

CASE BRIEF
2 Cdon 848/97

Parties: The plaintiff v. business company A., M. and M. B.

Facts

The plaintiff purchased a house and a garden from the vendor - business company A. Instead of transferring the estate to the plaintiff's proprietorship, A sold object of the contract, made with the plaintiff, to the second and third defendant, a married couple. This second contract was filed with registrar of estate and a petition was filed to put this new proprietorship in compliance with law. The registrar gave a permission and a new ownership was officially established in favour of the second and third defendant.

Legal issue

The question raised by this case is whether the second contract is valid according to law or the plaintiff can be found as an aggrieved party because of conduct of the first defendant and the estate belongs to him. The plaintiff deems that, regardless of the second contract, estate is in his proprietorship because the contract was completed and the second alienate is a breach of his right to undisturbed exercise of his ownership.

Procedural history

In the first instance court decided in favour of the plaintiff. Court ruled that the second contract between A. and the second and third defendant is void. According to this ruling, A. was bound with the first contract and was not entitled to make a new contract in this matter. The defendant did not agree and appealed against this judgement.

The second instance court reversed the ruling of the lower court and rejected the action. The court found the second contract valid because any party involved in the first contract (the plaintiff and A.) did not file a petition with the registrar of estate. It was done by the second and third defendant so their contract can not be found void. The plaintiff is only entitled to relief from A. for loss. The case went to appeal again.

The third instance court uphold the ruling of the second instance court and finally ruled that owners are M. and M. B.

Reasoning of the court

The third instance court argued that the contract of sale has got two phases. There is a titulus (reason) which is a contract and a modus which causes the transfer. A titulus has got only bond effect. The modus in this type of contract is to file the petition with the registrar of estate what was done only by the second and the third defendant. According to this principle, obligation from the first contract perished and as the second instance court has held, the plaintiff is only entitled to relief from A. for loss. This contract can only be found void in case of resisting against the statute or good manners what can not be used in this situation.

The court drew the conclusion that this case is about collision between obligation and property right and the preference must be always given to the right of an owner.