

34 Phil. 609

[ G.R. No. 11045. July 28, 1916 ]

**ILDEFONSO TOLENTINO, PLAINTIFF AND APPELLEE, VS. TOMAS PARAISO,  
DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**TORRES, J.:**

This is an appeal by bill of exceptions filed by counsel for defendant from a judgment of the 27th of October, 1914, by which the sale of the land in litigation made by Miguela Tolentino to Tomas Paraiso was declared to be null and void; the land to be the property of the plaintiff, and the defendant Paraiso was ordered to recognize the plaintiff as the owner of the said land and to deliver and return it to him immediately, to indemnify him for the fruits thereof which the plaintiff had failed to receive at the rate of ₱60 annually from the 22d of October, 1911, until complete payment should be made, with the costs against the defendant.

On the 28th of May, 1913, counsel for Ildefonso Tolentino filed a complaint in the Court of First Instance of Nueva Ecija, alleging that the plaintiff was the owner in fee simple by reason of having inherited from his late father and being in possession of a parcel of land in the *sitio* of Macabaclay, of the town of Bongabong, Nueva Ecija, the metes and bounds of which were set forth in the complaint; that in 1910 the defendant Paraiso, without the consent of the plaintiff, illegally appropriated said land and refused to return it, notwithstanding the various demands made upon him therefor; that during the three years that the defendant has been upon the land it has produced 80 cavanese of palay per annum, or a total of 240 cavanese, the true current price of which in Bongabong was ₱3 each cavan; that the said parties litigated the question of the ownership of said land in the court of the justice of the peace of Bongabong, and that a decision favorable to the plaintiff was rendered, which was set aside on appeal to the Court of First Instance for the reason that the justice of the peace had no jurisdiction to hear and decide questions concerning the ownership of real property; wherefore, plaintiff asked that judgment be rendered in his

favor, granting him the ownership and possession of the land in question, and ordering the defendant to deliver and restore the said land to the plaintiff, and to pay to the latter the value of the 240 cavanese of palay which he appropriated at the rate of ₱3 a cavan, in addition to the costs of the proceedings.

The demurrer to the foregoing complaint having been overruled, on the 22d of September, 1913, defendant answered denying generally and specifically all the allegations contained in the complaint, and in special defense alleged; that the land in question is part of a larger tract owned by the defendant which adjoins the same and that he acquired it by purchase, for which reason he prayed that he be absolved of the complaint, with the costs against the plaintiff.

The case came to trial, during the course of which Miguela Tolentino was cited to warrant the title and included as a party defendant as being the parson who sold the land in question to the defendant and, after both parties had presented their evidence, the court entered the decision above mentioned. The defendant excepted to the said decision and asked for a new trial; his motion being overruled, he excepted to the ruling, and, after his bill of exceptions was filed, it was approved and sent up to the clerk of this court.

The sole question to be decided in this case is: Who is the true owner of the parcel of land of a capacity of one and one-half cavanese sought to be recovered in the complaint? For, while the plaintiff alleges that he is the owner of said parcel of land by inheritance from his late father, Simeon Tolentino, by virtue of an extrajudicial partition effected on the 15th of July, 1909, between himself and his brothers (Exhibit A), the defendant claims that he acquired the said real property on the 21st of April, 1911, by purchase from its former owner, Miguela Tolentino, plaintiff's aunt, as appears in the document at page 24 of the record. In the record it appears to be duly proven that Canute Tolentino, a resident of the municipality of Santor, now comprised within that of Bongabong, Nueva Ecija, possessed certain real property, among which was a parcel of land described in paragraph 9, fifteenth clause of his will, dated May 30, 1894, and executed before the notary and witnesses and duly protocolized according to the laws governing at that time (page 16, Exhibit B). In this will the land is described as follows:

“Item.—Another parcel of rice land situated in the *sitio* of Macabaclay, of the barrio, of Antipolo, of a capacity of six cavanese of seed, which was acquired by way of leveling and clearing, and valued at ₱180.”

According to the second and third clauses of his will, the testator had six children by his first wife, of whom at the time of the making of the will the only survivors were Simeon, Remigio, and Francisco, and by his second marriage a daughter named Miguela. This latter received from her father Canute as her legitimate portion, among other properties, a “parcel of rice land in the *sitio* of Macabaclay of a capacity of six cavanos of seed,” paragraph 6, clause 11, of the will. On the 21st of April, 1911, Miguela Tolentino transferred in absolute sale to Tomas Paraiso and his wife Isidra Gonzalez said parcel of land which she had inherited from her father Canute Tolentino for the sum of ₱200. This land is situated in the *sitio* of Macabaclay or Canawan, in the barrio of Santor, municipality of Bongabong, Nueva Ecija; bounded on the north by lands of the State or the *sitio* called Catandungan; on the south by lands of Justino Tolentino; on the east by Calabiang creek and lands of Maximina Tolentino; and on the west by the Malpa creek. It measured about 12 hectares, more or less (Exhibit 1). The defendant claims to be the owner of the land in question by virtue of the deed of sale executed in his favor by Miguela Tolentino.

Miguela Tolentino, however, claims (pp. 31-39) that she only sold to the defendant Paraiso a parcel of land which had a capacity of 6 cavanos; that it was not true that she had sold 12 hectares of land, that being the reason why up to the present time the land had not been transferred to the name of Tomas Paraiso in the archives of the municipal treasury for the purposes of tax assessment. She added further that, as she was unable to read or understand Spanish, she did not know the true contents of the document (Exhibit 1), which she had signed outside of the office of the notary, and that the said document had been drawn up by the same defendant Paraiso. The vendor Miguela Tolentino does not deny that she sold the said land of 6 cavanos; she only denies that the land so sold measured 12 hectares, because in the said land there is not included that of the plaintiff Ildefonso Tolentino which adjoins the land sold on the north. Said vendor is corroborated in her testimony by the witnesses and adjoining land owners Jose Ybai and Eusebio Bartolome, and these latter under oath declared that in the act of the transfer of the land by the vendor Miguela to the purchaser Tomas Paraiso, said witnesses measured off the boundaries of the land and that within the boundaries so fixed was not included the plaintiff's land of one and one-half cavanos which is now detained and tilled by the defendant.

The plaintiff Ildefonso Tolentino testified that he had inherited the land in question from his father Simeon who, since the time of the former Spanish sovereignty up to his death in 1905, had possessed and tilled it; that it was his father who broke the land and put it under cultivation; that later the witness availed himself of the services of the defendant Tomas Paraiso to till the land since the year 1910, adding that the said land annually produced 80

cavanes of palay, worth from ₱2 to ₱3 per cavan.

In order to prove that the land in question came from his father Simeon the plaintiff presented in evidence a document marked Exhibit A, which is an extrajudicial partition agreement executed before a notary on the 15th day of July, 1909, in Bongabong, between the brothers and sister named Juana, Justino and Ildefonso, all surnamed Tolentino, of the property left by their father Simeon; that in the said partition the plaintiff Ildefonso's share was three parcels of real estate, one of which is a parcel of land "situated in the *sitio* of Macabaclay, jurisdiction of Santor, bounded on the north by lands of the State; on the south by land of Miguela Tolentino; on the east by the Calabiang creek; on the west by another creek called Bolaon," but its dimensions are not given.

So that the land which fell to the plaintiff in the extrajudicial partition is not the same as the land belonging to Miguela Tolentino which she sold to the defendant, although both lands adjoin each other on the south of that of Ildefonso and the north of that of Miguela, for which reason it is not to be wondered at that as it appeared in the deed of sale that the land acquired measured 12 hectares instead of six cavanes, its area might be extended on any side, and due to this circumstance the plaintiff's land, which was lying fallow for lack of work animals, was included in spite of the fact that the vendor set forth in the act that she sold the land of six cavanes, which was described in the will, a document which showed the purchaser, who read it and acquainted himself with the fact, that the vendor was only the owner of 6 cavanes which she had inherited from her father, and the said purchaser did not allow the vendor to show her parents the deed of sale which he had prepared.

It is to be noted that a cavan of seed, used as a measure of agricultural land, is 3,600 square *brazas*, equivalent to 10,062 square meters, or 1 hectare 62 centares (Act No. 1519, section 3, paragraph *u*), for which reason the land measuring six cavanes which was sold by Miguela Tolentino to the defendant herein, the only land which she had inherited from her father, only contains 6 hectares, 3 ares and 72 centares, and not 12 hectares as was set forth by the defendant in the document Exhibit 1, which he prepared and had signed by the vendor without her knowing its contents, for the reason that she could neither read nor write.

It is unquestionable that the parcel of land measuring one and one-half cavanes claimed by the plaintiff has been usurped by the defendant on the pretext that he had bought a parcel of land from Miguela Tolentino bounded on the north by the land in question, measuring 12 hectares, according to a notarial instrument executed for the purpose by the vendor

Miguela Tolentino.

Miguela Tolentino, not being the owner of the land in question, could not have disposed of the property and transferred it to the defendant, because she possessed no rights therein.

“Ownership and other property rights are acquired and transmitted by law, by gift, by testate or intestate succession, and, in consequence of certain contracts, by tradition.” (Article 609, Civil Code.)

If the dominion of the owner over the property consists in the right to enjoy and dispose of the same without further limitations than those established by the law, Miguela Tolentino, not being the owner or proprietor of the land in litigation measuring one and one-half cavanos, could not transfer the same to the defendant Paraiso, and as the latter detains the land without right or title which transferred to him the dominion, the owner has the right to recover it, since the defendant possesses the land in bad faith, inasmuch as he was able to usurp the land by means of a deed of sale of a separate and distinct parcel of land which was described therein as being larger than it actually was, with the fraudulent intention of using the said deed afterwards to secure the adjoining land of Ildefonso Tolentino

Among the three essential requisites indicated by article 1261 of the Civil Code is to be found the consent of the contracting parties and a definite object for the subject of the contract. Ildefonso Tolentino did not give his consent to his aunt Miguela Tolentino so that she might sell the land in question to the defendant Paraiso, and it is certain that the vendor Miguela affirms that she only sold to the defendant her own land which she inherited from her parents; this parcel of land measured 6 cavanos of seed, and was the certain object of the contract of sale (Exhibit 1). And when the defendant extended his dominion over the plaintiff's land of one and one-half cavanos under the pretext that the vendor Miguela had sold him 12 hectares of land, it cannot be questioned that he performed a void and fraudulent act with the fraudulent purpose of usurping without any right the property of Ildefonso Tolentino, whose rights over the land in question cannot be annulled or destroyed by the mere fact that in the deed of sale it appeared that he had bought 12 hectares of land when he had really bought only 6 cavanos, which are equivalent to 6 hectares, 3 ares and 72 centares, and when the vendor affirms that she did not possess nor was she the owner of any more land than this, and the defendant was aware of the fact by the will which transferred the ownership to the vendor, for which reason the validity and efficacy of the said document cannot produce any effect except on the land really sold; it cannot affect the

plaintiff's land which, although it is adjoining, is separate and does not belong to the vendor.

For the foregoing considerations, whereby the errors attributed to the judgment appealed from are refuted, we should, as we do hereby, affirm the said judgment in so far as it decides favorably the action for recovery brought by the plaintiff, and we order that the usurped land, together with its fruits, be restored, with the costs against the appellant. So ordered.

*Johnson, Moreland, Trent, and Araullo, JJ., concur.*

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