1 Phil. 275

[G.R. No. 66. May 01, 1902]

GEORGE M. SAUL, PLAINTIFF AND APPELLANT, VS. ENRIQUE DALTON HAWKINS, DEFENDANT AND APPELLEE.

D E C I S I O N

ARELLANO, C.J.:

On the 8th of August, 1900, D. Canuto Rivera sold to George M. Saul a house and lot at No. 14 Aguilar Street, Iloilo, P. I., by deed recorded in the property register on September 13 of the same year.

On the 29th of the same month Mr. Saul, in an act of conciliation with Mr. Dalton, stated that on the 8th he had bought the said house, and "as Mr. Dalton has subleased the house, he demands that the latter deliver to him each month the entire amount of the rental under the sublease," to which the defendant replied that as he had a contract of lease with Mr. Canuto Rivera he did not consider himself under any obligation to turn over the entire amount of the monthly rental, but simply the amount which he had agreed to pay Mr. Rivera.

On October 30 of the same year Mr. Saul, invoking article 348 of the Civil Code, according to which the owner of property is entitled to dispose of the thing owned by him without other limitation than that established by the laws and articles 2, 23, and 27 of the Mortgage Law, under which a lease, executed by the former owner of the property by means of a public instrument and recorded in the register of property, is a limitation established by law with respect to a third person who acquires by sublease, and affirming that the lease of the property to Dalton by Rivera, because it is a mere private agreement, does not bind Mr. Saul and can not constitute a *gravamen* upon the property which the purchaser is bound to respect, prayed the court to declare "the nullity of the *gravamen* which Mr. Dalton claims to have on the house purchased and to order him to deliver to Mr. Saul the total amount of the rental received from the date on which the latter purchased the house, with the costs."

On the 28th of November following counsel for Mr. Dalton answered the complaint, and, for the purpose of determining the issue before alleging the facts constituting his defense, stated: "And as the *gravamen* which my client contends to have upon the property in question is a contract of lease of the same entered into with Mr. Rivera, we conclude that this action is brought for the annulment of this contract of lease." Upon this basis he alleged the following facts as relevant to the issues: (1) That it is not true that the contract of lease in favor of Mr. Dalton is a private agreement; (2) that if it was such originally it was subsequently authenticated by the acknowledgment of its authenticity in court by Rivera in an action concerning the validity of the sublease by Dalton before the justice court, in which Dalton had won the suit; that this judgment had been preventively annotated in the property register after Rivera had recorded in a notarial act a description of the property in question. The contract of lease having these conditions, in his third conclusion of the law he draws the inference that "It results that this lease is enforceable not only against the person with whom the contract was made but also against a third person, such as is Mr. Saul." And in his fourth conclusion of law he states that with respect to Mr. Saul, not only is the contract of lease in question enforceable against him because the same was preventively annotated in the property register, but also because before purchasing the house in question he had knowledge of the existence of the contract, and he who purchases property, knowing the same to be encumbered, is understood to take it subject to the gravamen, and therefore is under obligation to accept the same.

The plaintiff in his replication, presenting the question in the same terms, said: "The affirmation of the adverse party that we, in seeking to obtain a declaration of the nullity of the *gravamen* of the lease which Mr. Dalton claims to have upon the house No. 14 Aguilar Street, are also seeking to obtain the nullity of the contract of lease entered into as alleged between his client, Mr. Dalton, and Mr. Canuto Rivera is wholly erroneous. It is apparent that the adverse party has not perceived that these are two distinct questions and that they can and do exist separate. The *gravamen* of the lease may be declared void, as prayed for by Mr. Saul, and the contract of lease entered into between Dalton and Rivera still be valid and binding. In no part of our complaint have we discussed the nullity of the contract, of lease, because it is our understanding that this is a matter completely distinct from the purpose of our complaint. * * * As a final argument the defendant states that the contract was ratified by Mr. Rivera before a notary public and was afterwards preventively annotated and registered, and that therefore it was converted into a public document; and, in consequence, Mr. Saul is obliged to respect it. We do not deny the first paragraph of the replication of the adverse party, but at the same time we contend that the document in question is not a

public document, and, with respect to the purchaser, Mr Saul, is unenforceable. * * * This lack of legal efficacy is demonstrated by the dates of the acts which are alleged to make the lease entered into with the former owner binding upon the new owner, and which are as follows: The ratification of the notarial act, September 28; the annotation in the register, October 26, and the date of the purchase, August 8." In the fourth paragraph of the replication the plaintiff' says: "As before stated, we do not discuss the validity or lack of validity of the contract in question, as that is not in issue. If the adverse party had made a careful examination of the complaint he would perhaps have seen that we take for granted the existence of some verbal or written contract in seeking to obtain a declaration of the nullity of the gravamen of lease, a thing which would not be asked if the lease did not exist, as the adverse party might well have understood."

The terms of the only question put in issue by the complaint and answer are well defined. These pleadings present the issue for all legal purposes, and the terms of the question can not subsequently be altered. We can not take into consideration the other question, improperly raised in the replication and rejoiner, with respect to the nullity of the contract of lease itself, upon the ground, apparently, that the stipulation was for the use of the house for such period as the lessee might desire to keep it. Article 531 of the Law of Civil Procedure of 1888 prohibits a variance from the claims advanced and defenses set up in the complaint and answer, which should be the principal object of the suit. Apart from this no discussion can be had upon a matter not involved in the case, and in this case there is no such contract of lease.

There is no question that the position taken by the defendant before the presentation of the complaint and still maintained is that of considering the lease executed by Rivera upon the property purchased by Mr. Saul as an incumbrance, and of insisting upon Mr. Saul's respecting the contract. Mr. Saul accordingly attempted to free his property from the alleged incumbrance and asked the court to declare the property free from this *gravamen* in the following words: "To declare the nullity of the lease which Mr. Dal ton alleges to exist upon the house purchased."

The court must determine whether the plaintiff has the right asserted by him and whether the action brought is the proper one.

The existence of an unrecorded lease, executed in favor of the defendant by the grantor, is taken for granted. There is no allegation that in the contract any agreement has been made that it was to be respected by the purchaser or any other subsequent transferee.

A contract of lease executed by the vendor, unless recorded, ceases to have effect when the property is sold, in the absence of a contrary agreement. The right to use the house is one of the rights inherent in the dominium transferred by the vendor to the vendee. The contract between the lessor and the lessee does not, however, cease to be binding if the term stipulated in the contract has not expired, as the transfer of the *dominium* and other rights over the thing does not free the vendor from liability under the personal actions arising from a contract of lease. But these personal actions do not bind the purchaser in his capacity as successor by singular title in the absence of an express agreement between the lessor and the lessee—an express agreement which must, in turn, become a personal obligation of the purchaser. If the lease is recorded it is no longer merely a personal right on the part of the lessee to continue to enjoy the property leased, even after the same is sold. It is also a real right, made such by recordation, and constitutes an incumbrance upon the property, whoever may be its owner or possessor, and is therefore enforceable even against third persons.

The lease in question does not constitute a real right. The subject of the preventive annotation was a judgment which refused "to declare the nullity of the contract of sublease entered into between the said Enrique Dalton and the present sublessee of the house belonging to the said Canuto Rivera." This is not such a recordation of the lease as to constitute a real right, and which, when inscribed in the register to give it publicity, plainly shows to anyone intending to purchase the property the existence of an incumbrance consisting in the deprivation of the right to use the house during the time stipulated in the recorded lease.

Taking for granted the existence of this sublease, attested in the judgment preventively annotated, it appears that at the date of the complaint it was not the defendant, Dalton, but the sublessee who had actual possession of the property. Article 445 of the Civil Code provides that possession de facto can not be recognized in two distinct persons, except in cases of tenancies in common. The sublessee, therefore, might continue to enjoy this possession with the toleration of the new purchaser, but it would not be a continuation of the civil possession of Canuto Rivera; that is, it could not be considered as a possession in the name of the owner who had conveyed away his civil possession, together with his dominion, by executing the contract of sale. The right of the grantor being extinguished, the right granted is extinguished. *Resoluto jure dantis resolvitur jus accipientis.* So that at the moment of the transfer of the dominion and civil possession, and, at the same time, of the right to use and enjoy the thing sold, all physical possession in the name of another was extinguished. The civil possession of Canuto Rivera being extinguished the physical

possession of the lessee or sublessee was also extinguished *ipso jure.* In this case the only right remaining to the lessee with respect to the purchaser is that of reaping the fruits of the crop corresponding to the current agricultural year, and, with respect to the vendor, the right to recover from him such damages as the lessee may have suffered. (Art. 1571, par. 2, of the Civil Code.)

What, then, was there to prevent the plaintiff from exercising his right to use and to enjoy the thing bought?

The existing lease, argues the defendant—the lease entered into with Canuto Rivera, by constituting an incumbrance upon the property acquired by the plaintiff which the latter is bound to respect.

This lease would be a valid and enforceable incumbrance with respect to Canuto Rivera during its existence, but it is not valid or binding with respect to Mr. Saul, as to whom it has no effect, because of the extinction of the right of the person who granted it, argues in turn the plaintiff.

The right having been extinguished *ipso jure* it was necessary that this be made known to the lessee, Dalton, or to the person to whom Dalton had subleased the property, the rights of the latter not being terminated by the mere fact of the transfer of the dominion and other real rights. The purchaser, availing himself of his privilege under article 1571, paragraph 1, above cited, to terminate the lease existing at the time of the sale, maae use of the act of conciliation, and this act of conciliation was opposed by the objection discussed in this suit; that is, the existence of a real right of recorded lease.

It is unquestionable that for the reasons above stated the alleged incumbrance does not exist as to the purchaser, the plaintiff herein; that is to say, it can not continue to be valid and enforceable against him, as it was against his predecessor, the vendor. Is, however, an action brought to obtain a declaration of the nullity of the alleged incumbrance the appropriate remedy?

It would undoubtedly have been correct to have brought action for an adjudication that the alleged incumbrance was not enforceable. But a prayer that it be declared “null” instead of “not enforceable” is not entirely incorrect, in view of the precise terms of the issue, the allegations of the parties, and the evidence introduced. A judgment which correctly and explicitly passes upon the relief prayed for by the plaintiff would be congruent with the complaint, even if the action may have been improperly designated, inasmuch as this

circumstance does not change its nature. (Judgment in cassation of April 4, 1883.)

The possessor in good faith is entitled to the fruits received until his possession is legally interrupted. (Art. 451 of the Civil Code.) The act of conciliation produces a civil interruption provided it is followed by a suit for the recovery of possession. (Art. 1947.) The complaint in this case for a declaration that the lease made by the former owner was riot enforceable, filed within two months following the date of the act of conciliation by which demand was made upon the defendants for the delivery of the entire rental of the property, is equivalent to a suit for possession.

Therefore the judgment appealed is reversed, and we hold that the lease stipulated in favor of Enrique Dalton by Canuto Rivera upon the house No. 14 Aguilar Street, Iloilo, can not be enforced against George M. Saul, and the said Saul is entitled to recover all rents received or which might have been received by Dalton from the time of the celebration of the act of conciliation, and the said Dalton is hereby ordered to pay and deliver the amount of the said rents derived from the property, without special condemnation as to costs.

Torres, Cooper, and *Willard, JJ.,* concur,

Mapa J., dissents.

Ladd, J., did not sit in this case.

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