

FAUSTO MONTESA, ET AL., PETITIONERS, VS. THE COURT OF APPEALS, ADRIANO LEE AND ANATALIA GICA, RESPONDENTS.*G.R. No. L-33632. October 23, 1982*

Ponente: GUTIERREZ, JR., J.

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This is a petition for review of a decision of the Court of Appeals (CA-G.R. No. 40632-R) affirming a judgment of the Court of First Instance of Cebu, Barili Branch, which ordered the petitioners to execute the necessary deed of sale of a parcel of land pursuant to Art. 1357 of the New Civil Code and to transfer and convey the ownership of the said land to respondent Adriano Lee.

On April 11, 1961 respondent Adriano Lee filed Civil Case No. R-36 (R-7020) in the Court of First Instance of Cebu, Barili Branch to recover a parcel of land allegedly sold to him on April 4, 1956 by Severino Montesa for the sum of P700.00 but subject to the usufructuary rights for life of the vendor's wife, Anatalia Gica.

The petitioners are the children of Severino Montesa by his first wife, Raymunda Perida. Adriano Lee is the son-in-law of Montesa's second wife, respondent Anatalia Gica.

The alleged sale was effected through an absolute deed of sale (Exhibit A) bearing the thumbmark of Severino Montesa, signed in the presence of three witnesses but not notarized allegedly because Montesa had no residence certificate at the time. Severino Montesa died on January 15, 1957, several months after the document was executed. Because the non-notarized deed could not be registered, Adriano Lee asked that the petitioners and their stepmother, Anatalia Gica, who was also made defendant, be compelled to execute the necessary documents pursuant to Article 1357 of the Civil Code. In her answer, Gica admitted practically all the averments of the complaint filed against her by her son-in-law.

In their answer to the complaint, the petitioners alleged that Exhibit "A" is a spurious and forged document and raised various reasons to show its alleged fraudulent nature. In their special defenses and counterclaim, they also alleged, among others, that the parcel of land allegedly sold through Exhibit "A" is the same parcel of land which was the subject matter of a June 13, 1952 deed of donation which they asked to be annulled in Civil Case No. R-5066 of the same Court of First Instance of Cebu. They asked why this deed of sale should surface only after they filed an action against their stepmother to annul a deed of donation of the same piece of land. Anatalia Gica was the defendant and the petitioners the plaintiffs in the latter case.

After respondent Adriano Lee rested his case in CC No. R-36 (R-7020), respondent Anatalia Gica filed a cross-claim against the petitioners adopting and incorporating as part of her cross-claim the allegations of the complaint.

In the special defenses of their answer to the cross-claim, the petitioners alleged, among others, (a) that Branch V of the Court of First Instance of Cebu had already rendered a partial judgment in Civil Case No. R-5066 declaring null and void the deed of donation inter vivos executed by Severino Montesa on June 13, 1952 in favor of

Anatalia Gica and declaring the petitioners as the co-owners of the land in question; and (b) that the parcel of land involved in the said partial judgment is the same parcel of land described in paragraph 3 of the complaint (Civil Case No. R-36 [R-7020]). They also attached a copy of the Partial Judgment to their answer. The partial judgment was made an integral part of the answer and was marked as Exhibit 3-Gica during the trial.

After due hearing, the trial court rendered a judgment on March 26, 1966 in favor of private respondents. The dispositive portion of the decision reads as follows:

"WHEREFORE, in view of all the foregoing evidence and provisions of law, the Court finds that the plaintiff and cross-claimant Anatalia Gica have established their case by a preponderance of evidence, considering all the facts and circumstances, the plaintiff's witnesses' testimonies and their manner of testifying which were straightforward, natural and direct, and renders judgment in favor of the plaintiff and against the defendants excepting Anatalia Gica, to wit:

“(a) Ordering the defendants except Anatalia Gica to execute the necessary documents pursuant to Art. 1357 of the New Civil Code;

“(b) Ordering the defendants to transfer and convey naked ownership of the property in litigation to the plaintiff within thirty (30) days from receipt hereof; and

“(c) Ordering the defendants except Anatalia Gica to pay the sum of two hundred pesos (P200.00) as attorney's fees and costs of proceedings. No pronouncement as to damages for lack of evidence.

"The counter-claim against the plaintiff is hereby dismissed. The complaint against the defendant, Anatalia Gica, is hereby likewise dismissed.

"The judgment is also rendered in the cross-claim of Anatalia Gica in her favor against cross-defendants - Fausto Montesa, Lucrea Montesa de Escraman, Sinforosa Montesa de Candeles and Marta Montesa de Avila - to turn over the possession of the land in question to Anatalia Gica within thirty (30) days from receipt hereof by virtue of the condition in Exhibit 1 - Gica, and the possession of the land in litigation shall also ipso facto revert to the plaintiff, Adriano Lee, after the usufructuary condition has been complied with.

"The counterclaim of cross-defendants against cross-claimant, Anatalia Gica is hereby dismissed."

The petitioners appealed the judgment of the lower court to the Court of Appeals and raised the following assignments of errors:

"I

"THE LOWER COURT ERRED IN NOT DECLARING EXHIBIT 'A', ABSOLUTE DEED OF SALE A FORGERY.

"II

"THE LOWER COURT ERRED IN NOT FINDING THAT THE LAND IN QUESTION IS THE CONJUGAL PROPERTY OF THE DECEASED SEVERINO MONTESA WITH HIS FIRST WIFE RAYMUNDA PERIDA.

"III

"THE LOWER COURT, THEREFORE, ERRED IN NOT DISMISSING PLAINTIFF--APPELLEE'S COMPLAINT AND DEFENDANT-CROSS-CLAIMANT-APPELLEE'S CROSS-CLAIM WITH COSTS AGAINST EACH OF THEM AND GRANTING THE DEFENDANTS-APPELLANTS THE RELIEF

PRAYED FOR IN THEIR COUNTERCLAIM AGAINST THE PLAINTIFF AND CROSS-CLAIMANT, RESPECTIVELY."

On March 18, 1971, the Court of Appeals affirmed the decision of the lower court. In a decision penned by Justice Hermogenes Concepcion, Jr. and concurred in by Justices Ruperto G. Martin and Cecilia Muñoz Palma, the Court of Appeals ruled that the evidence supports the conclusion of the lower court in upholding the validity of the deed of absolute sale. On the claim of the petitioners that the questioned property was the conjugal property of the deceased Severino Montesa and his first wife Raymunda Perida, the court ruled that this issue was not raised in the lower court, hence, it could not for the first time be raised on appeal.

In this petition for review on certiorari the petitioners assigned the following errors:

"FIRST ASSIGNMENT OF ERROR

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE ISSUE ASSIGNED BY THE APPELLANTS IN THEIR SECOND ASSIGNMENT OF ERROR THAT THE LAND IN QUESTION IS THE CONJUGAL PROPERTY OF THE DECEASED SEVERINO MONTESA WITH HIS WIFE RAYMUNDA PERIDA WAS NOT RAISED IN THE LOWER COURT.

"SECOND ASSIGNMENT OF ERROR

THE HONORABLE COURT OF APPEALS ERRED IN NOT CONSIDERING AND IN NOT GIVING WEIGHT TO THE MATERIAL AND SUBSTANTIAL ADMISSION OF PLAINTIFF-APPELLEE ADRIANO LEE IN THAT APPELLANTS HAD ONE-HALF OF THE SHARE OF THE LAND IN QUESTION AND THE OTHER HALF IN THE POSSESSION OF SEVERINO MONTESA.

"THIRD ASSIGNMENT OF ERROR

THE HONORABLE COURT OF APPEALS ERRED IN NOT CONSIDERING AND IN NOT GIVING WEIGHT TO THE MATERIAL AND SUBSTANTIAL ADMISSION ON CROSS-CLAIMANT-APPELLEE ANATALIA GICA IN THAT EXHIBIT 'A' ALLEGED PRIVATE DEED OF ABSOLUTE SALE WAS EXECUTED ON APRIL 4, 1960, CONSIDERING SAID EXHIBIT WAS ALLEGEDLY EXECUTED ON APRIL 4, 1956 AND SEVERINO MONTESA DIED ON JANUARY 15, 1957."

Was the Court of Appeals correct in ignoring the assigned error on the conjugal nature of the property?

The petitioners contend that when respondent Adriano Lee merely alleged in his reply and answer to their counterclaim in CC No. R-36 (R-7020), that he was not a party in CC No. R-5066 and had no interest in the outcome thereof, he admitted as a fact that the land involved in the two civil cases is the same piece of land so that they (petitioners) did not have to introduce evidence to show that the land was the conjugal property of the deceased Severino Montesa and his first wife Raymunda Perida.

The petitioners also argued that in their answer to Adriano Lee's complaint as well as in their answer to Anatalia Gica's cross-claim they (petitioners) raised the issue that the parcel of land sold through Exhibit "A" is the same parcel of land subject matter of the case filed against Anatalia Gica in CC No. R-5066 of the Court of First Instance of Cebu, Branch V and that the latter court had already rendered a partial judgment. The court ruled that the deed of donation involving the same parcel of land given by Severino Montesa to his second wife Anatalia Gica was null and void and that the petitioners were co-owners of the same parcel of land described in Exhibit "A".

On the other hand, the private respondents claim that there is nothing in the answer which raised as an issue or

which was pleaded therein as a special or affirmative defense asserted in plain, concise and direct language that would show that the land in question is the conjugal property of Severino Montesa and the deceased Raymunda Perida.

The private respondents state that the allegations in the special and affirmative defenses of the petitioners' answer raised only the following:

“(1) that the document, Deed of Absolute Sale, Exhibit 'A' was a spur-i-ous document;

“(2) that it was alleged as surprising why the document was only brought before the trial court after Civil Case No. R-5066 was filed for the annulment of the Deed of Donation; and

“(3) that the purpose of plaintiff's filing the case was to harass the defendants.”

We find the petitioners' stand well-taken. It must be noted that the petitioners, in their answer to the complaint in Civil Case No. R-36 (R-7020), alleged, among others, as special defenses -

"Anatalia Gica, mother-in-law of plaintiff herein resisted the action (Civil Case No. R-5066, this Court) maintaining her right to the property subject matter of the donation and also now subject matter of this case as per alleged Exhibit 'A'. (p. 17, Record on Appeal)

and

"Among others, the subject matter in Civil Case No. R-5066, this Court wherein the herein defendants are the plaintiffs and Anatalia Gica, mother-in-law of plaintiff Adriano Lee, is the defendant, is the same parcel of land now being described in paragraph III of this case." (p. 18, Record on Appeal)

In their answer to the cross-claim of Anatalia Gica the petitioners alleged as their special defenses -

"1. That on April 23, 1962, this Court (Branch V) rendered a Partial Judgment in Civil Case No. R-5066 wherein the herein defendants, Fausto Montesa, Adela Montesa, Lucrea Montesa de Ecranman, Sinforosa Montesa de Candeleza and Marta Montesa de Avila were parties in said case against the herein cross-claimant Anatalia Gica de Montesa, in that the Deed of Donation in favor of Anatalia Gica executed by the deceased, Severino Montesa covering the parcel of land now described in paragraph 3 of the Complaint of the above-entitled case was declared null and void; that the plaintiffs in the said case No. R-5066 were declared as co-owners of the land referred to and described in the amend complaint (Civil Case No. 5066); that the parcel of land covered by Tax Declaration No. 29674 (Dumanjug) involved in the Partial Judgment is the sane parcel of land described in paragraph 3 of the Complaint. A copy of the Partial Judgment is hereto attached and marked as Annex 'A' and made as an integral part hereof.

"2. That by virtue of the afore-mentioned Partial Judgment which has become final the parcel of land described in paragraph 3 of the Complaint and also the subject matter in Civil Case No. R-5066 contrary to the claim of cross-claim in paragraph 4 of the cross-claim in that she has the rights to possess of the land in question is a clear misrepresentation of facts and is belied by the said judgment." (pp. 61-62, Record on Appeal, underscoring supplied).

In the partial Judgment rendered in Civil Case No. R-5066, which was attached and made an integral part of petitioners' answer to the cross-claim of Anatalia Gica, the trial court stated:

"In their amended complaint, plaintiffs alleged four causes of action against the defendant. The first cause of action alleges that plaintiffs are the owners of a parcel of land situated in the barrio of Mantalao, municipality of Dumanjug, Cebu, which is more particularly described in Tax Declaration No. 29674 (Dumanjug), having inherited the same from their deceased parents and grandparents Severino Montesa and Raymunda Perida; x x x x x" (p. 65, Record on Appeal; underscoring supplied.)

It is to be noted, too, that in their amended complaint (Civil Case No. R-5066) petitioners alleged, among others, that -

"xxx xxx Severino Montesa and Raymunda Perida, who in their lifetime and during the existence of their marriage, the said decedents have acquired conjugal properties, among which is a parcel of land herein below described, to wit:

"A parcel of land situated at the barrio of Mantalao, Dumanjug, Cebu, under Tax Declaration No. 29674, and more particularly described as follows:

North: Policarpio Melgar and river

East: Benito Aleo

South: Felix Ugbinar

West: Felipe Capungan and river

Area - 29.2441 hectares more or less

Assessed value - P1530

Improvements - Coconut fruit bearing trees, bamboo grooves and a house of mixed materials." (pp. 33-34, Record on Appeal; underscoring supplied.)

Considering the foregoing pleadings, it cannot be said that the conjugal aspect of the land in question was not raised before the lower court. In the petitioners' answer to the cross-claim of Anatalia Gica, a copy of the Partial Judgment rendered in Civil Case No. R-5066 was attached and made an integral part thereof. It appears in the decision that "plaintiffs are the owners of a parcel of land situated in the barrio of Mantalao, municipality of Dumanjug, Cebu, which is more particularly described in Tax Declaration No. 29674 (Dumanjug), having inherited the same from their deceased parents and grandparents Severino Montesa and Raymunda Perida." It would be too technical if the phrase "having inherited the same from their deceased parents and grandparents Severino Montesa and Raymunda Perida" cannot be considered to mean that the land in question is the conjugal property of Severino Montesa and Raymunda Perida.

Adriano Lee and Anatalia Gica contended during the trial of this case that with the death of Raymunda Perida in 1935, the conjugal partnership of Severino Montesa's first marriage was dissolved and that the children of the first marriage, petitioners herein, already received their respective shares. In 1936 or one year after Perida's death, Severino Montesa and Anatalia Gica were married.

The decision in Civil Case No. R-5066, which was made a part of the answer in this case belied the above claim and awarded the disputed lot as co-owned by the petitioners and Anatalia Gica. The only basis for the co-ownership was the claim of the petitioners that they inherited the land from their parents Severino Montesa and Raymunda Perida. The lot that Severino Montesa tried so hard to give to Anatalia Gica, his second wife - first through a deed of donation which was nullified by the court and second through the un-notarized and thumb marked deed of sale to Adriano Lee but with lifetime usufructuary rights of Anatalia Gica, Lee's mother-in-law -was, therefore, found by the court in Civil Case No. R-5066 to be conjugal property. The arguments of Lee and Gica that they introduced no evidence to dispute the conjugal nature of the property because this was not an issue in the case have no merit.

The property involved in the donation case (CC No. R-5066) and in the deed of sale case (CC No. R-7020) is exactly the same parcel of land. The respondent court should have taken note of the decision in CC No. R-5066

appended to and made a part of the answers in CC No. R-7020 instead of ruling that the assigned error on the conjugal character of the land could not be raised for the first time on appeal. In that way, justice could have been served better.

The other issue raised in this petition refers to the validity of the questioned deed of sale. The authenticity and due execution of the deed of sale were sustained by the trial court and affirmed by the Court of Appeals. We see no compelling reason to deviate from the rule that findings of facts of the respondent court based on substantial evidence cannot be reviewed by Us in a petition for review on certiorari. However, Severino Montesa could not validly convey properties which did not belong to him. As clearly discernible from the records, the questioned parcel is conjugal property of the first marriage. Therefore, the deed of sale (Exhibit "A") is valid only up to the extent of Severino Montesa's share in the said property.

WHEREFORE, (1) The finding of the Court of Appeals that the conjugal character of the questioned parcel of land was raised for the first time on appeal is reversed and set aside; (2) We affirm the Court of Appeals decision upholding the authenticity, genuineness, and due execution of the deed of sale (Exhibit "A") but with a modification. The validity of the deed of sale extends only up to the share of Severino Montesa over the land in question; (3) Civil Case No. R-36 (R-7020) is hereby remanded to the trial court for the partition and determination of the respective shares of the parties over the same parcel of land in accordance with this decision. Costs against the respondents.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Melencio-Herrera, Plana, Vasquez, and Relova, JJ., concur.

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