

MARGARITA BENITO AND JULIANA BENITO, PETITIONERS, VS. SAMUEL ENERO, RESPONDENT.

G.R. No. L-5238. October 22, 1953

Ponente: TUASON, J.

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TUASON, J.:

This action was commenced in the Court of First Instance of Nueva Vizcaya to revindicate the land described in the complaint and recover damages. Defendant alleged as special defenses that he was the owner of the above-mentioned land in virtue of the conveyances mentioned in his answer. After the trial, the Honorable Jose R. de Venecia, Judge, handed down a judgment "declaring the plaintiffs absolute owners with the right to the possession of the land in question and condemning the defendant to restore" it to the plaintiffs. On appeal, the 5th Division of the Court of Appeals reversed the trial court's judgment in a decision which is now before us for review.

The facts of the case as found by the Court of Appeals may be condensed as follows:

Estefanio Benito, plaintiffs' father, was the holder of a homestead patent issued on August 8, 1930 covering a tract of land having an area of three hectares plus and situated in barrio La Torre, municipality of Bayombong, Province of Nueva Vizcaya. It was conjugal property, Estefanio Benito being married to Apolonia Corpuz, and identified as Cadastral Lot No. 1108.

Shortly after the issuance of the patent Estefanio Benito, who died in 1934, donated one-fourth of that lot to his brother, Saturnino Benito, and one-fourth to another brother, Eugenio Benito. These portions adjoin each other and constitute the northern half of the entire lot.

It is admitted on both sides that these donations were void because they were made verbally or at the most by private documents and, besides, within five years from the date of the patent.

But on November 3, 1935, after the patentee's death and the expiration of the prohibition period, Estefanio Benito's widow executed a deed in favor of each of her brothers-in-law. Drawn in identical form and properly notarized, the two deeds, identified as Exhibits 3 and 5, contained these paragraphs:

"That in the lifetime of my husband Estefanio Benito, he ceded, conveyed and transferred portions of said land to his brothers Saturnino Benito and Eugenio Benito, in concept of donation, and $\frac{1}{4}$ of said property, which is the northernmost part of the land above described was ceded, transferred and donated to Saturnino Benito, married to Agustina Apolinar.

"Now, then, for the formalization of said donation, in view that the donation executed by my deceased husband was executed in a private document, and complying with the request of Saturnino Benito to formalize said donation by way of public document in my capacity as widow of Estefanio Benito and administratrix of the properties left by him, and in consideration further of the fact that this act and deed is but the formalization of the very act of my deceased husband, by these presents I hereby convey and transfer unto said Saturnino Benito married to Agustina Apolinar, of legal age and a resident of the barrio of Bonfal, Bayombong, Nueva

Vizcaya, the northernmost portion of the property above described * * *."

On each instrument the corresponding donee stamped his acceptance of the donation as in such cases made and provided.

On April 4, 1935, and April 13, 1936, Saturnino Benito and Eugenio Benito sold their respective holdings and delivered the possession thereof to Toribia Castriciones in consideration of P320 and P180, respectively. On October 12, 1938, Toribia Castriciones in turn donated both portions in a public document to Samuel Enero, her grandson, who then and there duly accepted the donation and took immediate possession of the land donated. Enero has been in actual possession ever since.

None of the afore-mentioned deeds were registered, and realizing the defects in his title, Enero instituted case No. 68 in the Court of First Instance in the same month. The case is referred to on the record as a petition praying that "the petitioner be adjudged the absolute owner of the two portions above described;" that "the deeds of donation executed by the surviving spouse (Apolonia Corpuz) confirming the donation executed by her husband in his lifetime be confirmed;" and that "the donation executed by Toribia Castriciones in favor of the petitioner be annotated at the back of the said certificate of title."

Neither the petition at bar, the answer thereto, the briefs, nor the decision of the trial court and of the Court of Appeals disclose who the defendants or respondents are in case No. 68, but it does appear that Apolonia Corpuz filed therein a so-called affidavit, now known as Exhibit 7, in which she stated, among other things, that "after an amicable settlement with the parties, I do hereby announce and state that I withdrawn said verbal opposition and consent to have this motion approved in favor of said petitioner."

Case No. 68 was not tried before or during the Japanese occupation, and as a result of war operations, the record thereof was mixed up with other papers and was not located until a few months after the present action was brought by Apolonia Corpuz' daughters against Enero.

According to the Court of Appeals, Apolonia Corpuz at the trial admitted, as a witness, that she had signed Exhibits 3 and 5 but undertook to prove that she had done so because she had been led to understand that they were to effect the transfer of the title to the land in the name of her daughters. This testimony was not given credence by the Court of Appeals.

The reasoning behind the Court of Appeals' opinion runs substantially as follows:

The donations executed by Estefanio Benito in favor of his two brothers were premature and illegal, contrary to the provisions of sections 118 and 124 of Commonwealth Act No. 141, and the widow could not, after the death of her husband, act in his name to confirm and formalize said donations. However, one-half of lot No. 1108 was hers, and although she stated in Exhibits 3 and 5 that she was acting for and in the name of her deceased husband, the conveyance resulting from her husband's donations was personally sanctioned in her affidavit Exhibit 7, so that her half of the property, though in an undivided and pro-indiviso form, had to be affected by her acts. This explains why in the case at bar Apolonia Corpuz does not claim any right or interest over the lot in question, which is claimed entirely by her children Margarita and Juliana.

In conclusion, the defendant and appellant, Samuel Enero, was absolved. The court explained: "Although, under the circumstances of the case, it would be better to assign to him the northern half thereof, yet the pleadings in this case do not authorize us to make any adjudication of the property, which shall be made in case No. 68 of the Court of First Instance of Nueva Vizcaya, where appellant's petition (Exhibit 6) is still pending determination."

The plaintiffs', now petitioners', sole exception to the decision of the Court of Appeals is that the Appellate Court "resorted to interpret or construe said deeds, Exhibits 3 and 5," which, it is contended, the Court should not have

done, "because their terms are unmistakably clear * * *, and also because the question of interpretation or construction was never raised in issue in the trial court, either by the parties' pleadings, particularly the defendant's answer or by his evidence; neither was such issue stressed in the appellant's, now respondent's, brief."

The defendant set up title to the property in litigation, and introduced Exhibits 3, 5 and 7, among others, in evidence. The Court of Appeals' decision agrees in the result with defendant's thesis that he was the lawful owner of the questioned portions of the homestead. As we see it, the variance between the position taken by the defendant and the Court of Appeals' decision lies in the fact that, whereas defendant's counsel is said to have maintained that Exhibits 3, 5 and 7 were rooted in, and therefore dependent on, the donations made by Estefanio Benito, the Appellate Court held that these instruments, in and by themselves, operated to convey the property therein described or another equivalent portion.

We do not think that this variance, if variance it be, was a substantial departure from the pleadings, nor is it contended that it has misled the plaintiffs. The discrepancy was nothing but a divergence in conclusions of law drawn from the facts set out in the answer and relied upon by the defendant. This is not the kind of variance between decision and pleadings that is forbidden by the rules of practice. Thus it has been held that plaintiff is entitled to the relief to which the facts entitle him even though his own theory of the relief may have been unsound. (*Truth Seeker Co., Inc. vs. Durning*, 8 Fed. Rules Service, p. 824; U. S. Circuit Court of Appeals, 2nd Circuit, January 18, 1945, cited in the footnote in *I Moran's Commentaries on the Rules of Court* on page 632.) If this is true with plaintiff, who is on the affirmative side, it should even be more so with defendant, who is not called upon to formulate any theory beyond stating the bare facts in support of his denial.

On the appraisal of the deeds executed by Apolonia Corpuz in favor of Saturnino and Eugenio Benito, we agree with the Court of Appeals. These deeds were more than mere formalization or ratification of the donations previously made by Estefanio Benito to his brothers. We are of the opinion that Exhibits 3 and 5, standing alone and independent of the deceased's donation, were sufficient in form and intent to pass title. Note that, although Apolonia Corpuz in the recital seemed to consider the deeds as "the formalization of the very act of my deceased husband," yet she said in the habendum: "I hereby convey and transfer unto said Saturnino Benito (or Eugenio Benito) * * * the northernmost portion of the property above described * * *." Regarded, as well they may be, as deeds of donation, Exhibits 3 and 5, as already seen, were done in the manner provided by law after the five-year period in which the alienation of the property was prohibited, and the donations were duly accepted by the donees. The fact that Apolonia Corpuz' interest in the homestead was indeterminate may have affected or voided the donations as regards the identity of the portions donated, but it did not the intrinsic validity of the donations. A deed which purports to convey a greater estate than the grantor has will be void only as to the excess, and construed as a conveyance of that which it was in the grantor's power to convey. (26 C. J. S., 418.)

The question which may be open to doubt is the extent of the estate conveyed by Exhibits 3 and 5. Apolonia Corpuz was owner of an undivided half of the homestead and her children of the other half, but the aforesaid documents purported to convey one specified part of the entire lot. Did the said documents operate to transfer all the grantor's undivided interest in lot No. 1108 or did the grantees take only one-half undivided interest in the northern portion of it, which was the subject matter of the two deeds?

We do not have to decide, and do refrain from deciding, this point, however, because Apolonia Corpuz who, besides the respondent, is the only person to be affected by any decision on this score is not a party to the instant proceedings. This point will have to be left open for consideration in case No. 68 in which she is defendant.

The preceding discussion suggests a fundamental, may, fatal, defect in the plaintiffs' action which heretofore has been overlooked and which now should be emphasized. The plaintiffs have no valid cause for the present petition

for certiorari; in fact they had no cause of action in the first instance and the suit should have been dismissed on this ground by the trial court. Their father's one-half interest in lot No. 1108, which is all they inherited, is not in any shape impaired by the decision of the Court of Appeals; nor is, and was at the time of the commencement of the action, alive except that in the present state of indivision of the property they are coowners of each and every part of it. In other words, they had and have now no right to question Exhibits 3 and 5 beyond demanding that the common property be partitioned instead of one specific part of it, the northern half, being allotted to their mother or her successors-in-interest. Yet they did not and do not now seek this remedy. What they sought and still seek is to recover for themselves the land in question as though they exclusively owned the whole lot in fee simple.

To recapitulate, the action should be dismissed as the Court of Appeals ruled. The plaintiff's right is limited to asking for the partition of lot No. 1108 according to law and the rule of court on partition of property held in common. This right may be pursued and decided in case No. 68, which is supposed to be pending trial, and so should be the question relative to the extent of Apolonia Corpuz' share assigned by her, a question which depends in a measure upon the parties' intention to be determined from the evidence. Whatever rights may have inured to the parties with reference to the improvements they may have introduced should also be adjudicated in the partition, or taken into account in effecting it along with Enero's long possession.

The decision of the Court of Appeals will be affirmed subject to the reservations and indications set forth in this opinion, with costs against the petitioners.

Paras, C. J., Pablo, Bengzon, Padilla, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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