

CONSOLACION LUMAIN DE APARICIO, ACCOMPANIED BY HER HUSBAND BENITO APARICIO, PLAINTIFFS-APPELLEES, VS. HIPOLITO PARAGUYA, DEFENDANT-APPELLANT.

G.R. No. L-29771. May 29, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Trinidad Montilde, a young lass of Tubigon, Bohol had a love affair with a priest, Rev. Fr. Felipe Lumin and in the process she conceived. When she was almost four (4) months pregnant and in order to conceal her disgrace from the public she decided to marry Anastacio Mamburao. Father Lumin solemnized their marriage on March 4, 1924.[1] They never lived together as man and wife. On September 12, 1924, 192 days after the marriage, Trinidad gave birth to Consolacion Lumin. As shown by her birth certificate her registered parents are Trinidad and Anastacio.[2] On October 31, 1936, Fr. Lumin died but he left a last will and testament wherein he acknowledged Consolacion as his daughter and instituted her as the sole and universal heir of all his property rights and interests.[3] This was duly probated in the Court of First Instance of Bohol on June 11, 1938 and on appeal it was affirmed by the Court of Appeals.[4]

Soon after reaching the age of majority Consolacion filed an action in the Court of First Instance of Bohol against Hipolito Paraguya for the recovery of certain parcels of land she claims to have inherited from her father Fr. Lumin and for damages. After trial on the merits a decision was rendered on July 6, 1962, the dis-positive part of which reads as follows:

"PREMISES CONSIDERED, the Court renders judgment:

- (a) Declaring that plaintiff is entitled to the possession of the third parcel of land described in the 6th amended complaint, with all the improvements. If defendant Hipolito Paraguya is possessing this property, he is hereby ordered to vacate it and deliver its possession to plaintiff;
- (b) Declaring defendant Hipolito Paraguya owner of the second parcel of land described in the 6th amended complaint, with all the improvements. If plaintiff is possessing this land or any portion thereof, she is hereby ordered to vacate said property and to deliver its possession to defendant Paraguya;
- (c) Declaring defendant Hipolito Paraguya owner of Portions B and A of the sketch Exhibit E-1, with all the improvements. If plaintiff is possessing these portions or any part thereof, she is hereby ordered to vacate the same and to deliver its possession to defendant Hipolito Paraguya;
- (d) Declaring that plaintiff shall be entitled to the possession of Portions H, F and G, of Sketch Exhibit E-1, with all the improvements. If defendant is possessing these portions or any part thereof, he is hereby ordered to vacate them and to deliver the possession there-to plaintiff Consolacion Lumin Aparicio; and
- (e) Sentencing plaintiff to pay the Court the docketing fees and all other legal expenses.

The present judgment is rendered without special pronouncement as to costs."[5]

Not satisfied therewith, the defendant now interposed this appeal to the Court of Appeals alleging the trial court committed the following errors:

"I

THE LOWER COURT ERRED IN DECLARING THAT THE PLAINTIFF-APPELLEE IS ENTITLED TO THE POSSESSION OF PORTION G OF THE SKETCH EXHIBIT 'E-1', WITH ALL THE IM-PROVEMENTS.

II

THE LOWER COURT ERRED IN DECLARING THAT PLAINTIFF-APPELLEE IS A NATURAL CHILD OF THE LATE REV. FR. FELIPE LUMAIN.

III

THAT THE LOWER COURT ERRED IN NOT DECLARING THAT THE PLAINTIFF-APPELLEE IS LIABLE TO PAY THE DEFENDANT-APPELLANT FOR MORAL DAMAGES AS ALLEGED IN THE COUNTER-CLAIM."^[6]

In a resolution of September 27, 1968, the Court of Appeals forwarded the records of this case to this Court as appellant does not question the findings of facts of the court a quo but only the correctness of the conclusions drawn therefrom.^[7]

The undisputed findings of facts of the trial court are:

"It is a fact admitted in the evidence of both parties that the spouses Roman Lumain and Filomena Cosare were the owners of the parcels of land identified as first, second and third parcels in the sixth amended complaint.

The testimonial evidence has established the following facts:

The spouses Roman Lumain and Filomena Cosare and their children Rev. Fr. Felix Lumain and Macario Lumain are dead. This fact is corroborated by the following death certificates:

- (a) Exhibit I - death certificate showing that on August 20, 1929 Roman Lumain, husband of Filomena Cosare, was buried in the Catholic Cemetery of Tubigon, Bohol;
- (b) Exhibit J - death certificate showing that Filomena Cosare, wife of Roman Lumain, was buried on October 6, 1934 in the Catholic Cemetery of Tubigon, Bohol;
- (c) Exhibit K - death certificate showing that Rev. Fr. Felipe Lumain, son of Roman Lumain and Filomena Cosare, was buried on November 3, 1936 in the Catholic Cemetery of Tubigon, Bohol;
- (d) Exhibit L - death certificate showing that Macario Lumain, husband of Ceferina Falcon and son of the spouses Roman Lumain and Filomena Cosare, was buried on May 20, 1941 in the Catholic Cemetery of Tubigon, Bohol.

It appears proven at the same time that Ceferina Falcon de Lumain died on June 29, 1953, as shown by Exhibit M.

Several witnesses had declared that the spouses Roman Lumain and Filomena Cosare were possessing as owners and enjoying the products of the three parcels of land described in the complaint; that after their death, it was their two children Rev. Fr. Felipe Lumain and Macario Lumain who succeeded them in the possession of the same property.

Defendant Paraguya disclaims no right over the third parcel of land described in the 6th amended complaint. As a matter of fact, in the course of the trial the Court rendered judgment declaring plaintiff Consolacion Lumain Aparicio owner of said property. This judgment, however, was set aside because plaintiff's counsel manifested that he would present evidence for damages, in connection with this property which, according to plaintiff, had been possessed by defendant Paraguya.

Defendant claims right over the second parcel of land described in the 6th amended complaint, alleging that he had bought it from the late Roman Lumain, the admitted original owner. In support of his contention, defendant offered in evidence Exhibit 7 which is a deed of pacto de retro sale for the sum of P170. The parcel of land sold in this document is described as follows:

'Por el Noreste linda con el terreno del vendedor, por el Sureste con el de Macario Lumain, por Suroeste con el del vendedor y por el Noroeste con el del mismo vendedor y con el rio Bateria.'

If the boundaries of the land mentioned in Exhibit 7 were compared with the boundaries of the second parcel of land described in the 6th amended complaint, one would not hesitate to conclude that this parcel of land described in the complaint is the same property sold to defendant Hipolito Paraguya on August 1, 1928, for the sum of P170.00, by means of Exhibit 7.

It is true that vendor Roman Lumain reserved the right to repurchase the property at any time, but in the light of the provisions of Article 1508 of the old Civil Code which is the law applicable to the case, it is obvious that Roman Lumain and his heirs have lost the right to redeem the property. Article 1508 of the old Civil Code provides:

"The right referred to in the next preceding article, in default of an express agreement, shall endure four years, counted from the date of the contract.

Should there be an agreement, the period shall not exceed ten years.'

Although the area of the land mentioned in Exhibit 7 is 13,000 square meters, while the area of the land described as Parcel 2 is 14 area and 64 centares or 1,464 square meters, we think that this discrepancy is just a result of mistake. Our Supreme Court ruled that the correct boundaries of a land prevail over the discrepancy as regards its area.

We, therefore, conclude that the property described as second parcel of land in the 6th amended complaint belongs to defendant Hipolito Paraguya.

Although Exhibit 7 is a private document we entertain no doubt as to its authenticity established by testimonial evidence of defendant. Moreover, Macario Lumain, son of Roman Lumain, had signed as instrumental witness to this document and if we compared his signature on Exhibit 7 with his signatures on the documents Exhibits C-1, C-2, C-3, C-4 and C-5 offered in evidence by plaintiff, there would be no doubt that the signature affixed on Exhibit 7 is the authentic signature of Macario Lumain.

In connection with this case, the Court issued on August 7, 1952 the following order (Exh. D):

'When this case was called today, Atty. Diosdado R. Delima and Conrado D. Marapao, counsel for the parties, submitted the following agreement:

'Comes the undersigned attorney and respectfully proposes for an appointment of a Commissioner of the Court for the following purposes:

1. To localize Parcel II of the Second Amended Complaint under Tax No. 6862 superseded by Tax No. 20836 in the name of Roman Lumain;
2. To localize all the portions in the said parcel which are claimed by Hipolito Paraguya and to make a sketch of

the portions showing its relative positions with one another, showing its dimensions in meters, and showing its relative position in relation to the whole parcel;

3. To localize the portion in same parcel which are claimed by Ceferina Falcon and to make a sketch of the said portion showing its dimensions in meters and showing further its relative position in relation to the whole parcel.

The expenses of the Commission of the court to be shared pro rata by Consolacion Lumain Vallesteros, Ceferina Falcon and Hipolito Paraguya.

WHEREFORE, it is respectfully prayed that the above enumerated proposals be granted by the Court and a Commissioner duly appointed to carry out.

Tagbilaran, Bohol, August 7, 1952.

(Sgd.) DIOSDADO REYES DELIMA

Attorney for the Plaintiff

I AGREE:

(Sgd.) CONRADO MARAPAO

Attorney for the Defendants

Ceferina Falcon and Hipolito Paraguya'

IN VIEW WHEREOF, the Court hereby appoints Mr. Genaro Galon as Commissioner in charge to localize the properties in accordance with the foregoing agreement. Mr. Galon shall submit his report within the period of fifteen days. Before making this localization, Mr. Galon shall notify the attorneys of both parties two weeks in advance.

By agreement of the parties, the trial of this case is hereby postponed until further assignment.

SO ORDERED.

Given in open Court, Tagbilaran, Bohol, August 7, 1952.

(Sgd.) HIPOLITO ALO

Judge, 14th Judicial District'

In compliance with this order, the appointed commissioner Genaro Galon submitted his report (Exhibit E); and attached thereto is the sketch marked Exhibit E-1.

According to the report (Exhibit E), the land covered by tax declaration No. 20836 - which is the first parcel of land described in the 6th amended complaint is represented in the sketch Exhibit E-1 by the space enclosed within the black lines. For clarification purposes the Court had marked with letters H, B, A, G and F the portions enclosed within the black lines. The space marked letter C, outside the black lines, represents the land of Macario Lumain, acquired later by defendant Hipolito Paraguya.

Defendant Paraguya offered in evidence Exhibit 5, a deed of pacto de retro sale executed in his favor by the late Macario Lumain on December 6, 1937. This document describes the following parcel of land:

'El citado terreno es parte de la Declaracion No. 20836 a nombre de mi difunto padre Roman Lumain y Linda por el Noreste con el del vendedor y mide 39.30 metros; por el Sureste linda con el del mismo vendedor y mide 67.90 metros; por el Suroeste linda con la carretera provincial y mide 27.00 metros y por el Noroeste que tiene cinco lados linda con el del mismo vendedor y mide por dichos cinco lados 81.60 metros.'

If we linked the land described in Exhibit 5 with Portion A of the sketch Exhibit E-1, which portion, according to the report of Commissioner Galon, was indicated by defendant Paraguya as prop-erty belonging to him, we would find that the land described in Exhibit 5 is the same Portion A of the sketch Exhibit E-1, taking into account the length of the sides of Portion A and the length of the sides of the land sold under Exhibit 5. Portion A is precisely the portion claimed by defend-ant, according to Commissioner's report.

The authenticity of the signature of Macario Lumain on Exhibit 5 has been established by witnesses, and corroborated by documents Exhibits C-1, C-2, C-3, C-4 and C-5 offered in evidenced by plaintiff.

The includible conclusion, there-fore, is that Portion A of the sketch Exhibit E-1 was bought by defendant Hipolito Paraguya from Macario Lumain. Let us not lose sight of the fact that the land described in Exhibit 5 and Portion A of the sketch Exhibit E-1 have identical descriptions: On the NE is bounded by the land of Macario Lumain which was inherited by him from his father; on the SE by the same vendor Macario Lumain and provincial road; and on the NW by the same vendor. Macario Lumain has also lost the right to re-purchase.

The report of the commissioner Exhibit E also states that defendant Hipolito Paraguya claimed to be the owner of Portion B of the sketch Exhibit E-1. During the trial, Hipolito Paraguya maintained that on August 28, 1948 he bought from Raymundo Garduque a parcel of land by means of Exhibit 6-A. This document describes the property as follows:

'Este terreno es parte de la Declaracion No. 20836 a nombre del difunto Roman Lumain. Y linda por el Norte, con el del difunto Macario Lumain; por el Este, con el del difunto Roman Lumain; por el Sur, con la Carretera Pro-vincial; y por el Oeste, con el del mismo difunto Roman Lumain.'

Defendant Paraguya further main-tains that Raymundo Garduque had bought this property from Roman Lumain by means of Exhibit 6 which is trans-lated into English in Exhibit 6-1. Exhibit 6-1 describes the property sold by Roman Lumain to Raymundo Gar-duque as follows:

'On the North, it is bounded by the rice field of Macario Lumain which adjoins the parcel of rice field of the vendor; on the East, land of vendor; on the South, is Provincial Road; and on the West, it is bounded by the land of the vendor.'

If we link the description of Exhibit 6-1 with the description of Portion B of the sketch Exhibit E-1, there would be no doubt that this Portion B is the same land sold by Roman Lumain to Raymundo Garduque, by mans of Exhibit 6, bearing in mind that the boundaries of Portion B tally with the boundaries of the land described in Exhibit 6. We, therefore, conclude that Portion B also belongs to defendant Hipolito Paraguya.

The report of the commissioner Exhibit E reads as follows:

'En cumplimiento a la orders de este Juzgado de fecha 7 de Agosto, 1952 en la causa arriba titulada, el que suscribe como commissionado en dicho asunto, previa noti-ficacion por escrito a ambas partes y a sus respectivos Abogados, se contituyo al barrio de Tangnan, Tubigon, Bohol, para localizar el terreno bajo declaracion Tax No. 20836 a nombre de Roman Lumain y de las porciones reclamadas por Hipolito Para-guya y Ceferina Falcon Vda. de Lumain, y con asistencia de las partes se prodedio la localizacion de los mismos, de cuyo resultado, tiene la honra de someter a Su Señoria el adjunto croquis con los si-guientes:

1. Que la porcion limi-tada con lineas de tinta negra representa el terreno indicado por la demandante Consolacion M. Vallesteros, como terreno de Roman Lumain, bajo declaracion Tax No. 20836.
2. Que la pintada con lapiz encarnado, representa la reclamada por Hipolito Paraguya bajo declaraciones Tax Nos. 13497 y 13919 de Hipolito Paraguya.

3. Que la pintada con lapiz azul, representa el terreno reclamado por Ceferino Falcon Vda. de Lumin.
4. Que la manchada con puntitos de lapiz azul, representa la porcion reclamada por Hipolito Paraguya, que segun el lo adquirio de Pelagio Torre Franca.
5. Que la porcion com-prendida entre lineas de tinta negra angulos, A, B y C, re-presenta el terreno descrito en la declaracion Tax No. 6862 en nombre de Roman Lumin de Acuerdo con su croquis correspondiente.

Es todo, lo que al que suscribe puede informar a Su Señoria, para su consideracion y efectos procedentes.

Respetuosamente sometido.

Tagbilaran, Bohol, 22 de Sep-tiembre, 1952.

(Fdo.) GENARO GALON

Comisionado'

Defendant Hipolito Paraguya claims right over portion G of the Sketch Exhibit E-1, which portion is within the space enclosed within the black lines of the sketch Exhibit E-1.

Hipolito Paraguya maintains that he had bought this Portion G from Pelagio Torre Franca by means of a document which was lost. He offered, however, in evidence Exhibits 8 and 9, statements of the sister and brother of the deceased Pelagio Torre Franca to the effect that the latter had sold a parcel of land to Hipolito Paraguya.

But if we examine the sketch Exhibit E-1 we will find that the land of Pelagio Torre Franca is outside the land of Roman Lumin enclosed within the black lines. The land of Pelagio Torre Franca is even intercepted by other lands belonging to Juan Acidillo and Valerio Roba. If we also examine the plan Exhibit 11 of the land of Roman Lumin surveyed by a surveyor, we will find that the land of Roman Lumin is bounded on the North by Valerio Roba and Jorge Acidillo. The land of Pelagio Torre Franca is not mentioned and possibly it is on the North of the lands of Valerio Roba and Jorge Acidillo.

Consequently, the land bought by defendant Hipolito Paraguya from Pelagio Torre Franca is outside the land of Roman Lumin described in the plan Exhibit 11. It must not be forgotten that this plan was offered in evidence by defendant.

In the light of the foregoing, we conclude that out of the first parcel of land described in the 6th amended complaint defendant had only acquired Portions A and B described in the plan Exhibit E-1.

We do not overlook the fact that Macario Lumin, as co-owner of the first parcel of land described in the 6th amended complaint could not select any portion thereof as his own, as long, as there was no actual partition of the property. We believe, however, that it would be more advantageous to the plaintiff to disregard this procedure, since a partition would be more costly for her, for in such case defendant would claim reimbursements for necessary and useful expenses. Moreover, the sales took place almost 10 years before the filing of the complaint, and it would be unjust for defendant Paraguya to suffer the adverse effects of the laches committed by plaintiff.

Plaintiff maintains that she is entitled to inherit the property of the deceased Rev. Fr. Felipe Lumin on the ground that she had been recognized as daughter of the latter in his testament Exhibit A-1 which has been duly probated by this Court and the Court of Appeals, as shown from Exhibit A-2.

Defendant, on the other hand, maintains that plaintiff is not entitled to inherit the property of the deceased Rev. Fr. Felipe Lumin for the reason that she is an adulterous child. He further maintains that the acknowledgment of plaintiff by the late Fr. Felipe Lumin is null and void she being not a natural child of the

latter. In support of this contention, defendant offered in evidence Exhibit 2 which is the marriage certificate of Anastacio Mamburao and Trinidad Montilde, mother of plaintiff. According to this certificate, the marriage of both spouses took place on March 4, 1924. Defendant also offered in evidence Exhibit 1 showing that plaintiff was born on September 12, 1924. Taking into account both documents, it can be said that plaintiff was born six months after her mother's marriage to Anastacio Mamburao. During the trial Trinidad Montilde declared that she had never lived together with her husband and at present the latter is living with another woman.

Bearing in mind the date of the birth of plaintiff, it is evident that her mother Trinidad Montilde was still single at the time she was conceived. It is a legal presumption that plaintiff is the daughter of the spouses. Anastacio Mamburao and Trinidad Montilde, but bearing in mind that this presumption is disputable and was successfully overcome by Trinidad Montilde, plaintiff's mother, we find no other avenue than to declare that plaintiff is a natural child of the late Rev. Fr. Felipe Luman. Consequently, she can be acknowledged by the latter as his own child.

But in the remote possibility that plaintiff is not a natural child of the deceased Fr. Felipe Luman, we still maintain that, under the latter's will (Exhibit A-1), she is entitled to claim the disputed property, she having been instituted in the will as universal heir. This document contains the following provisions:

'4. - Dono tambien a la mencionada niña, Consolacion M. Luman, mi homestead con-sistentente en una parcela de terreno de 24 hect. situada en el barrio de Calatrava, Carmen, Bohol, con todas sus mejoras; todas Acciones e interesen la JAGNA ELECTRIC SERVICE CO., Jagna, Bohol; todos los bienes muebles e inmuebles que me cores-pandan de la herencia de mis padres; y todoos los bienes e intereses que yo consiga en lo futuro. (The following words are written in pencil without initial of the testator: Estoy asegurado por la Insular Life Assurance Co. en la cantidad de Dos Mil Pesos, y la beneficiaria de mi Poliza es la misma conso-lacion.)

Is plaintiff entitled to claim the entire first parcel of land described in the 6th amended complaint? Let us not forget that the spouses Roman Luman and Filomena Cosare died leaving two legitimate children: Rev. Fr. Felipe Luman and Macario Luman. Let us not either forget that Fr. Luman died ahead of Macario Luman. Under the circumstances, therefore, Fr. Luman did not become the owner of the share of Macario Luman, he having died ahead of the latter. Macario Luman could not either inherit the share of his brother, because the latter had ins-tituted the plaintiff as his legal heir. Plaintiff, on the other hand, cannot in-herit the property of the deceased Macario Luman in view of the following provisions of Article 943 of the old Civil Code:

'A natural or a legiti-mated child has no right to succeed ab intestate the legitimate children and re-latives of the father or mother who has acknowledged it; nor shall such children or relatives so inherit from the natural or legitimated child.'

In the light of the foregoing, it is obvious that, after the death of Fr. Felipe Luman, plaintiff and Macario Luman became co-owners of all the prop-erties left by their deceased parents. Consequently, plaintiff is only an owner of one-half (1/2) undivided share of said properties and the remaining undi-vided half belongs to the heirs of the late Macario Luman who took no inter-vention in this case. And because of this fact, the Court can not render a judgment determining the ownership of the property in question, on account of the fact that the heirs of the deceased Macario Luman are not parties to this case.

Considering, nevertheless, that a co-owner can file an action to recover the possession of a property from any stranger, the Court believes that this aspect can be determined by the Court in its judgment.

It appears from the record that plaintiff was exempted from payment of legal fees on account of her alleged poverty. But it appears from the evidence that she is not a pauper, she having several properties not involved in the present action. She shall, therefore, be sentenced to pay the Court the docketing fees and all other legal expenses.

Plaintiff's evidence regarding damages is insufficient, for the reason that this Court can not determine exactly the source of those damages. As may be seen from this decision, plaintiff had filed six complaints and had been changing the lands she was claiming, as well as the defendants, thus showing that she had filed at random her actions. Because of this, the Court cannot determine what property shall be the basis of damages and who are the persons liable."[8]

Under the first assigned error appellant contends that portion G of the sketch Exhibit E-1 with all the improvements belongs to him and that he is entitled to its possession. In support thereof appellant argues -

"This particular portion of land known as portion G of the sketch Exhibit 'E-1' declared in the name of the real owner of the defendant-appellant herein under Tax Dec. No. R-13497, (Exh.: '9-b') formerly under Tax Dec. No. 23216 (Exh.: '9-a') in the name of the former owner Rev. Father Pelagio Torre Franca is outside the land in question. (See IV last paragraph of p. 23 & 24; letter B last paragraph of p. 31 and letter C 1st paragraph of p. 32, Record on Appeal; (See also IV 2nd paragraph of p. 41, Record on Appeal).

We find support in this contention from the report of the Commissioner (Exhibit 'E') in paragraph 2 and 4 of said report: (See Record on Appeal, pp. 59-60 @.

Par. 2 of the Commissioner's Report (Exhibit 'E') states:

'Que la pintada con lapiz encarnado, repre-senta la reclamada por Hipolito Paraguya bajo declaraciones Tax Nos. 13497 y 13919 de Hipolito.' (P. 60, Record on Appeal)

Par. 4 of the said Commissioner's Report (Exhibit 'E') states:

'Que la manchada con puntitos de lapiz azul, representa la porcion reclamada por Hipolito Paraguya, que segun el lo adquirio de Pelagio Torre Franca.' (P. 60, Record on Appeal)

The name of Pelagio Torre Franca or the land of Pelagio Torre Franca is not mentioned because the Blueprint (Exh.: '11') was made long time ago in 1910 before Pelagio Torre Franca bought the land from Valerio Roba (the former owner).

Exh.: '11' is offered in evidence by the defendant Hipolito Paraguya to show to the Court that the land of Pelagio Torre Franca, identified as G (in Exh. 'E-1') is outside the land of Roman Lumain as can be seen by comparing the blueprint (Exh. '11') and the sketch (Exh. 'E-1').

If the land of Pelagio Torre Franca which is now owned by the defendant Hipolito Paraguya (Letter G in Exh. 'E-1') is outside the land of Roman Lumain (outside of heavy lines of Blue-print Exh. '11' and sketch of Galon Exh. 'E-1') then the plaintiff can not be given such land for she is only claiming interest in and to that parcel of land of Roman Lumain bearing Tax No. 20836. In the original complaint as well as the several amended complaints, the six amended complaint and supplement-al complaint Tax Dec. No. 23216 of the late Rev. Father Pelagio Torre Franca (now owned by defendant-appellant Paraguya, Letter G in Exh. 'E-1') is not included. Tax No. 23216 has been revised to R-13497 in defendant-appellant's name. Still this land identified as Letter G in Exh. 'E-1' now under Tax Dec. No. R-13497 is not included in all the plaintiffs' complaint (see Exhibits '9-a' and '9-b', 10 and 10-a to 10-g).

In the Blueprint (Exh. '11') the name of Valerio Roba appeared as the owner of that parcel known as Portion G (as shown in Exh. 'E-1') for at that time in 1910 Valerio Roba was still the owner. The blueprint (Exh. '11') was made and surveyed in 1910. But after 1910 Pelagio Torre Franca acquired this land (Portion G) from Valerio Roba. This particular Portion G is now declared under Tax Dec. No. R-13497 in the name of defendant-appellant Hipolito Paraguya and formerly dec-lared under Tax Dec. No. 23216 in the name of the former owner Pelagio Torre Franca. (See Exhibits '9-a', '9-b', '10' and '10-a' to '10-g' and Exhibits '8' and '9').

The Court should take notice that the land in the name of former owner Valerio Roba (known as Portion G in

Exhibit 'E-1') is the land acquired and owned by Rev. Father Pelagio Torrefranca and later sold by Rev. Father Pelagio Torrefranca to the defendant-appellant Hipolito Paraguya is outside the land (outside the Black Lines of Exhibits '11' and 'E-1') of the late Roman Luman as shown in the blue print (Exhibit '11') a map of the land of the late Roman Luman made and surveyed in 1910. There is no question therefore that this Portion G (shown in Exh. 'E-1') is not the land of the late Roman Luman, hence outside the land in question. The Court has no jurisdiction over this land Portion G as shown in Exhibit 'E-1' for it is not a part of the land of Roman Luman whose properties are the ones in question (See Exhibits '11' and 'E-1' - These two Exhibits '11' and 'E-1' should be compared as they are closely connected to each other.)

This is supported by the findings of the Lower Court found on page 61, 1st Sentence of the 3rd Paragraph of the Decision, (p. 61 Record on Appeal) which states: 'But if we examine the sketch Exhibit 'E-1' we will find the land of Pelagio Torrefranca is outside the land of Roman Luman enclosed within the black lines.' And on page 62, 1st Sentence of the 1st Paragraph of the Decision (p. 62, Record on Appeal) which states: 'Consequently, the land bought by defendant Hipolito Paraguya from Pelagio Torrefranca is outside the land of Roman Luman described in the plan Exhibit 11.' "[9]

We find the contention to be well-taken. Appellees confirmed that said portion G of Exhibit E-1 which appellant bought from Pelagio Torrefranca is outside the land of Roman Luman enclosed with black lines of Exhibit E-1, and thus is outside the land of Roman Luman as described in Exhibit 11.[10]

Under the second assigned error appellant points out that appellee Consolacion Luman is the legitimate child of spouses Anastacio Mamburao and Trinidad Montilde as she was born on September 12, 1924, 192 days after the marriage of said spouses citing the provision of Article 255 of the Civil Code (then Article 108 of the Spanish Civil Code) -

"ART. 255. Children born after one hundred and eighty days following the celebration of the marriage and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate.

Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred twenty days of the three hundred which preceded the birth of the child.

This physical impossibility may be caused:

- (1) By the impotence of the husband;
- (2) By the fact that the husband and wife were living separately, in such a way that access was not possible;
- (3) By the serious illness of the husband."

Appellant further argues there is no evidence of physical impossibility on the part of husband Anastacio to have access to his wife Trinidad in the first 120 days of the 300 days which preceded the birth of the child. Under Article 115 of the Spanish Civil Code, now Article 265 of the Civil Code, it is provided that:

"The filiation of legitimate children is proved by the record of birth appearing in the Civil Register, or by an authentic document or a final judgment." (Under-scoring supplied.)

Appellant concludes appellee Consolacion is the legitimate child of said Mamburao spouses as shown by the birth certificate.[11]

Appellant also avers that the declarations of Trinidad Montilde against the legitimacy of appellee Consolacion cannot prevail over the presumption of legitimacy under the provisions of Article 109 of the Spanish Civil Code, now Article 256 of the Civil Code.

However, the Court finds it unnecessary to determine the paternity of appellee Consolacion in this case. In the last will and testament of Fr. Luman he not only acknowledged appellee Consolacion as his natural daughter but designated her as his only heir. Said will was duly probated in Court. As Fr. Luman died without any compulsory heir, appellee Consolacion is therefore his lawful heir as duly instituted in his will.[12] One who has no compulsory heirs may dispose by will of all his estate or any part of it in favor of any person having capacity to succeed.[13]

The third assigned error wherein appellant contends appellee should pay him moral damages is obviously without merit. Appellee merely pursued an honest claim to the property in question. No bad faith had been imputed nor had the alleged damages suffered been established. The essential ingredient of moral damages is proof of bad faith and the fact that moral damages was suffered as shock, mental anguish, or anxiety although the amount of damages suffered need not be shown.[14]

WHEREFORE, with the only modification that portion G of sketch Exhibit E-1 and its improvement of the questioned property is hereby declared to be owned by appellant who is entitled to its possession, the judgment appealed from is hereby AFFIRMED in all other respects without pronouncement as to costs.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Cruz, and Sarmiento, JJ., concur.
Feliciano, J., on leave.

[1] Exhibit 2.

[2] Exhibit 1, TSN, Dec. 22, 1955, pp. 15-28.

[3] Exhibits A & A-1.

[4] Exhibit A-2.

[5] Pp. 68-70, Record on Appeal, p. 34 Rollo.

[6] Pp. 1-2, Appellant's Brief, p. 55 Rollo.

[7] Pp. 73-84, Rollo.

[8] Pp. 47-68, Record on Appeal.

[9] Pp. 6-7, Appellant's Brief; p. 55 Rollo.

[10] P. 3, Appellant's Brief; p. 65 Rollo.

[11] p. 3, Appellant's Brief; p. 65 Rollo.

[12] Articles 840 and 842, Civil Code.

[13] *Supra*.

[14] Articles 2217 and 2220, Civil Code; *Silva v. Peralta*, 110 Phil. 57; *Strebel v. Figueras*, 96 Phil. 321; *Lopez v. PANAM*, 16 SCRA 431; *Darang v. Belizar*, 19 SCRA 214.

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