

**BALDOMERA GARCIA AND JUAN GARCIA, SUBSTITUTED BY
SOLEDAD GARCIA, MARTIN GARCIA, CLEMENTINA GARCIA,
MERCEDES GARCIA AND JOSE GARCIA, PETITIONERS, VS. SERAFIN
OROZCO, SUBSTITUTED ...**

G.R. No. L-35213. August 31, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

Petition for review on certiorari of the decision of the Court of Appeals[1] dated April 4, 1972 in CA-G.R. No. 36944-R entitled "Serafin Orozco, et al., vs. Baldomera Garcia, et al.," which affirmed the decision of the trial court in the original case, Civil Case No. R-30, "Serafin Orozco, et al., vs. Baldomera Garcia, et al., Court of First Instance of Albay."

The decision of the appellate court recites the following findings of fact:

"It appears that the original plaintiffs, Serafin Orozco, Carmen Orozco, Merced Orozco and Arsenio Orozco, are brothers and sisters. They were declared as the natural children of the deceased Epifanio Orozco, by the lower court on March 26, 1906, in Civil Case No. 474 (Exh. A). Meanwhile, EPifanio Orozco had on May 20, 1905, married Albina Garcia, sister of the original defendants, namely, Juan Garcia and Baldomera Garcia. The marriage was not blessed with a child. The original plaintiffs were the children of Epifanio Orozco with another woman.

"During the marriage with Albina Garcia, the land in Mataguisi, Guinobatan, containing an area of 221,192 square meters, was acquired by Epifanio Orozco, identified as Lots Nos. 5789 and 5833 of the Cadastral Survey of Guinobatan.

"It also appears that the land in Malobago, Guinobatan, with an area of 261,035 square meters, originally formed an integral part of a big parcel of land owned and possessed by Epifanio Orozco since the Spanish Regime. The land in Malobago was subdivided into Lots 7207, 7213 and 7217 of the Cadastral Survey of Guinobatan.

"When Epifanio Orozco died on August 20, 1917, he was survived by Albina Garcia, his widow, and Serafin Orozco, Carmen Orozco, Merced Orozco and Arsenio Orozco, his acknowledged natural children. After the death of Epifanio Orozco, his widow, Albina Garcia, executed the deed of sale, Exhibit 2, conveying the land in Mataguisi to Baldomera Garcia for a consideration of P4,400.00.

"In the intestate estate proceedings for the settlement of the estate of Epifanio Orozco, one of his acknowledged natural children, original plaintiff Serafin Orozco, was appointed as administrator. As judicial administrator, Serafin Orozco brought an action on July 22, 1929, for the recovery of Lots Nos. 5789 and 5833 located in Mataguisi, Guinobatan, and Lots Nos. 7207, 7213 and 7217 located in Malobago, same town (Civil Case No. 5127). In that case, defendant Baldomera Garcia filed a motion for intervention, which was denied on August 5, 1932. Her motion for reconsideration of the order of denial was also denied on August 27, 1932, on the ground that "la misma Albina Garcia demandada on esta causa de quien la tercerista pretende derivar su derecho de propiedad sobre el terreno objeto de su mocion de terceria ha declarado expresamente a hizo constar en el convenio entre ella y el demandante Serafin Orozco del cual el Juscado base su decision en esta causa de dicho terreno forma parte integrante de los bienes ganaciales entre ella y su difunto esposo Epifanio Orozco el cual terreno esta marcado en el convenio de transaccion como parcela "A" bajo el Tax No. 19100." (Exh. E).

"Pursuant to the "Convenio" submitted by the parties in Civil Case No. 5127, the lower court rendered judgment on August 10, 1932, adjudicating, among other properties, Lots Nos. 5789 and 5833, composing the lands in Mataguisi, Guinobatan, and Lots 7207, 7213 and 7217, composing the lands in Malobago, same town, to the intestate estate of Epifanio Orozco, while the other properties involved therein were given to Albina Garcia as her share in the conjugal partnership. The decision expressly stated that Albina Garcia no longer had the usufructuary right as a widow of the deceased Epifanio Orozco in view of her waiver. (Exh. B).

"By virtue of the writ of execution issued to enforce the judgment in Civil Case No. 5127, Serafin Orozco, as administrator of Epifanio Orozco, was placed in possession of the lands adjudicated to the estate by the sheriff in November 1932. However, not long thereafter, Juan Garcia re-entered the lands in question and extrajudicially ejected therefrom Serafin Orozco. Since that date until the present, the plaintiffs have not been able to possess said lands.

"It further appears that in a "Sentencia", dated March 26, 1906, rendered in Civil Case No. 474 of the Court of First Instance of Albay, entitled "Serafin Osabel y Otros contra Epifanio Orozco", the plaintiffs therein (who are herein plaintiffs Serafin, Carmen, Merced and Arsenio, all surnamed Orozco) were declared natural children of Epifanio Orozco.

"Now, in a subsequent decision, dated August 10, 1932, rendered in Civil Case No. 5127, entitled "Serafin Orozco, en su capacidad de administrador del abinestato del finado Epifanio Orozco, demandante contra Albina Garcia, demandada", ownership of the parcels of land involved in the instant case were adjudicated to the estate of Epifanio Orozco. Such being the case, and inasmuch as the plaintiffs-appellees are the natural children of the late Epifanio Orozco, the lower court correctly held that they are entitled to the parcels of land in question, the ownership of which had been adjudicated in his (Epifanio's) favor as early as in 1932."

The protracted court proceedings and numerous legal incidents through which this case had undergone from the time the original complaint was filed more than 35 years ago are as stated in the appealed decision, thus -

"This is an action filed by the plaintiffs against the defendants on December 18, 1942, in the Court of First Instance of Albay. The former seek to recover from the latter two parcels of land, one situated at Mataguisi, Guinobatan, Albay, containing an area of 221,192 square meters and the other situated at Malobago, same

town and province, with an area of 261,035 square meters.

"It is alleged that the plaintiffs are the absolute owners of the parcels of land in question and that the defendants in bad faith dispossessed the former of their possession thereof. It is also claimed that by reason of the acts of the defendants, the plaintiffs suffered damages in the amount of P26,208.00.

"Instead of answering the complaint, the defendants filed a "Motion to Quash Plaintiffs' Complaint" on the ground of prescription. As the motion to dismiss was denied, the defendants seasonably filed their answer to the complaint, alleging among other things, absolute ownership, continuous possession of the contested parcels of land in the concept of owners for more than the period for acquisitive prescription, and denying the rest of the averments in the complaint.

"On March 24, 1943, the plaintiffs filed two actions, one for the declaration of defendant Baldomera Garcia in default and the other to order Juan Garcia also one of the defendants to make his answer specific. The court in its order of March 27, 1943, denied plaintiffs' motion to declare Baldomera Garcia in default but in the same order required defendant Juan Garcia to make specific the allegations of his answer.

"Accordingly, on May 12, 1943, defendants filed an amended answer interposing as defense absolute ownership of the parcels of land involved by virtue of the deeds of sale executed in their favor. In reply to the amended answer the plaintiffs denied the claim of the defendants of absolute ownership over the subject parcels of land by virtue of the deeds of sale dated December 29, 1924, and May 6, 1910, respectively and also denied that they were guilty of laches or estoppel, claiming that the deeds of sale were null and void. Thus, the court on July 3, 1943, required the defendants to attach copies of the deeds of sale, which they did.

"After the case had been heard on the merits, the court a quo on April 28, 1944, rendered a decision, declaring the plaintiffs joint owners of the lands in question, and ordering the defendants to deliver the possession of said lands to the former.

"Consequently, the original defendants-appellants interposed an appeal within the reglementary period. However, before the records of the case could be elevated to the Court of Appeals, the same was destroyed when the provincial capitol building where the court house was located was destroyed by bombs and fire during the liberation of Albay.

"Thus, on February 5, 1946, a petition for the reconstitution of the record of the case was filed by the plaintiffs. As the petition was granted the parties were ordered to bring all pleadings, documents and papers which they may have in their possession necessary for the reconstitution of the records. However, only the record on appeal was reconstituted. For this reason, the lower court ordered that the case will be tried de novo.

"Owing to the death of some of the original parties to the case, the plaintiff filed an amended complaint under date of May 29, 1958. However, the defendants filed on July 2, 1958 a motion to strike out on the ground that

the order of the lower court dated May 16, 1958, only authorized the plaintiffs to amend the party defendant in the complaint due to the death of the original defendant Juan Garcia but paragraph 4 in the amended complaint, increases the amount of damages claimed from P26,208.00 to P46,000.00. The defendants further contend that the plaintiffs have no right to increase or to alter the substance of the original complaint. To the motion to strike out, plaintiffs on July 24, 1958, filed their opposition, alleging that they have the right to up-date the damages according to the date of the amended complaint and further claimed that they have the right to do so since the case is being tried de novo. In its order of July 26, 1957, the lower court admitted the amended complaint.

"Consequently, on August 1, 1958, the defendants filed their answer to the amended complaint denying the allegations of paragraph 2 thereof, and claiming absolute ownership over the subject parcels of land, on the part of Baldomera Garcia by virtue of a deed of sale executed by the late Albina Garcia Vda. de Epifanio Orozco in her favor; and on the part of Juan Garcia, by virtue of the deed of sale with right to repurchase executed by the late Epifanio Orozco in his favor and another deed of sale on May 6, 1916, in favor of one Chino Angel Conihero who in turn ceded and conveyed the same to Juan Garcia. By way of special and affirmative defenses they interposed prescription. Under their counterclaim, they claimed P50,000.00 as reasonable value of the improvements introduced into the lands by them, the sum of P6,000.00 representing the expenses for introducing the improvements and maintenance and care thereof, and the sum of P7,000.00 which is the value of the land or a total sum of P64,000.00. The plaintiffs in answer to the counterclaim alleged possession in bad faith of the defendants.

"After trial, decision was rendered on December 19, 1964, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered declaring plaintiffs as absolute owners and entitled to the possession of the lands in question, as described in paragraph 2 of the amended complaint in the following proportion:

Heirs of Serafin Orozco ¼
Carmen Orozco ¼
Merced Orozco ¼
Arsenio Orozco ¼

and to recover in the same proportion damages at the rate of P500.00 a year for the land in Mataguisi, Mauraro and P800.00 a year for the land in Malobago from November 23, 1932 until they obtain possession of said lands from the following:

For the land in Malobago, from November 23, 1932 until April 27, 1943, from the estate of Juan Garcia and thereafter from Mercedes Garcia

For the land in Mataguisi, Mauraro, from November 23, 1932 until September 8, 1957, from Baldomera Garcia; and thereafter from Mercedes Garcia, and the costs.

The defendants are hereby ordered to vacate the lands in question and to deliver the same to the plaintiffs."

Not satisfied with the decision of the trial court, the defendants appealed to the Court of Appeals.

The appellate court in the decision of April 4, 1972, affirmed the judgment of the lower court. Defendants-appellants' motion for reconsideration having been denied, they now come to Us and in their Brief, make the following assignment of errors:

I. The Court of Appeals erred in not declaring that the sale by Albina Garcia to Baldomera Garcia of the land situated at Mataguisi, Guinobatan, Albay, after her husband's death, was valid and binding upon Albina Garcia and vested legal title upon Baldomera Garcia, insofar as one-half (1/2) of it was concerned, in view of the fact that this parcel of land belonged to the ganancial partnership between the spouses Albina Garcia and Epifanio Orozco and, under the law, one-half (1/2) of it became Albina Garcia's share in the property upon the death of Epifanio Orozco and the consequent dissolution of their ganancial partnership.

II. The Court of Appeals erred in not declaring that petitioners have acquired, through acquisitive prescription, ownership of the other half of the Mataguisi property - or of the whole of it for that matter, assuming that Albina Garcia's sale to Baldomera cannot be sustained even as to her one-half (1/2) share in the ganancial property.

III. The Court of Appeals erred in not declaring that petitioners have acquired ownership of the Malobago property by prescription.

IV. The Court of Appeals erred in holding that it was within the lower court's discretion to permit the filing of an amended complaint because at the time the amended complaint was filed, the lower court had lost jurisdiction over the case, as the appeal from its decision had already been perfected. The only purpose of the pending proceedings was to reconstitute the destroyed evidence.

V. The Court of Appeals erred in not declaring that the trial court should not have conducted a new trial or rendered a new decision considering that the records were successfully reconstituted.

VI. Assuming arguendo that it was proper for the lower court to conduct a new trial and render a new decision and assuming further that the decision rejecting petitioner's claim to the Mataguisi and Malobago lots is correct, the Court of Appeals nevertheless erred in not reversing the trial court's award of damages in view of its confessed lack of basis for awarding the same.

Petitioners contend under the first assignment of error that the Court of Appeals erred in not declaring that the sale by Albina Garcia to Baldomera Garcia of the land situated at Mataguisi, Guinobatan, Albay after her husband's death, was valid and binding upon Albina Garcia and vested legal title upon Baldomera Garcia insofar as 1/2 of it was concerned. They argue that this parcel of land belong to the ganancial partnership between the spouses Albina

Garcia and Epifanio Orozco, and under the law, 1/2 of it became Albina Garcia's share in the property upon the death of Epifanio Orozco and the consequent dissolution of their ganancial partnership.

There is no merit to petitioners' contention. The respondent court committed no error in ruling that "(s)uch being the case, and inasmuch as the plaintiffs-appellees are the natural children of the late Epifanio Orozco, the lower court correctly held that they are entitled to the parcels of land in question, the ownership of which had been adjudicated in his (Epifanio's) favor as early as in 1932."

The judgment rendered in Civil Case No. 5127 dated Aug. 10, 1932 based upon the "convenio" agreed upon and submitted by the parties, Serafin Orozco and his co-heirs on one hand, and the widow Albina Garcia, on the other, awarded among others, the ownership of the Mataguasi properties (Lots Nos. 5789 and 5833), and Malobago properties (Lots Nos. 7207, 7213 and 7217) to the intestate estate of Epifanio Orozco, while the other properties involved therein were given to Albina Garcia as her share in the conjugal partnership, the decision expressly stating that Albina Garcia no longer had the usufructuary right as a widow of the deceased Epifanio Orozco in view of her waiver. This judgment had long become final and executory. Considering that the petitioners Baldomera Garcia and Juan Garcia are the sister and brother of the widow Albina Garcia, that Juan Garcia lived with his sister Albina Garcia and that Juan Garcia merely administered the properties for her, We hold that Baldomera Garcia and Juan Garcia were not strangers to nor third parties in the proceedings against their sister, Albina Garcia. The former are therefore charged with knowledge of and are bound by the decision rendered in said Civil Case No. 5127.

Moreover, the records show that Baldomera Garcia attempted to intervene in Civil Case No. 5127 but was denied by the court on the ground that "la misma Albina Garcia demandada on esta causa de quien la tercerista pretende derivar su derecho de propiedad sobre el terreno objeto de su mocion de terceria ha declarado expresamente e' hizo constar en el convenio entre ella y el demandante Serafin Orozco del cual el Jusgado base su decision en esta causa que dicho terreno forma parte integrante de los bienes gananciales entre ella y su difunto esposo Epifanio Orozco el cual terreno esta marcado en el convenio de transaccion como parcela "A" bajo el Tax No. 19100." She moved for a reconsideration of the denial and the same was also denied. Yet, she did not appeal from said denial nor pursue any other remedy or action to protect her rights. Consequently, Baldomera Garcia and her successors-in-interest may not now claim on appeal that their rights and interest have been prejudiced thereby. For whatever right or interest Baldomera Garcia had in the Mataguasi properties which she claims were prejudiced by the act of her sister, the widow Albina Garcia, in renouncing her rights to the Mataguasi and Malobago properties and further agreeing accordingly to the "convenio" which became the basis of the judgment in Civil Case No. 5127, Baldomera Garcia's right of action was against her own sister, the widow Albina Garcia, as the vendor thereof.

The law then governing the dissolution and liquidation of conjugal partnership was Section 685 of the Code of Civil Procedure as amended by Act No. 3176 which provided:

"Sec. 685. Community Property.- When the marriage is dissolved by the death of the husband or wife, the community property shall be inventoried, administered and liquidated, and the debts thereof shall be paid in the testamentary or intestate proceedings of the deceased spouse, in accordance with the provisions of this Code relative to the administration and liquidation of the estates of deceased persons, or in an ordinary liquidation and partition proceeding, unless the parties being all of age and legally capacitated, avail themselves of the right granted them by this Code for proceeding to an extrajudicial partition and liquidation of said property.

In case it is necessary to sell any portion of said community property in order to pay the outstanding debts and obligations of the same, such sale shall be made in the manner and with the formalities established by this Code for the sale of the property of deceased persons. Any sale, transfer, alienation or disposition of said property effected without said formalities shall be null and void, except as regards the portion that belonged to the vendor at the time the liquidation and partition was made."

Commenting on the alienation of community property by the surviving spouse, a distinguished civil law authority writes:

"After the death of one of the spouses, in case it is necessary to sell any portion of the community property in order to pay outstanding obligations of the partnership, such sale must be made in the manner and with the formalities established by the Rules of Court for the sale of the property of deceased persons. Any sale, transfer, alienation or disposition of said property effected without said formalities shall be null and void, except as regards the portion that belongs to the vendor as determined in the liquidation and partition. (Act No. 3176) Pending the liquidation, the disposition must be considered as limited only to the contingent share or interest of the vendor in the particular property involved, but not to the corpus of the property. Such disposition cannot include the half that may be adjudicated to the heirs of the deceased spouse.

This rule applies, not only to sale, but also to mortgages. The alienation, mortgage or disposal of the conjugal property without the required formality, is not, however, null ab initio, for the law recognizes their validity, so long as they do not exceed the portion which, after liquidation and partition, should pertain to the surviving spouse who made the contract. Of course, before liquidation and partition have been completed, such portion cannot be determined. x x x

Manifestly, when third persons are in connivance with the husband or knowingly lend their aid, directly or indirectly to the commission of fraudulent acts by the husband, the court will see to it that they do not profit by their misconduct, and the fraud to which they are parties will vitiate and annul all their transactions." (Commentaries and Jurisprudence on the Civil Code of the Philippines, by Arturo M. Tolentino, Vol. I, pp. 438-439 (1974 Ed.)

In the case at bar, the formalities required by the law were not followed by the widow. Here the assets of the ganancial partnership between Epifanio Orozco and Albina Garcia consisted of numerous lots and properties aside from the Mataguisi and Malobago lands, and until a liquidation and partition was made upon the death of the husband, Epifanio Orozco, no particular lot or property can be said to appertain to the widow or to the heirs of the deceased husband who are his acknowledged natural children, the respondents herein. At the time of the sale, the rights of the widow and the heirs were not yet fully vested in the particular lot or property in specific metes and bounds. Since the sale executed by Albina Garcia was after the death of her husband, Epifanio Orozco, and was prior to the liquidation and partition of the conjugal partnership, said disposition which specifically transferred the two lots in Mataguisi rather than the conceptual interest or contingent share of the surviving spouse in these ganancial properties was ineffective because the Mataguisi lots were not adjudicated to the surviving spouse at the time the liquidation and partition was made, as provided in the law.

The ruling in the first decision dated April 28, 1944 that the purported sale in favor of Baldomera Garcia was a mere subterfuge resorted to in anticipation of the possible claims that may be made by the natural children and was intended to defeat said claims and prevent the latter from obtaining what is justly their due, as well as the ruling in the second decision of December 19, 1964 to the effect that the said sale is not effective, were both affirmed by the Court of Appeals. We find no error in the Court's affirmance. Under the particular facts and

circumstances of this case, We hold that Baldomera Garcia cannot be considered a third party insofar as the proceedings for the partition and liquidation of the conjugal partnership is concerned, within the contemplation of Art. 4 of the old Civil Code cited by petitioners.

Petitioners rely on the cases of *Antioho vs. Court of Appeals*, 87 Phil. 522, and *Corpus vs. Geronimo*, 98 Phil. 623, as authorities for holding that the sale by the widow of a parcel of land belonging to the ganancial partnership is valid with respect to her 1/2 share of property and void as to the other half which is passed to the heirs of the deceased husband. The ruling in said *Antioho* case is correct for the facts show that the property sold constituted the entire asset of the conjugal partnership, as also the *Corpus* case which involve a single parcel of land admittedly conjugal property. In the case at bar, there were numerous lots and properties constituting the assets of the conjugal partnership and until a liquidation and partition is made in the manner and with the formalities required by the law, the particular and corporeal share of the surviving spouse could not yet be determined. At any rate, when the widow agreed to the partition of the properties left by her husband and accepted other lots instead of those in Mataguisi which she had previously sold to her sister, Baldomera Garcia, the latter had a right of action against the former. To uphold the validity of the sale made by the widow in favor of her sister would give more share to the widow than she was entitled to and had agreed upon with the heirs of her husband, the respondents herein.

We find no merit in the contention of petitioners under the second and third assignment of errors that they had acquired through acquisitive prescription ownership of the other half of the Mataguisi properties or of the whole of it for that matter, and the Malobago properties. The Court of Appeals committed no error in ruling that:

"In the light of the foregoing circumstances showing (1) that the estate of the deceased Epifanio Orozco was the owner of the parcels of land herein involved, (2) that the plaintiffs are the successors in interest of said Epifanio Orozco, (3) that the real properties were delivered to original plaintiff, Serafin Orozco on November 28, 1932, (4) that Juan Garcia occupied said properties two months after delivery to Serafin Orozco, and (5) that Juan Garcia was cited for contempt, it could not be said that the appellants possessed the parcels of land in good faith. Appellant Baldomera Garcia had also knowledge of the existence of Civil Case No. 5127. For this reason, appellants are not entitled to reimbursements for whatever improvements they might have introduced thereon."

Petitioners cite in support of their claim of acquisitive prescription Section 41 of Act 190, Code of Civil Procedure, which provides:

"Sec. 41. Title to Land by Prescription.- Ten years of actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, shall be in every actual occupant or possessor of such land, full and complete title, saving to the persons under his abilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants. But failure to occupy or cultivate land solely by reason of war shall not be deemed to constitute an interruption of possession of the claimant and his title by prescription shall be complete, if in other respects perfect, notwithstanding such failure to occupy or cultivate the land during the continuance of war."

As found by the appellate court, "the land in Malobago, Guinobatan, with an area of 261,035 square meters originally formed an integral part of a big parcel of land owned and possessed by Epifanio Orozco since the

Spanish Regime. The land in Malobago was subdivided into Lots 7207, 7213 and 7217 of the Cadastral Survey of Guinobatan." In effect, the Court of Appeals rejected the theory of Juan Garcia that he bought the Malobago property from Epifanio Orozco and Angel Conejero. This finding of fact is final and conclusive upon this Court and may not be reviewed or revised by Us in the present appeal by certiorari. The claim of Juan Garcia that he has acquired the Malobago properties through prescription is, therefore, clearly without factual or legal basis.

Moreover, when Juan Garcia wrested possession of the Malobago properties in January 1933 and was cited for contempt by the court in Civil Case No. 5127, he was aware that the court had adjudicated ownership of the lands to the Orozco heirs and consequently he cannot thereafter claim possession of the land in the concept of owner as then and there the flaw in his title was apparent and patent. Even as he continued in possession of the land thereafter as "encargado" of Albina Garcia as hereinbefore stated, from 1933 to the filing of the instant case on December 18, 1942, his possession could not ripen to ownership through acquisitive prescription, considering that the period when the courts in Albay were closed from December 12, 1941 to August 10, 1942 and that the ten-year period to file the case had not prescribed. We cannot sanction petitioners' usurpation of respondents' possession, such ouster being committed in bad faith and in flagrant defiance of the writ of execution issued by the court.

With respect to the fourth, fifth and sixth assignment of errors, these are directed against two alleged procedural mistakes, namely, the admission of the amended complaint after rendition of the first judgment and perfection of the appeal therefrom, and the conduct of the trial de novo which eventually led to the new decision awarding to respondents damages previously denied in the first decision.

As far as the amended complaint is concerned, the records show that the amended complaint was filed after the case was set for trial de novo, which means a new trial upon the merits without regard to the proof presented in the trial court or the conclusions reached by it, whereby the court will make its own findings, lay down its own conclusions, and dispose of the case as if the same had never been tried before, and had been originally commenced therein. (*Lizo v. Carandang*, 73 Phil. 649 (1942); *Lichauco v. Guash*, 76 Phil. 5 (1946).

We cannot agree with petitioners that the lower court had lost jurisdiction over the case after perfection of the appeal when admittedly, the records of the same had been destroyed on account of war. We are not concerned with the cold letters of the Rules. In the case at bar, the intended appeal from the decision of April 28, 1944 was quite impossible in view of the destruction of the court records, including the documentary and testimonial evidence which need to be elevated to the Court of Appeals. The perfection of the appeal through the filing of the record on appeal and the corresponding appeal bond, therefore, would serve no purpose as the jurisdiction of the Court of Appeals to review the legal and factual issues would certainly be rendered useless with nothing more than the record on appeal which is but a chronological compendium of pleadings and court orders.

Moreover, on grounds of fairness and impartiality, petitioners are estopped to question the updating of the amount of damages originally prayed for by respondents. We note that in the first decision, neither party was awarded the damages respectively claimed, so at least on this aspect, both were at par. In the original complaint filed in 1942, the total amount of damages prayed for was P26,208.00, subsequently increased to P46,000.00 in the questioned amended complaint filed on May 29, 1958, (Record on Appeal, p. 113). The objection of petitioners to the amendment notwithstanding, the challenge was accepted by them when in their corresponding amended answer dated August 1, 1958, (Record on Appeal, p. 126), they also reassessed their counterclaim and prayed for a total amount of P64,000.00, much exceeding their original counterclaim of P31,000.00 prayed for in the amended answer dated May 12, 1943 (Record on Appeal, p. 31) and later, in the re-amended answer filed on September 3, 1943 (Record on Appeal, p. 39) the total was increased to P38,000.00. As stated by the trial court, the plaintiffs had the right to up-date their claim of damages which by the passing of the years since 1942 had increased.

Clearly, petitioners are estopped from complaining after following the move of their opponent. The trial court acted with fairness and due process whereby both parties were allowed equal opportunity to replead and re-estimate their pecuniary interests which both availed. We find no abuse of discretion on the part of the trial court, and the Court of Appeals is correct in upholding the admission of the amended complaint.

The petitioners contend that the trial court should not have conducted a new trial or rendered a new decision considering that the records were successfully reconstructed. There is no factual basis for this assertion as the trial court, in its decision, said: "On November 11, 1946, the court denied the motion for execution on the ground that the decision having been appealed, the Court had lost jurisdiction to execute said decision. Inasmuch as the oral and documentary evidence had been destroyed, the Court set this case for trial de novo pursuant to Section 6, Act No. 3110." (Decision, Record on Appeal, p. 137).

The trial court committed no error in conducting a trial de novo and in rendering a new judgment. As indicated previously, the court, in its order of December 1, 1947, (Record on Appeal, p. 109) ordered the reconstitution of the evidence, pursuant to Sec. 25, Act No. 3110, and since counsels for both parties upon inquiry of the court, manifested that they did not have a transcript of the destroyed stenographic notes taken in the previous trial nor copies of the documents presented therein as evidence, with the exception of the two writings now in the possession of the plaintiffs which have been alluded to in the decision, the court announced that the case will be tried de novo (Order dated October 24, 1950, Record on Appeal, pp. 109-111).

Sec. 6 of Act 3110 which provides the procedure for the reconstruction of the records of pending judicial proceedings, requires that the testimony of witnesses taken in civil cases shall be reconstituted by means of an authentic copy thereof or a new transcript of the stenographic notes and if no authentic copy can be obtained and the stenographic notes have also been destroyed, as in the case at bar, the cases shall be tried de novo as if called for trial for the first time. Under Sec. 7, if a civil case has already been decided, the decision shall be reconstituted by means of an authentic copy. On the other hand, Sec. 25 of the Act refers to the reconstitution of the records of civil actions, special proceedings, and registration and cadastral proceedings which at the time of their destruction were ready to be sent to the appellate court on appeal and said records shall be reconstituted by means of an authentic copy of the bill of exceptions or appeal record, which, together with the reconstituted evidence, shall form the reconstituted record for the purposes of the appeal.

We find that the trial court, in reconstituting the records of the instant case which was ready to be forwarded to the Court of Appeals for purposes of appeal, followed the procedure provided under both Sec. 6 and 25 of Act 3110 since it was necessary under the circumstances to reconstitute the evidence originally presented in the first trial of the case. At any rate, petitioners participated in the new trial by presenting new witnesses as well as their documentary exhibits. They also cross-examined the witnesses of the respondents. Petitioners had not complained of any irregularity much less raised or protested any proceedings or process prejudicial to their interest during the trial de novo, hence they cannot, at this late hour, be allowed to complain that there should have been no trial and that there should have been no judgment at all.

Finally, We hold that, contrary to petitioners' claim that the trial court's assessment of the damages awarded lacked basis, the appellate court correctly ruled, thus: "The amount of damages at the rate of P500.00 a year for the lands in Mataguisi and P800.00 a year for the lands in Malobago is way below the amount established by the evidence." In fact, the Court of Appeals cited in the appealed decision the very evidence in support of the assessment of damages this wise: "Anent the award of damages, suffice it to say that the very evidence of the defendants show that the lands in question are planted to abaca, coconuts and rice; that the original defendants and their successor have been continuously gathering the products from the lands in question from the time Juan Garcia entered the same shortly after the delivery thereof by the sheriff to Serafin Orozco on Nov. 23, 1932, until

the present; and that the land in Mataguisi is a little over 22 hectares. Now, when the lands in question were delivered by the sheriff on November 28, 1932, to Serafin Orozco he was able to gather around 10,000 coconuts and 13,000 kilos of hemp." Plaintiffs' evidence showing that the price of abaca fluctuated from P20.00 to P25.00 per 100 kilos from 1932 to 1960 and that coconuts averaged P0.05 each was also taken into account. The award of damages is therefore amply justified and supported by credible evidence.

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment appealed from is hereby affirmed with costs against petitioners.

SO ORDERED.

Makasiar, Antonio, and Santos, JJ., concur.

Teehankee, J., (Chairman), concurs in the result.

[1] Special Fourth Division; Concepcion, Jr., J., ponente; Muñoz Palma and Barcelona, JJ., concurring.

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