

PONCIANO MEDEL, ET AL., PETITIONERS, VS. JULIAN CALASANZ, ET AL., RESPONDENTS.*G.R. No. L-14835. August 31, 1960*

Ponente: BARRERA, J.

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This appeal by certiorari from the decision of the Court of Appeals affirming, in toto, the decision of the Court of First Instance of Manila, concerns 2 parcels of land,[1] one located on Suter Street, Sta. Ana, Manila, and another in Mandaluyong, Rizal, allegedly left undisposed of by Telesforo Calasanaz upon his death on October 24, 1939. Surviving next of kin of Telesforo are the following:

- (a) His widow Marciana Bernardo;
- (b) His nephew and nieces Julian, Primitiva, and Isabel Calasanaz, children of Telesforo's brother, Cecilio, now deceased;
- (c) His niece Leoncia Trinidad, daughter of his late sister Irene;
- (d) His grandniece Hilaria Bibiano, granddaughter of another deceased sister Engracia.

Julian Calasanaz, Primitiva Calasanaz, Leoncia Trinidad, and Hilaria Bibiano, now respondents in this Court, filed a complaint in the Court of First Instance of Manila against Ponciano Medel, husband of Isabel Calasanaz, their children Francisco Medel and Teodora C. Medel alleging that these defendants, together with the widow Marciana Bernardo, also made a party defendant, had, since the death of Telesforo Calasanaz, been in illegal and wrongful possession of the properties in question, to the exclusion, damage, and prejudice of the plaintiffs who are, with Isabel Calasanaz, the nearest surviving relatives of the deceased. They prayed for an accounting and the delivery to them of the 2 lots, including their income.

The defendant Medel (husband, wife, and children) in defense, contended that they are the owners of the lots, the one in Suter, Sta. Ana, by virtue of purchase direct from the deceased Telesforo Calasanaz in favor of Francisco Medel, then to one Demetrio Rosales, and finally to Teodora C. Medel; and the one in Mandaluyong, also by purchase by Francisco Medel from their co-defendant Marciana Bernardo, who inherited the same from her deceased husband Telesforo. These defendants filed a counterclaim for the P5,000.00, for alleged loans made to plaintiffs.

The defendant widow, Marciana Bernardo, filed a sworn answer, claiming that the Mandaluyong property belongs to the conjugal partnership between herself and her late husband Telesforo; that after the death of her said husband, the Medels took possession of it, as well as the other lot. She prayed in her cross-complaint against the Medels, that the latter be ordered to deliver to her, her rightful share. (This answer, however, was later withdrawn by counsel, with the approval of the court.)

After due hearing, the trial court rendered judgment adjudicating the 2 lots in favor of the plaintiffs, in the proportion indicated in the decision, and their delivery to them, subject to the usufruct of the widow Marciani

Bernardo; denying the accounting prayed for, on the ground that the court considered the fruits and products compensated by the improvements introduced by the defendants; and dismissing the counterclaim, for lack of evidence.

On appeal by the defendants, the Court of Appeals affirmed the lower court's decision in toto, after making the following findings:

"Plaintiffs claim and this is confirmed by the testimonies of plaintiff Julian Calasanz and defendant Ponciano Medel, that the parcel of land at Suter Street, Sta. Ana, Manila, belonged to Telesforo Calasanz by purchase from the estate or family of Ramon Fabie, for P2,159.40, on August 14, 1925; area of 726.60 sq. m. more or less, under Transfer Certificate of Title No. 5039 of the Register of Deeds of Manila and described in said Title as 'parcela primera.' Ponciano Medel declared that on March 18, 1939, Telesforo Calasanz sold the same property at Suter Street, Sta. Ana, to Ponciano's son, Francisco C. Medel; that years later Francisco C. Medel, in turn, sold the property to Demetrio Rosales—who resold it to Teodora C. Medel (Francisco's sister). On the witness stand, however, Ponciano Medel admitted that it was he (Ponciano) who sold the property, in the name of Telesforo Calasanz, because at the time Telesforo was gravely ill and authorized him to effect the sale (t.s.n., pp. 22-23; trial November 15, 1954). He (Ponciano Medel), notwithstanding, failed to produce the corresponding deed of sale of said property on Suter Street, allegedly executed by him and in the name of his uncle-in-law Telesforo Calasanz in favor of his son, Francisco C. Medel. Neither could he present the alleged power, of attorney executed in his favor by Telesforo Calasanz authorizing him to sell said property; that all he could produce in court was a carbon copy of an alleged deed of sale executed by Demetrio Rosales and acknowledged by notary public Delfin Gonzales on. April 12, 1946, purporting to have sold the property to Teodora C. Medel, then single (Exhibit 6). Defendant Ponciano Medel further contended that this lot at Suter Street, now registered in the name of his daughter, Teodora C. Medel, was filled and leveled and, thus, improved by him (Ponciano Medel) for which he spent P2,000.00.

"We find the court a quo's findings and conclusions questioning the aforementioned sale, sufficiently supported by the evidence.

"So it appears supported by the evidence, the testimony of plaintiff Julian Calasanz that the property of his uncle, Telesforo Calasanz, who died without issue, was left in the possession of Ponciano Medel only for administration—until its partition among the nephews and nieces of the said Telesforo Calasanz, one of said nieces being Isabel Calasanz married to Ponciano Medel; that Telesforo Calasanz had entrusted his property to the care of Ponciano Medel because he (Ponciano Medel), being a man of some accomplishment, was in a better position to carry out Telesforo's desires to have his property eventually partitioned among his nephews and nieces; that during the Japanese occupation in the last World War, he (Julian Calasanz) received from his brother-in-law, Ponciano Medel, more than P700.00, another P200.00 after the Liberation—for which latter amount Ponciano Medel made him sign a receipt with the understanding that as soon as the property of Telesforo Calasanz shall have been divided among his heirs, the aforesaid amount shall be deducted from his share; that some quantities of rice was subsequently received by him from Ponciano Medel—to be deducted eventually from Julian's share.

* * * * *

"The evidence sufficiently supports the trial court's findings that the alleged authority of Telesforo Calasanz in favor of Ponciano Medel, for the latter to sell the property at Suter Street, Sta. Ana, Manila in favor of Ponciano Medel's son, Francisco C. Medel, was altogether a forgery, and that a concoction was simply made to let one Demetrio Rosales appear as the vendor in the deed of sale (Exhibit 6), so as to make it appear that the property had passed to an innocent third party purchaser. Moreover, in her verified answer to the amended complaint, defendant Marciana Bibiano, widow of Telesforo Calasanz, claimed that the properties of her late husband Telesforo, Segundo and Macaria Calasanz have been 'wrongfully and illegally in the possession of defendants Ponciano Medel, Isabel C. Medel, Teodoro C. Medel and Francisco C. Medel.'

"It appears that all that Ponciano Medel could present in court to prove the alleged sale (with the supposed authority of Telesforo Calasanz) in favor of Francisco C. Medel, was an alleged deed of sale of the property to Demetrio Rosales to Teodora C. Medel (Exhibit 6)—which could not, however, be of legal value, inasmuch as no evidence has been established that Demetrio Rosales had ever acquired the said property from Teodora C. Medel by any legal means. This circumstance makes the supposed sale in favor of Francisco C. Medel untenable. It should be borne in mind that plaintiffs, including one of the defendants (the wife of Francisco Medel) as the nearest of kins by intestate succession, had to succeed into the ownership of the properties left by Telesforo Calasanz from the moment of the tatter's death. Inasmuch as, however, the defendants claim the ownership of that said properties, through alleged purchase from plaintiff's predecessors-in-interest, such claim is an affirmative allegation, and it is incumbent upon the defendants to prove the same, that is, the regularity of the processes, and above all, the genuineness of the sale in their favor. Thus, the presumption in favor of the validity of an otherwise public instrument (the sale in favor of Francisco C. Medel, Exhibit 6) is no longer obtaining. In this case, the burden of proof is shifted to the defendants.

* * * * *

"And inasmuch as the property in question would have fallen upon the lap of plaintiffs, including one of the defendants, as the heirs and nearest of kin of Telesforo Calasanz through an intestate succession, when the defendants, in order to rip open this legal succession, assert that they have a better claim to the property through purchase, the burden of proving, as, aforesated, the regularity of the pertinent proceedings as well as the genuineness of the document, is on them. * * *

"The court a quo, therefore, had properly declared the proceedings which culminated in the alleged sale of the pr6perty to Francisco C. Medel as of forgery, once the defendants had failed to prove the contrary. And it appears that Teodora C. Medel was used in the aforementioned transactions as a mere dummy—'to disguise the Teodora C. Medel appears to be the registered owner, Ponciano Medel.' This conclusion is supported by the circumstance that while Teodora C. Medel appears to be the registered owner, Ponciano Medel admitted having introduced improvements thereon and spent P2,000.00 for the filling and leveling the same.

"Referring to the parcel of land in Mandaluyong, Rizal, covered by Owner's Certificate of Title No. 460 of the Registry of Deeds of Rizal which, as per plaintiffs' claim, was likewise the property left by the deceased Telesforo Calasanz: It is claimed by defendant Ponciano Medel that this parcel of land belongs to his son, Francisco C. Medel, who had acquired it by purchase from Marciana Bernardo, the widow of Telesforo Calasanz, although Marciana Bernardo indirectly denies this: in her answer to plaintiffs' amended complaint. Defendant Ponciano Medel adds that after Marciana Bernardo had purchased this parcel of land in Mandaluyong (area 6469 sq. m.), Francisco C. Medel bought from Severino Francisco an additional strip of land of about 2,093 sq. m. which was added to the 6,469 sq. m. acquired by Marciana Bernardo, and from whom Francisco C. Medel alleged acquired the same. To prove said alleged purchase from Marciana Bernardo, however, Ponciano Medel presented to court only a carbon copy (Exhibit 8) of a deed of sale appearing to have been executed on April 19, 1946 by said Marciana Bernardo whose supposed thumbmark appears thereon, again, with the signature of Delfin Gonzales as the Notary Public for P1,500.00.

"Now, so as to establish defendants' claim that Marciana Bernardo had inherited this parcel of land from her deceased husband Telesforo Calasanz, defendant Ponciano Medel presented nothing more than a certification dated January 8, 1943 by the Clerk of the Court of First Instance of Rizal, to the effect that a copy of the last will and testament of Telesforo Calasanz, attached to the said certification, had been prepared by him with the original on file in his office and that the former is a 'true and correct copy of the latter (Exhibit 11), and an official receipt by said clerk of court for the amount paid for said certification'. Yet, that alleged copy of the last will and testament of Telesforo Calasanz (which has allegedly been attached to the corresponding court record as per Exhibit 11), was not presented as evidence in the case, and for such failure to present the same, Ponciano Medel simply testified as follows:

'Este es un caso en que habiendo sido requerido por el comprador del terreno de Tinajas para que demostrase el testamento en que consta que "dicho terreno se habia adjudicado a la Vda. de Telesforo Calasan, y que despues de haber deido el testamento, se desato en esta la copia y le lleve. Al pasar algunos dias requeri al agente o vendedor que traera el testamento y dijo que lo va entregar dentro de poco, lo que no se consiguio hasta ahora". (t.s.n., p. 4, Trial November 15, 1954). En vista de que el agente lo llevo para demostrar al comprador en donde aparece que la propiedad que ofrecia ha sido adjudicada a la viuda.' (t.s.n., p. 5, Trial November 15, 1954).

"This explanation (of Ponciano Medel) for said disappearance, is utterly incredible. Moreover, Marciana Bernardo, widow of the late Telesforo Calasan, frankly denied (note her verified answer to the amended complaint) having had possession of the properties in question at any time after the death of her husband Telesforo and of Segundo and Macaria Calasan, because according to her, the defendants Ponciano Medel, Isabel C. Medel, Teodora C. Medel and Francisco C. Medel have taken over the possession of the said properties immediately. She could not have, therefore, sold that parcel of land in Mandaluyong, Rizal, to Francisco C. Medel.

"Again, the trial court has rightly concluded that the answer to the amended complaint signed by Atty. Delfin L. Gonzales for and in behalf of the defendants, filed on January 17, 1949, could not be considered as including Marciana Bernardo's stand because Marciana Bernardo had filed on January 8, 1949 her own separate amended answer under oath. There is, furthermore, one circumstance which appears detrimental to defendants' contention and this is—that the alleged last will and testament of the late Telesforo Calasan (which is now missing) had been duly probated, so much so that the alleged request, as claimed by defendants, in favor of Telesforo Calasan's widow, Marciana Bernardo, could not be legally entertained.

"These circumstances altogether point at plaintiffs' claim that the said parcel of land, together with other properties, had simply been left in Ponciano Medel's care for administration—to have them eventually distributed among the heirs and nearest of kins of Telesforo Calasan.

"In view of all the foregoing considerations, the court a quo's decision and corresponding judgment disposing of the aforementioned properties, being in accordance with law and the evidence, are hereby affirmed in toto, with costs against the defendants."

In due time, defendants-appellants filed a motion for reconsideration and a new trial predicated on supposedly newly-discovered evidence consisting in a copy of the will of Telesforo Calasan and a photostat copy of an issue of the newspaper "The Tribune" containing publication of an order of the Court of First Instance of Rizal setting the hearing for the probate of said will for December 23, 1939. The Court of Appeals denied both motions.

Petitioners, in this appeal, assign ten alleged errors supposedly committed by the Court of Appeals, which, in substance, may be summarized thus: (a) that the Court of Appeals erred in failing to give due weight to appellants' evidence that Telesforo Calasan left a duly probated will in which he bequeathed all his properties to his wife Marciana Bernardo, and in declaring null and void the deed of sale of the Suter property executed by Ponciano Medel himself, purportedly as attorney-in-fact of the deceased, in favor of his own son, Francisco Medel; (b) that assuming Telesforo Calasan had died intestate, the properties, being conjugal, one-half thereof should have been adjudicated to his widow Marciana Bernardo; (c) that the action of plaintiffs-appellees had already prescribed; and (d) that the Court of Appeals should have granted the motion for new trial.

As it appears, the points raised by herein petitioners in this appeal by certiorari are necessarily questions of fact which this Court can not review. Thus, the petitioners' complaint against the action of the Court of Appeals in rejecting, as proof of the supposed authority of Ponciano Medel to sell the Suter property in behalf of the deceased

Telesforo, a mere certification of the Register of Deeds of Manila containing an excerpt of the annotation of the fact of registration of the power-of-attorney, but without giving the conditions, extent and/or limitations of the said power. The petitioners also charge as error, the refusal of the Court of Appeals to grant a new trial to permit the introduction of a copy of the will and the published notice of the hearing thereof, to prove the probate of the will. Surely these documents, even if allowed, would constitute at most, evidence of the fact of execution of the will and the publication of notice of hearing, but certainly not proof of the due probate of the will, which is the essential act that gives validity to the will to transmit title. This disposes of points (a) and (d).

(b) Petitioners, likewise, claim that the Court of Appeals should have declared the properties in question as conjugal properties of the deceased Telesforo Calasanaz and his widow, Marciana Bernardo, hence, $\frac{1}{2}$ thereof should be adjudicated to the latter, and the other half to collateral heirs, subject to the right of usufruct of said widow. Again the Court of Appeals acted correctly on this point.

The question as to whether said properties were conjugal was never raised in the court below.[2] In fact, petitioners' theory of the case therein, was that said properties belonged to them in absolute ownership, by the purchase of the Suter property from the deceased Telesforo Calasanaz, and the Mandaluyong property, from petitioner Marciana Bernardo. In none of their pleadings[3] in the lower court did petitioners ever claim that the properties in question were conjugal. The rule is well-settled that no question will be considered by the appellate court, which has not been raised in the court below. (Soriano vs. Ramirez, 44 Phil., 519; Toribio vs. Decasa, 55 Phil., 461; Sanagustin vs. Barrios, 68 Phil., 475.) In order that a question may be raised on appeal, it is essential that it be within the issues made by the parties in their pleadings. (Sec. 19, Rule 48, Rules of Court.) Consequently, when a party deliberately adopts a certain theory, and the case is tried and decided upon that theory in the lower court, he will not be permitted to change his theory on appeal because, to permit him to do so, would be unfair to the adverse party. (Agoncillo vs. Javier, 38 Phil., 424; American Express Co. vs. Natividad, 46 Phil., 207.)

(c) Petitioners, next, argue that the Court of Appeals erred in disregarding the fundamental rules on prescription, particularly, in respect of the Suter property, by failing to hold that this action has prescribed. It is urged that an action to contest the validity of documents by reason of fraud, prescribes in 4 years, citing as authority the case of Raymundo vs. Afable, 96 Phil., 655; 51 Off. Gaz., (3) 1329.

The argument has, likewise, no merit, for it appears that said issue of prescription was never raised by petitioners before the trial court. Neither was it raised in the Court of Appeals, except in their motion for reconsideration of its decision, which was, however, denied by said court for lack of merit.

Wherefore, finding no error in the decision appealed from, the same is hereby affirmed in all respects, with costs against the petitioners. So ordered.

Paras, C. J., Bengzon, Concepcion, Reyes, J. B. L., Gutierrez David and Dizon, JJ., concur.
Padilla, J., took no part.

[1] 2 other lots were also involved in the original complaint, but since the same were adjudicated in favor of the petitioners, and respondents did not appeal, the judgment as to them has become final. [2] The answer of the widow Marciana Bernardo which mentions this point was subsequently withdrawn with the approval of the court. [3] Ibid. The Medels never raised this point.

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