

SOLEDAD ABIJUELA, DOROTEA LAGAMAYO AND REYNALDO LAGUIDAO, PLAINTIFFS AND APPELLANTS VS. HOSPICIA DOLOSA AND MARCOS AUMENTADO, DEFENDANTS AND APPELLEES. ESPERANZA ABIJUELA, THIRD...

G.R. No. L-14245. December 29, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

The plaintiffs brought an action against the defendants in the Court of First Instance of Sorsogon to recover possession of two parcels of land situate in Sorsogon, Sorsogon, described in the amended complaint, damages and attorney's fees, and to be declared owners thereof (civil No. 748). With previous leave of court obtained, the defendants filed a third-party complaint against Esperanza Abijuela, who answered it.

After trial, the Court rendered judgment dismissing the plaintiffs' complaint; declaring the defendants owners of the two parcels of land in controversy and entitled to their possession; dissolving the writ of preliminary injunction theretofore issued; and dismissing the defendant's third-party complaint, with costs against the plaintiffs. The plaintiffs have appealed.

On 12 May 1956 the Clerk of Court forwarded the appealed case to the Court of Appeals where on 22 May 1956 the records were received (C.A.-G.R. No. 17848-R). On 10 March 1958 the Court of Appeals forwarded the case to this Court on the ground that only questions of law are involved. On 18 August 1958, this court resolved to have the case "provisionally docketed." (G.R. No. L-14245.)

The preliminary question raised in this appeal is whether this Court has appellate jurisdiction of the case. In their notice of appeal filed with the trial court on 21 December 1955, the appellants stated—

That they hereby make a formal Notice of Appeal of their intention to appeal, as they hereby appeal, the decision of this Court in the above entitled case in favor of the defendants and against the plaintiffs, copy of said decision was received by the plaintiffs thru their counsel on Dec. 1, 1955, to the Supreme Court based on the ground of question of law and evidence, to wit: Can the indefeasible and absolute character according to law of O.C.T. Nos. 1465 and 1967 of spouses Jorge Abijuela and Dorotea Lagamayo granted and issued, after hearing in 1931 be successfully attacked and rendered without force and effect after 24 years from its issuance? (pp. 77-78, rec. on app.)

and in their prayer for approval of the record on appeal, they asked that—

* * * the Clerk of Court be ordered to certify same and be transmitted to the Supreme Court together with all the evidence presented during the hearing of this case, both oral and documentary which are made part of this appeal, (p. 79, supra.)

However, in their brief submitted to the Court of Appeals, they charge the trial court, among others, with having—

* * * erred in holding that O.C.T. No. 1465 (Exh. A) and O.C.T. No. 1967 (Exh. E-), both in the name of

spouses' Jorge Abijuela and Dorotea Lagamayo, issued in 1931, covering the land in question, do not affect the previous property rights of Esperanza Abijuela, the predecessor in interest of the defendants for the said original certificates of title were issued to a mere "encargado" and hence null and without effect, (pp. 2 and 5, appellants' brief)

and dispute its finding that Jorge Abijuela, the appellants' husband, father and father-in-law, was a mere "encargado" or overseer of the third-party defendant.

Section 3, Rule 42, of the Rules of Court, provides:

Where the appeal is based purely on questions of law, the appellant shall so state in his notice of appeal, and then no other questions shall be allowed, and the evidence need not be elevated.

Section 31, Republic Act No. 296, as amended, provides:

All cases which may be erroneously brought to the Supreme Court or to the Court of Appeals shall be sent to the proper court, which shall hear the same, as if it had originally been brought before it.

By categorically and specifically stating in their notice of appeal that they were appealing "to the Supreme Court based on the ground of question of law and evidence," and definitely stating the question of law to be raised, and praying that "the Clerk of Court be ordered to certify" and transmit the record on appeal and the evidence, both oral and documentary, presented at the trial of the case to the Supreme Court, the appellants have waived their right to raise questions of fact in their brief. In *Millar vs. Nadres*, 74 Phil., 307, where the appellant stated in his notice of appeal that he was appealing to this Court because ninety per cent of the questions involved were of law, and caused the record to be elevated thereto, this Court construed those statements as a waiver of his right to raise any question of fact. In *Portea vs. Pabellon*, 84 Phil., 298; 47 Off. Gaz., 655, where the petitioner stated in his notice of appeal that his appeal was "on the ground that the question involved is one of law; and in the record on appeal filed by him and approved by the trial court, it was prayed that the case be certified and elevated to the Supreme Court, as only a question of law is involved," this Court followed the rule laid down in the first mentioned case. Lastly, in *Flores vs. Plasina*, 94 Phil., 327; 50 Off. Gaz., 1073, this Court held that "In bringing this appeal to this Court upon the claim that plaintiffs would merely raise questions of law, appellants waived their right to dispute the findings of fact of the lower court which under the rules and precedents are deemed final and are binding upon this Court." Hence, in the case at bar, only questions of law may be raised and it is this Court that has appellate jurisdiction of the case.

The following are the findings of the trial court:

Tratase de la demanda de reivindicacion de dos parcelas de terreno situadas en el municipio de Sorsogon, provincia de Sorsogon, y mas particularmente descritas en el parrafo 3 de la demanda enmendada, presentada por Soledad Abijuela, Dorotea liagamayo y Reynaldo Laguidao contra Hospicia Doiosa y Marcos Aesaentado. A peticion de los demandantes se expidio ex-parte en esta-causa orden de interdicto prohibitorio preliminar contra los demandados.

En el curso de la tramitacion de esta causa, los demandados, previo permiso del Juzgado, presentaron demanda de terceria contra Esperanza Abijuela, de quien alegan haber comprado de buena fe dichas propiedades.

De las pruebas resulta que los esposos Jorge Abijuela, quien desa-parecio en 1943 y hasta ahora no ha vuelto, y la demandante Dorotea Lagamayo eran dueños de las dos parcelas de terreno en cuestion; que la otra demandante, Soledad Abijuela, es hija de dichos maridab-Jes, y esta casada con el demandante Reynaldo Laguidao; que, el 3 de julio de 1928, dicho Jorge Abijuela vendio las dos citadas parcelas de terreno, que entonces formaban, una sola, a favor de su hermana Esperanza Abijuela (Exhibit I), demandada en la demanda de terceria presentada por los demandados, sin embargo, dichos esposos Jorge Abijuela y Dorotea Lagamayo,

con el permiso de su hermana y como encargado de Esperanza Abijuela de dichas propiedades, siguieron viviendo en la casa que tenia levantada erf/fattta. de dichas parcelas hasta que dieho Jorge Abijuela desaparecio, y ilesde entonces los demandantes se trasladaron a vivir en el barrio de'Abuyog, del mismo municipio de Sorsogon, pero alegan haber continuado en pose-sion de las dos parcelas de terreno en cuestion hasta el ano 1948, en que los demandados se posesionaron de los mismos, en concepto de duefios, por haberlas comprado de Esperanza Abijuela; que en 1952, cuando se presento la demanda original y con la expedicion de la orden de interdicto prohibitorio preliminar a favor de los demandantes, los demandados fueron desposeidos de la posesion de los citados terrenos; que durante el tiempo de la pos'esion de los demandados, estos cosecharon los productos.

Asi mismo resulta de las pruebas que no obstante haberse ven-dido en julio 3, 1928, el terreno en cuestion, ahora compuesto de dos parcelas por la medicion catastral, por Jorge Abijuela a favor de su hermana. Esperanza Abijuela, aquel consign io titularlas a su nombre y a su esposa, la demandante Dorotea Lagamayo, como propiedad ganancial de los mismos en junio 10 y 11 de 1931, res-pectivamente, a espaldas y sin conocimiento de su hermana Esperanza Abijuela (Certificados Originales de Titulo Nos. 1967 y 1465, Ex-'hibits B y A), las cuales parcelas de terreno siguen hasta ahora tituladas. y registradas a nombre de los referidos espososf Jorge Abijuela y Dorotea Lagamayo; que dichos Certificados Originales de Titulo Nos. 1967 y 1465 fueron rescatados y pagados por los demandantes los gastos correspondientes solamente el 11 de julio de 1952, o sea, mas de 20 anos despues de la expedicion de los mismos; que Esperanza Abijuela, ignorando de que su hermano y encargado Jorge Abijuela habia gestionado y obtenido la titulacion de los dos lotes de terreno en cuestion, los vendio el noviembre 15, 1958, a los demandados Marcos Aumentado y Hospicia Dolosa (Exhibit 1), por la cual se posesionaron de los mismos y los declararon a su nombre para el pago de amillaramiento (Exhibits 3 y 4), desde entonces "nan venido pagando la contribucion territorial de los mismos (Exhibits 4, 4-A al 4-G).

En virtud do los hechos establecidos, arriba relatados, se presentan las cuestiones siguientes: (a) Que efecto legal tienen los Certificados Originales de Titulo Nos, 1967 y 1465 sobre el derecho de propiedad de Esperanza Abijuela y consecuentemente del de los demandados, los esposos Marcos Aumentado y Hospicia Dolosa, en las parceias de terreno objeto de dichos titulos; que estan litigadas; y (b) Be puede legalmente declarar duena a Esperanza Abijuela y consecuentemente a los demandados de las mencionadas parcelas de terreno no obstante dichos titulos? (pp. 71-75, rec. on app.)

The Court held as follows:

El Juzgado es de opinion que los citados titulos no afectan ni anulan el derecho da propiedad de Esperanza Abijuela ni de los demandados sobre las parcelas de terreno en cuestion, pbrque cuando se titularon dichas propiedades a nombre de Jorge Abijuela, este era un mero encargado de dichas propiedades, o fideicomisario de las mismas, asi que la adquisicion de dichos titulos es ilegal. La razon es obvia, porque la ley como regla general no autoriza la titulacion de propiedades en fideicomiso a favor del fideicomisario y, por tanto, los mismos deben declararse per. se nulos y de ningun valor. Aun su-poniendo que dichos titulos fueran validos, el Juzgado cree que el derecho de Esperanza Abijuela y consecuentemente de los demandados no ha cambiado, por la razon de que dichos titulos sif>uen siendo hasta ahora a nombre del antiquo dueño, Jorge Abijuela, y las propiedades no se han traspasado por ninguh procego legal a otras personas ni existe tercera persona o comprador de buena fe de dichas propiedades que puede ser perjudicado. La demandante Dorotea Lagamayo, esposa de Jorge Abijuela, tampoco puede rec-clarar ni la mitad de dichas propiedades, porque al tiempo de ser vendidas las mismas, su esposo, Jorge Abijuela, estaba facultado por las leyes entonces vigentes de vender bienes gananciales sin necesidad del consentimiento marital.

La reconvencion de los demandados no fue debidamente probada. (pp. 75-76, rec. on app.)

Since Jorge Abijuela, the appellants' husband, father and father-in-law, had sold to his sister Esperanza, the third-party defendant, the parcels of land in question, and the latter only allowed him, as her "encargado" or

overseer, to stay in one flip; the parcels of land, the registration of the two parcels of land as conjugal property of the spouses Jorge Abijuela and Dorotea Lagamayo, without her knowledge and consent, did not affect the right of ownership and title of the true and real owner, the third-party defendant, and her right to alienate them to the appellees. No cogent reason may be found for reversing the judgment appealed from, except that the appellant Dorotea Lagamayo and the clerk of Court of First Instance of Sorsogon, in behalf of Jorge Abijuela, because of his absence and his whereabouts unknown, be ordered to execute a document transferring and reconvening the two parcels of land to Esperanza Abijuela and upon the strength of the deed executed by the latter in favor of the appellees, the Registrar of Deeds in and for the province of Sorsogon, upon payment of the lawful fees, to cancel the original certificates of title Nos. 1465 and 1967 and to issue in lieu thereof transfer certificates of title in the name of the appellees.

Modified as above stated, the judgment appealed from is in all other respects affirmed, with costs against the appellants.

Paras, C.J., Bengzon, Bautista Angelo, Labrador; Conception, Reyes, J.B.L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Judgment affirmed with modification.

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