

**SILVERIO LUMAWAG, SUBSTITUTED BY GABINA CASAMAYOR,
PLAINTIFF-APPELLANT, VS. DOMINADOR SOLIS,
DEFENDANT-APPELLEE.**

G.R. No. L-26273. August 24, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

This is an unusual case where Leon P. Gellada, as counsel, appealed for the deceased plaintiff Silverio Lumawag, who was succeeded by his wife, Gabina Casamayor, also deceased.

In controversy is a parcel of land located at Barrio Tina, Dumarao, Capiz which Lumawag claimed as his own but which was allegedly forcibly entered upon by Solis. The trial court rendered a judgment declaring Lumawag the owner of the land. It ordered Solis to deliver to him 150 cavans of palay and 30 cavans of corn beginning 1947 at the market value of eight pesos per cavan of palay and four pesos per cavan of corn.

Pending appeal, or on February 10, 1958, the judgment was executed upon Lumawag's filing of a bond of P3,000 with two bondsmen. Solis had to deliver the land to Lumawag.

That judgment was reversed by the Court of Appeals on October 17, 1963 in Lumawag vs. Solis, CA-G.R. No. 24014-R. Lumawag's complaint against Solis was dismissed.

Upon motion of Solis, the trial court in an order dated February 17, 1964 ordered the issuance of a writ of execution. The sheriff on March 17, 1964 restored Solis to the disputed land. He reported that as of that date both Lumawag and his wife, Gabina Casamayor, were dead (pp. 21-22, Appellant's brief).

The death of his client did not deter Gellada from filing with this Court a petition for prohibition and certiorari, wherein he questioned the trial court's jurisdiction over Solis' claim for damages. The case was dismissed by this Court in a minute resolution dated November 16, 1964 (Lumawag vs. Solis, L-23665).

Notwithstanding the death of Lumawag and his wife, Judge Golez continued to hear Solis' claim for damages. In an order dated April 5, 1965, he turned the tables against the deceased Lumawag by ordering him to deliver to Solis 150 cavans of palay and 30 cavans of corn yearly for the period from February 20, 1958 to March 16, 1964 or pay its equivalent value of eight pesos and four pesos per cavan, respectively (p. 69, Record on Appeal). Gellada appealed to this Court although Lumawag was already dead.

Gellada contended in his brief that Judge Golez had no jurisdiction to adjudicate damages, that his adjudication amounted to an amendment of the Appellate Court's decision and that damages could not be adjudged against the bondsmen after entry of final judgment. (The order against Lumawag did not include his bondsmen.)

Gellada in the concluding part of his brief raised a point not raised in the trial court. He noted that Solis' claim should be filed in the administration proceeding for the settlement of Lumawag's estate pursuant to section 5, Rule 87, now Rule 86, of the Rules of Court. Solis did not file any brief.

In the resolution of May 16, 1984, the Court required plaintiff's counsel to state the names of the persons succeeding Lumawag and his wife as plaintiffs. Plaintiff-appellant's counsel did not comply with that resolution.

In view of that non-compliance and since it is anomalous to decide a case where the deceased appellant has not been substituted by his heirs and, moreover, as the claim of Solis is ultimately a money claim which should have been ventilated in the proceeding for the settlement of the debtor's estate, the Court resolved to dismiss this case. No costs.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, and Cuevas, JJ., concur.

Makasiar, J., (Chairman), on leave.

Escolin, J., no part.

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