

MUNICIPALITY OF VICTORIAS, PETITIONER, VS. THE COURT OF APPEALS, NORMA LEUENBERGER AND FRANCISCO SOLIVA, RESPONDENTS.

G.R. No. L-31189. March 31, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a Petition for Review on Certiorari of the decision[*] of respondent Court of Appeals promulgated on September 29, 1969 in CA-G.R. No. 35036-R (Rollo, p. 11) setting aside the decision[**] of the Court of First Instance of Negros Occidental, Branch 1, dated September 24, 1964 which dismissed the complaint for recovery of possession in Civil Case No. 181-S and declared the cemetery site on Lot No. 76 in Victorias as property of the municipality of Victorias (Record on Appeal, p. 9).

The dispositive portion of the questioned decision reads as follows:

"IN VIEW OF THE FOREGOING, the judgment of the lower court is hereby set aside and another is hereby rendered:

(1) Ordering the defendant municipality and/or thru its appropriate officials to return and deliver the possession of the portion of Lot 76 used as cemetery or burial site to the plaintiff-appellant.

(2) Ordering defendant municipality to pay the plaintiff-appellant the sum of P400.00 a year from 1963 until the possession of said land is actually delivered."

Lot No. 76 containing an area of 208,157 sq. meters forms a part of Cadastral Lot No. 140 (Rollo, p. 11), a 27.2460 ha. sugar land located in Bo. Madanlog, Victorias, Negros Occidental, in the name of the deceased Gonzalo Ditching under Tax Declaration No. 3429 of Negros Occidental, for the year 1941 (Exh. "3", Folder of Exhibits, p. 22). He was survived by his widow Simeona Jingco Vda. de Ditching and a daughter, Isabel, who died in 1928 (TSN, July 1, 1964, p. 7) leaving one offspring, respondent Norma Leuenberger, who was then only six months old (TSN, July 1, 1964, p. 34).

Respondent Norma Leuenberger, married to Francisco Soliva, inherited the whole of Lot No. 140 from her grandmother, Simeona J. Vda. de Ditching (not from her predeceased mother Isabel Ditching). In 1952, she donated a portion of Lot No. 140, about 3 ha., to the municipality for the ground of a certain high school, and had 4 ha. converted into a subdivision (TSN, July 1, 1964, p. 24).

In 1963, she had the remaining 21 ha. or 208, 157 sq. m. relocated by a surveyor upon request of lessee Ramon Jover who complained of being prohibited by municipal officials from cultivating the land. It was then that she discovered that the parcel of land, more or less 4 ha. or 33,747 sq. m. used by Petitioner Municipality of Victorias, as a cemetery from 1934, is within her property which is now identified as Lot 76 and covered by TCT No. 34546 (TSN, July 1, 1964, pp. 7-9; Exh. "4", Folder of Exhibits, p. 23 and Exh. "A", Folder of Exhibits, p. 1).

On May 20, 1963, Respondent wrote the Mayor of Victorias regarding her discovery, demanding payment of past rentals and requesting delivery of the area allegedly illegally occupied by Petitioner (Exh. "G", Folder of Exhibits, p. 15). When the Mayor replied that Petitioner bought the land she asked to be shown the papers concerning the sale but was referred by the Mayor to the municipal treasurer who refused to show the same (TSN, July 1, 1964, pp. 32-33).

On January 11, 1964, Respondents filed a complaint in the Court of First Instance of Negros Occidental, Branch 1, for recovery of possession of the parcel of land occupied by the municipal cemetery (Record on Appeal, p. 1). In its answer, petitioner Municipality, by way of special defense, alleged ownership of the lot, subject of the complaint, having bought it from Simeona Jingco Vda. de Ditching sometime in 1934 (Record on Appeal, p. 7). The lower court decided in favor of the Municipality. On appeal, Respondent appellate Court set aside the decision of the lower court (Record on Appeal, p. 9); hence, this petition for review on certiorari.

This petition was filed with the Court on November 6, 1969 (Rollo, p. 2), the Record on Appeal on December 19, 1969 (Rollo, p. 80)). On January 5, 1970, the Court gave due course to the petition (Rollo, p. 84).

The Brief for the Petitioner was filed on April 1, 1970 (Rollo, p. 88), the Brief for Respondents was filed on May 18, 1970 (Rollo, p. 92).

On July 8, 1970, the Court resolved to consider the case submitted for decision without Petitioner's Reply Brief, Petitioner having failed to file the brief within the period which expired on June 10, 1970 (Rollo, p. 99).

On motion of counsel for the Respondents (Rollo, p. 104), the Court resolved on June 30, 1972 to allow respondent Francisco Soliva to continue the appeal in behalf of the estate of respondent Norma Leuenberger who died on January 25, 1972, Respondent Francisco Soliva having been appointed special administrator in Special Proceedings No. 84-V of the Court of First Instance of Negros Occidental (Rollo, p. 110).

In their brief, petitioner raised the following errors of respondent Court of Appeals: (Brief for the Petitioner, p. 1-3);

I.

The Honorable Court of Appeals erred in holding that respondents Norma Leuenberger and Francisco Soliva are the lawful owners of the land in litigation as they are estopped from questioning the possession and ownership of herein petitioner which dates back to more than 30 years.

II.

The Honorable Court of Appeals also erred in ordering the petitioner to deliver the possession of the land in question to the respondents Norma Leuenberger and Francisco Soliva, by holding that non-annotation on the Torrens Certificate of Title could not affect the said land when the possession by the petitioner of the said land for over 30 years and using it as a public cemetery for that length of time are sufficient proof of purchase and transfer of title and non-annotation of the Certificate of Title did not render the sale ineffectual.

III.

The Honorable Court of Appeals further erred in ordering the petitioner Municipality of Victorias to pay the respondents the sum of P400.00 a year from 1963 until possession is actually delivered because under the law, an owner of a piece of land has no obligation to pay rentals as it owns and possesses the same.

There is merit in the petition.

It is undisputed that petitioner failed to present before the Court a Deed of Sale to prove its purchase of the land in question which is included in the Transfer Certificate of Title No. T-34546 in the name of private respondent Norma Leuenberger.

The pivotal issue in this case is whether or not the secondary evidence presented by the petitioner municipality is sufficient to substantiate its claim that it acquired the disputed land by means of a Deed of Sale.

Under the Best Evidence Rule when the original writing is lost or otherwise unavailable, the law in point provides:

"Sec. 4. Secondary evidence when original is lost or destroyed. — When the original writing has been lost or destroyed, or cannot be produced in court, upon proof of its execution and loss or destruction or unavailability, its contents may be proved by a copy, or by a recital of its contents in some authentic document, or by the recollection of witnesses." (Rule 130, Rules of Court).

In lieu of a Deed of Sale, petitioner presented a certificate issued by the Archives Division of the Bureau of Records Management in Manila, of a page of the 1934 Notarial Register of Vicente D. Aragon with the following entries:

"Nature of Instrument - Compra venta 2 porciones Terrenos: Lotes Nos. 140-A y 140-B, Victorias, Neg. Occ.; pago por esso despues aprobacion Juscado la Insta, Neg. Oc. causa civil 5116 Vendedora: — Simeona Jingco Vda. de Ditching administradora Abint. G. Ditching
Comprador: — Municipio Victorias, Neg. Oc..... por su Pres. Mpal.
Vicente B. Arnaez Valor: — P750.00 ...
Vease copia correspondiente.Names of Persons Executing/Acknowledging:Simeona Vda. de Ditching
Adm. Abint actuacion especial No. 5116
Juscado la Insta Neg. Oc.

Vendedora

Vicente B. Arnaez
Pres. Mpal. Victorias

Comprador

"Witnesses to the Signatures:

Esteban Jalandoni
Gregorio Elizalde

Date: Month

9 Julio 1934

Fees: P2.00

Cedulas:

Exenta por su sexo
P1027880 Enero 26/34 Victorias, Neg. Oc.

Remarks:

En Victorias, Neg. Oc.
Los anexes A. y B. estan unidos
solamente en el original de la escritura."

Respondent Court of Appeals was of the view (Rollo, p. 16) that a mere entry in the notarial register of a notary public of an alleged sale cannot prove that a particular piece of land was sold by one person to another, one of the important requirements being the indication of the area and the technical description of the land being sold. In the present case, since no deed of sale could be produced, there is no way of telling what particular portion of the property was sold to defendant municipality and how big was the sale of the land conveyed to the defendant municipality.

It will be observed that the entries in the notarial register clearly show: (a) the nature of the instrument. — a deed of sale; (b) the subject of the sale - two parcels of land, Lot Nos. 140-A and 140-B; (c) the parties of the contract — the vendor Simeona J. Vda. de Ditching in her capacity as Administrator in Civil Case No. 5116 of the Court of First Instance of Negros Occidental and the vendee, Vicente B. Ananosa, Municipal Mayor of Victorias; (d) the consideration P750.00; (e) the names of the witnesses Esteban Jalandoni and Gregorio Elizado; and (f) the date of the sale on July 9, 1934.

It is beyond question that the foregoing certificate is an authentic document clearly corroborated and supported by: (a) the testimony of the municipal councilor of Victorias, Ricardo Suarez, (Original TSN Hearing of September 14, 1964, pp. 12-22) who negotiated the sale; (b) the testimony of Emilio Cuesta, (Original TSN Hearing of September 14, 1964, pp. 22-38) the municipal treasurer of said municipality, since 1932 up to the date of trial on September 14, 1964, who personally paid the amount of P750.00 to Felipe Leuenberger as consideration of the Contract of Sale; (c) Certificate of Settlement (Original Exhibits, p. 20) "as evidence of said payment"; (d) Tax Declaration No. 429 (Ibid., p. 22) which was cancelled and was substituted by Tax Declaration No. 3600 covering the portion of the property unsold (Decision, CFI, Neg. Occ. Orig. Record on Appeal, p. 6) and (e) Tax Declaration No. 3601 (Ibid., p. 23) in the name of the Municipal Government of Victorias covering the portion occupied as cemetery.

Tax Declaration No. 3601 shows on its face the boundaries as follows:

"North - NE - Lot No. 140-C of the Subdivision
South-SW - Lot No. 140-C of the Subdivision
West - NW - Lots Nos. 140-C & 140-B of the Subdivision."
The area is 33,747 sq.m.

At the back Exh. 4-A, the sale of a portion of the lot to the Municipality of Victorias was clearly explained as follows:

"Note: The whole Lot No. 140, belongs to Norma Leuenberger as evidenced by a Transfer of Cert. of Title No. 18672. Portion of this Lot, (30,000 sq. m. was sold to Municipality of Victorias for Cemetery Site as evidenced by a Deed of Sale executed by Simeona Jingco Vda. de Ditching in favor of the aforesaid Municipality and ratified by Notary Public Mr. Vicente Aragon under Doc. No. 132; Page No. 2; Book No. 10, Series of 1934."

At the lowest portion under Memoranda it was explained that —

"The area under this declaration includes 3,746 sq. meters donated by Mrs. Simeona Jingco Vda. de Ditching and used as road leading to the cemetery." (Exh. 4; Original Exhibits, p. 23).

The above-mentioned testimonies and documentary evidence sufficiently identify the land sold by the

predecessors-in-interest of private respondent. To insist on the technical description of the land in dispute would be to sacrifice substance to form which would undoubtedly result in manifest injustice to the petitioner.

Moreover, it is expressly provided by law that the thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee. (Civil Code Art. 1497). Where there is no express provision that title shall not pass until payment of the price, and the thing sold has been delivered, title passes from the moment the thing sold is placed in the possession and control of the buyer. (*Kuenzle & Streiff vs. Watson & Co.*, 13 Phil. 26 [1909]). Delivery produces its natural effects in law, the principal and most important of which being the conveyance of ownership, without prejudice to the right of the vendor to claim payment of the price. (*Ocejo, Perez & Co. v. International Banking Corp.*, 37 Phil. 631 [1918]).

Similarly, when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed, the contrary does not appear or cannot be clearly inferred. (Civil Code Art. 1498). The execution of the public instrument operates as a formal or symbolic delivery of the property sold and authorizes the buyer to use the document as proof of ownership. (*Florendo v. Foz*, 20 Phil. 388 [1911]).

In the case at bar it is undisputed that petitioner had been in open, public, adverse and continuous possession of the land for a period of more than thirty years. In fact, according to the municipal treasurer there are over 1000 graves in the cemetery. (Decision, Court of Appeals, Rollo, pp. 11-22).

As correctly observed by Justice Magno S. Gatmaitan in his dissenting opinion (Rollo, pp. 23-28) in the decision of this case by the Court of Appeals, the evidence establishes without debate that the property was originally registered in 1916. Plaintiff was born only in 1928 and cannot possibly be the registered owner of the original lot 140 at the time. Indeed, according to her own evidence, (Exhibit A; Original Record pp. 1-3) she became the registered owner only in 1963. Likewise, it is undisputed that in the intestate estate of Gonzalo Ditching, the grandfather of private respondent Norma Leuenberger, it was her grandmother, Simeona, the surviving spouse of Gonzalo who was named judicial administratrix. According to Norma's own testimony, Isabel, her mother, died in 1928 (TSN Aug. 12, 1964, p. 34) while Simeona the grandmother died in 1942. (Ibid.) Therefore, as of 1934 when a document of sale was executed by Simeona in favor of the municipality of Victorias as indubitably shown in the notarial register (Exhibit 5-A) in question, Simeona was still the administratrix of the properties left by her husband, Gonzalo and of their conjugal partnership. Consequently, she is the only person who could legally dispose of by sale this particular four-hectare portion of Lot 140. And so it is, that in 1934, Simeona Ditching in her capacity as judicial administratrix made and executed the document described in the Notarial Report as Lots 140-A and 140-B, showing clearly that they are portions of the original big Lot 140. As this conveyance was executed by the judicial administratrix, unquestionably the party authorized to dispose of the same, the presumption must be that she did so upon proper authority of the Court of First Instance.

As to the description of the property sold, the fact that a notarial report shows that they are portions of Lot 140 and the property in question occupied by the public cemetery is admittedly a portion of said lot in the absence of evidence that there were other portions of Lot 140 ceded unto the petitioner municipality, the inevitable conclusion is that the sale executed in the Notarial Register refers to the disputed lot.

Unfortunately, the purchaser Municipality of Victorias failed to register said Deed of Sale; hence, when Simeona Jingco Vda. de Ditching died, her granddaughter, respondent Norma Leuenberger claimed to have inherited the land in dispute and succeeded in registering said land under the Torrens system. Said land is now covered by Transfer Certificate of Title No. T-34036 (Exhibit A, supra) issued by the Register of Deeds of Negros Occidental on March 11, 1963 in the name of Norma Leuenberger, married to Francisco Soliva, containing an area of

208,157 square meters. As registered owner, she is unquestionably entitled to the protection afforded to a holder of a Torrens Title.

Admittedly, it is well-settled that under the Torrens System, "Every person receiving a certificate of title in pursuance of a decree of registration, ... shall hold the same free of all encumbrance except those noted on said certificate x x x." (Sec. 39, Act 496, now Sec. 43, PD 1529).

In the instant case, however, respondent Norma Leuenberger admitted that she inherited the land covered by Transfer Certificate of Title No. T-34036 from her grandmother, who had already sold the land to the petitioner in 1934; hence, she merely stepped into the shoes of her grandmother and she cannot claim a better right than her predecessor-in-interest. When she applied for registration of the disputed land, she had no legal right to do so as she had no ownership of the land since land registration is not a mode of acquiring ownership but only of confirming ownership of the land. (Grande, et al. vs. Court of Appeals, et al., 115 Phil. 521.) "The Torrens System was not established as a means for the acquisition of title to private land, x x x" It is intended merely to confirm and register the title which one may already have on the land. Where the applicant possesses no title or ownership over the parcel of land, he cannot acquire one under the Torrens system of Registration. (Torela, et al., vs. Torela, et al., L-27843, October 11, 1979).

While an inherently defective Torrens title may not ordinarily be cancelled even after proof of its defect, the law nevertheless safeguards the rightful party's interest in the titled land from fraud and improper use of technicalities by allowing such party, in appropriate cases, to judicially seek reconveyance to him of whatever he has been deprived of as long as the land has not been transferred or conveyed to a purchaser in good faith. (Pedro Pascua, et al., vs. Mariano Gopuyoc, et al., L-23197, May 31, 1977.)

The Civil Code provides:

"Art. 1456. If the property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes."

Thus, it has been held that where the land is decreed in the name of a person through fraud or mistake, such person is by operation of law considered a trustee of an implied trust for the benefit of the persons from whom the property comes. The beneficiary shall have the right to enforce the trust, notwithstanding the irrevocability of the Torrens title and the trustee and his successors-in-interest are bound to execute the deed of reconveyance. (Pacheco vs. Arro, 85 Phil. 505; Escobar vs. Locsin, 74 Phil. 86).

As the land in dispute is held by private respondents in trust for the Municipality of Victorias, it is logical to conclude that the latter can neither be deprived of its possession nor be made to pay rentals thereof. Private respondent is in equity bound to reconvey the subject land to the cestui que trust, the Municipality of Victorias. The Torrens system was never calculated to foment betrayal in the performance of a trust. (Escobar vs. Locsin, 74 Phil. 86).

For a more expeditious disposition of the case at bar, Rule 39 of the Rules of Court provides:

"SEC. 10. Judgment for Specific acts; vesting title. — x x x If real or personal property is within the Philippines, the court in lieu of directing a conveyance thereof may enter judgment divesting the title of any party and vesting it in others and such judgment shall have the force and effect of a conveyance executed in due form of law."

Finally, the conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case. (Chase v. Buencamino

Sr., 136 SCRA 365 [1985]).

PREMISES CONSIDERED, the judgment of the respondent appellate court is hereby SET ASIDE and the decision of the Court of First Instance of Negros Occidental, Branch I - Silay City in Civil Case No. 181-S declaring the cemetery site (Exh. E-2) on Lot No. 76 in Victorias as the property of the municipality of Victorias, is hereby REINSTATED. Additionally, We hereby order (a) the petitioner to have the disputed land segregated by a licensed surveyor from the rest of Lot No. 76 described in Transfer Certificate of Title No. T-34036 and to have the corresponding subdivision plan, duly approved by the Land Registration Commission, submitted to the court of origin for approval; (b) the private respondents Norma Leuenberger and Francisco Soliva to be divested of their title to the disputed land under Rule 39, Sec. 10, Rules of Court; and (c) the Register of Deeds of Negros Occidental to cancel Transfer Certificate of Title No. 34036 and issue, in lieu thereof, one title in the name of the Municipality of Victorias for the disputed land and another title in the names of the private respondents Norma Leuenberger and Francisco Soliva for the rest of Lot No. 76. Without costs.

SO ORDERED.

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

[*] Penned by Justice Ruperto G. Martin and concurred in by Justices Julio Villamor and Andres Reyes, with Justices Magno S. Gatmaitan and Edilberto Soriano, dissenting.

[**] Written by Judge Rafael C. Climaco.

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