

95 Phil. 677

[ G.R. No. L-6094. August 27, 1954 ]

**TEODORICO SANTOS, PLAINTIFF AND APPELLEE, VS. CATALINA ICHON, LUISA CORDERO DE PEDREGOSA, JOSE CORDERO, JR. AND LORENZO CORDERO, DEFENDANTS AND APPELLANTS.**

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

**REYES, J.B.L., J.:**

This is an appeal interposed by defendants Catalina Ichon and Luisa Cordero de Pedregosa from the decision of the Court of First Instance of Tacloban, Leyte, in Civil Case No. 135 of that court, declaring the plaintiff Teodorico Santos the owner of the land described in the complaint as follows:

“A portion only of a residential land situated at the Poblacion of the Municipality of Burauen, Leyte, of approximately 160 square meters in area; covered by Tax Declaration No. 27985—part only; valued at P2,230 part; designated as Lot 293—portion only of the Burauen Cadastre; and bounded on the North, by S. Agustin St.; on the East, by S. Ramon St.; on the South, by heirs of Candido Masayon, and on the West, by the remaining portion in the name of the Hrs. of Jose S. Cordero and evidenced by Certificate of Title of the Registry of Deeds for the Province of Leyte.” (Record on Appeal, pp. 2-3.) and ordering the defendants to restore the possession there- of to the plaintiff.

The appeal was originally docketed with the Court of Appeals, but upon motion of the appellee, the case was certified to this court on the ground that the only error assigned by the appellants is a question of law, to wit:

“THE LOWER COURT ERRED IN NOT DISMISSING THE COMPLAINT ON THE GROUND THAT THE ACTION BROUGHT BY THE PLAINTIFF IS NOT THE PROPER REMEDY.”

There being no questions of facts raised in this appeal, the following findings of fact of the Court a quo are conclusive :

“During the trial it was proved that in the year 1936, Jose S. Cordero, father of the defendants and his heirs, Luisa, Jose Jr., Francisco and Lorenzo, all surnamed Cordero, sold a portion of a parcel of residential lot belonging to the conjugal partnership between said Jose S. Cordero and his first wife the deceased Francisca Tiaoson to Felipe R. Santos by virtue of a document marked Exhibit “A”. It is stated in said Exhibit “A” that the whole parcel of land was adjudicated to said Jose S. Cordero by the Cadastral Court in the following proportion: one-half (%) to him and the other half to his children with his first wife, Francisca Tiaoson, above mentioned. That the sale of the portion executed by Jose S. Cordero to Felipe R. Santos appears in a document Exhibit “A” which is a public instrument ratified by a notary public and said portion consists of 160 square meters specifically described in paragraph 2 of the complaint quoted above. That said Felipe R. Santos in turn sold the same portion to one Aurea Espada by virtue of Exhibit “B” also a public instrument ratified by a notary public. It is noteworthy that in Exhibit “B” it is specified as boundary on the western side of the portion subject of the sale the remaining portion, which belongs to Jose S. Cordero. It appears further that in Exhibit “B”, the sale of Felipe R. Santos in favor of Aurea Espada, one of the heirs of Jose S. Cordero namely Lorenzo Cordero, signed as witness to said instrument (Exhibit “B”). It was also proven that Aurea Espada who acquired the portion in litigation from Felipe R. Santos sold the same to the herein plaintiff, Teodorico Santos, in a deed of sale marked Exhibit “C” also a public instrument ratified before a notary public. That since the purchase by the plaintiff of the portion of the land in question he has been paying the taxes corresponding thereto.

“The defendants do not deny the successive transfer of the portion from the original owner, Jose S. Cordero, to Felipe R. Santos, from the latter to Aurea Espada and finally to Teodorico Santos. They claimed however that the said portion of land consisting of 160 square meters and forming part of lot No. 293 of the Cadastral Survey of Burauen, Leyte, having been claimed by Jose S. Cordero in the Cadastral hearing and the same having been adjudicated in his favor as an undivided property between him and his children already mentioned and there having no sub-division effected so far between the co-owners and the shares not

having been divided by metes and bound the sale effected by Jose S. Cordero with specific boundaries has no legal effect and cannot set aside the decision of the Cadastral Court adjudicating said land to Jose S. Cordero and his children.

“The Court is of the opinion and so holds that the sale made by Jose S. Cordero of the portion of land in litigation to Felipe R. Santos is valid and being so the subsequent transfer of said portion from Felipe R. Santos to Aurea Espada and from the latter to Teodorico Santos, the herein plaintiff, is also valid.

“It is not disputed that Jose S. Cordero is a co-owner of the lot a portion of which is the land in question, the same being a conjugal property with his first wife Francisca Tiaoson and therefore one-half of it corresponds to him. The whole lot contains an area of 596 square meters (Exhibit “2”) his share therefore is 298 square meters. It is also an established fact that he executed the sale of the portion belonging to him consisting of 160 square meters to Felipe R. Santos in January 1936 after the death of his first wife Francisca Tiaoson. The right of Jose S. Cordero to dispose of a portion of the lot owned by him as his share can not be disputed. The mere fact that no subdivision has been done so far of the whole lot between the co-owners do not deprive Jose S. Cordero of his right to the lawful disposition of his share.

“The contention of the defendant that the sale made by Jose S. Cordero of a portion of the undivided property having been done by metes and bounds is illegal, does not hold water considering that when Jose S. Cordero sold said portion to Felipe R. Santos by virtue of Exhibit “A” his children were present and saw while the vendor was indicating the boundaries of the portion sold to the vendee which is tantamount to an acquiescence of what their father Jose S. Cordero was doing, and this implied consent on the part of Lorenzo Cordero one of his sons and a co-owner of the lot from which the portion sold was taken became more manifest when he signed as a witness in the deed of sale executed by Felipe R. Santos of the same portion now subject of litigation of Aurea Espada, the predecessor in interest of the herein plaintiff. It is noteworthy that the defendants Jose S. Cordero, Jr., Lorenzo and Francisco Cordero, children of Jose S. Cordero, Sr., and co-owners of the land a portion of which is subject of this controversy, did not even bother themselves to answer the complaint.” (Record on Appeal, pp. 17-22.)

As already stated, only one argument is advanced by appellants for the reversal of the decision appealed from, namely: that the decision of June 19, 1941 in the cadastral proceeding adjudicating the land in question to Jose Cordero, Sr. and his children being now final and unappealable, and there being no entry of the decree of registration up to this time, the proper remedy of the plaintiff-appellee is to file a petition for review in the cadastral case on the ground of fraud under article 38 of Act 496, and not this independent action for the recovery of the property.

We find no merit in the above argument. It is to be borne in mind that under the Land Registration Act, a petition for review may be filed only by a person who has been deprived of his title to, right, or interest in property by *reason of fraud* (of the applicant), calculated to deprive the interested party of his day in court, and preventing him from asserting his right to the property registered in the name of the applicant (*Grey Alba vs. De la Cruz*, 17 Phil., 49; *Ruiz vs. Lacsamana*, 32 Phil., 653; *Dizon vs. Lacap*, 50 Phil., 193). It has neither been alleged nor proved in this case that the applicant Jose Cordero, Sr. procured the registration of the land in question in his name in fraud of the rights of the plaintiff-appellee or his predecessors-in-interest, all of whom derive their title from said applicant; consequently, a petition for review of the decision in the cadastral case would not lie.

It is true that under previous rulings of this court, appellee could have moved for the reopening of the case in the cadastral court so that he could be given an opportunity to prove his right to the land in question and get a decree in his favor, since the adjudication of land in a registration or cadastral case does not become final and incontrovertible until the expiration of one year after the entry of the final decree, and until then the court rendering the decree may, after hearing, set aside the decision or decree and adjudicate the land to another person (*Afalla and Pinaroc vs. Rosaura*, 60 Phil., 622; *Valmonte vs. Nable*, 47 Off. Gaz., 2917, 85 Phil. 256; *Capio vs. Capio*, 50 Off. Gaz. [1] 137; 94 Phil. 113). But appellee chose instead to file this independent action for the recovery of the land in question; and as the lower court has conclusively found, and the appellants do not now contest, that the appellee is entitled to the ownership and possession thereof by virtue of his acquisition of said land in 1946 from Aurea Espada, the transferee of Felipe R. Santos, to whom the original owner Jose S. Cordero, Sr. had validly conveyed his interest thereto, we find no practical reason why the decision of the lower court in this case should not be affirmed, without prejudice to the plaintiff-appellee's right to petition in the cadastral case for the subdivision of lot 293 of the Bureau Cadastre, the segregation of the portion acquired by him, and the adjudication thereof in his name.

Wherefore, the decision appealed from is affirmed, with costs against the appellants.

*Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador and Concepcion, JJ., concur.*

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