

CONCEPCION B. TUPUE, PETITIONER, VS. JOSE URGEL, JESUS URGEL, JUANA URGEL AND INTERMEDIATE APPELLATE COURT, RESPONDENTS.

G.R. No. L-73491. May 23, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition originated from an action for quieting of title filed by the petitioner against the private respondents. The trial court ruled for the petitioner. On appeal, however, the Court of Appeals reversed the decision of the trial court and adjudicated the disputed property to the private respondents. Hence, this petition for review.

The petitioner presented evidence before the trial court to the effect that:

1)

On August 26, 1927, the petitioner's father, Francisco Boribor, mortgaged the land in question to Florentino Urgel, (Exhs. A and A-1) The mortgage was redeemed on August 29, 1943 (Exh. A-2);

2)

On June 12, 1960, the same land was mortgaged by the petitioner's mother, Damiana Boribor, to Sesinando Tuplano (Exhs. B, B-1, B-2 & B-3) and redeemed on March 31, 1962 (Exhs. B-4).

3)

On September 10, 1967, the petitioner's sister, Aurelia Boribor, mortgaged the same land to Julian Bernal (Exhs. C, C-1 & C-2), which mortgage was redeemed on April 17, 1970 (Exhs. C-3, C-4 & C-5);

4)

On September 30, 1973, private respondents Jose Urgel and Jesus Urgel, along with one, Antonio Macenas, signed an affidavit of confirmation of deed of sale/donation and quitclaim over the land in favor of Aurelia Boribor (Exhs. D, D-1 and D-2);

5)

Aurelia Boribor filed a sworn statement of the current and fair market value of the land in question on September 30, 1973 as required by P.D. No. 76 (Exh. G) and paid the tax due thereon on September 28, 1973 (Exh. A);

6)

The land was surveyed in the name of Aurelia Boribor per survey notification card dated April 26, 1969 (Exhs. E & E-1) and declared for taxation purposes in her name on January 24, 1979 (Exh. F);

7)

Aurelia Boribor died on April 10, 1978 without any issue, leaving petitioner and her other sister Socorro, as surviving heirs; and

8)

From 1970 to Aurelia Boribor's death in 1978, the landowner's share was delivered to Aurelia. After her death, the Station Commander of Viga prevented the tenant, Susana Tayamura, from delivering the landowner's share to the petitioner; instead, he ordered it delivered to private respondent Juana Urgel, Jose Urgel's wife;

The private respondents, for their side, alleged the following:

1)

The land in question was given in a Will to the late Luciana Toyorsa Urgel, mother of private respondents Jesus and Jose Urgel (Exhs. 10 and 10-C).

2)

As early as 1922, Luciana T. Urgel was already using the land until 1944 when she gave the land in question to be used by her sister, Damiana T. Boribor, with the condition that the land will be returned upon demand;

3)

Before Luciana Urgel died in 1958, she twice demanded the return of the property but Damiana always managed with her pleadings to be allowed to continue using it;

4)

After Luciana T. Urgel died, Florentino Urgel, thru private respondent Jesus Urgel, asked for the return of the land, but Damiana T. Boribor failed to effect the return as the land was still mortgaged to Sesinando Tuplano. When Damiana T. Boribor died in 1966, her daughter, Aurelia, took over the possession of the land. Private respondent Jesus Urgel, his father having died in 1963, then asked her to return the land, but despite repeated demands she failed to return it as same was still mortgaged;

5)

Sometime in 1973, Aurelia Boribor came to the house of Juana Urgel asking that her husband, Jose Urgel, sign a quitclaim of the property to convince Francisco Manga that the same was already given to her so that the Mangas will accept the same in exchange for their property which they have already redeemed but which

cannot be returned as same was mortgaged by Aurelia Boribor to another person and was not yet redeemed; so to make up for it, Aurelia Boribor promised to give the land in question to the Mangas; hence, her request for private respondents to sign a quitclaim (Exh. D; Exh. 2);

6)

At first private respondents were unwilling to grant Aurelia Boribor's request, but with her and her sister's (Socorro's) persistent pleas that they sign the quitclaim to save them (Boribors) from embarrassment, with their assurance that they would not use the document to defraud them of their (Urgel's) mother's property, they signed it;

7)

The land in question is a part of the land declared in the name of private respondent's father, the late Marcelino Toyorsa under Tax Dec. Nos. 6096, 13586, 6632 and 3719 (Exhs. 3-A, 3-B, 3-C, and 3-E);

8)

The taxes for the land in question were paid by private respondents per tax receipts (Exhs. 14 to 14-M), the earliest of which is dated October 22, 1923; and

9)

Petitioner's sister, Socorro B. Torrocha, testified that the real owner of the land in question was private respondents' mother, Luciana Toyorsa. (Rollo, pp. 24-25).

The trial court ruled that the preponderance of evidence favored the petitioner's case and, therefore, the latter should be declared the owner and lawful possessor of the land in question.

On appeal, the Court of Appeals reversed the decision and held that the private respondents were the rightful owners of the disputed property relying heavily on the statement of Socorro B. Torrocha that the owner of the land was Luciana Torrocha. The court presumed that the execution of the mortgages by Francisco Boribor was made possible because the latter "might have taken advantage of the fact that the land was in his possession that he mortgaged the land."

The Court of Appeals further based its ruling on its finding that the petitioner and her predecessors have not declared the land in their names nor paid the taxes thereon until 1973 and found the following as explanation for such fact: "Under date of April 26, 1969, a survey notification card, was received in the name of Aurelia Boribor. This must have been sent to the Boribors by the Surveyors who found the Boribors in possession of the subject property. Receipt of the survey notification card (Exh. B) in the name of Aurelia emboldened them to declare the land in Aurelia's name on January, 1979 and accomplish the sworn statement required under Pres. Decree No. 76 on September 30, 1973 under Tax Dec. No. 6632 in the name of Marcelino Toyorsa (Exhs. F and G)."

Finally, the court pointed out the fact that while the affidavit of confirmation stated that the land was donated to Aurelia Boribor, the deed of donation itself was not presented so it was more inclined to believe that the plaintiff's mother had requested the use of the land and that the private respondents have signed the affidavit to save Aurelia Boribor from embarrassment.

In this petition, the issue raised can be reduced to the sole question of whether or not the respondent Court of Appeals committed reversible error in reversing the decision of the trial court and disregarding the petitioner's evidence.

The petitioner contends that the deeds of mortgage, "Affidavit of Confirmation of sale/donation and quitclaim", "Survey notification card," tax declaration and payment of real estate tax, and the sworn affidavit of the current and fair market value of the land are the best evidence obtainable in this particular case and that, therefore, the same cannot be thrown overboard by mere parol testimony in the absence of clear and convincing proof that these documents are inadmissible in evidence or that they suffer from defects which would invalidate them.

We find the petitioner's contentions impressed with merit.

Apart from the tax declarations submitted by the private respondents showing that they and their predecessors have paid the realty taxes on a property which included the land in dispute, the appellate court did not have sufficient basis to discard the documentary evidence presented by herein petitioner and to conclude that the private respondents are the true owners of the land. The Court relied solely on the latter's bare allegations that the only reason why they signed the affidavit was to save Aurelia Boribor from embarrassment, a fact which the latter is no longer in a position to rebut because she is already dead. The rest of the appellate court's conclusions regarding the execution of the mortgages and the subsequent declaration of the land in Aurelia Boribor's name are based on unsubstantiated presumptions and conjectures.

It should be borne in mind that as admitted by the private respondents, the petitioner's predecessors-in-interest had possessed the disputed property since 1944 continuously up to the present although according to the said respondents, the land was only "borrowed" by the petitioner's mother. In the absence, however, of any evidence or tangible proof that the land was indeed borrowed, the appellate court should have given more weight and credence to the petitioner's allegation that her predecessors were the true owners of the land not only because she was able to present documentary evidence tending to prove such allegation but also because under Article 541 of the New Civil Code which squarely applies to petitioner's case, "A possessor in the concept of owner has in his favor the legal presumption that he possesses with a just title and he cannot be obliged to show or prove it." Clearly, therefore, since the petitioner and her predecessors have been in continuous and uninterrupted possession of the land from 1944 and have been exercising acts of ownership thereon even before the said year, that is, as far back as 1927 when Francisco Boribor mortgaged the land for the first time, it was incumbent upon the private respondents, and not the petitioner, to show that the land belonged to them or their predecessors. Moreover, as stated earlier in the absence of any proof that the affidavit of quitclaim executed by the private respondents did not express the true intent of the executors, the principle on parol evidence will apply and hence, the affidavit must be construed exactly as it is: a quitclaim. As we have ruled in *De La Rama v. Ledesma*, 143 SCRA 1, 6):

"It is a well accepted principle of law that evidence of a prior or contemporaneous verbal agreement is generally not admissible to vary, contradict or defeat the operation of a valid instrument. (*American Factors (Phil.) Inc. v. Murphy Tire Corporation, et al.* (C.A.) 49 O.G. 189)

"While parol evidence is admissible in a variety of ways to explain the meaning of written contracts, it cannot serve the purpose of incorporating into the contract additional contemporaneous conditions which are not mentioned at all in the writing, unless there has been fraud or mistake, (*Yu Tek & Co. v. Gonzales*, 29 Phil. 384). Indeed, the exceptions to the rule do not apply in the instant case, there being no intrinsic ambiguity of fraud, mistake or failure to express the true agreement of the parties. If indeed the alleged reservation had been intended, businessmen like the parties would have placed in writing such an important reservation."

Furthermore, as correctly found by the trial court, (1) were it true that the land was only lent to the petitioner's mother by the private respondent's mother, the latter could have easily let the former sign a writing to that effect

but she did not; (2) were it true that the private respondents signed the quitclaim only to accommodate the late Aurelia Boribor, they could have easily let her sign a counter-affidavit to that effect but also they did not; and (3) it is quite strange that while respondents Jesus Urgel who was an engineer and Macenas, the other signatory, who was then the principal of the Viga Central School, were both educated enough to know the effect of their signatures, none of these thought of asking Aurelia Boribor to sign counter-documents. These factors militate against the veracity of private respondents' allegations. In all their seeming efforts to get back the land, not once have they shown any attempt to bind the petitioner or her predecessors through a piece of paper. Neither have they filed any opposition despite the general notice to the public that a cadastral survey, which precedes cadastral registration which, in turn, is a proceeding, in rem, was going on in the entire Viga Cadastre. In fact, this survey resulted in the issuance of Original Certificate of Title No. 6923 on April 23, 1981 in the name of land in dispute. In the case of *Samonte v. Court of Appeals*, (141 SCRA 189, 193) we ruled:

“(b) It is also our opinion that respondent Court correctly invoked Article 541 of the Civil Code in concluding that private respondents should now be deemed the owners of the DISPUTED PROPERTY. Petitioner's claim that an instrument of antichresis had been executed by PLACIDA and VICTORIA in the later part of 1930, based on testimonial evidence, cannot be considered legally sufficient. An unregistered lease for 50 years, enforceable against the successors-in-interest of the lessee, could have been as easily alleged. x x x

“(c) As to respondent court's indirect finding of laches, we repeat hereunder the following statement of *Pangadil v. Court of First Instance of Cotabato*, 116 SCRA, p. 353);

"It is equally unbelievable that in the span of time from December 1941 up to the date that Civil Case No. 2187 was filed on January 7, 1969, a period of more than twenty seven years, the petitioners would not have taken any step to verify the status of the land of their father which had been in the possession of the private respondents during all the time, particularly as to the possibility of redeeming the supposed mortgage their father had constituted thereon. Their inaction for such a considerable period of time reflects on the credibility of their pretense that they merely intended to confirm an oral mortgage, instead of a sale of the land in question."

As to the payment of taxes, we are inclined to believe the explanation of the petitioner that since the land in dispute is part of a bigger parcel declared for taxation purposes in the name of Marcelino Toyorsa, the parties' common ancestor, the yearly taxes due thereon were paid in Toyorsa's name by his heirs who shared pro rata but the receipts were issued in the name of the private respondents who effected payment as representative of all the heirs until 1973, when Aurelia Boribor began paying the taxes due on the land.

We agree with the respondents that generally, the findings of fact of the appellate court are conclusive on the parties and on this Court. This, however, is not without exceptions, the first of which is when the appellate court's conclusion is a finding grounded entirely on speculations, surmises, and conjectures. (See *Tolentino v. De Jesus* 56 SCRA 167, 171-172). The case at bar falls under this exception.

WHEREFORE, the appealed decision is hereby REVERSED and SET ASIDE. The decision of the Regional Trial Court dated January 23, 1984 is REINSTATED.

SO ORDERED.

Fernan (Chairman), Feliciano, and Cortes, JJ., concur.

Bidin, J., ** took no part.

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