

CANDIDA VILLALUZ, ET AL., PLAINTIFFS AND APPELLANTS, VS. JUAN NEME AND FELICISIMA VILLAFRANCA, DEFENDANTS AND APPELLEES.*G. R. No. L-14676. January 31, 1963*

Ponente: PAREDES, J.

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This case was elevated to this Court "on purely questions of law". The record discloses that Maria Rocabo died intestate on February 17, 1937, leaving a parcel of land granted her under Homestead Patent No. 18532, issued on May 20, 1930, and covered by Original Certificate of Title No. 217 (Exh. A), of the Register of Deeds of Camarizies Norte. She left three (3) daughters, named Sinforosa, Patricia and Maria, surnamed Villaluz and grandchildren, Candida, Emilia, Clemencia, Roberto and Isidra Villaluz, legitimate children of her deceased son Pedro Villaluz; Isabelo and Teodoro Napoles, legitimate sons of a deceased daughter, Severina Villaluz and Sinforosa and Leonor Napoles, legitimate daughters of another deceased daughter, Gregoria Villaluz.

After the approval of her application, but before the granting of the patent, on March 6, 1926, Maria Rocabo donated the southern portion of the land to Maria, and the northern portion to Patricia, in two notarial deeds of donations (Exhibits 1 and 7), giving them the right to present the deeds of donations to the Bureau of Lands. The said donees accepted the donations and took actual possession of their respective portions, but only Maria Villaluz remained on the entire land because Patricia left. Maria cultivated and improved the land from 1927 to 1938 inclusive. Maria and Patricia, however, forgot and cared not to present the deeds of donation to the Bureau of Lands. On March 27, 1930, the patent was granted and O.C.T. No. 217 was issued in the name of Maria Rocabo. Realizing that the deeds of donations were not in accordance with the formalities required by law, and because Sinforosa Villaluz, who had the custody of the title would not surrender it to the donees, unless given a share, upon the advice of a Notary Public, Carlos de Jesus, Maria, Patricia and Sinforosa, on September 1, 1939, executed a deed of extra-judicial partition (Exh. 2), among themselves, to the exclusion and without the knowledge and consent of their nephews and nieces, the herein plaintiffs-appellants, and in virtue thereof, O.C.T. No. 217 was cancelled and Transfer Certificate of Title No. 269 was issued in their names (Exh. 5), after having made representations that they were the only heirs of their mother, Maria Rocabo. On September 2, 1939, the 3 sisters declared the land for taxation purposes (Exh. 4). On September 11, 1939, they sold the land to Eamona Pajarillo, wife of Adriano Mago and Angela Pajarillo, wife of defendant Juan Neme (Exh. 3). Ramona and Angela declared the land for taxation purposes in their names (Exh. 6). On August 3, 1953, the heirs of Adriano and Ramona sold the undivided interest of the latter to Juan Neme (Exh. 8), who, on August 8, 1953, sold the southern half portion of the property in favor of defendant Felicisima Villafranca (Exh. 13). Thereafter, the plaintiffs-appellants came to know that the land which was in the administration of their aunts Sinforosa, Patricia and Maria, was already in the possession of the defendants. After attempts of amicable settlement had failed, the plaintiffs on June 3, 1954, filed a complaint for partition of said land and recovery of their respective shares on the property and accounting of the fruits thereof.

It also appears that the deeds of sale of the land in question executed in favor of the defendants, had not been registered in favor of the defendants and had not been recorded in accordance with Public Land Act No. 141 and the Land Registration Law, Act No. 496; that the vendees failed to have their deed of sale (Exh. 3), annotated on said T.C.T. No. 269, or have the title thereof transferred in their names.

After due trial, the lower court rendered judgment, dismissing the complaint,' with costs against the plaintiffs, and declaring the defendants the owners of the land described in the complaint and in the T.C.T. No. 269. Plaintiffs in their appeal, claim that the lower court erred (1). In not finding- that the extra-judicial partition (Exh. 2), only affected the partition of Sinforosa, Patricia and Maria, surnamed Villaluz, on the land in question and not the participation of the plaintiffs-appellants, as compulsory heirs of Maria Rocabo; (2) In finding that plaintiffs-appellants are already barred from claiming their participation thereon; and (3) In finding that defendants-appellees are owners, with right of possession, of the said land.

The contention of the plaintiffs-appellants is meritorious. The decision found to be an incontrovertible fact that the land in question should be divided among the heirs of the decedent Sinforosa, Patricia and Maria Villaluz and her grandchildren. Thus, the trial Court said :

"* * * The settlement of the estate of Maria Rocabo was summarily effected by the extrajudicial partition executed on September 1, 1939, by the three surviving children to the exclusion of the plaintiffs who were entitled to inherit by representation. By virtue of the extrajudicial partition Exhibit 1, the Original Certificate of Title No. 217 in the name of Maria Roeabo was cancelled and Transfer Certificate of Title No. 269 was issued in lien thereof in favor of Sinforosa Villaluz, Patricia Villaluz and Maria Villaluz on September 6, 1939, to the prejudice of the plaintiffs. * * *".

Furthermore, Maria having left no testament or last will, her heirs succeeded to the possession and ownership of the land in question from the time of her death (Art. 440, Old Civil Code, Art. 533, New Civil Code; *Lubrico vs. Arbado*, 12 Phil. 391). The deed of extrajudicial partition (Exh. 2), was fraudulent and vicious, the same having been executed among the 3 sisters, without including their co-heirs, who had no knowledge of and consent to the same. The partition, therefore, did not and could not prejudice the interest and participation of the herein plaintiffs-appellants, and the sale of the land to the defendants did not and could not also prejudice and affect plaintiffs-appellants' interest and participation thereon. The cancellation of O.C.T. No. 217 and the issuance of T.C.T. No. 269, did not likewise prejudice the interest and the participation of the plaintiffs-appellants. The three sisters could not have, sold what did not belong to them. *Nemo dat quod non habet*.

The trial court held that under Sec. 4, Rule 73 of the Rules, the plaintiffs' cause of action had already prescribed. This section, however, refers only to the settlement and distribution of the estate of the deceased by the heirs who make such partition among themselves in good faith, believing that they are the only heirs with the right to succeed. In case at bar, however, the 3 surviving sisters could not have ignored that they had co-heirs, the children of the 3 brothers who predeceased their mother. Considering that Maria Rocabo died during the regime of the Spanish Civil Code, the distribution of her properties should be governed by said Code, wherein it is provided that between co-heirs, the act to demand the partition of the inheritance does not prescribe (Art. 1965 [Old Civil Code], *Baysa, et al. vs. Baysa*, 53 Off. Gaz. 7282). Verily, the 3 living sisters were possessing the property as administratrices or trustees for and in behalf of the other co-heirs, plaintiffs-appellants herein, who have the right to vindicate their inheritance, regardless of the lapse of time (*Sevilla vs. de los Angeles*, L-7745; 51 Off. Gaz., 5590, and cases cited therein).

Moreover, the acquisition of the land in question is governed by the Public Land Act No. 141 and the Land Registration Law Act No. 496. And considering that the deed of sale had not been registered in accordance with the said laws, the same did not constitute a conveyance which would bind or affect the land, because the

registration of a voluntary sale of land is the operative act that transmits or transfer title (Tuason vs. Raymundo, 28 Phil. 635).

Defendants-appellees further argue that the extrajudicial partition should not be taken independently of the deeds of donation, as in fact, according to them, the crux of the case lies mainly in the two deeds of donation, which enabled the donees to possess the land and cut any and all rights of the plaintiffs-appellants to claim participation therein. In other words, it is pretended that after the alleged donations, the land in question was no longer a part of the intestate estate of Maria Rocabo, and the plaintiffs-appellants could no longer participate thereon. But the deeds of donation, according to the trial court, were defective and inoperative, because they were not executed in accordance with law. The trial court itself began to count the period of prescription "after the execution of the extrajudicial partition and the issuance of Transfer Certificate of Title No. 269." The donees themselves knew that the donations were defective and inoperative, otherwise they would not have subsequently decided to execute the deed of extra-judicial partition, which also goes to show that the rights of the three sisters and the vendees, stemmed from the said extrajudicial partition. The defendants-appellees finally argue that, this notwithstanding, the subsequent registration of the land in the names of the two donees and Sinforosa Villaluz pursuant to the extra-judicial partition on September 1, 1939, and the subsequent sale thereof by the registered owners to the defendants-appellees, on September 11, 1939, followed by the actual, adverse and continuous possession by the vendees and successors for more than 10 years, before the present complaint was filed, had barred the right of appellants to recover, title of the property and claim participation therein. Having held that the three sisters were mere trustees of the property for the benefit of the appellants, and it appearing that they had not repudiated the trust, defendants-appellees' pretension in this respect, is without merit. The finding in the appealed decision that "there is no evidence that the said defendants are not innocent purchasers and for value" (good faith), is of no moment in the case at bar. As heretofore adverted to, there was no effective sale at all, which would affect the rights of the plaintiffs-appellants.

Moreover, the lack of good faith on the part of the defendants-appellees can reasonably be inferred from their conduct in not presenting for registration the supposed deed of sale in their favor; in failing to annotate the sale on the T.C.T. of the alleged donees, and in not asking that a transfer certificate of title be issued in their (vendees') names. It may also be reasonably concluded that if they did not present the deed of sale for registration, it was because they knew that their vendors were not the sole and only heirs so as to entitle them to the ownership of the land in question.

In view hereof, the decision appealed from is hereby set aside, and the case is remanded to the court of origin for further and appropriate proceedings.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon, and Regala, JJ., concur.

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