

PEDRO PASCUA, LUISA CORPUZ, ANDRES PASCUA, VICTORIA- NO PASCUA AND BONIFACIA LORA, PLAINTIFFS AND APPEL- JANTS, VS. MARIANO COPUYOC, QUINTIN MELEBO, MARTA MANUEL, PEDRO PASCUA, ...

G.R. No. L-9595. November 28, 1958

Ponente: PADILLA, J.

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PADILLA, J.:

Appeal from an order dismissing the plaintiff's complaint in civil case No. 1445 of the Court of First Instance of Nueva Ecija upon motion of the defendant Quintin Melebo on the ground that the court proceedings to reopen for review a decree entered in land registration proceedings is barred by the statute, more than one year having elapsed since the entry of the decree.

The case involves Lot No. 2986 of the Cadastral Survey of Guimba, Cadastral Case No. 23, G.L.R.O. Record No. 401, situated in barrio Nagpandayan, municipality of Guimba, province of Nueva Ecija, containing an area of 43,256 sq. m. more or less. The plaintiffs' complaint filed on 29 March 1954, leaving out unnecessary averments, alleges that during the Spanish regime, Juan Pascua, grandfather of the plaintiffs Pedro Pascua and Andres Pascua, was the owner of a parcel of land designated as Lot No. 2986 of the Cadastral Survey of Guimba. On 2 February 1900 in a private instrument Juan Pascua donated it to the spouses Victoriano Pascua and Bonifacia Lora. On 31 January 1929 in a public instrument registered in the registry of deeds of the province, the spouses Victoriano and Bonifacia sold one-half of it to Andres Pascua. On 2 March 1936 in a public document also recorded in the same registry of deeds, for in consideration of the marriage of Pedro Pascua and Luisa Corpuz, the spouses Victoriano and Bonifacia donated the remaining half of the parcel of land to Pedro Pascua who accepted it in the document of donation. On 14 June 1939 Pedro Pascua and Andres Pascua entered into an agreement whereby they partitioned the parcel of land assigning the western half of the parcel of land; and from 1900 to 1936 the spouses to the latter. From 1900 to 1929 the plaintiffs Victoriano Pascua and Bonifacia Lora and from 1929 to the present Andres Pascua have been in possession of the eastern half of the parcel of land; and from 1900 to 1936 the spouses Victoriano Pascua and Bonifacia Lora and from 1936 to the present the spouses Pedro Pascua and Luisa Corpuz have been in possession of the western half of the parcel of land. Andres Pascua and Pedro Pascua and their predecessors-in-interest Victoriano Pascua and Bonifacia Lora have paid the land tax on the parcel of land from

1900 to the present time. Sometime in April 1940, Andres Pascua and Pedro Pascua discovered that on 31 October 1929 in the cadastral proceedings held by the Court in Guimba, Nueva Ecija, the registration of the title to the parcel of land was decreed in favor of the heirs of the late Juan Pascua, namely: (1) Maria Pascua, 55 years of age, widow; (2) Valeriana Pascua, 50 years of age, married to Julian Manuel; (3) Severina Pascua, 30 years of age, single; (4) Paulina Pascua, 30 years of age, widow; (5) Victoriano Pascua, 32 years of age, married to Bonifacia Lora; (6) Pedro Pascua, 30 years of age, married to Marcelina Arecheta; and (7) Petronila Pascua, 28 years of age, married to Marcelo Baltazar. They lost no time in demanding from the herein defendants, heirs of

the late Juan Pascua, and successors-in-interest of such heirs, except Quintin Melebo, Mariano Copuyoc and the Insular Treasurer, to reconvey it to them. On 21 April 1940, Angelo Reyes, as sole heir of the late Maria Pascua; on 29 April 1940, Pedro Pascua (married to Marcelina Arecheta) ; on 1 May 1940, Severina Pascua; and on 12 January 1941, Marcelo Baltazar, in his capacity as guardian ad litem of the minors Flaviano Baltazar and Virginia Baltazar, heirs of the late Petronila Pascua, executed separate deeds reconveying to Pedro Pascua and Andres Pascua their respective shares in the parcel of land. On 12 June 1940 Andres Pascua and Pedro Pascua filed a petition praying the Cadastral Court to—

* * * review the decision of the cadastral Court dated October 31, 1929, and thereafter adjudicate the above described parcel of land to the petitioners Pedro Pascua and Andres Pascua, and that an order also be issued for the issuance of decree in the names of the said petitioners Pedro Pascua and Andres Pascua.

The petition was finally set for hearing on 21 June 1940 after notice thereof upon Angelo Reyes, Pedro Pascua, Severina Pascua, Victoriano Pascua, Marcelo Baltazar, Flaviano Baltazar, Virginia Baltazar, Valeriano Pascua and Paulina Pascua. Only the last two named persons objected to the petition. Pedro Pascua, Severina Pascua, Marcelo Baltazar, as guardian of the minors Flaviano and Virginia gave their consent to the granting of the petition. Up to this time, the Court has not yet acted upon the motion. On 31 March 1952 the defendants Marta Manuel, Pedro Pascua, Angelo Reyes, Severina Pascua, Flaviano Baltazar and Quintin Melebo, a lawyer by profession, filed a motion praying for the issuance of the decree of registration of the parcel of land in favor of the aforementioned heirs of the late Juan Pascua. On 7 April 1952 the Court, ordered the General Land Registration Office to issue the corresponding decree. On 18 June 1952, the General Land Registration Office issued Decree No. 7264. On 7 July 1952 the Registrar of Deeds in and for the province of Nueva Ecija issued original certificate of title No. O-680 in the name of the heirs of the late Juan Pascua. On 3 August 1952 Pedro Pascua and Angelo Reyes, the latter claiming to be the sole heir of the late Maria Pascua and Paulina Pascua, sold to Marta Manuel their respective shares and interests in the parcel of land. On the same date, Flaviano Baltazar and Virginia Baltazar, heirs of the late Petronila Pascua, donated to Marta Manuel their respective shares and interests in the parcel of land. On 12 March 1953 Severina Pascua sold to Marta Manuel her share and interest in the parcel of land. On 30 November 1953, Marta Manuel executed an affidavit asserting that she is the only heir of the late Valeriana Pascua and entitled to the latter's share and interest in the parcel of land. The sales, donation and affidavit just mentioned were all executed with the legal assistance and advice of the defendants Quintin Melebo and Mariano Copuyoc who are attorneys-at-law. On 27 June 1953, the Registrar of Deeds in and for the province of Nueva Ecija cancelled original certificate of title No. O-680 and issued in lieu thereof transfer certificate of title No. NT-12784 in the name of Marta Manuel for six-seventh (6/7) undivided share, and of Victoriano Pascua, married to Bonifacia Lora, for one-seventh (1/7) undivided share, in the parcel of land. On 30 November 1953, Marta Manuel sold her six-seventh (6/7) undivided share and interest in the parcel of land to Quintin Melebo. On 12 February 1954, the Registrar of Deeds in and for the province of Nueva Ecija cancelled transfer certificate of title No. NT-12784 and issued in lieu thereof transfer certificate of title No. NT-15124 in the name of Quintin Melebo for six-seventh (6/7) undivided share in the parcel of land. On 22 March 1954, Quintin Melebo sold his share to Mariano Copuyoc. On 23 March 1954, the Registrar of Deeds cancelled transfer certificate of title No. NT-15124 and issued in lieu thereof transfer certificate of title No. NT-15403 in the name of Mariano Copuyoc for six-seventh (6/7) undivided share.

The plaintiffs' complaint further alleges that the series of transactions just narrated were fraudulently entered into to deprive them to their property, because the defendant heirs knew fully well that they had no longer any right or interest in the parcel of land, and the defendants Quintin Melebo and Mariano Copuyoc, lawyers by profession, had actual knowledge thereof. Upon the foregoing allegations the plaintiffs pray that judgment be rendered ordering and declaring the following:

(1)

The plaintiffs, the spouses Pedro Pascua and Luisa Corpuz and Andres Pascua, to be the true and absolute owners in equal shares of the above described land.

(2)

The nullity of Decree No. 7264 issued by the General Land Eegistration Office on June 18, 1952.

(3)

The nullity of the Deeds of Sale executed by Pedro Pascua, Angel (Angelo Reyes), and Severina Pascua in favor of the defendant Marta Manuel.

(4)

The nullity of the Deed of Donation executed by the defendant Flaviano Baltazar in favor of the defendant Marta Manuel.

(5)

The nullity of the Deed of Sale executed by the defendant Marta Manuel.

(6)

The nullity of the Deeds of Sale executed by the defendant Marta Manuel in favor of the defendant Quintin Melebo.

(7)

The nullity of the Deed of Sale executed by the defendant Marta Manuel in favor of the defendant Quintin Melebo.

(8)

The nullity of Original Certificate of Title No. O-680 and of Transfer Certificate of Title Nos. NT-12784, NT-15124, and NT- 15403.

(9)

The issuance of a Decree by the General Land Registration Office over the above described parcel of land in favor of the plaintiffs, the spouses Pedro Pascua and Luisa Corpuz and Andres Pascua.

(10)

The issuance by the Register of Deeds of Nueva Ecija the corresponding Original Certificate of Title in favor of the plaintiffs, the spouses Pedro Pascua and Luisa Corpuz and Andres Pascua, and based on the decree issued in accordance with the next preceding paragraph.

(11)

The defendants Mariano Copuyoc, Quintin Melebo, Marta Manuel, Pedro Pascua, Flaviano Baltazar, Severina Pascua and Angelo Reyes (to) pay jointly and severally the plaintiffs, the spouses Pedro Pascua, and Luisa Corpuz and Andres Pascua the amount of Seven Thousand Six Hundred Eighty Pesos (P7,680) with legal rate of interest from June 18, 1952, in the remote possibility that the plaintiffs are deprived of the above described parcel of land.

(12)

The defendant Insular Treasurer of the Philippines to pay the plaintiffs, the spouses Pedro Pascua and Luisa Corpuz and Andres Pascua the amount of Seven Thousand Six Hundred Eighty Pesos (P7,680.00) with legal rate of interest from June 18, 1952 in the remote possibility that said plaintiffs are deprived of the above described parcel of land and in the event that all the defendants named in the next preceding paragraph are insolvent.

(13)

The defendants Quintin Melebo, Mariano Copuyoc, Pedro Pascua, Angelo Reyes, Severina Pascua, Marta Manuel and Flaviano Baltazar to pay jointly and severally the plaintiffs the total sum of Ten Thousand Pesos (P10,000.00) as damages and attorney's fees.

(14)

The defendants to pay the costs of the suit; and it is further prayed that such other remedy which this Honorable Court may deem just and equitable be issued.

The defendants Quintin Melebo and Mariano Copuyoc filed separate answers specifically denying the allegations of the plaintiffs' complaint; pleading that they are innocent purchasers for value, having relied upon the certificates of title of their respective predecessors-in-interest which did not show any defect, infirmity or flaw; disclaiming actual knowledge thereof if there was any; and Mariano Copuyoc further asserting that the decree of registration cannot be reopened for review because more than one year from the issuance thereof already had elapsed. They pray that the complaint be dismissed. As counterclaim, Quintin Melebo claims that the malicious and defamatory imputation by the plaintiffs that he bought the property from Marta Manuel in bad faith adversely affected his integrity, good name and professional and business standing in the community for which he should be paid P10,000 by way of moral damages. As counterclaim, Mariano Copuyoc claims that the malicious, libelous and defamatory statements of the plaintiffs in their complaint and their taking forcible possession of six-seventh (6/7) part of the parcel of land in question caused him damages for which he should be indemnified in the sum of P50,000 and paid 100 cavanos of palay every harvest until the possession thereof be restored to him.

The Solicitor General, in behalf of the Insular Treasurer, filed an answer specifically denying certain allegations

of the plaintiffs' complaint and disclaiming knowledge or information sufficient to form a belief as to the others. As special defense, he avers that the late Juan Pascua could not have donated legally in a private document the parcel of land in question to the spouses Victoriano Pascua and Bonifacia Lora. Consequently, the latter could not have sold validly one-half thereof to Andres Pascua and donated propter nuptias the other half to Pedro Pascua. As the plaintiffs did not acquire any right or interest in the parcel of land, they were not deprived of their property by the operation of Act No. 496, as amended, and hence they cannot recover damages from the Assurance Fund. Furthermore, the plaintiffs' action which seeks to recover the parcel of land by reconveyance, precludes that of recovery for damages from the Assurance Fund. Lastly, the action to recover damages from the Assurance Fund already had prescribed, more than six years from April 1940, when the plaintiffs discovered the alleged erroneous and fraudulent decree of registration of the parcel of land in the name of the heirs of the late Juan Pascua, having already elapsed.[1] He prays that the complaint be dismissed.

The plaintiffs filed replies to the answers of Quintin Melebo and Mariano Copuyoc and answers to their counterclaim.

The defendants Flaviano Baltazar, Angelo Reyes, Severina Pascua, Marta Manuel and Pedro Pascua were declared in default for failure to appear despite summons.

On 18 May 1955 the defendant Quintin Melebo filed a motion to dismiss the plaintiffs' complaint on the ground that the cause of action is barred by the statute of limitations, the main relief sought by the plaintiffs being to annul and set aside the decree of registration, a relief which cannot legally be secured because the period of one year from the issuance thereof already had elapsed. The plaintiffs filed an answer to the motion to dismiss contending that the defendant Quintin Melebo not having set up in his answer the defense that the action is barred by the statute of limitations, he could no longer move for dismissal pursuant to section 5, Rule 8, and that such defense was waived for failure to set it up as defense in the answer pursuant to section 8, Rule 26. On 7 June 1955 the trial court granted the motion and dismissed the complaint without costs. The plaintiffs have appealed.

The suit commenced by the appellants, as may be gathered from the allegations of their complaint, seeks to annul the sale and donation made by the original registered owners and their successors-in-interest of their shares and interests in the parcel of land to Marta Manuel and conveyance by the latter to the appellee Quintin Melebo and the sale by the latter to the appellee Mariano Copuyoc, on the ground of fraud, lack of consideration, knowledge by the appellees Quintin Melebo and Mariano Copuyoc of the fact that the original registered owners and their successors-in-interest who had sold and donated their shares and interests in the parcel of land to Marta Manuel were not the true owners of such shares and interests, because they were the attorneys who assisted and advised the original registered owners and Marta Manuel in the series of transactions made on the parcel of land, and for that reason the two appellees Quintin Melebo and Mariano Copuyoc were aware of the flaw of the title of their predecessors-in-interest. The complaint alleges that the defendants Angelo Reyes, as sole heir of the late Maria Pascua, Pedro Pascua, married to Marcelina Arecheta, and Severina Pascua and Marcelo Baltazar, in his capacity as guardian ad litem of the minors Flaviano and Virginia Baltazar, heirs of the late Petronila Pascua, had executed deeds to reconvey to the appellants Pedro Pascua and Andres Pascua their respective shares and interests in the parcel of land; and that all the defendants knew that there was a pending petition in the cadastral court filed on 12 June 1940 by the appellants praying for the setting aside of the decision of the cadastral court rendered on 31 October 1929 and for a decree of registration of the parcel of land in the name of the appellants.

Such being the case the alternative prayer for nullity or annulment of the decree issued by the General Land Registration Office on 18 June 1952 cannot be construed as defeating the other prayers of the complaint which should be granted if the allegations set forth in the complaint could be established or proved. Of course, the nullity of the decree cannot be declared and ordered, because it would amount to reviewing the decree after the period

provided for in section 38, Act No. 496, as amended by Act No. 3630, had elapsed. Nevertheless, if the series of fraudulent transactions described in the complaint could be proved, then the Court should annul such sales and donation. If the appellants should succeed in establishing and proving that the defendants, who were the original registered owners of the parcel of land, have no longer any interest, right, share and participation in the parcel of land, the Court could direct them or their lawful heirs to reconvey their share to the appellants.

The other point involved in this appeal is whether after the appellee Quintin Melebo had filed his answer without setting up the defense that the action of the appellants is barred by the statute, as provided for in section 38, Act No. 496, as amended by Act No. 3630, he may still be allowed to move for the dismissal of the complaint on the ground that the action is barred by the statute of limitations, a defense he has failed to set up in his answer.

Section 5, Rule 8, provides:

If no motion to dismiss has been filed, any of the grounds therefor as provided in this rule, may be pleaded as an affirmative defense, and a preliminary hearing may be had thereof as if a motion to dismiss has been filed.

Section 8, Rule 26, provides:

A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

It is clear that the motion filed by the appellee Quintin Melebo for the dismissal of the complaint was not in accordance with the above quoted provisions of the Rules, because the appellee Quintin Melebo must be deemed to have waived the defense of prescription of the action for failure to set it up in his answer, pursuant to the provisions of section 8, Rule 26.

The order appealed from is set aside and the case remanded to the lower court for further proceedings in accordance with law, with costs against the appellee Quintin Melebo.

Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L. and Endeneia, JJ., concur. Paras, C. J., concurs in the result.

Order set aside.

[1]Section 107, Act No. 496

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