

**SILVERIO VERAN, LUIS VERAN, CRISTINA VERAN, LEON VERAN,
GREGORIO SALAMEDA, AND GENEROSA SALAMERA, PETITIONERS,
VS. THE HON. COURT OF APPEALS AND PRIMITIVA VILLAREAL,
RESPONDENTS.**

G.R. No. L-41154. January 29, 1988

Ponente: CORTES, J.

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CORTES, J.:

This is a petition for review on certiorari of a decision of the Court of Appeals in CA-G.R. No. 46367-R, entitled *Silverio Veran, et al. v. Primitiva Villareal*, reversing the trial court's decision declaring petitioners the owners pro-indiviso of the property subject of the litigation.

As found by the Court of Appeals in its Decision promulgated on May 27, 1975:

Plaintiffs brought this action to recover possession of a parcel of land located in Atimonan, Quezon and registered in the name of Aleja Glodoveza, mother and grandmother of said plaintiffs, against the defendant Primitiva Villareal, who died during the pendency of this action and was substituted accordingly.

It is alleged in the complaint that plaintiffs only allowed the aforementioned defendant, being a cousin, to erect her house on a portion of the land in dispute, which they inherited from Aleja Glodoveza, who in turn received it as her share from her mother's estate. Said defendant, however, refused to vacate the lot when demanded to do so repeatedly, claiming co-ownership also by inheritance from their common ancestor, the mother of Aleja Glodoveza. Thus, in the amended answer, defendant interposed the following special defenses:

- That the land particularly described in paragraph No. 5 of the Complaint was originally owned pro-indiviso and in common by the late Leocadia Glodoveza, defendant's mother, the deceased Aleja Glodoveza, plaintiffs' predecessor, and the late Ladislawa Glodoveza, all children of Cornelio Glodoveza and Filomena Padilla, after whose death their children above mentioned orally partitioned said land, by virtue of which the portion occupied by the defendant was given and received by her from her predecessor, and the other portion by the plaintiffs and other co-heirs over said realty.

a-1. That in the said oral extrajudicial partition, the above-indicated Lot No. 1744 was adjudicated to the three children of the late spouses Cornelio Glodoveza and Filomena Padilla above-named, for a special purpose, i.e., to enable each of them to own a land by the roadside suited for residential purpose.

a-2. That of all the real properties, left by the aforementioned spouses, the plaintiffs' mother Aleja Glodoveza received as her share in the extrajudicial partition of Lot No. 1742 a portion of Lot No. 1744, consisting of residential and rice land; and a part of Lot No. 1832, all of the Atimonan Cadastre; whereas, the defendant's mother Leocadia Glodoveza received only two parcels of land.

- That even if the plaintiffs have registered the said land in whole as described in paragraph No. 5 of the cited Complaint, yet it is also a fact that said registration was secured thru fraud, deceit, misrepresentation and by illegal means to great damage of herein defendant and the heirs of Ladislawa Glodoveza, and she and the latter

have filed their protest to the Director of Lands after they learned that the plaintiffs through fraud, deceit, misrepresentation, by illegal means and irregularly obtained their free patent, as evidenced by the aforesaid protest together with the two affidavits supporting it to be presented at the trial of this case.

Because of the pendency of the administrative case as mentioned in the answer, the trial of the case was suspended indefinitely on petition of both parties. However, when the plaintiffs changed their counsel, the latter moved for the setting of the case for trial after almost four years from Dec. 5, 1955 when the complaint was filed. The motion was granted, but for failure of the defendants to appear on the date set for hearing, plaintiffs were allowed to present their evidence ex-parte, after which decision was rendered on Dec. 15, 1959 in favor of the plaintiff and against the defendant. Upon a motion for reconsideration, the decision was set aside in order to allow the defendant to present her evidence, after filing an amended answer, on the advice of the trial court itself, so as to include a prayer for the reconveyance of the disputed portion of the lot, said lot, described as Lot 1744, having been already registered in the name of Aleja Glodoveza, the predecessor of plaintiffs.

Defendant offered as part of her evidence the deposition of Apolonia Glodoveza, but it was denied admission by the trial court on the ground that no proof was submitted to show that the witness was so old and infirm as not to be able to come to court to testify, as contended by plaintiffs in their opposition to the deposition-taking.

After trial, judgment was rendered the dispositive portion reading as follows:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant, declaring the former owners pro indiviso of Lot No. 1744, covered by Original Certificate of Title No. P. 1589 of the Register of Deeds of Quezon, and ordering the latter to vacate the portion of the land occupied by her house, to pay the plaintiff the sum of P300.00 as damages, P200.00 as attorney's fees and the costs of this suit." (pp. 1-4, Decision).

On appeal, the Court of Appeals reversed the decision of the trial court:

WHEREFORE, the judgment appealed from should be as it is hereby reversed, and the complaint is accordingly dismissed. On the counterclaim, judgment is hereby rendered ordering the appellees to reconvey the portion of Lot No. 1744, designated in the subdivision survey plan as Lot No. 1744-B to the appellant, as substituted by her heirs. Costs against appellees in both instances. (p. 11, Decision).

As respondent court also denied petitioners' motion for reconsideration, the case was elevated to this Court. After petitioner filed her comment, this Court, on November 5, 1975, resolved to give the petition due course.

After petitioner and respondent filed their respective briefs, the case was submitted for decision.

Petitioners assign as errors the following:

I

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THE REJECTION BY THE COURT A QUO OF WITNESS APOLONIA GLODOVEZA'S DEPOSITION AS ERRONEOUS, DESPITE THE FACT THAT THE COURT A QUO'S CONCLUSION UNDER THE PREMISES WAS IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THE RULES OF COURT.

II

THE HONORABLE COURT OF APPEALS ERRED IN GIVING UNDUE APPRECIATION TO THE MATTERS RELATED IN THE IRREGULARLY-ACCEPTED DEPOSITION OF WITNESS APOLONIA GLODOVEZA WHEN THE SAME MATTERS -- STANDING ALONE -- ARE HARDLY ADEQUATE TO BELIEVE THE CONTRARY EVIDENCE PRESENTED BY PETITIONERS.

III

THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT THE LETTER DATED FEBRUARY 25, 1921 OF FEDERICO VERAN, HUSBAND OF PETITIONER'S PREDECESSOR-IN-INTEREST, ADDRESSED TO PRIVATE RESPONDENT, SEEKING A P1.00 YEARLY CONTRIBUTION FOR TAXES COULD GIVE RISE TO ANY PRESUMPTION THAT PRIVATE RESPONDENT HAD BEEN IN POSSESSION OF THE DISPUTED PORTION OF THE LAND IN QUESTION SINCE 1921.

IV

THE HONORABLE COURT OF APPEALS ERRED IN ATTACHING MISPLACED SIGNIFICANCE ON EXHIBIT "4" -- A SUBDIVISION SURVEY PLAN OF THE LOT IN QUESTION -- WHEN WHATEVER PROBATIVE VALUE EXHIBIT "4" MAY HAVE ON THE MATTER IN ISSUE IS RENDERED PRACTICALLY USELESS SINCE IT WAS PREPARED ALMOST ONE (1) YEAR AFTER ALEJA GLODOVEZA -- THE PETITIONERS' PREDECESSOR-IN-INTEREST -- HAD OBTAINED AN ORIGINAL CERTIFICATE OF TITLE (NO. P-1589) WHICH ACTUALLY LAID TO REST ANY DOUBT AS TO THE OWNERSHIP OF THE DISPUTED PORTION OF THE LOT IN QUESTION.

V

THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT "NO EVIDENTIARY WORTH CAN, THEREFORE, BE ATTACHED TO WHAT TRANSPIRED IN THE SAID ADMINISTRATIVE PROCEEDINGS (BEFORE THE BUREAU OF LANDS)" WHEN SAID ADMINISTRATIVE PROCEEDINGS HAD PRECISELY BEEN DESIGNED TO LAY AT REST WHATEVER CONFLICTING CLAIMS THE CONTENDING PARTIES HAD OVER THE PROPERTY IN QUESTION.

VI

THE HONORABLE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE COURT A QUO. (pp. 1-3, Brief for Petitioners).

Save for the first and second, which are closely interrelated, the errors assigned by petitioners shall be discussed separately.

- The deposition of Apolonia Glodoveza was taken on January 21, 1961. At that time the applicable rules of procedure were provided in the (old) Rules of Court, Section 1 of Rule 18 of which states:

Section 1. Depositions pending action, when may be taken. -- By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories. * * *

Considering that the deposition was taken long after the answer had been filed and served, there was therefore no need to seek the approval of the trial court for the taking of the deposition, notice of such taking being sufficient. In the instant case, it is not disputed that notice of the deposition-taking was received by petitioners well before the intended date and that although petitioners filed an opposition, this was not acted upon by the trial court before the taking of the deposition.

Leave of court for taking depositions should, however, be distinguished from the approval of the court for the use of the deposition. Under Section 4 of Rule 24 of the Revised Rules of Court, which was already in force and effect when the deposition was offered in evidence:

* * *(c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

* * *

(3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;

* * *

Thus, with regard to the use of a deposition, there is occasion for the court to exercise its discretion, the proper time being when the deposition is formally offered in evidence.

In the instant case, the trial court did not admit the deposition when it was formally offered, on the ground that petitioners were denied their right to cross-examine the deponent. However, the Court of Appeals, in deciding to admit the deposition, observed:

The rejection of said deposition is assigned as one of the errors of the trial court. From the facts sufficiently disclosed by the records, We find no irregularity in its execution. The reason for the taking was disclosed not only in the notice, but also in the deposition itself. To reject such a deposition on the ground considered by the trial court smacks of a technicality which does not serve the ends of substantial justice. The counsel of the plaintiffs was notified sufficiently in advance of the deposition-taking, and his opposition was not acted upon favorably before the day set for the taking of the deposition. If he failed to appear on that day, as he could have done if he exerted diligent efforts, he did so at his own risk. (p. 7, Decision).

The findings of fact supporting this conclusion of the Court of Appeals not being disputed, We agree that, under the circumstances, petitioners' contention that they were denied their right to cross-examine the deponent is unfounded.

Further, as pointed out by respondent, before the deposition was formally offered, respondent had already testified as to the age of deponent:

ATTY. BALDEO:

Q Do you know Apolonia Glodoveza?

A Yes, sir.

Q Where is she now, do you know?

A She is in Atimonan.

Q Do you know how old she is now?

A She is very old, more or less, ninety years. (tsn, pp. 13-14, May 30, 1963).

Apparently, this was overlooked by the trial court when it denied admission of the deposition.

In view of the foregoing, it cannot be argued that the Court of Appeals committed a reversible error when it decided to admit the deposition of Apolonia Glodoveza.

As correctly observed by respondent court:

With the admission of the deposition, a very significant fact gets into the records which is that the assignment of the lot in question was to the three sisters, not to Aleja alone, and the segregation or apportionment thereof among the said sisters was made by their eldest sister, Ruperta Glodoveza in 1905. (p. 7, Decision).

As found by the Court of Appeals, this conclusion is buttressed by the testimony of Enrique Glodoveza (p. 6, Decision) and documentary evidence (p. 8, Decision).

This disposes then of petitioners' first two assignments of error.

- Petitioners argue that respondent court erred in concluding that the letter (Exhibit 2) dated February 25, 1921 of Francisco Veran addressed to private respondent, seeking a P1.00 yearly contribution for taxes gave rise to the presumption that private respondent had been in possession of the disputed portion of the lot since 1921.

The pertinent portion of Exhibit 2 reads as follows:

At ang ikalawa, ay ang isang bagay na bakasakaling hindi na itagubilin ng inyong ina bago siya yumaon. Ang baggy na ito ay na tutukol sa kabuwisan ng kapisang lupa na kalakip sa deklaracion sa aking pangalan, kaparis din ng sa ina mong Lawa (Ladislawa). Ang lugar na ito ay alam ninyo, sapagkat kayo ang naglinis at nag halaman doon.

At dahil dito ay gusto kong inyong ipagpatuloy ang pagambag sa ka buwisan nito sa halagang peso (P1.00) sa taon-taon, paris din ang pagambag ng yomaon ninyong ina.

At once it will be noticed that the letter does not specify which parcel of land is referred to. Respondent claims that it referred to the disputed lot and this view was sustained by the Court of Appeals. Petitioners contend that the letter refers to a different lot owned by Francisco Veran. As the facts relative to this matter are not quite clear, this Court is inclined to respect the findings of the Court of Appeals:

Thus Exhibit 2 would seem to prove that as early as Feb. 25, 1921, appellants were already in possession of the disputed portion of Lot No. 1744, as by said exhibit, it is shown that on the date aforementioned, appellees' father, Francisco Veran, was asking Mr. and Mrs. Celso Villacruel (nee Primitiva Villareal) for a contribution of P1.00 for payment of yearly tax on the property in question. This document gives credence to Enrique Glodoveza's testimony that it was since 1910 that appellant has occupied the lot in dispute not only since 1950 as claimed by appellees. (p. 8, Decision).

- Contrary to petitioners' contention, the expiration of the one-year period from the issuance of an Original Certificate of Title covering the disputed lot in favor of the heirs of Aleja Glodoveza will not bar private respondent's action for reconveyance. Private respondent's counterclaim for reconveyance was made in her amended answer filed on March 4, 1961, some seven and a half years after the issuance of the title in the name of the heirs of Aleja Glodoveza on December 3, 1953, but well within the ten-year prescriptive period for bringing an action for reconveyance based on an implied or constructive trust resulting from fraud in securing title [Diaz v. Gorricho, 103 Phil. 261(1958); J. M. Tuazon & Co., Inc. v. Magdangal, G.R. No. L-15539, January 30, 1962, 4 SCRA 84; Alzona v. Capunitan, G.R. No. L-10228, February 28, 1962, 4 SCRA 450]. Thus, in Gonzales v. Jimenez, G.R. No. L-19073, January 30, 1965, 13 SCRA 80, the Court said:

Since it appears that the land in question was obtained by defendants thru fraudulent representations by means of which a patent and a title were issued in their name, they are deemed to hold it in trust for the benefit of the person prejudiced by it. Here this person is the plaintiff. There being an implied trust in this transaction, the action to recover the property prescribes after the lapse of ten years. Here this period has not yet elapsed.

Further, no error was committed by the Court of Appeals in appreciating the significance of the subdivision

survey plan of the disputed lot (Exhibit 4). The fact that it was prepared a year after the title was issued in the name of the heirs of Aleja Glodoveza does not per se render misplaced respondent court's reliance upon it. The division in the subdivision survey plan of the disputed lot into three portions assigned to Leocadia, Aleja and Ladislawa, respectively, merely served to corroborate testimony as to the lot's apportionment among the three sisters.

- Neither do We find error in respondent court's conclusion that no evidentiary worth can be attached to what transpired in the administrative case pending before the Bureau of Lands, considering that the decision rendered by said bureau was still pending appeal before the Department of Agriculture at the time the decision of the trial court was rendered. Further, it is not disputed that the decision of the Bureau of Lands was never offered in evidence, but was merely attached to petitioners' "Urgent Ex-parte Petition to Render the Much Awaited and Long Overdue Judgment." Section 35 of Rule 132 of the Revised Rules of Court is quite clear that "the court shall consider no evidence which has not been formally offered."

- To conclude, no reversible error was committed by the Court of Appeals when it reversed the decision of the lower court.

WHEREFORE, the instant petition is DISMISSED for lack of merit.

Fernan, (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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