

[G.R No. 16869. March 13, 1922]

**THE HEIRS OF ANTONIO ENRIQUEZ AND CIRIACA VILLANUEVA, DECEASED,
PLAINTIFFS AND APPELLANTS, VS. FRANCISCO ENRIQUEZ AND THE
TREASURER OF THE PHILIPPINE ISLANDS, DEFENDANTS AND APPELLEES.**

D E C I S I O N

ROMUALDEZ, J.:

This action is based upon the provisions of sections 101 and 102 of the Land Registration Act (No. 496).

The complaint is worded as follows:

“I. That on January 25, 1906, the Honorable A. S. Crossfield, Judge of the Court of First Instance of Manila, approved the tentative partition filed in cause No. 1869, estate of the deceased Antonio Enriquez and Ciriaca Villanueva. In the said partition, it was agreed that ‘Don Francisco Enriquez Villanueva and his wife, Doña Carmen de la Cavada de Enriquez, the latter as the successor in interest of the deceased Jorge Enriquez, hereby receive, by virtue of this partition, all their rights, interests and shares in the properties, rights and interests’ of the deceased Don Antonio Enriquez and Doña Ciriaca Villanueva; and the rest of the same consisting of ‘movable and immovable properties, rights, actions and choses in action’ was adjudicated in equal parts to the following: Don Rafael Enriquez, Don Cayetano Enriquez, Doña Rosario Enriquez, Doña Gertrudis Enriquez, Don Antonio Enriquez, Doña Trinidad Enriquez, Doña Carmen Enriquez, and the minor Jose Antonio Gascon y Enriquez.

“II. That Doña Rosario Enriquez died in June, 1913, leaving as her only heirs her legitimate children Doña Josef a Morales and Doña Rosario Morales; and Don Antonio Enriquez died in June, 1913, leaving a widow and four legitimate

children, to wit: Doña Trinidad Carmelo Vda. de Enriquez, and Julio, Alfonso, Trinidad, and Antonio, all surnamed Enriquez.

“III. That under the title of ‘The heirs of the deceased, Don Antonio Enriquez and Doña Ciriaca Villanueva,’ the following persons bring this action: Rafael Enriquez, Cayetano Enriquez, Gertrudis Enriquez, Carmen Enriquez, Josefa Morales, and Rosario Morales, Julio and Alfonso Enriquez, and the minors Trinidad and Antonio Enriquez, represented by their guardian Doña Trinidad C. Vda. de Enriquez, and Jose Antonio Gascon y Enriquez, represented by his guardian Don Nazario Constantino.

“IV. That the share of the defendant Francisco Enriquez and his wife is the property No. 42 at Calle David, which was adjudicated to them under the conditions contained in paragraph 5 of the deed of partition, which copied verbatim is as follows:

” ‘Fifth. By virtue of this indenture of partition the house and lot numbered 42 (new number) on Calle David, City of Manila, and described under letter A and paragraph 3 hereof, with all its appurtenances and warehouses annexed thereto, are hereby given, ceded, transferred, and allotted to Don Francisco Enriquez y Villanueva and his wife Doña Carmen de la Cavada de Enriquez, in full payment of all their respective interests, rights and shares in the properties and rights hereinbefore mentioned. The said property numbered 42, on Calle David, is subject to a lien or mortgage in favor of the Recollectan friars to guarantee a debt amounting to seven thousand five hundred pesos (P7,500), with interest thereon, and the said Don Francisco Enriquez and his wife Doña Carmen de la Cavada hereby assume and promise to pay the said debt, binding themselves to give, as they do hereby give, the mortgage creditor the right to collect the amount of interest directly from the tenant of the said property.

” ‘It is hereby expressly understood, agreed and covenanted by all the undersigned that this cession and adjudication to the aforesaid Francisco Enriquez of the undivided half of the said property No. 42, Calle David, and its annexes, is made under the express condition that

the said Don Francisco Enriquez shall not sell, mortgage or encumber in any way or manner, or under any pretext, his share of said property, No. 42, Calle David, and its appurtenances, while the litigations over the said property are pending in the courts of the Philippines, one of which is about the accounts of Don Francisco Enriquez y Sequera, as administrator and executor, and another is the intestate of Doña Ciriaca Villanueva * * *; it being understood that the share of Don Francisco Enriquez shall be answerable for the judgment or final decision that *may be rendered* in the case already mentioned relative to his accounts as *administrator and executor* * * *. And consequently he shall not enjoy the *absolute ownership and free use* of his share in the said property until final judgment or decision is rendered regarding his accounts and after he has paid all the amount for which he may be liable in accordance with the said judgment or decision.'

"V. That on November 14, 1907, the defendant, Don Francisco Enriquez y Villanueva, and his wife, Doña Carmen de la Cavada Salavert, applied for the registration of the aforementioned property, and with the fraudulent intent of securing a title free from liens, alleged in the application that they were the 'absolute owners in equal shares (of the said property) and that there were existing improvements on the said land of which they were the owners, consisting of a house with an annex and warehouses, all of strong materials.'

"VI. That on account of the application not containing any statement regarding the mortgage upon the said property in favor of the parties in interest in the testate proceedings No. 1869, Who are the same parties named in paragraph 1 hereof, the latter were not notified of the filing of the said application for registration of said property, and did not have any knowledge of the proceedings had in connection with the said registration until two years after title thereto had been issued.

"VII. That on January 25, 1908, the Honorable S. del Rosario, Judge of the Court of Land Registration, decreed the adjudication and registration of the property described in paragraph 4 hereof, in favor of the applicants without making in the decree any mention of the mortgage upon the undivided half belonging to the defendant Francisco Enriquez, and, pursuant to the said decree thus fraudulently

obtained, the defendant Don Francisco Enriquez and his wife secured a title free from any lien, and the said property, with a title so obtained, was sold with right to repurchase to Mr. Allison D. Gibbs.

“VIII. That the plaintiff Don Rafael Enriquez, upon learning of the sale of the property at No. 42, Calle David, to Mr. Allison D. Gibbs, protested against such sale and, as administrator in the testate proceedings No. 1869 and in behalf of his co-heirs, appeared before the Court of Land Registration praying for the dismissal of the application or the suspension of the proceedings so as to enable him and his co-heirs to prove their right to the property as mortgage creditors, but this opposition was not even acted upon, probably because it was filed two years and so many months after the decree of registration had been entered.

“IX. That the loss, suppression or omission of the real right or of the mortgage credit of these plaintiffs over the said registered property was not due to their fault or negligence, but to the fraudulent means employed in obtaining the title.

“X. That by the very provisions of the Land Registration Act, the plaintiffs are barred from recovering their mortgage right over the said property, of which they were unjustly and illegally deprived by having the said property fraudulently registered, and selling it afterwards to third persons.

“XI. That on September 6, 1916, the Honorable James A. Ostrand, Judge of the Court of First Instance of Manila, issued an order in case No. 1869, the dispositive part whereof is as follows: ‘Wherefore it is hereby ordered and decreed that the said Francisco Enriquez pay to the estate of Antonio Enriquez and Ciriaca Villanueva the sum of P61,000.’ This sum of P61,000, after the final liquidation of the accounts of the administrator, the defendant Francisco Enriquez, represented the value of the mortgage or obligation to which his undivided half of property No. 42, Calle David, was liable.

“For all the foregoing, the plaintiffs respectfully pray that judgment be entered in their favor, ordering that they be indemnified in the sum of sixty-one thousand pesos (P61,000) with legal interest and costs, and should the defendant Don Francisco Enriquez be wholly or partially unable to pay the said amount, that an execution be issued against the Treasurer of the Philippine Islands ordering him to pay from the assurance fund such part of the said sum as may not be paid by

the principal defendant.”

The Attorney-General in behalf of the Treasurer of the Philippine Islands, one of the defendants, filed the following demurrer:

“Comes now the undersigned in behalf of the Treasurer of the Philippine Islands and demurs to the complaint on the following ground:

“That the complaint does not state facts sufficient to constitute a cause of action.

“From the complaint itself it appears that the plaintiffs were negligent in not filing their opposition to the application of Francisco Enriquez to the Court of Land Registration for the registration in his name of the land now in dispute, The plaintiffs cannot now allege the excuse that they were not notified of the application filed by the defendant Francisco Enriquez with the Court of Land Registration, because in the expression ‘to all whom it may concern’ appearing in the notice the plaintiffs were certainly included, as such notice affects every person whether or not he is specifically named therein and the title issued to the applicant in accordance with section 38 of Act No. 496 is conclusive as to everybody.

“On the other hand, plaintiffs base their complaint upon the interpretation that must be given to a clause contained in paragraph 5 of the deed of partition by virtue of which one-half of the land now in question was awarded to the defendant as his share in the inheritance of the deceased Antonio Enriquez and Ciriaca Villanueva, Civil Cause No. 1869 of the Court of First Instance of Manila. The context of the said paragraph 5 of the deed of partition inserted in paragraph 4 of the complaint shows that in the strict juridical sense of the word, the condition that the share of the defendant, Francisco Enriquez, was liable for the judgment that might be rendered in the case then pending regarding his administration and his accounts as administrator and executor of the said estate, is not a real right. The question, to our minds, may be summed up as follows: That the applicant Francisco Enriquez did not consider that condition as a mortgage. This mere circumstance does not constitute sufficient ground for holding the assurance fund in the possession of the Insular Treasurer answerable for the damages that the plaintiffs might have sustained. Section 101 of Act No.

496 is conclusive and provides that there cannot arise any cause of action against the Insular Treasurer, or claim for damages against the assurance fund, when he who has suffered damages, or has been deprived of his property rights or real rights by any of the causes mentioned in said section, was guilty of negligence. The reason for this provision of the law is evident, as the same law provides the adequate means and procedure available to anybody in order to enforce his rights in the Court of Land Registration over any property that may be the subject of registration, by filing the opposition that may be adequate. Furthermore, should plaintiffs' contention be upheld we would be forced to accept the dangerous sequel that at the present time, even though after the period prescribed by law (section 38), the final decree of the court adjudging title in favor of the defendant Francisco Enriquez can still be assailed successfully. The plaintiffs deviate from the rule provided in the law when they proceed against the funds in the hands of the Insular Treasurer, when, ostensibly it is shown by their own acts that they contributed with their manifest negligence in the adjudication of title of ownership in favor of the defendant Francisco Enriquez (sections 101 and 102). We maintain that they were negligent when they allowed the time prescribed by Act No. 496 to elapse without objecting to the decree which, in their own mind, had been fraudulently obtained by the applicant.

"In view of the foregoing, the defendant, the Treasurer of the Philippine Islands, prays that the complaint as to him be dismissed with costs against the plaintiffs."

Upon this demurrer the lower court ruled as follows:

"The complaint not containing any of the facts that may give rise to a cause of action against the Treasurer of the Philippine Islands, and it appearing that all the notices prescribed by law had been published prior to the issuance of the decree of registration in favor of the defendant Francisco Enriquez, who is the only responsible party for the omission to mention the liens on the property at the time of filing the application;

"The demurrer filed by the Attorney-General, in behalf of the Treasurer of the Philippine Islands, is well founded.

“Demurrer sustained.”

Being dissatisfied with the above ruling the plaintiffs now appeal to this court.

According to the law the action may be brought by:

“Any person who without negligence on his part sustains loss or damage through any omission, mistake, or misfeasance of the clerk, or register of deeds, or of any examiner of titles, or of any deputy or clerk of the register of deeds in the performance of their respective duties under the provisions of this Act, and any person who is wrongfully deprived of any land or any interest therein, without negligence on his part, through the bringing of the same under the provisions of this Act or by the registration of any other person as owner of such land, or by any mistake, omission, or misdescription in any certificate or owner’s duplicate, or in any entry or memorandum in the register or other official book, or by any cancellation, and who by the provisions of this Act is barred or in any way precluded from bringing an action for the recovery of such land or interest therein, or claim upon the same. * * *” (Section 101, Act No. 496.)

And the cases in which this action may be commenced are enumerated in section 102 of the same Act, the pertinent part of which is as follows:

“If such action be for recovery for loss or damage arising only through any omission, mistake, or misfeasance of the clerk, or of the register of deeds, or of any examiner of titles, or of any deputy or clerk of the register of deeds in the performance of their respective duties under the provisions of this Act, then the Treasurer of the Philippine Archipelago shall be the sole defendant to such action. But if such action be brought for loss or damage arising only through the fraud or willful act of some person or persons other than the clerk, the register of deeds, the examiners of titles, deputies, and clerks, or arising jointly through the fraud or wrongful act of such other person or persons and the omission, mistake, or misfeasance of the clerk, the register of deeds, the examiners of titles, deputies, or clerks, then such action shall be brought against both the Treasurer of the Philippine Archipelago and such person or persons aforesaid. In all such actions where there are defendants other than the Treasurer of the Philippine

Archipelago and damages shall have been recovered, no final judgment shall be entered against the Treasurer of the Philippine Archipelago until execution against the other defendants shall be returned unsatisfied in whole or in part, and the officer returning the execution shall certify that the amount still due upon the execution cannot be collected except by application to the assurance fund. Thereupon the court having jurisdiction of the action, being satisfied as to the truth of such return, may, upon proper showing, order the amount of the execution and costs, or so much thereof as remains unpaid, to be paid by the Treasurer of the Philippine Archipelago out of the assurance fund. * * *” (Sec. 102, Act No. 496.)

The market value of the property in question is not alleged in the complaint, one-half of which is, at all events (according to section 106 of Act No. 496), the amount that the plaintiffs might recover as damages.

Neither is it alleged that Francisco Enriquez is insolvent and that the plaintiffs have suffered damages on that account. Nor does the complaint contain any allegation as to whether or not the right of the plaintiffs, of which they allege to have been deprived, had been registered in the old registry prior to the issuance of a title under the Torrens system. This failure to register would indicate negligence on the part of the plaintiffs. Finally it might well be that the plaintiffs’ action has prescribed. The complaint does not state sufficient facts to show that the action has not prescribed. Section 107 of Act No. 496 provides:

“All actions for compensation under this Act by reason of any loss or damage or deprivation of land or any estate or interest therein shall be begun within the period of six years from the time when the right to bring or take such action or proceeding first accrued, and not afterwards: etc.”

According to the complaint the title to the property in question was adjudicated under Act No. 496 on January 25, 1908, in favor of the spouses Francisco Enriquez and Carmen de la Cavada Salavert. Within one year from the date of the decree of registration, the plaintiffs could have taken advantage of the provisions of section 38 of this law, but it was after the lapse of the year that the cause of action arose, as we see it, which might have been brought only within six years. The date when the decree of registration was entered does not appear

in the complaint; but the fact is that the complaint was not filed until March 15, 1918, that is to say, more than ten years after the property had been ordered registered under Act No. 496.

We find that the complaint is substantially defective.

Furthermore, for the purposes of this decision, it is unnecessary to determine whether or not the right of which the plaintiffs have been deprived is a real one, or whether or not the fraud has been sufficiently alleged.

It must be deemed not to have been sufficiently alleged if the damage was not due to the fault or negligence of the plaintiffs. The issuance of the title to the said property was made under the provisions of Act No. 496, and it must be presumed that the provisions thereof, referring to the publication of notices, have been complied with. The fact that the right claimed was not alleged in the application does not relieve the plaintiffs from diligently appearing before the court at the opportune time, if they did not intend to waive their right.

We cannot find any reason for reversing the judgment appealed from, which we affirm with costs against the appellants. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor, Ostrand, and Johns, JJ., concur.
