

## **ALVAREZ MALAGUIT (MORO), PLAINTIFF AND APPELLANT, VS. FELIX ALIPIO, ET AL., DEFENDANTS AND APPELLEES.**

*G.R. No. L-18596. September 30, 1964*

Ponente: BAUTISTA ANGELO, J.

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### **BAUTISTA ANGELO, J.:**

Alvarez Malaguit brought this action before the Court of First Instance of Basilan City to recover the portions occupied by Felix Alipio, et al. of a parcel of land situated in said city containing an area of 34,775 sq. m., and damages. This property is covered by Original Certificate of Title No. 10246.

Plaintiff claims to be the exclusive owner of the parcel of land already mentioned which formerly was Lot No. 67 of the cadastral survey of Lamitan but that, taking advantage of his absence and ignorance, defendants entered into the possession of the portions now occupied by them, usurped the same, and introduced improvements thereon, and refused to vacate the same notwithstanding the demands made upon them by plaintiff to do so. Defendants, on the other hand, claim to be the owners of the portions of land respectively occupied by them having submitted a subdivision plan to prove their ownership and adverse possession.

After trial, the court a quo rendered decision dismissing the complaint but ordering the registration in the name of the defendants of the respective portions occupied by them having in view the subdivision plan submitted by them wherein said portions appear delimited.

Plaintiff elevated this case directly to this Court, but having died during the pendency of this appeal, he was ordered substituted by his widow and children.

In the first and second assignments of errors it is contended that the court a quo erred in declaring that appellant owned only 1/6 of Lot No. 67 herein involved and that 5/6 thereof is owned pro-indiviso by his brothers and sisters, namely, Balbino, Manuel, Anastacio, Maria, and Petrona, all surnamed Malaguit, for the reason that, according to the evidence submitted by said plaintiff, his five brothers and sisters have already renounced in his favor their interest and participation in said land.

There is no merit in this contention. Since this case was taken directly to this Court, the facts as found by the court a quo cannot now be disputed, especially with regard to the ownership of the property in question. Thus as found by the court a quo, Lot No. 67 was originally owned by Domingo Malaguit who died in 1921. This lot was later the subject of a registration proceeding, it having been registered in the name of his heirs pro-indiviso. Thus, according to Decree No. 296265 dated October 15, 1927, this lot was ordered registered in equal shares pro-indiviso in the name of his heirs as follows: Alvarez Malaguit, married to Badoria (Mora); Balbino Malaguit, married to Djumlaya (Mora); Manuel Malaguit, married to Baing (Mora); Anastacio Malaguit, married to Kalimaran (Mora); Maria Malaguit, a widow; and Petrona Malaguit, wife of Jose Bernardo. And pursuant to the decree, Original Certificate of Title No. 10246 was issued in the name of said heirs.

It is clear, therefore, that since all the owners pro-indiviso in whose favor Lot No. 67 was registered are six in

number, plaintiff is only the owner of 1/6 thereof, whereas the 5/6 is owned by his brothers and sisters, as correctly found by the court a quo. Plaintiff's claim that his five brothers and sisters have renounced their interest and participation in said lot in his favor as apparently shown by some private documents executed sometime in June, 1952 wherein his brothers Balbino Malaguit and Manuel Malaguit, on one hand, and his sister Petrona Malaguit, on the other, have manifested that they had made such renunciation because they had already received their shares in the inheritance of their common ancestor consisting of a ricefield which they sold to one Pedro Antonio, Jr. of Lamitan, cannot be sustained in the light of substantial documentary evidence on record clearly belying such claim.

To begin with, the evidence shows that more than 20 years before the dates said private documents were allegedly executed one of plaintiff's co-heirs, Petrona Malaguit, sold on October 9, 1920 to Marcelino Navarro her interest in the lot in question, whereas on November 24, 1925, his other co-heir Balbino Malaguit also sold his interest in the same property to Juan Antonio, while on November 5, 1951, another co-heir by the name of Manuel Malaguit executed an affidavit declaring that he had sold his share in the property to one Miguel Rollano. These transactions are evidenced by indubitable documents. And these documents show that plaintiff was not considered by his brothers and sisters as the sole owner of the controverted property for, if that were so, they could not have sold the portions belonging to them to different persons prior to the alleged renunciation of their interest in the property in favor of plaintiff. This only goes to show that after the death of their common ancestor, Domingo Malaguit, there had been an oral partition of Lot 67 among his six heirs who later became its registered owners as shown in Original Certificate of Title No. 19246 covering said property.

The next question raised by appellant is that the court a quo erred in declaring that appellees who actually occupy portions of Lot No. 67 are owners thereof having acquired the same by purchase from plaintiffs brothers and sisters, and in support of this contention plaintiff claims that among the exhibits presented by appellees there is none that proves that the portions occupied by them were conveyed to them by plaintiff and his brothers, and that even if they were so the documents are null and void because they do not bear the approval of the governor of the province or the mayor as required by Articles 145 and 146 of the Administrative Code of Mindanao and Sulu. This contention is also belied by the evidence.

Let us begin with Felix Alipio. It appears that Balbino Malaguit sold a portion of Lot No. 67 to Maria Lahum. Felix is the son of Maria Lahum, who has been in possession of said portion for about 30 years and on which he constructed a big house and planted mangoes and oranges. Said possession is supported by several tax declarations showing that Maria Lahum is either a boundary owner or possessor of the property.

Igmidio Hipolito has also shown his title. It appears that Balbino Malaguit sold on November 24, 1925 to Juan Antonio, married to Petrona Pantone, his interest in Lot No. 67, Pantone, already a widow, in turn sold it to Guadalupe Fontanilla, under pacto de retro, and when Petrona Pantone repurchased it she again solid the portion to Lucia Camagay. Lucia Camagay later sold it to Igmidio Hipolito, married to Carolina Bisquera on September 6, 1947.

Conrado Yumul has also proven his title. It appears that he bought on July 27, 1934 from Maria Lahum a part of Lot No. 67 which was declared for tax purposes on the same date in his name. And Felix Alipio, the son of Maria Lahum, testified that Conrado Yumul had occupied the portion bought by him for about 20 years.

Antonio Pardo, Jr. likewise proved his title. Petrona Malaguit declared that, with the consent of her husband, she sold a portion of Lot No. 67 to Damaso Purigay who later sold it to Antonio Pardo, Jr. According to the deposition of Pedro A. Natividad, this Pardo is among those who occupied a portion of Lot No. 67 and Tax Declaration No. 1923 issued to Igmidio Hipolito shows that Antonio Pardo is the boundary owner on the west of said lot.

Arsenio Sebastian also proved that he is the owner of the lot he is occupying. In an affidavit executed on November 5, 1951, by Manuel Malaguit, one of the co-owners of Lot No. 67, he declared that he sold his share 20 years ago to one Miguel Rollano, who later sold it to Pedro Francisco, and who in turn sold it to Arsenio Sebastian, who fenced it and introduced improvements thereon. Exhibit 14 is a receipt showing the last payment made by Arsenio Sebastian to Pedro Francisco. Even the deed of sale Exhibit C executed by Petrona Malaguit in favor of Marcelino Navarro shows that the portion therein sold was bounded on the west by Arsenio Sebastian. Exhibits 19 and 24 are tax declarations showing the possession of Arsenio Sebastian.

Jose Trota claims ownership of Lot No. 67 containing an area of 2,572 sq. m. It appears that plaintiff admitted having sold a portion of this lot to Estanislao Silva portions of which were later occupied by Salani Una, Leoncio Mariano and Claro Toribio. Plaintiff also admits that Estanislao Silva sold a portion to Claro Toribio who in turn sold a portion to Rodrigo Silva. Rodrigo Silva later conveyed it to Jose Trota. All these appear in the relocation plan approved by the Director of Lands on June 12, 1951.

With regard to Flaviano Campo, who claims ownership of a portion of Lot 67, it will be recalled that the Malaguit family sold a portion thereof to Miguel Rollano who conveyed the same to Pedro Francisco, and who in turn sold it to Arsenio Sebastian. A portion of this lot was sold by Arsenio Sebastian to Flaviano Campo.

As to Maria Velasco, the evidence shows that she occupies Lot No. 67-A (3) with an area of 905 sq. m. This was sold to her by Arsenio Sebastian as shown in Exhibit 13-A.

Finally, Damiana Velasco occupies Lot No. 67-A (2) which contains an area of 1,393 sq. m. Arsenio Sebastian admitted having sold this portion to Damiana and this is evidenced by Exhibit 13-A signed by Arsenio Sebastian.

In resumé, it appears from the above exposition that each and everyone of the herein appellees are the owners of the portions they are occupying, their titles thereto being evidenced by a series of sales and transfers that can be traced to the Malaguits. The question that now arises is: Can these transfers or sales of the portions of Lot No. 67 to herein appellees be now invalidated on the ground that they have not been approved by the governor of the province or by the mayor pursuant to Articles 145 and 146 of the Administrative Code of Mindanao and Sulu? Of course, these transfers may be invalidated if it appears sufficiently proven that the Malaguit family belongs to the Moro tribe or is of Moro descent as to require the legal assistance provided for in said Code. But while in the pleadings plaintiff Alvarez Malaguit is described as a Moro, however, appellees in their answer denied that he is, and apparently the evidence seems to be on the side of the latter.

Thus, plaintiff himself, on the witness stand, testified that his father was Domingo Malaguit, who hails from Manila, even if his mother is a Mora. Exhibit A, which is the decree of registration of Lot No. 67, enumerates the owners of the undivided shares of said lot, but in mentioning the names of plaintiff and his brothers and sisters nothing is said that they are Moros, whereas in mentioning the names of their respective wives the word "Mora" appears after their names. It is apparent that plaintiff and his brothers and sisters are Christians as otherwise the word "Moro" should also appear after their names in the same manner as it does with regard to their wives. Verity, they are Christians as their names suggest, and not Moros as are their wives. Consequently, the requirement of Sections 145 and 146 of the Administrative Code of Mindanao and Sulu regarding the legal assistance of the governor or mayor in any transaction in which a Moro intervenes does not apply to the sales under consideration.

We find, however, that the court a quo erred in approving the subdivision plan submitted by appellees to show their respective shares of Lot No. 67 and which served as basis of the decision of the court a quo in ordering their registration in their names, for such function comes under the exclusive jurisdiction of a cadastral or registration court. Since the lot in question is covered by a torrens title the petition for such registration should be presented

before the registration court under Section 112 of the Land Registration Act. This portion of the decision should, therefore, be eliminated.

WHEREFORE, the decision appealed from is hereby modified by eliminating from the dispositive part that portion which decrees the registration of Lot No. 67 in the name of appellees, affirming the decision in all other respects. No costs.

Bengzon, C.J., Paredes, Dizon, Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

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