

PEDRO JACINTO, PLAINTIFF AND APPELLANT, VS. NARCISO JACINTO, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-12313. July 31, 1959

Ponente: BARRERA, J.

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BARRERA, J.:

On January 27, 1930, Pedro Jacinto and Narciso Jacinto, brothers, both sons of Crispin Jacinto, executed a sworn statement in the following terms:

"ESTADOS UNIDOS EB AMERICA
ISLAS FIUPINAS
MUNICIPIO DE ZAMBOANGA
PROVINCIA DE ZAMBOANGA

Que nosotros, Pedro Jacinto y Narciso Jacinto, mayores de edad, casados, y vecinos de San Roque, del municipio y provincia de Zamboanga, Islas Filipinas, y despues de prestar juramento en forma legal, declaramos y hacemos constar lo siguiente: Que Pedro Jacinto es el solicitante del Homestead Application No. 102221, situado en el sitio de Looc, barrio de Looc, del Distrito Municipal de Lamitan, provincia de Zamboanga, Islas Filipinas, el cual tiene una extension superficial de unos veinticuatro (24) hectareas. Que dicho terreno solicitado por Pedro Jacinto han estado trabajando, tanto el solicitante como su hermano Narciso Jacinto asi como su padre Crispin Jacinto, este ultimo, inclusive ayud6 a mejorar parte de dicho terreno con su propio dinero.

Que tan pronto cumo el solicitante Pedro Jacinto obtenga el Certificado de Homestead Patent y ser cambiado este con titulo Torrens, despues de cinco aios, contados desde la expedicion de dicho certificado de Homestead Patent, la mitad de dicha parcela de terreno arriba descrita se dividira en dos partes iguales, quedando la una mitad a favor de Crispin Jacinto y la otra, mitad se dividiran en partes iguales entre los que suscriben.

Que el terruno arriba mencionado aun no esta del todo cultivado y ios que suscriben se comprometen y obligan a trabajar 'y cultivar todo el bianco del referido terreno aun no semorado o cultivado, desde esta fecna y si Narciso Jacinto dejare de trabaiair perdera su derecho de adquirir la parte que pueda corresponderle en dicha mitad del referido terreno solicitadp por Pedro Jacinto. Que en el casb de que Narciso Jacinto quiera de algun modo disponer de las mejoras que le corresponden o del terrteno una vez sudividido el mismo, debera dar preferencia en igualdad de circunstancias a su padre Crispin Jacinto, a su hermano Pedro Jacinto. Que yo, Narciso Jacinto, declaro que estoy enterado del contenido de esta declaraci6n jurada y estoy conforme en un todo en todas y cada una de las condiciones expuestas en la misma. En testimonio de todo lo cual, firmamos la presente en Zamboanga, hoy 27 de Enero de 1930.

(Sgd.) Pedro Jacinto (Sgd.) Narciso Jacinto"

On August 30, 1939, after Homestead Application No. 102221 mentioned in the second paragraph of the above-quoted sworn statement had been approved by the Bureau of Lands, and the corresponding Homestead

Patent No. 55556 duly registered in the office of the Register of Deeds of the City of Zamboanga, Original Certificate of Title No. 652 was issued in the name of Pedro Jacinto.

On April 24, 1950, or after a little over 10 years had elapsed since August 30, 1939, the date of the issuance of the certificate of title; Crispin Jacinto, the father, and Narciso Jacinto, the brother, filed an action for specific performance against Pedro Jacinto in the Court of First Instance of Zamboanga and Basilan City (Civil Case No. 209-Z[9-BC] seeking the enforcement of the agreement evidenced by the sworn statement quoted earlier and claiming that contrary to what had been done since 1930, Pedro Jacinto had refused, since the last quarter of the year 1949, up to the date of the presentation of the complaint, to share with the plaintiffs the yieldings and fruits of the coconut trees planted by them on the land in question, amounting to P1,875.00 for each quarter. The plaintiffs also prayed for the appointment of a receiver to take charge of the property pendente lite.

On May 10, 1950, defendant Pedro Jacinto filed his answer containing a special defense and counterclaim in which he avers that the agreement he had with the plaintiff was that he would apply for 2 other parcels of land which they all would work and cultivate and when once improved, Pedro would be given 4 hectares of the first and $\frac{1}{2}$ of the second, he in turn promising that of the parcel of land described in plaintiffs' complaint, and applied for by him in his own name, he would cede $\frac{1}{2}$ to his father Crispin and $\frac{1}{4}$ to his brother Narciso. He further opposed the petition for the appointment of a receiver.

Seven months later, or on December 6, 1950, before the case for specific performance could be heard in the Court of First Instance, Pedro Jacinto in turn filed in the Municipal Court of the City of Basilan a complaint against the plaintiffs in the first case and five others, charging them of usurping and illegally detaining the same parcel of land subject of the action for specific performance, and alleging that the defendants, on October 3 and December 4, 1950, by means of violence, intimidation, threats, stratagem and fraud, entered upon and seized the land and gathered the fruits of the coconut trees existing thereon as well as the palay growing in a portion thereof. Plaintiff prayed for a writ of preliminary injunction against the defendants and a judgment for the sum of P10,000.00 as damages resulting from the act complained of.

On March 15, 1951, the defendants filed a motion to dismiss on the ground that there was another action pending between the same parties and for the same cause, that for specific performance filed in the Court of First Instance of Basilan City. The motion for dismissal was denied. After hearing on the merits, the Municipal Judge dismissed the complaint without costs, dissolving the writ of preliminary injunction previously issued therein. From the decision plaintiff appealed, and upon the reproduction of the complaint in the Court of First Instance, the defendants, on June 16, 1951, filed an answer denying the allegations of the complaint and setting up a special defense predicated on the agreement alleged in their action for specific performance, claiming damages in the amount of P1,493.38 for Crispin Jacinto and P746.69 for Narciso Jacinto, the amount of P500.00 as attorney's fees in the lower court and P500.00 as attorney's fees in the Court of First Instance, plus the sum of P800.00 for other necessary expenses incurred.

On June 19, 1953, upon representation of plaintiff's attorney that Pedro Jacinto had died on June 11, 1953, his heirs consisting of the widow, Mercedes Alarcon, and 9 children were substituted in his place in both cases. Upon agreement of the parties, the 2 cases were later heard together, and on January 21, 1956, the lower court rendered judgment finding that the preponderance of evidence was in favor of Crispin Jacinto and Narciso Jacinto in both cases and ordering, in Civil Case No. 209 -Z (9-BG) for specific performance, that a deed of partition be executed by and between the plaintiffs and defendant or whosoever may be his administrator or heirs, in the proportion as agreed upon Exhibit A namely, one-half of the land described in Original Certificate of Title No. 652 (Exh. 1) in favor of Crispin Jacinto, and the other half to be divided equally between Narciso Jacinto and Pedro Jacinto or his heirs, administrator, successors, or assigns, and dismissing Civil Case No. 297-Z (36-BC) for usurpation and

illegal detention. The Court a quo did not allow any damages or costs in favor of any of the parties.

It is from this decision that the representation of Pedro Jacinto has appealed in both cases, assigning five errors supposedly committed by the trial court.

The first point raised by appellant is that of prescription citing Sec. 43 of Act No. 190 prescribing that action based on written contracts must be brought within 10 years. He contends that since the complaint for specific performance is predicated on a written contract Exh. A providing that the partition would be made after 5 years counted from the issuance of the homestead patent and certificate of title, the action for its enforcement has already prescribed because from August 30, 1939 when the patent and title were issued more than 10 years had elapsed when the complaint was filed on April 14, 1950. This is clearly erroneous because by the terms of the agreement the cause of action for the partition of the land did not accrue until after 5 years counted from August 30, 1939, date of the patent and the certificate of title, or August 30, 1944. From this date to the date of the filing of the complaint on April 14, 1950, only less than six (6) years had elapsed.

Appellant likewise contests the legality of the decision of the lower court ordering him to convey unto the appellees certain portions of the property subject of the litigation, claiming that under Section 21 of Act No. 2874 (now Sec. 20, Com. Act 141), transfer of homestead rights is allowable only prior to the making of the final proof of the application but not thereafter. While this is true, yet this provision is not applicable to the case at bar. The subject of the agreement between the parties hereto is not the homestead right but the property itself after it has been acquired and title thereto issued in favor of Pedro Jacinto. Such undertaking to divide and convey portions of the land to those who have jointly occupied, cleared and cultivated the land, as in this case, does not run counter to any provision of the Public Land Law.

Where the homestead applied for was acquired by means of joint occupation, clearing and cultivation of the land by both petitioner and respondent, it is held under a joint tenancy, and the promise of the latter to convey a part thereof to the family is not the alienation or encumbrance prohibited by Sections 16 and 22 of Act 2874, as amended. (*Gauran vs. Sahagun*, 93 Phil., 227).

Commonwealth Act No. 141, in its Section 118, as amended, provides:

"Sec. 118. Except in favor of the Government or any of its branches, units, or institutions or legally constituted banking corporations, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of the issuance of the patent or grant. * * * No alienation, transfer, or conveyance of any homestead after 6 years and before twenty-five years after the issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds (Com. Act 141, as amended.)"

The prohibition imposed upon a grantee or homesteader against the alienation or conveyance of a land grant is, therefore, lifted upon the expiration of 5 years from the date of the issuance of the patent or certificate, and thereafter and for the next 20 years, the restriction is confined merely to the security of the approval by the Secretary of Agriculture and Natural Resources of such conveyance or alienation. Apparently, the provision of the herein agreement was purposely drafted to comply with this specific requirement. Nor can the appellant claim exemption from fulfilling his part of the agreement by taking shelter behind their failure to secure prior approval by the Secretary of Agriculture and Natural Resources, the alienation being one to be accomplished after the lapsed of 5 years but before 25 years from the issuance of the patent have expired. In fact he does not raise this point. Furthermore, as already held by this Court, the absence of approval by the Secretary of Agriculture and Natural Resources does not invalidate a sale made upon the expiration of the 5-year period, for in such event the

requirement of Section 118 of the Public Law becomes merely directory. The approval may therefore be secured later, producing the effect of ratifying and adopting the transaction as if the sale had been previously authorized (*Evangelista vs. Montano*, 93 Phil., 275). This doctrine was reiterated in the case of *Flores vs. Plasina* (94 Phil., 327), when this Court held:

It is true that the transfer took place before the expiration of 25 years from the issuance of the patent and the law requires that the transfer be made with the approval of the Secretary of Agriculture and Natural Resources, (Section 118, Commonwealth Act No. 141), but we do not deem of importance the absence of such requirement not only because the same is not now in issue but because this Court has already held in a similar case that the failure to secure the requisite approval from the Secretary of Agriculture and Natural Resources does not have the effect of rendering the sale null and void. This provision of the law is merely directory which can be complied with any time in the future.

Again, in another case we said:

That approval by the Secretary of Agriculture and Natural Resources) is merely a formality which the law requires if the sale is effected after the term of five but before the expiration of a period of twenty-five years for the purpose of testing the validity of the sale on constitutional grounds But as was ruled by this Court, the absence of such formality will not render the transaction null and void. (*De los Santos vs. Roman Catholic Church of Midsayap*, 94 Phil., 405).

There being no evidence presented during the trial to prove the existence of any legal ground nullifying the validity of the stipulations embodied in the agreement Exhibit A, we have to uphold the ruling of the lower court.

The other points raised by appellant—that appellees did not comply with their part of the agreement for their failure to help clear and cultivate the land and that appellant had been in peaceful possession thereof before appellees forcibly entered it—refer to questions of fact. Considering that the amounts demanded by the parties in the two cases, as appearing in their respective complaints and counterclaims, do not exceed P50,000.00 in order to vest jurisdiction on this Tribunal to pass upon factual issues, the appellant, in bringing these cases directly to us, is deemed to have waived his right to dispute the findings of fact of the court of origin which are final and binding upon this Court (Rule 42, Sec. 3; *Millar vs. Nadres*, 74 Phil., 207; *Portea vs. Pabellion*, 84 Phil., 298; 47 Off. Gaz., No. 2, 655; *Flores vs. Plasina*, supra). Nevertheless, because of the claim in appellant's brief that the damages he is claiming has amounted to P89,800.00 on the date he filed his brief on December 12, 1957 (although in his complaint he only claimed P10,000.00), a review was made of the evidence. However, we find no reason nor justification to disturb the conclusion reached by the trial court that the testimony as well as the documentary evidence incline preponderantly in favor of the appellees. Even Pedro Jacinto himself and his witness Benito Antonio in their respective depositions admitted that Crispin and Narciso Jacinto had cleared by means of caingin, portions of the controverted land in Looc. Furthermore it clearly appears in the sworn agreement Exh. A, the authenticity of which has been admitted in the stipulation of facts (Exh. 1 mentioned therein being Exh. A):

"Que dicho terreno solicitado por Pedro Jacinto ban estado trabajando, tanto el solicitante como su hermano Narciso Jaeinto asi como su padre Crispin Jaeinto, este ultimo, inclusive ayudd a mejorar parte de dicho terreno con su propio dinero."

With respect to the supposed agreement that appellant was to get a share in the two other lots applied for in Bolingan and Boheyakan in exchange of the agreed partition of the lot in Looc, there is nothing but the uncorroborated testimony of appellant himself, denied both by the old man Crispin and his son Narciso. Even the widow of appellant, in trying to corroborate the deposition of her husband had to admit that the agreement about sharing referred to the land in Looc, described in Exhibit A. Let it be noted that there is nothing in Exhibit A that

refers to any collateral agreement regarding other lands.

Against the claim of appellant that he was in peaceful exclusive possession of the land in question and that the appellees forcibly entered and usurped the land in October and December, 1950, suffice it to refer to the stipulation of facts submitted on December 11, 1953 which says:

"3. Que desde el ana 1924 y hasta la fecha aiwbas partes viven y residen sin interrupcion en dicho terreno."

Wherefore, finding the decision of the trial court in accordance with the evidence and the applicable law, the same is hereby affirmed in toto, with costs against the appellant. It is so ordered.

Paras, C. J., Bengzon, Padilla, Bautista Angela, Labrador, Concepcion, and Endencia, JJ., concur.

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