

KIOMASA KAMINANGA, Plaintiff
v.
TEKERENG SYLVESTER, YOSIWO RENGUUL AND ERETA
RENGUUL, Defendants
and
YOSIWO RENGUUL AND ERETA RENGUUL, Cross-complainants
v.
TEKERENG SYLVESTER, Cross-defendant
Civil Action No. 478
Trial Division of the High Court
Truk District
February 16, 1971
See, also, 5 T.T.R. 341

Action to determine ownership of land in Iras Village, Moen Island, Truk District. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that when the defendant complied with the contract for the purchase of land by full payment of the purchase price he was entitled to receive a deed transferring legal title and as against a subsequent purchaser who had actual notice of his occupancy of the land he could demand a deed from the seller or the subsequent purchaser.

1. Real Property—Equitable Conversion

The interest of a person in possession of land who is a purchaser under a valid contract under which the purchase price has not been paid, is,

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nevertheless, considered as ownership, even though the buyer does not have legal title.

2. Real Property—Equitable Conversion

The purchaser in possession holds the equitable title and is entitled to the legal title as soon as full purchase price has been paid.

3. Real Property—Sales—Contracts

There is no statute of frauds in the Trust Territory requiring a writing for a contract for the sale of land.

4. Real Property—Sales—Generally

A contract of sale and purchase contemplates a subsequent execution of a deed transferring title, thus when the buyer complies with the contract by full payment he is entitled, at that time, to receive a deed transferring legal title and only a subsequent sale to an innocent purchaser for value would cut off his rights.

5. Real Property—Sales—Recording

The purpose of the recording statute is to protect a buyer from a subsequent innocent purchaser because recordation of a deed is notice to the world that title is in the buyer and thus a subsequent purchaser is not "innocent" in the legal sense.

6. Real Property—Sales—Bona Fide Purchaser

One who had actual notice of the occupancy of the land by another and should have, but failed, to inquire what interest those in occupancy claimed to support their occupancy, is not an innocent purchaser.

7. Real Property—Sales—Recording

Actual notice, when proved may be substituted for the statutory notice established by the recording statute.

8. Real Property—Sales—Generally

Defendants, being the first purchaser and holding an equitable title, could demand a deed from the seller, or from the subsequent purchaser of the legal title with notice of another's claim.

Assessor:

PRESIDING JUDGE F. SOUKICHI

Interpreter:

SABASTIAN FRANK

Reporter:

NANCY K. HATTORI

Counsel for Plaintiff:

MITARO DANIS

Counsel for Defendants Renguul:

FUJITA PETER

TURNER, *Associate Justice*

This case concerns ownership of the land Manonong, located in Iras Village, Moen Island, Truk District. Both plaintiff and defendants Renguul purchased the property

(at different times) from the defendant Sylvester. Defendant Sylvester did not appear and was not represented and accordingly default judgment is entered against him in accordance with the pleadings and evidence.

FINDINGS OF FACT

Essential elements of Sylvester's sale to the plaintiff are as follows:

1. After a period of negotiation in 1967, plaintiff purchased the land through his agent, Tatasy Wainit, who paid Sylvester Two Hundred Dollars (\$200.00) by check dated April 28, 1967.

2. Plaintiff obtained a deed dated March 6, 1967, which was recorded with the Truk District Clerk of Courts December 27, 1967.

3. Prior to the purchase, plaintiff knew the defendants Renguul lived on the land and farmed it. Plaintiff did not inquire as to defendants' claim, if any. When subsequent to the purchase, plaintiff was told by defendants Renguul they had purchased from Sylvester, plaintiff obtained a written statement under oath from Sylvester, dated May 7, 1963, in which Sylvester denied a sale to defendants Renguul and reaffirmed his sale to plaintiff. Renguul obtained a similar statement from Sylvester under oath, dated September 9, 1963, in which Sylvester acknowledged the sale to Renguul, receipt of "full payment" of Two Hundred Dollars (\$200.00) on April 12, 1966, execution of a deed and also made no mention of any sale to plaintiff. Because the statements were contradictory and false in part, neither is entitled to probative value.

Essential elements of Sylvester's sale to the defendant Renguul are as follows:

1. Although defendant paid Sylvester Eighty Dollars (\$80.00) in 1963 in connection with his desire to purchase the land, an agreement of sale was not entered into until November 18, 1965, with the payment of One Hundred

Dollars (\$100.00) on the purchase price at the jail in Saipan in the presence of three Trukese sailors who accompanied Renguul.

2. Defendant Renguul paid the balance of the purchase price April 12, 1966, but did not obtain a deed until December 22, 1967. The deed was recorded with the Truk District Clerk of Courts February 19, 1963.

3. When defendant and Sylvester entered into the land sale agreement in 1965, defendants then built their house and moved onto the land and started farming it.

4. In the absence of the defendants, who were on a trip, the plaintiff built his house on the land and when Ereta returned to Truk in September, 1967, she discovered plaintiff's house.

5. This confrontation between plaintiff and defendants led the parties to recordation of their deeds and obtaining the conflicting and self-serving statements from Sylvester.

OPINION

The facts of this case are not in dispute and evidence from both sides is entirely believable. The question resolves itself therefore into issues of law. As a matter of law, which purchase prevails?

Defendant entered into an oral agreement and paid the full purchase price prior to payment by plaintiff. Defendant paid the balance of One Hundred Dollars (\$100.00) April 12, 1966, and plaintiff paid in full, by check from his agent, April 23, 1967. Plaintiff obtained a deed and recorded it in Truk before defendant got his deed and recorded it with the Clerk of Courts.

[1, 2] As a matter of law, the facts that determine the issue relate to when a sale was made. The sale to plaintiff was the date of payment of the purchase price in 1967. The sale to defendant occurred when the 1965 agreement was made and One Hundred Dollars (\$100.00) of the pur-

chase price was paid. Renguul took possession at that time. The interest of a person in possession of land who is a purchaser under a valid contract under which the purchase price has not been paid, is, nevertheless, considered as ownership, even though the buyer does not have legal title. This is known in law as "equitable conversion." The purchaser in possession holds the equitable title and is entitled to the legal title as soon as full purchase price has been paid. 33 A.L.R. 310. 60 A.L.R. 1. 34 A.L.R. 1008.

[3] The defendants entered into an oral contract for the purchase of land. It must be remembered there is no statute of frauds in the Trust Territory requiring a writing for a contract for the sale of land. *Penno v. Katarina*, 2 T.T.R. 470, 472.

[4, 5] A contract of sale and purchase contemplates a subsequent execution of a deed transferring title. When defendant complied with the contract by full payment in 1966, he was entitled at that time to receive a deed transferring legal title. Only a subsequent sale to an innocent purchaser for value would cut off his rights. The purpose of the recording statute is to protect a buyer from a subsequent innocent purchaser because recordation of a deed is notice to the world that title is in the buyer and thus a subsequent purchaser is not "innocent" in the legal sense. *Rudimch v. Chin*, 3 T.T.R. 323, 327.

In *Asanuma v. Pius*, 1 T.T.R. 458, 460, this court said as to innocent purchaser:—

" . . . since Pius had given Flores clear evidence of full ownership of the land and the plaintiff Asao bought it from him in reliance on that evidence, in good faith for value paid, without notice of Pius' later oral agreement with Flores, Asao has acquired full title to the land free of Pius' claims."

[6, 7] The plaintiff was not an innocent purchaser because he had actual notice of the occupancy of the land by the defendants and he should have, but failed, to in-

quire what interest defendants claimed to support that occupancy. Actual notice, when proved, may be substituted for the statutory notice established by the recording statute.

[8] The defendants, being the first purchaser and holding an equitable title, could demand a deed from the seller, Sylvester, or from the plaintiff the subsequent purchaser of the legal title with notice of another's claim. 55 Am. Jur. Vendor and Purchaser, § 358.

Defendant's argument that between equal equities the one prior in time prevails is applicable to the case and is another way of stating the theory of equitable conversion. Equally applicable is the equitable maxim that "equity regards and treats as done what, in good conscience, ought to be done." 27 Am. Jur. 2d, Equity, §§ 126-149.

When defendant paid the full purchase price under the sale contract, he had a right to receive legal title and under equitable principles this right which was prior to plaintiff's right of ownership will be given effect as if the defendant in fact received a legal title prior to the plaintiff.

Akos v. Orem, 3 T.T.R. 504, is very similar to the present case in resolving a conflict between two sales of the same land.

We hold, therefore, that the law applicable to evidentiary facts requires judgment for the defendants Renguul. The plaintiff is entitled to recover the purchase price from Sylvester and to remove his house from the land. Accordingly, it is,

Ordered, adjudged, and decreed:—

1. That defendants Yosiwo Renguul and Ereta Renguul are the owners of the land known as Manonong #4 and Manonong #4a situated in Iras Village, Moen Island, Truk District, and more fully described in that certain deed of conveyance from Tekereng Sylvester to Yosiwo

Renguul, recorded with the Clerk of Courts, Truk District, February 10, 1968.

2. That plaintiff Kiomasa Kaminanga holds no interest in the above described land and the deed from Tekereng Sylvester to Kiomasa Kaminanga, recorded with the Clerk of Courts, Truk District, December 27, 1967, is without force and effect and is hereby cancelled and declared void.

3. That plaintiff shall have and hereby is granted judgment against the defendant Tekereng Sylvester in the sum of Two Hundred Dollars (\$200.00), together with interest thereon from April 28, 1967, at the rate of six percent (6%) per annum until paid.

4. That plaintiff shall have sixty (60) days, or such further time as defendants Renguul shall allow, within which to remove his house on the above-described land.

5. That this judgment shall not affect any rights-of-way there may be over said land.