

AUREA ESQUEJO, PLAINTIFF AND APPELLANT, VS. CERAPIO FORTALEZA AND DANIEL FORTALEZA, DEFENDANTS AND APPELLEES.

G. R. No. L-15897. February 26, 1965

Ponente: REGALA, J.

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REGALA, J.:

This is an action for the recovery of property consisting of a residential land situated in Sta. Maria, Binalonan, Pangasinan. It was originally filed in the Court of First Instance of Pangasinan by Aurea Esquejo against Cerapio and Daniel Fortaleza.

The trial court found that this residential lot (together with three parcels of riceland situated in barrio Manguzmana of the same town and province) had been donated by Pablo Fortaleza to Aurea Esquejo in consideration of the latter's marriage to the donor's son, Cresenciano. Nevertheless, the court denied recovery of the residential land on the ground that Pablo Fortaleza, the supposed donor, did not own this land, the same being the registered property of Pedro Fortaleza whose ownership is evidenced by Original Certificate of Title No. 4322. According to the lower court, Cerapio Fortaleza acquired this land from the heirs of Pedro Fortaleza as shown by a deed of sale (Exh. "2").

Aurea Esquejo excepts to these findings of the trial court. She contends that the lot donated to her is different from the lot covered by Original Certificate of Title No. 4322 which the court found had been sold to Cerapio Fortaleza by the heirs of Pedro Fortaleza, the registered owner. Her version is that after donating the residential lot to her Pablo Fortaleza subsequently conveyed the same property to Cerapio Fortaleza by means of a deed of sale marked Exh. "F". According to her, when this action was filed and Cerapio Fortaleza realized that he could not rely on the deed of sale (Exh. "F"), Cerapio Fortaleza procured the execution of another deed of sale (Exh. "2"). She contends that this deed of sale (Exh. "2") is simulated and refers to a different land registered in the name of Pedro Fortaleza, whereas the land donated to her and subsequently sold to Cerapio Fortaleza is unregistered and was formerly the property of Pablo Fortaleza. She goes on to say that-

"En el dia de la vista de la causa, Cerapio Fortaleza presento como prueba a su favor esta escritura ficticia de compraventa, EXHIBITO "2", para justificar su propiedad, y ahora Cerapio Fortaleza sostiene que el terreno en litigio es el terreno cubierto por el Certificado Original de Titulo No. 4322; siendo que el terreno que realmente es el objeto del litigio es aquel terreno que Cerapio Fortaleza compro de su padre Pablo Fortaleza, mediante escritura publica, EXHIBITO "F", en el año de 1948, en donde el vendedor Pablo Fortaleza declaro o hizo constar que el terreno que vendio no esta registrado bajo la Ley 496."

As stated in the beginning, this action was originally filed in the Court of First Instance of Pangasinan. The appeal in this case was taken directly to this Court] on the ground that only questions of law would be raised. But, as shown above, the findings of the lower court are disputed and questions of fact are actually raised.

Aurea Esquejo's statement in her notice of appeal that she would raise only questions of law should be construed

as a waiver of all questions of fact. (Rule 42, Sec. 2, Rev. Rules of Court; 2 Moran 394-395 1963) Therefore, she can not now dispute the factual finding of the lower court that the residential land purportedly given to her under the deed of donation propter nuptias is the same land covered by Original Certificate of Title No. 4322. On this point, the lower court found:

" * * * After examining both documents, the Court is convinced that they refer to the same land in question notwithstanding some discrepancies in their boundaries on the north, south and east but their areas are practically the same. The reason for these discrepancies may be attributable to the change of owners adjacent thereto. This is shown by tax declaration No. 14363, marked Exhibit '3'. Besides, the defendant Cerapio Fortaleza did not dispute the identity of the residential land in question described in paragraph 5 (No. 1) of the amended complaint in relation to Lot 700. * * *"

The facts being so, We agree with the following conclusion of the lower court:

"Under these circumstances, if the residential land was the registered property of Pedro Fortaleza, how did Pablo Fortaleza acquire the same? The plaintiff failed to adduce evidence to show how her donor acquired it from the registered owner. Such being the case, Pablo Fortaleza has no right, title or interest in this Lot 700 which he would lawfully convey to the donee under the deed of donation, because it is a principle of law that nobody can dispose of that which does not belong to him. * * *."

WHEREFORE, the decision of the lower court is hereby affirmed, without pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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