

SATURNINA HOLLERO AND JOSE CAMEMO, PETITIONERS, VS. THE COURT OF APPEALS, JOSE HOLLERO, ANITA HARDER, ISAGANI EVANGELISTA, ET. AL., RESPONDENTS.

G.R. No. L-16579. June 29, 1964

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

Review of the decision of the Court of Appeals awarding ownership of a parcel of land in Jaro, Iloilo.

It formerly was the paraphernal property of Paz Hollero, who died in June 1935, leaving her husband Generoso Hollero and their only son Felix. The latter died in 1944 followed shortly by his father Generoso.

The plaintiffs Jose Hollero, et al.,—brothers and nephews or nieces of Paz Hollero—claim the property by virtue of the reserva troncal provisions of the Civil Code. Upon the death of Paz, they contend, the property passed to Felix; and upon the latter's death, it passed to Generoso. Thereafter, the reserva troncal began to operate, to wit: when Generoso died, the property had to be transmitted by operation of law to the relatives of Felix up to the third degree, i.e., the brothers and sisters of Paz (Jose, Severo, Socorro, Estrella, Benjamin and Manuel) who survived him.

On the other hand, the defendants allege in short, that they inherited the land from Saturnina's brother Generoso, upon the latter's death. They assert that Paz Hollero, in her lifetime, had sold the property to Andrea Gustilo in 1931; and that in 1936, Generoso purchased it from Andrea.

It appears that on December 21, 1934, Paz Hollero executed a document transferring the property by "pacto de retro" to Andrea Gustillo for P240.00. After her death, i.e., on February 28, 1936, Andrea sold the same land to Generoso for P200.00. And the principal issue, debated both in the court of first instance and the Court of Appeals, was whether the "pacto de retro" constituted a true sale or was merely a mortgage. If a sale, Generoso got ownership of the land and his successors-in-interest—the defendants—have a right to judgment.

Substantially, the Court of Appeals held: (a) it was a mere mortgage; (b) Generoso merely repaid the debt; and Felix inherited it upon the death of Paz, his mother; and (c) when Felix in turn died, it passed to Generoso subject to the provisions on reserva troncal.[1]

At this level, the character of the document whether a sale or a mere mortgage is foreclosed: it is a question of fact on which the Appeals' Court pronouncement is final. This disposes of the last error assigned by the petitioners of this review.

The other two assignments while not necessarily assailing the second and third declarations of the appellate court, tend only to modify the dispositive part of its judgment now under review, which reads as follows:

"WHEREFORE, we hereby reverse the decision a quo, and render another declaring that the transaction between Paz Hollero and Aureu Guutilo, executed on December 21, 1934, was an equitable mortgage which

was validly cancelled by payment of the loan on February 28, 1936; declaring that the land, subject-matter of the mortgage, or lot 237C-D of the Jaro cadastre, described in paragraph 3 of the complaint, was the paraphernal property of Paz Hollero; ordering the Register of Deeds of Iloilo to cancel transfer certificate of title T-5941 (exh. 30) and in lieu thereof to issue another in the names of Jose Hollero, Severo Hollero, Manuel Hollero, and the other brothers and sisters of these persons who were alive at the time of death of Generoso Hollero, in pro-indiviso and equal shares, upon the repayment of the defendants of the charges evidenced by the receipts, exhs. 7, 8, 9 to 1-1, and 17 to 22, which charges may however be offset against their share in the produce of the land due from the defendants and condemning the defendants to pay to the owners of the property the sum of P5,000 per year beginning with the crop year 1955-1957, until possession of the land shall have been restored to the latter. No pronouncement as to costs in this instance.

The petitioners—who were defendants below—maintain that it was error to award a part of the land in question to Manuel Hollero and Felix Harder—whom the complaint had expressly excluded, and who had previously acknowledged the right to the land of herein petitioners—defendants below.

It appears that the complaint itself stated that although said two persons were heirs of Paz and Felix Hollero, they were not parties plaintiff because "they have relinquished their rights in favor of the defendants"; it also appears in Civil Case No. 2239 of the Iloilo court of first instance, the herein petitioners sued said two persons for ejectment from the land; and both having expressly acknowledged the ownership of then plaintiffs (petitioners here now), were ejected therefrom (in 1951).

(By the way, this litigation commenced in 1956 by plaintiffs-respondents, seeks to recover the same land.)

There is merit in this (first) assignment of error. Having won Civil Case 2239, the herein defendants must be deemed to have the rights of Manuel Hollero and Felix Harder to the property. Now, what are those rights?

It must be explained that the record makes reference to two Manuel Holleros. One is the plaintiff Manuel Hollero who is the nephew of Paz (as the son of her brother Benjamin Hollero) and another Manuel Hollero who is Paz' own brother—excluded from the complaint. The latter is the one enumerated—erroneously—in the dispositive part of the Court of Appeals' decision. Given the result of the Iloilo Civil Case No. 2239, his portion should have been reserved or adjudicated to herein petitioners-defendants below. What about Felix Harder? He is the son of Socorro, sister of Paz. She is awarded one-sixth of the property by the above decision; and as she had left four children (Anita, Meriam, Alatia and Felix) the latter's share is one-fourth of such one-sixth, i.e. $1/24$, which must be awarded to herein petitioners-defendants below.

The second assignment of error challenges the part of the decision awarding damages. No evidence was adduced say petitioners—about the annual crops harvested from the land. In reply the respondents point out the page of the stenographic notes and the evidence supporting the appellate court's decision and findings. As this issue depends on the evidence, we must decline to interfere.

Now therefore, in upholding the rights of petitioners to the portion of Manuel Hollero and Felix Harder, it should be stated that Manuel Hollero was entitled, upon the death of Generoso, to one-sixth of the land (they were six brothers and sisters of Paz); but Felix Harder, as explained, is now entitled to one-fourth of the one-sixth which his mother Socorro inherited, i.e. $1/24$ of the land.

Wherefore, the dispositive part of the appellate court's decision should be modified to the effect that the property belongs pro-indiviso to Jose Hollero $4/24$; Severo Hollero $4/24$; the heirs of Socorro Hollero $3/24$; the heirs of Estrella Hollero $4/24$; the heirs of Benjamin Hollero $4/24$; and the spouses of Jose Camemo and Saturnina Hollero $6/24$. Needless to add, the amount to be repaid to defendants for the charges evidenced by the receipts, etc., must correspondingly be decreased by $5/24$, in the same way that the indemnity per year (P5,000) payable to plaintiffs,

must also be reduced by 5/24; such indemnity to be computed up to the day this decision becomes final.

As surrender of the entire lot to plaintiffs may not now be ordered, the case should be, and is hereby remanded to the court of first instance, so that further proceedings may be had to remanded the portion belonging to defendants; and upon such separation, orders shall be made for the delivery to plaintiffs of the parts corresponding them with the fruits thereof; and the issuance of the corresponding titles. Unless, of course, the parties come to an agreement to hold the property pro-indiviso; in which case, a new title may be issued in the corresponding name and proportions. With the modifications, the appellate court's decision is affirmed.

Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, and Regala, JJ. concur.

[1] Arts. 811, Spanish Civil code and 891, New Civil Code.

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