

CONCORDIA LALUAN, ET AL., PETITIONERS, VS. APOLINARIO MALPAYA, MELECIO TAMBOT, BERNARDINO JASMIN, ET AL., RESPONDENTS.

G.R. No. L-21231. July 30, 1975

Ponente: CASTRO, J.

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CASTRO, J.:

In 1950 the Laluans,[1] the Laguits[2] and the Sorianos[3] (hereinafter referred to as the petitioners) filed with the Court of First Instance of Pangasinan a complaint against Apolinario Malpaya, Melecio Tambot and Bernardino Jasmin (hereinafter referred to as the respondents) for recovery of ownership and possession of two parcels of land. The petitioners seek a declaration that they are the owners pro indiviso of

"A PARCEL OF RICELAND, situated in the barrio of Inoman, Pozorrubio, Pangasinan, Philippines x x x containing an area of 1 hectare nine hundred seventy one (10,971) square meters, more or less; bounded on the N. by Nicolas Estares; on the E. by Zanja; on the S. by Estero Inoman and on W. by Aniceta Marquez; x x x,"

and the owners pro indiviso of one-half of

"A PARCEL OF RICELAND AND CORNLAND, situated in the barrio of Inoman, Pozorrubio, Pangasinan, x x x containing an area of (31,548) square meters, more or less, bounded on N. by Rosendo Serran; E. by Esteban Malpaya; S. by Creek and W. by Creek that surround it; x x x"

They base their claim on their alleged right to inherit, by legal succession, from Marciana Laluan (the respondent Malpaya's wife) who died intestate on July 17, 1948 and without any children.

The first parcel of land they allege as paraphernal property of the late Marciana Laluan. They claim that the respondent Malpaya, taking advantage of the senility of his wife, sold the land to the respondent Tambot, as evidenced by the "Deed of Absolute Sale of Real Property" dated June 26, 1948. The second parcel of land they allege as conjugal property of the spouses Malpaya and Laluan, and charge that the respondent Malpaya, with right to sell only one-half thereof, sold the whole property, four days after the death of his wife, to the respondents Tambot and Jasmin, as evidenced by the "Absolute Deed of Sale" dated July 21, 1948.

The respondents filed their answer,[4] denying the allegations of the complaint and claiming that the parcels of land belonged to the respondent Malpaya as his exclusive property. The respondents Tambot and Jasmin further aver that the respondent Malpaya had the "perfect legal right" to dispose of the said parcels of land and that they bought the properties in good faith, unaware of any flaw in the title of their vendor.

To expedite the proceedings, the parties entered into a partial stipulation of facts at the hearings of August 31 and October 25, 1950. The petitioners then proceeded to adduce their evidence.

Several postponements of the scheduled hearings followed. Then, at the hearing scheduled on August 1, 1957 neither the respondents nor their counsel appeared, notwithstanding due and proper notice served on them. Nor

did they file any motion for postponement. The petitioners thus moved for leave to continue with the presentation of their evidence. This the court a quo granted, allowing the petitioners to adduce their evidence before the clerk of court.

On September 23, 1957 the court a quo rendered judgment declaring null and void the "Deed of Absolute Sale of Real Property" dated June 26, 1948 as well the "Absolute Deed of Sale" dated July 21, 1948, except as regards the one-half portion of the land described in the latter document which belonged to the respondent Malpaya. With respect to the parcel of land covered by the "Deed of Absolute Sale of Real Property," the court a quo declared the petitioners owners pro indiviso of the entirety thereof and ordered the respondent Tambot not only to deliver the possession of the land to them but also to pay them, by way of damages, the amount of P750 – the value of the crops which the petitioners failed to realize for the last nine years from the land – plus P500 annually from date until possession thereof shall have been delivered to them. With respect to the parcel of land subject of the "Absolute Deed of Sale," the court a quo likewise declared the petitioners owners pro indiviso of one-half thereof and ordered the respondents Tambot and Jasmin to deliver the possession of the half-portion to the petitioners, as well as to pay them, in damages, the sum of P1,343.75 – the value of the produce which the petitioners failed to realize for the last nine years from the half-portion of the land – plus P687.50 annually from date until possession thereof shall have been delivered to them.

On October 7, 1957 the respondents Tambot and Jasmin filed their Moción de Reconsideración. On October 18, 1957 the court a quo, finding the grounds invoked by the respondents in their motion without merit, denied the same.

The respondents then appealed to the Court of Appeals (hereinafter referred to as the respondent Court). On January 31, 1963 the respondent Court rendered judgment setting aside the appealed decision and entered another remanding the case to the court a quo for further proceedings. The respondent Court voided the procedure whereby, at the continuation of the hearing of the case on August 1, 1957, the court a quo, in the absence of the respondents and their counsel, allowed the petitioners to present their evidence before the clerk of court.

In due time, the petitioners, through a motion for reconsideration, asked the respondent Court to re-examine its decision. This motion, however, the respondent Court denied.

In the instant petition for certiorari, the petitioners pray for the reversal of the decision of the respondent Court as well its resolution denying their motion for reconsideration, and ask that judgment be rendered affirming in toto the decision of the court a quo dated September 23, 1957.

The petitioners and the respondents point to what they believe is the sole question for resolution; whether or not the reception by the clerk of court of the petitioners' evidence, in the absence of the respondents and their counsel, constitutes a prejudicial error that vitiated the proceedings.

The petitioners argue that a trial court has authority to designate its clerk of court to receive the evidence of the party present when the other party fails to appear. In receiving evidence, the petitioners continue, the clerk of court merely performs a ministerial task. The ministerial nature of such a task allows the clerk of court to dispense with the procedural steps^[5] prescribed by Rule 33 of the Rules of Court.

The respondents, on the other hand, contend that the court a quo arrogated unto itself the power, otherwise denied it, to designate its clerk of court to receive the petitioners' evidence. No provision of the Rules of Court, according to them, empowers a trial court to authorize its clerk of court to receive the evidence of a party litigant; only when the clerk of court becomes a commissioner, by appointment pursuant to Rule 33, has he the authority to so receive the evidence of a party litigant, and even in such a situation Rule 33 requires the clerk of court to observe the

procedural steps therein prescribed.

The provisions of Rule 33 of the Rules of Court invoked by both parties properly relate to the reference by a court of any or all of the issues in a case to a person so commissioned to act or report thereon. These provisions explicitly spell out the rules governing the conduct of the court, the commissioner, and the parties before, during, and after the reference proceedings. Compliance with these rules of conduct becomes imperative only when the court formally orders a reference of the case to a commissioner. Strictly speaking then, the provisions of Rule 33 find no application to the case at bar where the court a quo merely directed the clerk of court to take down the testimony of the witnesses^[6] presented and to mark the documentary evidence^[7] proffered on a date previously set for hearing.

No provision of law or principle of public policy prohibits a court from authorizing its clerk of court to receive the evidence of a party litigant. After all, the reception of evidence by the clerk of court constitutes but a ministerial task – the taking down of the testimony of the witnesses and the marking of the pieces of documentary evidence, if any, adduced by the party present. This task of receiving evidence precludes, on the part of the clerk of court, the exercise of judicial discretion usually called for when the other party who is present objects to questions propounded and to the admission of the documentary evidence proffered.^[8] More importantly, the duty to render judgment on the merits of the case still rests with the judge who is obliged to personally and directly prepare the decision based upon the evidence reported.^[9]

But where the proceedings before the clerk of court and the concomitant result thereof, i.e., the judgment rendered by the court based on the evidence presented in such limited proceedings, prejudice the substantial rights of the aggrieved party, then there exists sufficient justification to grant the latter complete opportunity to thresh out his case in court.

1. Anent the parcel of land subject of the "Deed of Absolute Sale of Real Property," the court a quo, in its decision dated September 23, 1957, declared it as the paraphernal property of the deceased Marciana Laluan. In so doing, the court a quo relied mainly on the documents – the deed of donation propter nuptias and the translation thereof in English – presented by the petitioners before the clerk of court at the hearing on August 1, 1957. However, the respondents contend – and this the respondent court took significant note of in its resolution dated March 30, 1963 – that the land described in the "Deed of Absolute Sale of Real Property" is not any of those set forth in the deed of donation.

The "Deed of Absolute Sale of Real Property" describes the land subject thereof as follows:

"A parcel of riceland, together with all the improvements existing thereon situated in the Barrio of Inoman, Pozorrubio, Pangasinan, Philippines, . . . containing an area of 1 hectare nine hundred seventy one (10,971) square meters, more or less; bounded on the N. by Nicolas Estaris; on the E. by Zanja; on the S. by Estero Inoman and on the W. by Aniceta Marquez; the boundaries consists of visible dikes that surround it; declared under Tax No. 20006 in the name of the Vendor and assessed at P330.00 of the current year of Pozorrubio, Pangasinan; said land is not registered under Act No. 496 nor under the Spanish Mortgage Law."^[10]

On the other hand, the deed of donation propter nuptias treats of three parcels of land in this manner:

"First: A parcel of riceland situated in Paldit, municipality of Pozorrubio, Pangasinan, the measurement and boundaries on all sides could be seen from the sketch at the back hereof, this parcel of land is given in lieu of jewelry, whose value is TEN (P10.00) PESOS.

"Second: Another parcel of riceland situated in the same place mentioned above, also its measurements and boundaries on all sides could be seen from the sketch at the back hereof, and valued at THIRTY (P30.00) PESOS."

". . . a parcel of riceland . . . situated in Inmatotong, this municipality, its measurements in brazas and boundaries on all sides, could be seen on the sketch herein below, and this said parcel of land is valued at TEN (P10.00) PESOS."

The sketch appearing on the deed of donation covers three parcels of land: the first parcel, 63 X 52 brazas,[11] bounded on the north by Jacinto Malpaya, on the west by a payas, and on the south and east by Pedro Malpaya; the second parcel, 30 X 63 brazas, bounded on the north by Tomas Tollao, on the west by Jacinto Lalan, on the south by a colos, and on the east by Pedro Malpaya; and the third parcel, 52 X 23 brazas, bounded on the north and west by Pedro Malpaya, on the south by Roman Gramata, and on the east by Eustaquio Marquez. All of these three parcels have stated metes and bounds quite different from those of the land covered by the "Deed of Absolute Sale of Real Property." The location too of the latter land differs from those of the parcels described in the deed of donation. While the land subject of the "Deed of Absolute Sale of Real Property" lies in Inoman, Pozorrubio, Pangasinan, the parcels included in the deed of donation lie either in Paldit or in Inmatotong, both also in Pozorrubio, Pangasinan. At first sight also appears the marked variance between the respective areas of those parcels described in the deed of donation and the parcel subject of the "Deed of Absolute Sale of Real Property."

Indeed, there arises the possibility that in the interim of fifty six years from February 15, 1892 (the date of the deed of donation propter nuptias) to June 26, 1948 (the date of the "Deed of Absolute Sale of Real Property"), the parcels of land contiguous to those described in the deed of donation passed in ownership from one hand to another, or changes in the man-made or natural boundaries used to indicate the confines of the parcels set forth in the said document occurred. This could very well explain the discrepancies between the names of the boundary owners of the piece of land described in the "Deed of Absolute Sale of Real Property" and the names of the adjacent owners of the parcels subject of the deed of donation as well as the absence of any mention of the payas and colos in the later "Deed of Absolute Sale of Real Property." In addition, the variance between the location of the land described in the "Deed of Absolute Sale of Real Property" and those of the parcels set forth in the deed of donation could reasonably be due to the creation of new barrios in the municipality of Pozorrubio, Pangasinan, or the alteration of the boundaries of the barrios therein.

However, the apparent difference between the area of the land described in the "Deed of Absolute Sale of Real Property" and the areas of the parcels included in the deed of donation propter nuptias should be fully and properly explained. The record shows that the petitioners neither offered nor attempted to offer any evidence indicating that the land sold by the respondent Malpaya to his co-respondent Tambot corresponds with any of the three parcels described in the deed of donation. The petitioners failed to specify precisely which of the three parcels – its location, area, and contiguous owners – subject of the deed of donation constitutes the very land delimited in the "Deed of Absolute Sale of Real Property."

All these give rise to a grave doubt as to the specific identity of one of the parcels of land in dispute which the court a quo neither noticed nor considered notwithstanding the obvious fact that the location, area, and boundaries of the land covered by the "Deed of Absolute Sale of Real Property" do not coincide with those of any of the parcels described in the deed of donation propter nuptias.

The invariable applicable rule[12] is to the effect that in order to maintain an action to recover ownership, the person who claims that he has a better right to the property must prove not only his ownership of the property claimed but also the identity thereof. The party who desires to recover must fix the identity of the land he claims.[13] And where doubt and uncertainty exist as to the identity of the land claimed, a court should resolve the question by recourse to the pleadings and the record as well as to extrinsic evidence, oral or written.

Absent, therefore, any indicium in the record to show and identify with absolute certainty any of the three parcels

of land included in the deed of donation propter nuptias as the land described in the "Deed of Absolute Sale of Real Property," the prudent course open obviously consists in an investigation by the court a quo, either in the form of a hearing or an ocular inspection, or both, to enable it to know positively the land in litigation. If indeed the "Deed of Absolute Sale of Real Property" treats of a piece of land entirely different and distinct from the parcels described in the deed of donation propter nuptias, and considering that the court a quo, in its decision dated September 23, 1957, relied mainly on the said deed of donation in declaring the land subject of the "Deed of Absolute Sale of Real Property" as the paraphernal property of the late Marciana Laluan and in nullifying the latter document, then there exists sufficient ground to remand the case to the court a quo for a new trial on the matter.

2. Anent the parcel of land subject of the "Absolute Deed of Sale," the court a quo, in its decision dated September 23, 1957, found and declared it as the conjugal property of the spouses Laluan and Malpaya. In so doing, the court a quo relied heavily on the presumption established by article 1407[14] of the Civil Code of 1889 that "[a] 11 the property of the spouses shall be deemed partnership property in the absence of proof that it belongs exclusively to the husband or to the wife."

It needs no emphasis to point out that the court a quo committed no error in declaring that the parcel of land subject of the "Absolute Deed of Sale" belongs to the conjugal partnership of the spouses Laluan and Malpaya. Indeed, the spouses Laluan and Malpaya acquired the said parcel of land from Eustaquio Marquez "sometime in 1912" or, specifically, during the marriage. Following the rule then that proof of acquisition of the property in dispute during the marriage suffices to render the statutory presumption operative,[15] it seems clear enough that the parcel covered by the "Absolute Deed of Sale" pertains to the conjugal partnership of the spouses Laluan and Malpaya.

Likewise, the court a quo committed no error in declaring the "Absolute Deed of Sale" null and void as to the one-half portion of the land described therein which belonged to Laluan, spouse of the respondent Malpaya; in declaring the petitioners the owners pro indiviso of one-half of the land subject of the said "Absolute Deed of Sale;" and in ordering the respondents Tambot and Jasmin to deliver the possession of the said half-portion to the petitioners. The court a quo also correctly cited and applied the provisions of articles 953[16] and 837[17] of the Civil Code of 1889 which, pursuant, to article 2263[18] of the new Civil Code, govern the rights of the petitioners and the respondent Malpaya to the property left by Marciana Laluan who died on July 17, 1948 or before the effectivity of the new code. Consequently, the court a quo correctly ordered the respondents Tambot and Jasmin to pay to the petitioners, by way of damages, the amount of P1,343.75 which is the value of the produce which the said petitioners failed to realize for nine years from the half-portion of the land subject of the "Absolute Deed of Sale" – plus the sum of P687.50 annually from September 23, 1957 until possession of the said half-portion of land shall have been delivered to them.

ACCORDINGLY, (1) the judgment of the Court of Appeals dated January 31, 1963 and its resolution dated March 30, 1963 are set aside; (2) the judgment of the court a quo dated September 23, 1957, insofar as it pertains to the "Absolute Deed of Sale," is hereby affirmed; and (3) the judgment of the court a quo of the same date, insofar as it relates to the "Deed of Absolute Sale of Real Property," is set aside, and the case (civil case 11219) is hereby remanded to the court a quo for a new trial, to the end that the identities of the parcels of land in dispute may be specifically established. At the new trial, it will not be necessary to retake evidence already taken, but the parties shall be afforded opportunity to present such evidence as they may deem relevant to the particular question raised herein. No costs.

Makasiar, Esguerra, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., is on leave.

[1] Concordia, Timoteo, Lorenzo, Maria, Victorio, Florentino, Juanito, Feliciano, Severino, Marcela, Florencio, Juliana, Genoveva, Agustin, Alberta, Paula, Filomena, Victoria, Gregorio and Beatriz.

[2] Faustina, Inocencia, Jose and Marcelina.

[3] Santiago, Segundo, Felipe and Julita.

[4] The respondents subsequently filed an amended answer, substantially pleading the same allegations found in their original answer, and adding, by way of defense, that the claim of the petitioners is subject to the expenses incurred by the respondent Malpaya in connection with the last illness and death of the late Marciana Laluan.

[5] Rule 33 requires the following: (1) order of reference; (2) oath of the commissioner; (3) notice to the parties to the proceedings before the commissioner; (4) report of the commissioner; (5) notice to the parties of the filing of the report; and (6) hearing upon the report.

[6] TSN of August 1, 1957, pp. 1-16, the respective testimonies of the petitioners Concordia Laluan and Timoteo Laluan.

[7] (1) Exhibit "A" (Copy of the "Deed of Absolute Sale of Real Property" dated June 26, 1948); (2) Exhibit "B" (Copy of the "Absolute Deed of Sale" dated July 21, 1948); (3) Exhibit "C" (Copy of the deposition of Apolinario Malpaya); (4) Exhibit "D" (The deed of donation propter nuptias dated February 15, 1892); and (5) Exhibit "D-1" (The English translation of Exhibit "D").

[8] Wack Wack Golf and Country Club, Inc. vs. Court of Appeals, 106 Phil. 501.

[9] Province of Pangasinan vs. Palisoc, 6 SCRA 299.

[10] Exhibit "A".

[11] The Diccionario de la Lengua Espanola (Decimoseptima Edicion, Madrid: 1947) defines a braza thus: "Medida agraria usada en Filipinas, centesima parte de loan, y equivalent a 36 pies cuadrados, o sea a 2 centiares y 79 miliares."

[12] Sanchez Mellado vs. Municipality of Tacloban, 9 Phil. 92; Lubrico vs. Arbado, 12 Phil. 391; Belen vs. Belen, 13 Phil. 202; Salacup vs. Rambac, 17 Phil. 21; De la Cruz vs. Nino, 18 Phil. 284; Santos vs. Estejada, 26 Phil. 398; Del Valle vs. Mercado, 34 Phil. 963; Marcelo vs. Maniquis, 35 Phil. 134; Misamis Lumber Co., Inc. vs. Director of Lands, 57 Phil. 881.

[13] Puruganan vs. Martin, 8 Phil. 519; Santiago vs. Santos, 48 Phil. 567.

[14] Article 160, Civil Code of the Philippines.

[15] Camia de Reyes vs. Reyes de Ilano, 63 Phil. 629.

[16] "ART. 953. Should brothers or sisters or children of brothers or sisters survive, the surviving spouse shall be entitled to receive the part of the inheritance in usufruct assigned him or her in Article 837."

[17] "ART. 837. If the testator should leave no legitimate ascendants or descendants, the surviving spouse shall be entitled to one-half of the estate, also in usufruct".

[18] "ART. 2263. Rights to the inheritance of person who died, with or without a will, before the effectivity of this Code, shall be governed by the Civil Code of 1889, by other previous laws, and by the Rules of Court. x x x."

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