

ALFREDO GIMENO AND DR. LEONARDO GIMENO, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND PRUDENCIO CARTAGENA, RESPONDENTS.

G.R. No. L-22747. December 29, 1977

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

This is a simple case of recovery of two hectares of land filed by petitioner Alfredo Gimeno and several others against respondent Prudencio Cartagena with the Court of First Instance of Davao.

The land in litigation is part of a 17-hectare parcel situated in barrio Baculin, Municipality of Baganga, province of Davao, presently covered by Original Certificate of Title No. 1354 dated February 14, 1935 under a homestead patent issued in favor of Brigido Cartagena, father of Prudencio Cartagena. During the lifetime of Brigido Cartagena a "Deed of Partition Inter Vivos" was executed between spouses Brigido Cartagena and Isabel Ferrando and their four children and a 7-hectare portion was allocated to Prudencio Cartagena which includes the two hectares now being claimed by petitioners.

In their complaint filed on June 7, 1957, the Gimenos claim that sometime in 1926 their predecessors-in-interest, brothers Exequiel Gimeno and Victorio Gimeno, now deceased, on one hand and Brigido Cartagena on the other, verbally agreed to jointly clear and cultivate the 17 hectares with the understanding that when the coconuts planted by the Gimenos would have borne fruit, the land cleared by the latter would be segregated by a competent surveyor and Brigido Cartagena would execute papers of relinquishment in favor of the Gimenos; that as a consideration of this agreement the Gimenos gave P150.00 to Brigido Cartagena to help the latter cultivate the rest of the property; and in 1948, the 17 hectares were surveyed and subdivided into "lot 2126" of two hectares and "lot 3320" containing an area of 15.590 hectares. Lot 2126 is the portion now sought to be recovered by the Gimenos.

The allegations of the complaint and the evidence adduced by the petitioners were controverted by respondent Prudencio Cartagena who claimed that his father, Brigido Cartagena, owned and possessed exclusively as a homestead the 17-hectare land for which the latter was issued Original Certificate of Title 1354 since February 14, 1935; that Brigido Cartagena declared for taxation purposes the entire 17 hectares solely in his name; that a deed of partition was executed between Brigido Cartagena and his four children, and the area allocated to Prudencio Cartagena measured seven hectares of which two hectares are now being claimed by the Gimenos without justification.

The trial court presided by Judge Macapanton Abbas as well as the Court of Appeals dismissed the complaint of the Gimenos because of "the dubious character of plaintiffs' evidence" as well as "laches in the enforcement of their alleged right", they having filed this particular complaint only after "22 years, 3 months, and 6 days from February 14, 1935 when OCT 1354 was issued in the name of Brigido Cartagena" and "31 years from the date of the alleged verbal agreement of June 21, 1926" between the Gimeno brothers and Brigido Cartagena.[1] The

Court of Appeals further stated that petitioners (plaintiffs-appellants) "failed to adduce clear, competent and convincing evidence that would justify this Court to hold that a fiduciary relation existed between Exequiel and Victorio Gimeno on the one hand and Brigido Cartagena on the other, with respect to the two-hectare portion which is now known as lot 2126 of Baganga Cadastre, Davao. There is no gainsaying the fact that the plaintiffs' evidence falls far short of the required quantum and quality that can overthrow the homestead patent issued under OCT 1354 which, as mentioned heretofore, has been in existence, unassailed for more than 22 years prior to the institution of the present action." [2]

Petitioners now seek a reversal of the decision of the Court of Appeals raising a number of legal questions which respondent appellate court allegedly disposed of erroneously.

We find however that the issues are basically factual and that they essentially involve an appreciation of the evidence adduced by the parties. In other words, is there clear and convincing evidence - as the Court of Appeals puts it - to sustain the claim of petitioners that there was a verbal agreement of purchase entered into in 1926 between their predecessors-in-interest and respondent's father, Brigido Cartagena, over the two-hectare portion of land? Is there clear and convincing evidence that an implied trust existed in favor of petitioners which respondent Prudencio Cartagena is bound to respect and comply with? The appellate court held that there is none. That finding of respondent court is binding on Us in the absence of any showing that there has been a misapprehension of facts or that a grave abuse of discretion was committed in the appreciation of the evidence or that the situation calls for an exception to the general rule. [3]

In the first assigned error petitioners submit that respondent Court of Appeals erred in not holding that private respondent waived the defenses of "indefeasibility of title, prescription, laches and lack of cause of action," inasmuch as respondent Cartagena failed to assert them in his answer to the complaint, and under Rule 9, Section 2 of the Revised Rules of Court, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. [4]

We agree with the appellate court that there is substantial compliance with the Rules considering that in the answer of respondent Cartagena it was specifically pleaded that the two hectares object of the complaint are part of a bigger tract of land covered by OCT 1354 issued since February 14, 1935 in the name of respondent's father Brigido Cartagena, and even prior to that date respondent's predecessors-in-interest were in possession of said property exclusively as owners thereof, and that respondent Cartagena merely continued the possession of his father Brigido Cartagena after the partition of the property was executed among the children of Brigido Cartagena in September of 1952.

It is to be noted that in the overall appreciation of the evidence of petitioners on their claim that there was a verbal purchase of the two hectares since 1926, both the trial court and the Court of Appeals did not find the claim credible, and one of the factors which led the two courts to that conclusion was the inaction of petitioners and their predecessors-in-interest to assert their supposed right over the pro-perty in litigation notwithstanding the allegation that there was an agreement that a document conveying the two hectares to the Gimeno brothers would be executed by Brigido Cartagena after the coconut trees the Gimenos planted shall have borne fruit and the two hectares shall have been segregated, which events according to petitioners occurred since 1943 and 1948 respectively. It is indeed surprising why no positive step was taken by the Gimeno brothers to enforce the supposed verbal agreement against Brigido Cartagena during the latter's lifetime. It was only after Brigido Cartagena died and was no longer in a position to deny or dispute the supposed agreement that this complaint was filed on June 7, 1957. In evaluating the evidence, both the court a quo and the appellate court found that the Gimenos' failure to take positive action since 1926 and before Brigido Cartagena died sometime in 1954 greatly weakened the claim of petitioners. To that We agree.

In PHHC and University of the Philippines vs. Mencias, et al. this Court held among others that an action for reconveyance of a property that was titled since 1914 and brought only in 1957 is to be barred on grounds of laches.[5] In Delima vs. Tio the Court likewise pronounced that inaction for 28 years from the time of the supposed transaction invoked by plaintiff before she filed the action for recovery of property amounts to laches and convert what otherwise could be a valid case into a stale demand.[6] Again in Pabalate et al. vs. Echarri, Jr. the land in litigation was covered by an original certificate of title issued by virtue of a homestead patent dated February 20, 1926 which was sold by the heirs of the original patentee to a third person who since 1927 was in continuous exclusive possession in concept of owner thereof. The dismissal of the action for recovery of said property filed only in 1959 by the heirs of the vendors, was upheld by this Court on the ground inter alia that by the long period of 37 years and the plaintiffs' inaction or inexcusable neglect their claim was converted into a "stale demand".[7]

In the second assigned error it is asserted that respondent Court of Appeals erred in not holding that a certificate of title issued by reason of a homestead patent is not indefeasible[8] and in support thereof petitioners invoke the pronouncements of this Court in Nieto vs. Quines to the effect that

"x x x a certificate of title based on a patent, even after the expiration of one year from the issuance thereof, is still subject to certain conditions and restrictions. As a matter of fact, in appropriate cases and after prior administrative investigations by the Director of Lands, proper actions may be instituted by said official which may lead to the cancellation of the patent and the title, and the consequent reversion of the land to the Government. On the other hand, a certificate of title issued pursuant to Act 2259, after the lapse of 1 year, becomes incontrovertible. The inescapable conclusion, therefore, is that, while with the due registration and issuance of a certificate of title over a land acquired pursuant to the Public Land Law, said property becomes registered in contemplation of Act 496, in view of its nature and manner of acquisition, such certificate of title, when in conflict with one obtained on the same date through judicial proceedings, must give way to the latter." (L-14643, Sept. 29, 1962, 6 SCRA 74, 80)

The Nieto case has no application to the present action. In Nieto two certificates of title were issued - one based on a homestead patent while the other was obtained through a cadastral proceeding, and the issue was which of the two registrations already effected and secured should prevail. In this Case of the Gimeno all that is involved is the latter's claim that the homestead patentee, Brigido Cartagena, agreed way back in 1926 to convey to the Gimeno two hectares of that homestead, which assertion was discarded by the trial court and the Court of Appeals for lack of sufficient credible evidence to substantiate the same. Hence, the dismissal of petitioners' complaint for reconveyance.

In their third assigned error, petitioners contend that the survey plan prepared and approved in 1948 by the Bureau of Lands which segregated the two hectares in question from the rest of the Cartagena property is "the most eloquent evidence" of their ownership.[9] Again We state that this is a matter of appreciation of evidence which is best left to the trial court and the appellate court which are finders of facts. It appears that said piece of evidence was not given weight in the evaluation of the evidence of the parties. We note that the sketch plan, Exhibit A, prepared by a private land surveyor does not bear the approval of the Director of Lands as claimed in page 12 of the Petition for Certiorari. All that appears is a certification of the Acting District Land Officer that the sketch is a true and correct copy of a plan existing in the Land Office in Davao City. At any rate, the existence of a sketch plan of a real property even if approved by the Bureau of Lands is no proof in itself of ownership of the land covered by the plan.

In their fourth assigned error petitioners claim that re-spondent Court of Appeals erred in finding that the petitioners' witness Felimon Manguib testified that the subdivision plan Exhibit A had no technical descriptions because in truth there was no such testimony in the record.[10] We note however that petitioners'

contention is premised on a wrong interpretation of a portion of page four of the appellate court's decision. The clause "without technical description" is a specific finding of respondent court based on the sketch, Exhibit A, for the truth of the matter is that said sketch plan is without technical descriptions. What the appellate court meant and in effect stated on page four of its decision was that according to Felimon Manguio the subdivision survey was effected in June, 1948, at the instance of Brigido Cartagena, the registered owner of the title.10-a This testimony of the witness was not however believed or given credit both by the court a quo and the Court of Appeals.

In the fifth assigned error it is asserted that respondent court erred in holding that fraud or bad faith is a necessary allegation in an action for reconveyance.[11] Petitioners cite *Sanchez vs. Vda. de Tamsi*, L-16736, June 30, 1961, wherein it was held that reconveyance can be justified on the ground of error. Petitioners have a point in this regard, for in *Sanchez* it was stated that where a property is erroneously included in a homestead patent, the patentee by force of law becomes a trustee under an implied trust for the benefit of the real owner. However, that is not the issue in this case now before Us. The Gimenos do not assert that there was error or that there was fraud on the part of Brigido Cartagena in applying for a homestead patent for the 17 hectares and in securing the original certificate of title. No; what is alleged is that there was a verbal understanding or "purchase" in that the two hectares cleared and cultivated by petitioners' predecessors-in-interest would be "deeded" in their favor, and to enforce that supposed oral agreement entered into in 1926 this complaint was filed.[12]

Fundamentally, therefore, the action is one for enforcement of a verbal understanding supposedly entered into between the respective predecessors-in-interest of the petitioners and the respondent herein, and if the same is to prosper there must be a finding that the Cartagenas held the two hectares in trust for the Gimenos. It is in this context that respondent court declared that there was need for petitioners to show that they were the owners of the property claimed and were being deprived thereof by private respondent.[13] Respondent court concluded that the record is "barren of evidence" to establish a fiduciary relationship between the homestead patentee, Brigido Cartagena and the Gimenos.

The sixth assigned error argues that respondent court erred in not holding that petitioners sufficiently established their claim of ownership and continuous possession on the basis of the allegation in their complaint that they planted 377 coconuts which was admitted by respondent Cartagena in the latter's answer to the complaint.[14]

On this point, We examined the answer of respondent Cartagena to the amended complaint and contrary to the assertion of petitioners, there is no such admission on the part of defendant, now respondent, Cartagena. Paragraph 9 of the amended complaint reads:

"9. That the property in the case at bar consists of 377 productive coconut trees which produce 30 piculs of copra every after three months or 120 piculs every year;" (p. 14, Record on Appeal)

Paragraph 9 of respondent's answer in turn states:

"9. That the Defendant ADMITS that the land in question is planted to 377 fruit-bearing coconut trees but DENIES that the produce is 30 piculs per quarter; the truth being that the quarterly produce is at best 20 piculs or 80 piculs yearly." (pp. 18-19, Record on Appeal)

It is obvious that what Cartagena admitted was that there were 377 fruit-bearing coconut trees on the two hectares, but that was all. Note that the allegation in paragraph 4 of the amended complaint that plaintiffs' predecessors-in-interest introduced the present improvements consisting mainly of coconuts, was specifically denied in paragraph 4 of the defendant's answer, and it was alleged that it was Brigido Cartagena, the patentee, with the help of his children one of whom is the defendant, who cleared, cultivated and improved the land in question which is only a part of the parcel covered by Original Certificate of Title 1354.[15]

All the allegations of petitioners as to their alleged occupation, possession and cultivation of the land in litigation were not substantiated according to the trial court and the Court of Appeals, and We do not disturb that finding.

The seventh assigned error contends that respondent court erred in not holding that the trial court of Davao should have allowed counsel of petitioners to cross-examine respondent Cartagena on a letter allegedly sent by the latter to Mrs. Natividad Gimeno wherein the continuous possession of the petitioners was supposedly admitted.[16]

The stenographic transcript of the cross-examination of respondent Cartagena shows that petitioners' counsel presented to the former a certain letter written by Atty. Juanito Hernandez to Mrs. Natividad Gimeno. No error was committed by the trial court in sustaining the timely objection of Cartagena's counsel and ruling that the best witness competent to testify on that letter was the addressee, Mrs. Natividad Gimeno and not Prudencio Cartagena as the letter would constitute hearsay evidence in so far as the latter was concerned.

WHEREFORE, We find this appeal without merit and We dismiss the same and affirm the decision of the Court of Appeals in toto with costs against petitioners.

So Ordered.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.
Martin, J., no part.

* The names of Petitioners were taken from the printed Record on Appeal inasmuch as the caption in this Petition for Certiorari did not give in full the names of Petitioners.

** Decision of February 7, 1964, of First Division composed of Antonio Lucero, J., ponente, with the concurrence of Jose P. Bengzon, Presiding Justice and Salvador Esguerra, J.

[1] see p. 36, rollo

[2] p. 37, *ibid.*

[3] *Vda. de Catindig, et al. vs. Heirs of Catalina Roque*, 1976, 74 SCRA 83, 88. *Perido et al. vs. Perido, et al.*, 1975, 63 SCRA 97, 105; *Alaras, et al. vs. Court of Appeals, et al.*, 1975, 64 SCRA 671; *Baptista vs. Carillo, et al.*, 1976, 72 SCRA 214, citing *Fortus vs. Novero*, 1968, 23 SCRA 1330, and other cases; See also among others: *Joaquin vs. Navarro*, 93 Phil. 257; *Luna vs. Linatoc*, 74 Phil. 15; *Tagumpay, et al. vs. Masangkay, et al.* 46 SCRA 608.

[4] see pp. 4-5, Printed Petition for Certiorari

[5] 20 SCRA 1031, 1042

[6] 32 SCRA 516

[7] 37 SCRA 518

[8] see p. 10 of Printed Petition

[9] see pp. 12-13 of Printed Petition

[10] see p. 17, *ibid.*

10-a see p. 31, rollo

[11] see p. 18, Printed Petition

[12] see pp. 29-34, Record on Appeal

[13] see p. 37, rollo

[14] p. 18, Printed Petition

[15] see pp. 12-13, & 17, Record on Appeal

[16] p. 20, Printed Petition

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