

**BERNARDA COPON AND CECILIO COPON, PETITIONERS, VS.
FERNANDO UMALI AND PURIFICACION ORBETA, RESPONDENTS.***G.R. No. L-2588. July 25, 1950*

Ponente: REYES, J.

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Crispulo Armando died shortly before the last war, leaving a piece of land of his exclusive ownership but no heirs except his widow, Bernarda Copon, and his brother, Doroteo Armando. On this land the widow had built a house with money of her own and planted 5 lanzon trees. Without benefit of judicial proceeding for the administration and partition of the decedent's estate, the widow sold the land and its improvements to her brother, Cecilio Copon, in 1942, while the aforesaid Doroteo Armando, on his part, sold the same land to the spouses Fernando Umali and Purificacion Orbeta in 1945. As was to be expected, a dispute arose over the ownership of the land between the first and the second vendees. As a means of ending the dispute, the present action was instituted in the Court of First Instance by Fernando Umali and his wife against the widow and her brother to quiet title, and judgment having been rendered in favor of plaintiffs, the defendants took the case to the Court of Appeals. Partly confirming the judgment appealed from, the Court of Appeals adjudged the ownership of the land and the lanzon trees to plaintiffs and the house to Cecilio Copon. Not satisfied with this decision, defendants brought the case here for review on the following

"Assignment of Errors

"1. The Court of Appeals erred in sustaining respondents' objection to the admission of oral evidence, raised for the first time in the motion for reconsideration;

"2. The Court of Appeals erred in not considering that the objection not raised in the trial court is waived;

"3. The Court of Appeals erred in applying the statute of frauds to fully executed contract;

"4. The Court of Appeals erred in applying here the statute of 'frauds, when this case is not for performance of or violation of an oral agreement jover realty;

"5. The Court of Appeals erred in concluding that there is no proof of the sale or authority when it held that it "encuentra probados los siguientes hechos: * * * este solar con sus sembrados y casa fue vendido por la viuda Bernarda Copon a su hermano Cecilio Copon, * * * segun escritura Exh. 1' and 'y cuando lo vendio a su hermano Cecilio Copon estaba debidamente autorizado por su cuñado Doroteo Armando;'

"6. The Court of Appeals erred in giving more weight to negative testimony, inspite of its findings that the positive testimonies of the witnesses for petitioners are more candid; and

"7. The Court of Appeals finally erred in not allowing compensation to Bernarda Copon for the lanzones trees she had planted, she being a planter in good faith."

The first four specifications of error are addressed to the pronouncement contained in the following paragraph of the decision of the Court of Appeals:

"Doroteo Armando declaro que no autorizo de palabra ni por escrito en nihguna ocasion a su cuñada Bernarda Copon. Esta autorizacion debe constar por escrito (Regla 123, sec. 21 [e]), y el testimonio de Bernarda Copon sobre esta autorizacion carece de valor probatorio. Por tanto, Bernarda Copon no podia vender el terreno en disputa porque ella misma admitip que Crispulo Armando era su verdadero dueno, por haberio heredado de sus padres antes de su casamiento."

The transcript of the testimony is not before us, but it would appear from the briefs that the widow sought to uphold the validity of the sale to her brother by declaring at the trial that the said sale had been authorized by Doroteo Armando. Such declaration did not, of course, constitute competent proof of the alleged authority, since under the Statute of Frauds the only competent evidence of the agency in such case "is the authority of the agent in writing subscribed by such party, or secondary evidence of its contents." (Rule 123, Sec. 21 [e]) Appellants contend, however, that as the oral evidence was not objected to at the trial, the appellate court had no right to rule it out on appeal. Whatever merit there may be in this contention, the point raised is not decisive, for the said oral evidence is contradicted by Doroteo Armando's declaration (as reported in the decision below) that he had not on any occasion, verbally or in writing, given authority to the widow, and with this conflict in evidence, the conclusion that the widow did not have the authority to sell the land in question is a finding of fact which we have no authority to revise.

Error No. 5 refers to the following portion of the decision below:

"Esta (the widow) admite que su hoy difunto marido Crispulo ha heredado de sus padres el solar en disputa, y en vida le habia cedido el mencionado solar; y cuando lo vendio a su hermano Cecilio Copon estaba debidamente autorizado por su cuñado Doroteo Armando. No hay prueba sobre la cesion del solar ni sobre la alegada autoriaccion."

The appellants contend that by this pronouncement the Court of Appeals found it as a fact that the sale of the property by the widow was duly authorized by Doroteo Armando. It is obvious that appellants have misconstrued the decision due to somewhat loose phraseology employed by its writer. But it is evident from the context that the statement that when the widow sold the land to her brother she had the requisite authority from Doroteo Armando was an admission made by the widow and not a conclusion of fact made by the appellate court. This is obvious from the sentence immediately following said statement which reads: "No hay prueba sobre la cesion del solar ni sobre la alegada autorizacion."

Error No. 6 refers to the credibility of witnesses, a matter for the exclusive determination of the Court of Appeals as sole judges on question of fact in cases within their appellate jurisdiction.

In her last assignment of error the widow complains that the decision appealed from takes away from her the lanzon trees planted by her on the land in question without providing for compensation for their "planting and rearing," thus departing from the ruling laid down in *Dominado vs. Derayunan*, (49 Phil. 452), that expenses incurred in making such improvements are conjugal expenses for which the conjugal partnership must be reimbursed. While the point raised is correct as a matter of law, there is, however, no showing that any expenses have been incurred in connection with the planting of the trees in question, so that no such expenses could be recovered.

The foregoing disposes of the appellants' assignment of errors. We note, however, that the land in question would appear to be the only property left by the deceased Crispulo Armando, who, as already stated, died without heirs except his widow and one brother. Under the law (article 837, Civil Code) the widow inherits one-half of the property in usufruct. Such being the case, the widow is entitled to the usufruct of one-half of the land in controversy. This right to the usufruct being alienable (4 Manresa 420), its conveyance to her brother Cecilio Copon must be recognized. This point was not raised by the widow in this case, but in order to do full justice to

the parties, we hold that defendants-appellees shall hold the land in question subject to Cecilio Copon's right to the said usufruct until this is extinguished as prescribed by law.

With this only modification, the judgment brought here for review is affirmed, with costs against the petitioners.

Ozaeta, Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

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