Supreme Court E-Library

[G.R. No. L-27345. February 28, 1969]

LEONARDO CATAIN, plaintiff-appellant, *vs.* HERMINIO RIOS and MARIANO TAMAYO, defendants-appellees.

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DOUBLE SALE OF IMMOVABLE PROPERTY; PREFERENTIAL RIGHT OVER THE PROPERTY SOLD.— In a double sale of immovable property, where both sales had been registered in the registry of property, ownership of the property sold shall pertain to the purchaser who first took possession in good faith; in this regard, possession of the property sold is deemed symbolically delivered to the purchaser upon execution of the deed of conveyance, unless said deed states otherwise or the contrary can be clearly inferred therein.

2. ID.; ID.; ID.; ID.; POSSESSION OF PURCHASER MAYBE ACTUAL OR CONSTRUCTIVE.— The term 'possession' as used in Art. 1544 of the Civil Code, includes actual, as well as constructive possession without preferential distinction between the two kinds of possession, so that, where the intent of the parties in executing a public instrument evidencing the sale of immovable property was to thereby consummate a full transfer of the corresponding right *in rem,* in and to the property, an effective delivery of the civil possession thereof had been carried out in the sense that the term is understood.

3. ID.; ID.; ID.; ID.; GOOD FAITH A NECESSARY ELEMENT OF POSSESSION.— A buyer of a parcel of land which appears in the registry of property to be in the name of a person other than the vendor of said land, much less could the latter even produce at the time of the sale the owner's duplicate of the original certificate of title, neither could he show the tax declaration of the property, is deemed to have notice of such facts and he cannot legally claim afterwards that he bought the land in the belief, in good faith, that it belonged to the vendor at the time of the sale. Entering into actual possession of the land cannot cure his lack of good faith and he cannot be entitled to the benefits afforded in the last paragraph of Art. 1544 of the Civil Code.

APPEARANCES OF COUNSEL

Abordo, Bocasa and *Socretes* for plaintiff-appellant.

David M. Lindayag and *Emiliano B. Tanay* for defendants-appellees.

Supreme Court E-Library

DECISION

CONCEPCION, *C.J.*:

This appeal from a decision of the Court of First Instance of Palawan, dismissing Civil Case No. 313 thereof, is before Us upon certification by the Court of Appeals, only questions of law being raised therein.

Before the institution of said case, plaintiff Leonardo Catain had filed Civil Case No. 268 of the same court, which was dismissed, upon the ground that, although its object was to recover the possession of a land, the right thereto hinged on the ownership thereof, in view of which the court reserved to the parties the right to settle this question in another action therefor. Hence, the aforementioned Case No. 313.[1]

It appears that, on March 8, 1954, defendant Herminio Rios sold the land in question—which is situated in the sitio of Ituan, Municipality of Busuanga, Province of Palawan—to plaintiff Leonardo Catain. Over a year later, or on August 20, 1955, Rios sold the same land to his co-defendant herein, Mariano Tamayo. When, sometime after the second sale, plaintiff sought to take physical possession of said land, Tamayo refused to turn it over to him. Accordingly, plaintiff commenced the former action for the recovery of possession, and, upon its dismissal, as above stated, the present case, against Herminio Rios and Mariano Tamayo, to establish title to said property, as well as to secure its possession and recover damages. Defendant Herminio Rios did not care to file his answer to the complaint or otherwise contest the same.

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[1] The records do not show why the title to said land could not be determined in Civil Case No. 268. Perhaps the same was an appeal from a forcible entry or detainer case initiated in the Justice of the Peace or Municipal Court, and appealed to the Court of First Instance.

Supreme Court E-Library

Relying upon Article 1544 of the Civil Code of the Philippines,[2] the lower court rendered judgment for Tamayo and against the plaintiff, upon the theory that, since neither the deed of sale to Tamayo nor that executed in favor of the plaintiff had been registered, the former has a better right, he having been first in the physical possession of the disputed land.

Upon a review of the record, we find that the decision appealed from cannot be sustained. Indeed, it is well settled that the possession referred to in the last paragraph of said Art. 1544, includes actual, as well as constructive possession.[3] In the case at bar, both sales had been made through public instruments, so that, upon execution of the deed of conveyance in favor of plaintiff herein, the property sold was deemed symbolically delivered to him, inasmuch as the contrary does not appear and cannot be clearly inferred from said instrument.[4] What is more, as hereafter pointed out, the intent of the parties, at the time of the execution thereof, was to thereby consummate a full transfer of the corresponding right *in rem,* in and to the property in litigation, to plaintiff herein.

It is true that Tamayo was then in actual possession thereof. Such possession was, however, a precarious one, for, admittedly,

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[2] "If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

"Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

"Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith" (Art. 1544, Civil Code of the Philippines).

[3] Bautista *v.* Sioson, 39 Phil. 615; Lichauco *v.* Berenguer, 39 Phil. 643.

[4] "ART. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

"With regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept" (Civil Code of the Philippines).

Supreme Court E-Library

he then held the land, *not* adversely to, but with the consent and, therefore, on behalf of defendant Herminio Rios. This was due to the fact that prior thereto, Tamayo had bought from Honesto Rios, father of Herminio Rios, *another* land—located in the sitio of *Malabnao*—which, however, could not be delivered to Tamayo because it was the object of a litigation. Pending final determination thereof, it was agreed, therefore, between Herminio Rios—his father having died in the meantime—and Tamayo, that the latter would *meanwhile* hold the property now in question—located in the sitio of Ituan—although *not* in a proprietary character. Hence, it has been stipulated, between the parties herein, that Tamayo's possession was *not* that of an owner, until August 20, 1955, when—owing to subsequent developments, making it impossible to turn over to Tamayo the land situated in Malabnao—Herminio Rios executed the aforementioned deed of sale in his (Tamayo's) favor.

At the time of the sale to plaintiff herein, on March 8, 1954, and for over a year thereafter, Rios was, therefore, in civil possession of the land in question, in much the same way as he would have been in such possession had the land been physically held by his tenant, administrator or agent. And his intent to make a symbolic and effective delivery of that civil possession to the plaintiff could be and was carried out through the execution of the public instrument evidencing the sale to the latter.

There is, besides, a decisive factor in favor of plaintiff herein, and that is that the property in question is *registered,* not in the name of Herminio Rios, but *in that of plaintiff's father, Vicente Catain.* In this connection, it is alleged in plaintiff's complaint, and not denied in defendants' answer, that said property is covered by Patent No. 2127 and Original Certificate of Title No. 344 of Palawan, both in the name of said Vicente Catain. It appears that, sometime before 1951, the latter had sold the property to Honesto Rios, father of defendant Herminio Rios, subject to redemption, which was exercised by plaintiff Leonardo Catain, on March 8, 1954, his own father having died prior thereto. For

Supreme Court E-Library

one reason or another, said conditional sale by Vicente Catain to Honesto Rios was not registered, although the owner's duplicate of said Original Certificate of Title No. 344 had been delivered to him. Hence, when, on March 8, 1954, plaintiff redeemed the property from Herminio Rios, whose father had, also, died in the meantime, Herminio turned over to plaintiff said owner's duplicate of Original Certificate of Title No. 344 and the corresponding tax declaration, as well as executed, before the Municipal Treasurer of Busuanga, Palawan, an affidavit of transfer of said property to him (plaintiff). As heretofore adverted to, the public instrument evidencing the sale in his favor, coupled with the surrender of the owner's duplicate of said original certificate of title and the tax declaration, and the execution of said affidavit of transfer of real estate, for purposes of taxation, manifestly reveal the intent of Herminio Rios to do everything necessary to fully convey and transfer effectively to plaintiff herein the real right of ownership over the land in question.

At any rate, inasmuch as said land was registered in the name of Vicente Catain when Herminio Rios sold it to Tamayo—as well as at present— and this appeared and still appears in public records, in the Office of the Register of Deeds of Palawan, Tamayo must be deemed to have notice of such fact[5] and cannot legally claim that he bought the land in the belief, in good faith, that it belonged to Rios, who could not even produce—at the time of the sale to Tamayo—the owner's duplicate of the original certificate of title in the name of Vicente Catain, the same having been previously delivered to plaintiff herein.

In fact, *Tamayo did not allege* in his answer that he bought the property in question in good faith or that he acted in good faith when, *on August 20, 1955,* he converted his, up to then, precarious possession, into one as owner. Although the lower court found that there was good faith on his part, when his possession began *in 1951,* this did not suffice to place him within the purview of the third paragraph of the aforementioned Article

[5] Palanca *v.* Director of Lands, 43 Phil. 149.

Supreme Court E-Library

1544, because—as already pointed out—such possession was one held *with the consent* of Honesto Rios, and, hence, *in his representation and behalf,* not adversely to him. In other words, Tamayo is not entitled to the benefits of said legal provision.[6]

Moreover, a deed conveying a land covered by a certificate of title, under the Torrens system, does not transmit a right *in rem* until the registration of said instrument,[7] and that executed in favor of Tamayo has not been registered. In fact, it *could not* have been registered, it having been executed by Herminio Rios, whereas the land is registered in the name of Vicente Catain, and Tamayo could not have presented the owner's duplicate of the certificate of title.

It is urged in plaintiff's brief that, in view of Tamayo's unjustified and illegal refusal to surrender the physical possession of the property in question, the former has suffered damages equivalent to 50 cavans of palay yearly, at the rate of ₱8.00 a cavan. Without contesting the sufficiency of the evidence on this point, Tamayo argues that plaintiff is not entitled to recover said damages, because said refusal was justified by law. Inasmuch, however, as Tamayo's stand is not legally tenable, it follows necessarily that he should indemnify said damages.

WHEREFORE, the decision appealed from is hereby reversed and another one shall be entered ordering the defendants herein to vacate the property in question and to deliver the possession thereof to plaintiff herein, as well as sentencing said defendants to pay him by way of damages the price of 50 cavanes of palay a year, from August 20, 1955, up to the date on which said delivery shall have taken place, computed at the rate of ₱8.00 a cavan, with interest thereon at the legal rate, from September 22, 1958, when this action was begun, in addition to attorney's fees in the sum of ₱1,000.00, and the costs.

IT IS SO ORDERED.

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[6] Paylago *v.* Pastrana Jarabe, L-20046, March 27, 1968; Bernas *v.* Bolo, 81 Phil. 16.

[7] Section 50, Act No. 496.

Supreme Court E-Library

Reyes J.B.L., Dizon, Zaldivar, Ruiz Castro, Fernando, Capistrano, Teehankee and *Barredo, JJ.*, concur.

Sanchez, J., took no part.

Makalintal, J., concurs in the result.

Judgment reversed.

[G.R. No. L-28652. February 28, 1969]

ALFREDO B. BARAÑGAN, petitioner-appellee, *vs.* VICENTE HERNANDO, et al., respondents-appellants.

SYLLABUS

1. ADMINISTRATIVE LAW; CIVIL SERVICE LAW; APPOINTMENTS; TEMPORARY APPOINTMENTS, EFFECTS THEREOF; INSTANT CASE.— Inasmuch as Barañgan's appointment is temporary in character, he stands outside the protective mantle of a secured tenure and may be summarily removed at the pleasure of the appointing power. His civil service eligibility avails him nothing at all. As a temporary-appointee, he is not entitled to the protection afforded by Republic Act No. 557, nor to the protection of security of tenure in office guaranteed by the Constitution. Neither can he derive comfort from the act of the Commissioner of Civil Service reclassifying his second appointment as provisional, and then as permanent. This is an exercise in futility. It is, in fact, an illegal act which appellant Mayor Hernando may rightfully disregard (Santos *vs.* Chico, *ante.*) for, to allow the Civil Service Commissioner to qualify at his pleasure an appointment already made is to permit him to assume the appointing power, contrary to law.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; MANDAMUS; TO COMPEL REINSTATEMENT IS NOT PROPER WHERE THERE IS NO RIGHT TO OCCUPY POSITION.— Shorn of any right to permanently occupy the position in question, Barañgan may not compel said mayor to reinstate him thereto by mandamus.

APPEARANCES OF COUNSEL

Jose W. Diokno and *Roberto P. Tolentino* for protestant-appellant.

Dator and *Associate Law Off.* for respondents-appellees.