

**ZOILA MENDEZ, RAFAEL MENDEZ, AND MATILDE BIONSON,
PETITIONERS, VS. MAXIMO, EUGENIA, JUANA, FORTUNATA,
PRUDENCIA, ROMAN, ANECITA, AND MARIA, ALL SURNAMED
BIONSON, AND HON. ALFRED...**

G.R. No. L-32159. October 28, 1977

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition to review the summary judgment in Civil Case No. AV-26 of the Court of First Instance of Cebu, Branch XII, entitled "Maximo Bionson, et al., vs. Zoila Mendez, et al.", the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs in the above entitled case and against the defendants, that the portion of land subject matter of the case which the defendants are occupying is hereby awarded to the plaintiffs, and the defendants are hereby ordered to vacate the same and to deliver it to the plaintiffs. Without any damages and pronounce-ment as to costs.

SO ORDERED.

Given in Open Court 15th day of May, 1970, Cebu City, Philippines.

(Sgd.) ALFREDO C. LAYA

Judge"[1]

The record shows that the petitioners Zoila Mendez and Matilde Bionson, together with ten (10) other persons filed on October 8, 1968 in the Court of First Instance of Cebu an action against Cecilia Bionson, Dionisia Gumapon, and Juana, Fortunata, Maximo, Prudencia, Roman, Anecita, Eugenia and Maria, all surnamed Bionson, for partition of two parcels of land located in Oslob, Cebu. The action was docketed as Civil Case No. R-10846 and assigned to Branch XI of the Court of First Instance of Cebu.[2] It was prayed in the complaint that judgment be rendered declaring plaintiffs Zoila Mendez, Paula, Benigna, Pedro, Felisa, Amos, Toribia, and Macario, all surnamed Bionson, as the lawful owners of one-third (1/3) of each parcel of land described in paragraph 4 (a) and (b) of the complaint; and declaring plaintiffs Matilde, Marina, Ponciano and Leon; all sur-named Bionson, as the lawful owners of another one-third (1/3) of each of the said properties; declaring defendants as the owners of the remaining one-third (1/3) of each of the properties; and ordering the physical partition of said parcels of land into three (3) equal parts, and each part to be assigned to the specific declared owners.

The defendants in Civil Case No. R-10846 alleged in their answer[3] that they are the absolute and exclusive owners of the two (2) parcels of land and that the plain-tiffs have no cause of action against them. As counterclaim, the defendants asked for moral damages and for the agreed monthly rental of P10.00 and the rentals in arrears for the last ten (10) months of the house owned by Antonio Bionson rented and occupied by Zoila Mendez on parcel (a), paragraph 4 of the complaint, as well as that portion of the said land leased to Matilde Bionson and occupied by her house and/or to vacate the premises and for attorney's fees and expenses of

litigation.

After trial, the Court of First instance of Cebu, Branch XI, rendered its decision in Civil Case No. R-10846, the dispositive part of which reads:

"PREMISES CONSIDERED, JUDGMENT is hereby rendered in favor of the defendants and against the plain-tiffs dismissing the complaint for failure of the plaintiffs to prove their claim on the two parcels of land in question with preponderance of evidence, with costs. The coun-terclaim of defendants is hereby dismissed for lack of sufficient evidence.

SO ORDERED.

Cebu City, Philippines, Sep-tember 1, 1969.

(Sgd.) AGAPITO HONTANOSAS

Judge"[4]

The said decision in Civil Case No. R-10846 became final and executory. A writ of execution was issued and the Deputy Provincial Sheriff collected from the plain-tiffs therein the sum of P190.80 for costs.[5]

In December 1969, the private respondents filed in the Court of First Instance of Cebu an action for recovery of possession and ownership of one of the parcels of land litigated in Civil Case No. R-10846 against the petitioners. The complaint was docketed as Civil Case No. AV-26 and assigned to Branch XII of the Court of First Instance of Cebu. The parties, subject matter and issues are substan-tially the same in Civil Case No. R-10846 and Civil Case. No. AV-26 of the Court of First Instance of Cebu.

After the issues were joined, Civil Case No. AV-26 was set for pre-trial. During the pre-trial, the parties asked that judgment be rendered on the pleadings and both of them presented the decision in Civil Case No. R-10846. Thereupon, the trial court rendered a summary judgment which reads:

"SUMMARY OF JUDGMENT

During the pre-trial this morn-ing, the parties thru their res-pective counsels asked for judge-ment on the pleadings, and both of them presented the decision in Civil Case No. R-10846. The property under litigation in the case at bar being the same subject matter in Civil Case No. R-10846 the defendants in this present case thru their coun-sels manifested to the Court that the decision in Civil Case No. R-10846 has already become final and that no appeal was made. Going over the decision of the Court in Civil Case No. R-10846 the defendants in that case and who are the plaintiffs in the case at bar were awarded the property in question but the dispositive portion of the said decision inadvertently failed to state that the plaintiffs in that case should vacate the premises in question in favor of plaintiffs herein and for which reason the plaintiffs in the case at bar filed this action for recovery and for the purpose of requiring the de-fendants herein to deliver to them the portion of the property in question. As it was extensively discussed and found out by the Court in Civil Case No. R-10846 that the property in question belongs to plaintiffs in the case at bar and the defendants refuse to deliver to them the ownership and possession of the same, the former ask this Court to compel the latter to deliver to them the possession of the portion of the land in question. There being no appeal taken by them and the decision in Civil Case No. R-10846, (Exhibit-A for plaintiffs and Ex-hibit-1 for defendants) having become final, the preponderance of evidence is in favor of the here-in plaintiffs who were defendants in Civil Case No. R-10846 and against the defendants herein who were the plaintiffs in said Civil Case No. R-10846.

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs in the above entitled case and against the defendants, that the portion of land subject matter of the case which the defendants are occupying is hereby awarded to the plaintiffs, and the defendants are hereby ordered to vacate the same and to deliver it to the

plaintiffs. Without any damages and pronouncement as to costs.

SO ORDERED.

Given in Open Court 15th day of May, 1970, Cebu City, Philip-pines.

(Sgd.) ALFREDO C. LAYA

Judge"[6]

The petitioners assign the following errors:

"I

THE COURT A QUO ERRED IN NOT DISMISSING THE COMPLAINT IN CIVIL CASE NO. AV-26 FOR BEING BARRED BY A PRIOR JUDGMENT IN CIVIL CASE NO. R-10846 RENDERED BY ANOTHER BRANCH OF THE SAME COURT AND WHICH HAD LONG BECOME FINAL.

II

THE COURT A QUO ERRED IN RENDERING A JUDGMENT ON THE PLEADINGS, WHERE THE MATERIAL ALLEGATIONS IN THE COMPLAINT ARE SPECIFICALLY DENIED AND SERIOUSLY TRAVERSED.

III

THE COURT A QUO ERRED IN RENDERING A JUDGMENT BASED ON A PREVIOUS DECISION RENDERED BY ANOTHER BRANCH OF THE SAME COURT WITH A DIFFERENT DISPO-SITION.

IV

THE COURT A QUO ERRED IN NOT DISMISSING THE COMPLAINT FOR LACK OF EARNEST EFFORTS BEING EXERTED BY THE PARTIES TO ARRIVE AT AN AMICABLE SET-TLEMENT BEFORE THE ACTION WAS INSTITUTED, THE PARTIES BEING MEMBERS OF THE SAME FAMILY."[7]

The principal issue is the interpretation of the decision in Civil Case No. R-10846. The petitioners' contention that the decision in Civil Case No. R-10846 'denied the private respondents' claim of ownership'[8] has no merit. Precisely, the Court of First Instance of Cebu, Branch XI, rendered judgment in favor of the de-fendants and against the plaintiffs dismissing the complaint for failure of the latter to prove their claim on the two parcels of land in question with preponderance of evidence. The pertinent portion of the decision in Civil Case No. R-10846 reads:

"After a careful review and study of the evidence of both par-ties, this Court is of the view that the plaintiffs have failed to estab-lish their claims to the two parcels of land in question with preponde-rance of evidence although the testi-monial evidence of their witnesses is presented in the manner more ela-borately than that of the defendants. It cannot be held, however, that said testimonial evidence is superior to and/or more paramount than that of the defendants considering all the sur-rounding circumstances of the case and taking into consideration the documen-tary evidence in support of the defendants' testimonial evidence. What is decisive in the determina-tion as to which party has established its claim or theory with preponderance of evidence is the documentary exhibits consisting of tax declarations as shown in Exhibits '1' to '11' and the official tax re-cepts as shown in Exhibits '12' '12-A' to '12-W'. These official documents speak better than the best oral testimony a witness is capable of making."[9]

It is clear that in Civil Case No. R-10846 the de-fendants, private respondents herein, were declared as the owners of the land in question.

It is true that the counterclaim of the defendants in Civil Case No. 10846 was also dismissed for lack of sufficient evidence. However, the dismissal of the counterclaim cannot affect the rights of the private respondents on the two (2) parcels of land in question because said counterclaim referred only to the demand for moral damages, rentals and attorney's fees.

As owners of the land in question, the private respondents have a right to the possession thereof and have the right of action against the holder and possessor of the land in order to recover it.[10]

The plaintiffs in Civil Case No. R-10846 alleged in their complaint that they exerted diligent efforts to arrive at an amicable settlement or compromise to the extent of asking the intervention of local municipal officials.[11] The petitioners may no longer assign as error failure of the trial court to dismiss Civil Case No. AV-26 for alleged lack of earnest efforts of the private respondents to settle the case amicably. Civil Case No. AV-26 is a mere consequence of Civil Case No. R-10846.

Moreover, the parties are not members of the same family as provided in Article 217, Civil Code of the Philippines which reads:

"ART. 217. Family relations shall include those:

- (1) Between husband and wife;
- (2) Between parent and child;
- (3) Among other ascendants and their descendants;
- (4) Among brothers and sisters."

The parties are collateral relatives who are not brothers and sisters.[12]

The trial court did not commit the errors assigned.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the petitioners.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, Martin, and Guerrero, JJ., concur.

[1] Rollo, p. 94.

[2] Rollo, pp. 30-35.

[3] Rollo, pp. 36-41.

[4] Rollo, pp. 53-54.

[5] Rollo, p. 7.

[6] Rollo, pp. 93-94.

[7] Brief for Petitioners-Appellants, pp. 1-3, Rollo, p. 167.

[8] Idem., p. 16.

[9] Rollo, pp. 52-53.

[10] Article 428, Civil Code of the Philippines.

[11] Rollo, p. 44.

[12] See paragraphs 4 to 9, Complaint in Civil Case No. R-10846, Rollo, pp. 30-32.

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