

[G.R. No. 1666. July 28, 1905]

**PAULA DE GUZMAN, PLAINTIFF AND APPELLANT, VS. FIDEL RIVERA,
DEFENDANT AND APPELLEE.**

D E C I S I O N

TORRES, J.:

Counsel for plaintiff Paula de Guzman, in a complaint filed January 27, 1902, asked the court to enter judgment against the defendant. Fidel Rivera, and in favor of the plaintiff, declaring that certain possessory information proceedings, instituted by the latter, were null and void on account of some alleged irregularities committed therein, to wit: That Antera Macario, the owner of the adjoining land, was not cited to appear in the said proceedings, and that these proceedings had been approved by a judge without jurisdiction. He also asked the court to find that plaintiff had a better right to the land in question, she having purchased the same from one Jose Torres for the sum of 273 pesos, praying further that the defendant be directed to pay the costs of proceedings and to indemnify plaintiff for the damages incurred by her by reason of her ejectment from the premises, and that she, the plaintiff, be granted any such other and further relief as the court deemed just and equitable.

The defendant, Rivera, in his answer filed February 21, 1902, denied each and all of the allegations of the complaint.

On June 27 of the same year the defendant filed a cross complaint against the plaintiff in which he asked the court to declare that he, the defendant, was the owner of the land in question, and to direct that plaintiff vacate the premises and remove from the lot in question

the house built thereon by her, and to pay the costs of proceedings and indemnify defendant for the damages incurred by him, alleging that the property in question was sold by Jose Torres, to the defendant, Rivera, and his wife Agueda Asuncion, and not to the plaintiff, Paula de Guzman. Defendant further alleged that plaintiff had been in possession of the land by mere tolerance on his part and that she had continued to withhold the same unlawfully and unjustly from defendant, notwithstanding the fact that she had been required through a notary public to vacate the premises.

Plaintiff's demurrer to the cross complaint having been overruled, she asked the court on September 11, 1902, to dismiss the cross complaint, with costs against the defendant in this action, alleging that the latter never had any intervention whatever in the sale of the lot in question, except that he drafted the private instrument which was subsequently signed by the vendor, Jose Torres; that the plaintiff, Paula de Guzman, was in possession of the land as the lawful owner thereof; that the house of strong materials built thereon belonged to her, she having acquired the same from Pantaleon Aldana. and his wife, Romana Basa, in the year 1897, and that in the following year she bought the lot itself.

The court below, after hearing the evidence, entered judgment May 1, 1903, declaring that the land in question belonged to the defendant and that he was entitled to recover the same from the plaintiff, and expressly directed the latter to remove her house from the premises within three months from the date the prevailing party should apply for an execution of the judgment, and to pay the costs of the proceedings. From this judgment plaintiff appealed.

Plaintiff's main contention is that the possessory information proceedings instituted at defendant's request were null and void, and the trial court so found, as appears from the findings upon which it based its decision, but the court failed to make any order in the adjudging part of its decision. Neither party, however, excepted to that part of the judgment of the court below relating to the nullity of the possessory information proceedings. We do not therefore pass upon

this branch of the case.

It was fully established during the trial in the court below, and it was also admitted by both parties, that the lot in question formerly belonged to the said Jose Torres. The only question therefore is, who bought the land from Jose Torres?

The trial court upon a consideration of the whole case found that the lot was sold to the defendant, Fidel Rivera, who acquired title thereto, and that the defendant, and not the plaintiff, Paula de Guzman, was the owner of the land.

Jose Torres, the former owner of the land, testified under oath at the trial, and subsequently made the same statement in a public instrument executed before a notary public, April 19, 1902, that in the year 1898 he sold the land in question to the defendant, Fidel Rivera, and his wife, Agueda Asuncion, for the sum of 270 pesos, which he acknowledged to have received from the purchaser, thereby ratifying and confirming all acts of ownership theretofore exercised by the said purchaser in and about the premises, the fact that the sale was effected through a private instrument notwithstanding. The vendor delivered at the same time to the defendant the old title deeds of the land thus transferred to the latter. These papers were subsequently introduced in evidence in this case by the defendant.

The testimony of Jose Torres, the former owner, is conclusive as to the title of the purchaser, Rivera, to the land in question. It is the more decisive upon this point because it is corroborated by the witnesses, Candido de Vera, Romana Basa, Tomas Subandal, and Esteban Pabalan, whose testimony is in perfect accord with the uncontradicted testimony of Rivera and his wife.

To overcome this evidence the plaintiff introduced no proof tending to show that she was the owner of the land in question. It was her duty to prove that she had a better right to the land, and the trial court found that the mere fact that the possessory information proceedings were null and void did not necessarily mean that the plaintiff had a

better right to the land, and that it appeared from the evidence that the land had been sold by Jose Torres to the defendant, who was the real owner of the same.

If the defendant, Fidel Rivera, was the lawful owner of the land, it can not be denied that he had a right to maintain an action to recover the same from the wrongful possessor, excluding her from the use and enjoyment of the property. (Art. 348 of the Civil Code.)

The plaintiff having failed to prove that she was the owner of the land, we must conclude that she was wrongfully in possession thereof, and that she occupied the same by the mere tolerance of the defendant. The judgment of the court below, which is in accordance with the prayer of the cross complaint, is, therefore, hereby confirmed.

It also appears from the record in this case that the house occupied by the plaintiff, Paula de Guzman, belonged to Romana Basa, an old tenant of Jose Torres, the former owner of the lot upon which the said house was built; that the house was subsequently sold by Romana Basa to the plaintiff in this case; that the latter paid no rent for the use of the lot since the defendant, Rivera, and his wife bought the same as aforesaid, she being a relative of theirs.

Paula de Guzman, as has been said before, did not build the house upon the lot in question but acquired the same from one of Rivera's tenants, who paid rent while she occupied the land. The plaintiff, therefore, has no right to be indemnified nor can she avail herself of the provisions of article 361 of the Civil Code since she, a wrongful possessor, had no right to continue to occupy the land which she unlawfully withheld from the defendant, to the prejudice of the latter.

She bought the house from Romana Basa with full knowledge of the fact that the land belonged to Jose Torres, and she can not now Claim that she believed in good faith that she had a right to continue in possession, and allege that she can not be ejected from the premises without being first indemnified.

From the foregoing it follows that the plaintiff occupied the land

unlawfully and by mere tolerance of the actual owners thereof. She did not acquire when she bought the house any more rights than those which the former tenant had. She acted in bad faith when she instituted this action and she can not now avail herself of the provisions of articles 361 and 434 and other corresponding articles of the Civil Code.

Her petition that she be declared the owner of the land in question without having shown in any way, shape, or form that she had bought the land, is the best evidence of her bad faith and of the fact that she has no right to indemnification.

For the foregoing reasons we are of opinion that the judgment of the lower court dated May 1, 1903, should be affirmed with costs against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith. The parties should be notified of this decision and a copy thereof, together with a copy of the judgment, shall be sent to the court below for proceedings in conformity herewith. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.
Willard, J., did not sit in this case.