

TOMAS ROCO, ET AL., PLAINTIFFS AND APPELLANTS, VS. JUAN GIMEDA, DEFENDANT AND APPELLEE.

G. R. No. L-11651. December 27, 1958

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Cebu, Hon. Jose S. Rodriguez, presiding, dismissing the complaint upon petition of defendants, on the ground that it fails to state a cause of action.

The complaint makes the following allegations: that before August 22, 1918, Espiridiona Caramihan, owned and possessed two parcels of land known as lots Nos. 2741 and 3082 of the Barili Cadastral Survey No. 219, covered by tax declarations Nos. 01865 and 01854; that upon the death of said Espiridiona Caramihan on August 22, 1918, said lands were partitioned equally among her children, who similarly possessed and cultivated their respective shares and paid the taxes thereon; that in the years 1925 to 1927, through ignorance and inadvertence of the heirs, the said lots were declared public land in a cadastral proceeding; that Espiridiona occupied said lands openly, adversely, continuously and publicly, planting coconut and fruit trees and building her dwelling house thereon, and that said improvements and house are still on said lots; that the present plaintiffs acquired their rights to the lots by purchase from the heirs of the original owner Esperidiona Caramihan; that on or about December 7, 1940, Juan Gimeda, defendant, filed an application for a free patent to said lands, surreptitiously and fraudulently, without knowledge of the owners and possessors, and on December 7, 1940, the Director of Lands issued an order and in accordance therewith, on September 17, 1951, the Bureau of Lands issued patent No. 51552 in the name of defendant Juan Gimeda; that the plaintiffs and their original predecessor-in-interest have always been in the actual, physical, continuous and uninterrupted possession of the said parcels of land and defendant Juan Gimeda applied for and obtained his patent thereto without notice to them and without their knowledge, and secured the approval of his patent by fraudulent statements, alleging that he was the only heir of Espiridiona Caramihan and the only occupant of the land; and that by such false and fraudulent statements the Bureau of Lands approved his application and ordered the issuance of his patent.

The defendant filed an answer to the complaint, then amended the said answer and alleges that he is the youngest among the children of Espiridiona Caramihan; denies the allegations made in the complaint as to the acquisition by false and fraudulent means of the said lands; alleges that the complaint states no cause of action. He presents a counterclaim for P5,000 and P10,000 as moral and exemplary damages, respectively, and P500 as attorney's fees. Plaintiffs deny this counterclaim.

Later on defendant presented a motion to dismiss, alleging that the complaint alleges no cause of action, arguing that as the title in his favor was issued on October 17, 1951 and action was filed on July 15, 1954, the action was filed more than two years after the issuance of the patent, beyond the one-year period provided by law. The authorities cited for this defense are the case of Director of Lands vs. Gutierrez David, 50 Phil, 797; Villarosa vs. Sarmiento, 46 Phil., 814; Cabanos vs. Register of Deeds, 40 Phil., 620; Sumcad vs. Judge of the Court of First Instance, et al., 96 Phil., 946; 51 Off. Gaz., [5] 2413.

It is to be noted that the petition does not seek for a reconsideration of the granting of the patent or of the decree issued in the registration proceeding. The purpose is not to annul the title but to have it conveyed to plaintiffs. Fraudulent statements were made in the application for the patent and no notice thereof was given to plaintiffs, nor knowledge of the petition known to the actual possessors and occupants of the property. The action is one based on fraud and under the law, it can be instituted within four years from the discovery of the fraud. (Art. 1146, Civil Code, as based on Section 3, paragraph 43 of Act No. 190.) It is to be noted that as the patent here has already been issued, the land has the character of registered property in accordance with the provisions of Section 122 of Act No. 496, as amended by Act No. 2332, and the remedy of the party who has been injured by the fraudulent registration is an action for reconveyance. (Director of Lands vs. Register of Deeds, 92 Phil., 826; 49 Off. Gaz. [3] 935; Section 55 of Act No. 496.)

The order of dismissal appealed from is, therefore, reversed and the case is returned to the court a quo for further proceedings in accordance with law.

Paras, C. J., Bengzon, Padilla, Montemayor, Concepcion, Reyes, J. B. L., and Endencia, JJ. concur.

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