

**BIENVENIDO BABAO, ETC., PLAINTIFF AND APPELLEE, VS.
FLORENCIO PEREZ, ETC., ET AL., DEFENDANTS AND APPELLANTS.***G. R. No. L-8334. December 28, 1957*

Ponente: BAUTISTA ANGELO, J.

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This is an action to recover one-half (1/2) of a parcel of land containing an area of 156 hectares situated in San Juan, Batangas, plus the value of the produce gathered thereon from August, 1947 until actual recovery and in the alternative, to recover the sum of P47,000 representing reimbursement of the amount of useful and necessary expenses incurred to clear and improve the aforesaid land.

Plaintiff is the judicial administrator of the estate of the late Santiago Babao while defendant Florencio Perez is the judicial administrator of the estate of the late Celestina Perez. The other defendants are purchasers and actual owners of portions of the land which is sought to be recovered in the present litigation.

The complaint alleges that Celestina Perez was in her lifetime the owner of the parcel of land in question which was not registered either under Act 496 or under the Spanish Mortgage Law; that sometime in 1924 when the deceased Santiago Babao married Maria Cleofe Perez, niece of Celestina Perez, the latter and the former entered into a verbal agreement whereby Santiago Babao bound himself to improve the land by levelling and clearing all the forest trees standing thereon and planting in lieu thereof coconuts, rice, corn and other crops such as bananas and bamboo trees, and to act at the same time as administrator thereof during the lifetime of Celestina Perez, all expenses for labor and materials to be at his cost, in consideration of which Celestina in turn bound herself to convey to Santiago Babao or his wife 1/2 of the land, together with all the improvements thereon upon her death; that pursuant to said verbal agreement, Santiago Babao in 1924 left his job as administrator of the Liana Estate in San Juan, Batangas for which he was receiving a salary of P150 a month, and started levelling and clearing the land having planted in an area of 50 hectares 5,000 coconuts trees, and rice and corn in another area of 70 hectares, leaving out only about 50 hectares unimproved, all of which having been administered by him from 1924 to 1946; that for clearing and improving the portions of land above-mentioned, he incurred expenses amounting to P7,400 which added to his salary as administrator from 1924 to 1946 at the rate of P150 a month amounting to P39,600, makes a total of P47,000; that in violation of the aforesaid verbal agreement, Celestina Perez, acting through Leovigildo Perez, to whom she extended a power of attorney to sell, sold few days before she died about 127 1/2 hectares of 'the land in question in consequence of which Santiago Babao was deprived of the possession and administration thereof from 1945; that said sales were fictitious and were made in clear violation of the oral agreement made between Celestina Perez and Santiago Babao and as such the same are null and void; that Celestina Perez died on August 24, 1947 as a result of which intestate proceedings were instituted for the settlement of her estate and one Florencio Perez was named as judicial administrator; that Santiago Babao died on January 6, 1948 and as a consequence intestate proceedings were instituted for the settlement of his estate and Bienvenido Babao was appointed judicial administrator; and that in the event the estate of Santiago Babao failed to recover the 1/2 portion of the land herein litigated, said estate would suffer an irreparable damage of not

less than P366,700 representing fruits which it has failed to receive during the last 20 years. Wherefore, plaintiff prayed for the conveyance of 1/2 portion of the land in question and for annulment of the sales of the portion thereof for having been made fictitiously, and in the alternative, for judgment in plaintiff's favor for the sum of P47,000 representing the amount of useful and necessary expenses incurred by Santiago Babao in improving the land in line with the oral agreement.

Defendants denied plaintiff's claim that a verbal agreement was entered into between Celestina Perez and Santiago Babao relative to the clearing, improving and administering the land belonging to the former having an area of 156 hectares, as well as the other claim that Santiago Babao had actually cleared and improved a great portion thereof at a cost of around P7,400. They alleged that in 1924 and for many years prior thereto, the land in question had already been cleared and cultivated for agricultural purposes with an exception of a portion of 50 hectares; that said land was cleared and cultivated due partly to the effort made by Celestina's husband, Esteban de Villa, her overseers and tenants, and partly to the "trusco" system employed by them whereby persons were allowed to clear the land and plant thereon and from the . harvest were compensated according to a graduated scale of division varying from year to year; that the coconut trees, banana plants and bamboo trees now standing thereon were planted not by Santiago Babao nor at his expense but by the tenants of the spouses Esteban de Villa and Celestina Perez who were duly compensated according to the "trusco" system; that although Santiago Babao and Maria Cleofe Perez were married in 1924, the former did not have anything to do with the land in question for Esteban de Villa was then still living and actively managed the same with the help of his overseer and tenants until he died in 1930; that it was only in. that year when Santiago Babao began administering the land in the capacity of a nephew of Celestina until 1935 when Celestina, disgusted with the conduct of Santiago, left the company of Santiago and his wife and went to live with her nephew Bernardo Perez until her death in 1947; that since then Celestina Perez prohibited Santiago from interfering with the administration of the land and designated another person in his place, and for the work he did from 1930 to 1935, he was more than compensated because the proceeds of the harvests during said years were all given to him and his wife and Celestina was given only what was barely sufficient for her maintenance.

Defendants also alleged that the sales made by Celestina Perez through her attorney-in-fact Leovigildo Perez of several portions of the land were not fictitious as alleged but were made with full knowledge and authority of Celestina who executed in favor of Leovigildo Perez a power of attorney under the authority of a notary public in the presence of Santiago Babao himself who did not interpose any objection to the execution of said power of attorney and, therefore, said sales are real, valid and genuine, having been executed in accordance with law. Defendants prayed that the complaint be dismissed with costs, after awarding to them moral damages' in the amount that the court may deem proper to fix.

After hearing, the court rendered judgment the dispositive part of which reads:

"WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendants,

- (1) Declaring the sales of Lupang Parang by and between the defendants, fraudulent and fictitious, null and void;
- (2) Ordering: defendant Florencio Perez as administrator of the testate estate of the deceased Celestina Perez, to pay plaintiff the sum of P3,786.66 annually from August 25, 1947 until delivery of the land to the latter, with interest thereon at the rate of 6 per cent per annum from the date of the filing of the complaint;
- (3) Divesting the title of defendants over 1/2 of Lupang Parang both in quantity and quality and vesting title thereover in plaintiff pursuant to section 10 of Rule 39. To carry out this judgment, the Clerk of Court is hereby appointed representative of this Court to designate a disinterested surveyor for the necessary survey and division, the expenses therefor to be defrayed half and half by plaintiff and Floreneio Peres;
- (4) Ordering defendants to surrender the possession of the half adjudicated and vested in favor of the plaintiff

after the same has been designated under the proceeding paragraph; and
(5) To pay the costs."

Defendants in due time took the case on appeal to the Court of Appeals where the parties submitted their respective briefs within the reglementary period, and thereafter the court rendered judgment reversing in toto the decision appealed from and dismissing the case without pronouncement as to costs. But when its attention was called, thru a proper motion, that that court acted without jurisdiction because the amount involved was more than P50,000, the court in a resolution entered on August 14, 1954 set aside its decision and forwarded the case to us to have the case remanded to the Court of Appeals proved futile.

While this case was pending in the lower court, counsel for appellants filed a motion to dismiss on the ground, among others, that the alleged verbal agreement between Santiago Babao and Celestina Perez was unenforceable under the Statute of Frauds. The trial court denied this motion on the ground that it appears from the complaint "that Santiago fully complied with his part of the oral contract between the parties and that this is an action not only for specific performance but also for damages." Consequently, the court held that the Statute of Frauds cannot be invoked for the reason that "performance by one party of his part of the contract takes the case out of the statute." And pursuant to such ruling, when the case was tried on the merits, the court overruled all objections of counsel for appellants to the introduction of oral testimony to prove the alleged verbal agreement. The important question then to be determined is whether or not the alleged verbal agreement falls within the prohibition of the Statute of Frauds.

This statute, formerly incorporated as Section 21 of Rule 123 of our Rules of Court, is now found in Article 1403 of the new Civil Code, which provides, in so far as pertinent to this case, as follows:

"In the following cases an agreement hereafter made shall be unenforceable by action unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent, evidence therefore, of the agreement cannot be received without the writing, or secondary evidence of its contents;

"(a) An agreement that by its terms is not to be performed within a year from the making thereof.

* * * * *

"(e) An agreement * * * for the sale of real property or of an interest therein."

Appellants contend that the alleged verbal agreement falls under paragraphs (a) and (e) above-quoted because the same may be considered as an agreement which by its terms, is not to be performed within one year from the making thereof, or one which involves a sale of real property or of an interest therein. If this premise is correct, appellants contend, then the trial court erred in allowing the introduction of parole evidence to prove the alleged agreement over the vigorous objection of counsel for appellants.

That the alleged verbal agreement is one which by its terms is not to be performed within one year is very apparent from the allegations of the complaint. Thus, it is therein alleged that the agreement was allegedly made in 1924 and by its terms Santiago Babao bound himself (1) to improve all the 156 hectares of forest lands by levelling and clearing all the forest trees and planting thereon coconuts, rice, corn and other crops such as bananas and bamboo trees, and (2) to act at the same time as administrator of said land and improvements during the lifetime of Celestina Perez. And in consideration of such undertaking-, Celestina Perez "bound herself to give and deliver, either to Santiago Babao or his wife Cleofe Perez, one-half (1/2) of the whole area of said land as improved with all the improvements thereon "upon her death". It is also alleged in the complaint that Celestina Perez died on August 24, 1947, or 23 years after the making of the alleged agreement, while Santiago Babao died on January 6, 1948. From the above terms, therefore, it is not difficult to see that the undertaking assumed by Santiago Babao which was to clear, level and plant to coconut trees and other plants 156 hectares of forest land

could not be accomplished in one year. In fact, the alleged improvements were supposedly accomplished during the lifetime of Celestina, which lasted over a period of 28 years, and even then not all was cleared and planted but only a portion thereof. Another part of his undertaking is that he is to administer the land during the lifetime of Celestina, and as we have already said, her death occurred 23 years after the agreement.

But the trial court expressed the view that the statute does riot apply because it assumed that Santiago Babao fully complied with his part of the oral contract between the parties, and in its opinion "performance by one party of his part of the contract takes the case out of the statute." Even if this assumption were correct, still we find one flaw in its logic which fully nullifies it for it fails to consider that in order that a partial performance of the contract may take the case out of the operation of the statute, it must appear clear that the full performance has been made by one party within one year, as otherwise the statute would apply. Thus, the rule on this point is well stated in Corpus Juris in the following wise: "Contracts which by their terms are not to be performed within one year, may be taken out of the statute through performance by one party thereto. All that is required in such case is complete performance within the year by one party, however many years may have to elapse before the agreement is performed by the other party. But nothing less than full performance by one party will suffice, and it has been held that, if anything remains to be done after the expiration of the year besides the mere payment of money, the statute will apply."^[1] (Italics supplied). It- is not therefore correct to state that Santiago Babao has fully complied with his part within the year from the alleged contract in question.

"When, in an oral contract which, by its terms, is not to be performed within one year from the execution thereof, one of the contracting parties has complied within the year with the obligations imposed on him by said contract, the other party cannot avoid the fulfillment of those incumbent on him under the same contract by invoking the statute of frauds because the latter aims to prevent and not to protect fraud." (Shoemaker vs. La Tondeña, Inc. 68 Phil., 2A.)

"The broad view is that the statute of Frauds applies only to agreements not to be performed on either side within a year from the making thereof. Agreements to be fully performed on one side within the year are taken out of the operation of the statute." (National Bank vs. Philippine Vegetable Oil Co., 49 Phil, 857, 858.)

Assuming arguendo that the agreement in question falls also under paragraph (a) of Article 1403 of the new Civil Code, i. e., it is a contract or agreement for the sale of real property or of an interest therein, it cannot also be contended that that provision does not apply to the present case for the reason that there was part performance on the part of one of the parties. In this connection, it must be noted that this statute is one based on equity. It is based on equitable estoppel or estoppel by conduct. It operates only under certain specified conditions and when adequate relief at law is unavailable (49 Am. Jur., Statute of Frauds, Section 422, p. 727). And one of the requisites that need be present is that the agreement relied on must be certain, definite, clear, unambiguous and unequivocal in its terms before the statute may operate. Thus, the rule on this matter is as follows:

"The contract must be fully made and completed in every respect except for the writing required by the statute, in order to be enforceable on the ground of part performance. The oral agreement relied on must be certain, definite, clear, unambiguous, and unequivocal in its terms, particularly where the agreement is between parent and child, and be clearly established by the evidence. The requisite of clearness and definiteness extends to both the terms and the subject matter of the contract. Also, the oral contract must be fair, reasonable, and just in its provisions for equity to enforce it on the ground of part performance. If it would be inequitable to enforce the oral agreement, or if its specific enforcement would be harsh, or oppressive upon the defendant, equity will withhold its aid. Clearly, the doctrine of part performance taking an oral contract out of the statute of frauds does not apply so as to support a suit for specific performance where both the equities and the statute support the defendant's case." (49 Am. Jur., p. 729.)

The alleged agreement is far from complying with the above requirement for, according to the complaint,

Santiago Babao bound himself to convert a big parcel of forest land of 156 hectares into a veritable farm planted to coconuts, rice, corn and other crops such as bananas and bamboo trees and to act as administrator of said farm during the lifetime of Celestina Perez; while the latter in turn bound herself to give either to Santiago or his wife 1/2 of the land as improved with all the improvements thereon upon her death. This agreement is indeed vague and ambiguous for it does not specify how many hectares was to be planted to coconuts, how many to rice and corn, and what portion to bananas and bamboo trees. And as counsel for appellants puts it, "as the alleged contract stands, if Santiago Babao should plant one-half hectares to coconuts, one-half to rice, and another half hectare to corn, and the rest to bananas and bamboo trees, he would be entitled to receive one-half of 156 hectares, or 78 hectares, of land for his services. That certainly would be unfair and unheard of; no sane property owner would enter into such contract. It costs much more time, money, and labor to plant coconut trees than to plant bananas and bamboo trees; and it also costs less to convert forest land to rice and corn land than to convert it into a coconut plantation. On the part of Celestina Perez, her promise is also incapable of execution. How could she give and deliver one-half of the land upon her death?"

The terms of the alleged contract would appear more vague if we consider the testimony of Carlos Orense who claimed to have been present at the time the alleged agreement was made between Celestina Perez and Santiago Babao for apparently the same does not run along the same line as the one claimed by appellee. This is what Orense said: "You, Santiago, leave the Liana estate and attend to this lupang parang. Have it cleared and planted to coconuts, for that land will eventually fall in your hands" (as translated from Tagalog), which runs counter with the claim of appellee. The agreement being vague and ambiguous, the doctrine of part performance cannot therefore be Invoked to take this case out of the operation of the statute,

"Obviously, there can be no part performance until there is a definite and complete agreement between the parties. In order to warrant the specific enforcement of a parol contract for the sale of land, on the ground of part performance, all the essential terms of the contract must be established by competent proof, and shown to be definite, certain, clear, and unambiguous.

"And this clearness and definiteness must extend to both the terms and the subject-matter of the contract.

"The rule that a court will not specifically enforce a contract for the sale of land unless its terms have been definitely understood and agreed upon by the parties, and established by the evidence, is especially applicable to oral contracts sought to be enforced on the ground of part performance. An oral contract, to be enforced on this ground, must at least have that degree of certainty which is required of written contracts sought to be specifically enforced.

"The parol contract must be sufficiently clear and definite to render the precise acts which are to be performed thereunder clearly ascertainable. Its terms must be so clear and complete as to allow no reasonable doubt respecting its enforcement according to the understanding of the parties." (101 A. L. R., pp. 950-951)

"In this jurisdiction, as in the United States, the existence of an oral agreement or understanding such as that alleged in the complaint in the case at bar cannot be maintained on vague, uncertain, and indefinite testimony, against the reasonable presumption that prudent men who enter into such contracts will execute them in writing, and comply with the formalities prescribed by law for the creation of a valid mortgage. But where the evidence as to the existence of such an understanding or agreement is clear, convincing, and satisfactory, the same broad principles of equity operate in this jurisdiction as in the United States to compel the parties to live up to the terms of their contract." (Cuyugan vs. Santos, 34 Phil., 100, 101.)

There is another flaw that we find in the decision of the court a quo. During the trial of this case, counsel for appellants objected the admission of the testimony of plaintiff Bernardo Babao and that of his mother Cleofe Perez as to what occurred between Celestina Perez and Santiago Babao with regard to the agreement on the

ground that their testimony was prohibited by section 26(c) of Rule 123 of the Rules of Court. This rule prohibits parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator of a deceased person upon a claim or testifying as to any matter of fact occurring before the death of such deceased person. But the trial court over-ruled the opposition saying that said rule did not apply where the complaint against the estate of a deceased person alleges fraud, citing the case of *Ong Chua vs. Carr*, 53 Phil., 980. Here again the court is in error because if in that case the witness was allowed to testify it was because the existence of fraud was first established by sufficient and competent evidence. Here, however, the alleged fraud is predicated upon the existence of the agreement itself which violates the rule of *petitio principii*. Evidently, the fraud to exist must be established by evidence *aliunde* and not by the same evidence which is to be sought to be prevented. The infringement of the rule is evident.

""* * * The reason for this rule is that 'if death has closed the lips of one party, the policy of the law is to close the lips of the other.' Another reason is that 'the temptation to falsehood and concealment in such cases is considered too great to allow the surviving party to testify in his own behalf.' Accordingly, the incompetency applies whether the deceased died before or after the commencement of the action against him, if at the time the testimony was given he was dead and cannot disprove it, since the reason for the prohibition, which is to discourage perjury, exists in both instances." (Moran, Comments on the Rules of Court, Vol. 3, 1952 Ed., p, 234.)

Having reached the conclusion that all the parol evidence of appellee was submitted in violation of the Statute of Frauds, or of the rule which prohibits testimony against deceased persons, we find unnecessary to discuss the other issues raised in appellants' brief.

Wherefore, the decision appealed from is reversed, and the case is dismissed, with costs against appellee.

Paras, C. J., Bengzon, Padilla, Reyes, A., Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

[1] This rule was quoted with approval by our Supreme Court in the case of *Shoemaker vs. La Tondeña, Inc.*, *supra*.

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