

PILAR LAZARO VDA. DE JACINTO, ET AL., PETITIONERS VS. SALUD DEL ROSARIO VDA. DE JACINTO, ET AL., RESPONDENTS. VDA. DE JACINTO, ET AL. VS. VDA. DE JACINTO, ET AL. RESPONDENTS*G. R. No. L-17955 and 17957. May 31, 1962*

Ponente: DIZON, J.

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The present action filed in the Court of First Instance of Bulacan by Pilar Lazaro Vda. de Jacinto and her son Melchor Jacinto, Jr., against Salud del Rosario Vda. de Jacinto and her children, is for the reconveyance to them of a parcel of land located in barrio Sto. Rosario, Paombong, Bulacan, with an area of 5,94574 hectares, covered originally by OCT. No. 12515 and at present by TCT No. 5380 issued by the Register of Deeds of Bulacan in the name of now deceased Pedro Jacinto.

Their complaint alleged, in substance, that the land subject matter thereof was a portion of a bigger parcel allotted to their predecessor in interest, Melchor Jacinto, Sr., when the estate of the deceased spouses Andres Jacinto and Maria C. Santos was partitioned, and that Melchor's surviving brother, Pedro, predecessor in interest of the defendants, had succeeded in registering it in his name through fraud and with breach of trust, to their prejudice.

The defendants denied the allegations of the complaint and further alleged that their predecessor in interest had acquired ownership of the property in litigation by virtue of the provisions of Act 496 and/or by prescription.

After due trial the action was dismissed. On appeal to the Court of Appeals, however, the latter reversed the decision and rendered judgment as follows:

"In view of all the foregoing, we find that the errors assigned are well taken. The decision appealed from, not being in conformity with the evidence and the law on the matter, should be, as it is hereby reversed and another entered declaring the plaintiffs-appellants owners of the land described in their complaint and designated as Lot No. 5, plan S. W. C. No. 11075 under TCT No. 5830, of the Register of Deeds of Bulacan, and ordering the defendants-appellees, upon finality of this decision, to reconvey the same to said plaintiffs-appellants. We find that appellants' claim for damages was abandoned by them in their appeal, and that appellees' counterclaim, is unmeritorious. Costs is taxed against the defendants-appellees, proportionately."

From the above decision both parties appealed by certiorari. The appeal of Pilar Lazaro and her son is now G. R. No. L-17955, and that of Salud del Rosario and children is G. R. No. L-17957.

There is no dispute—and the Court of Appeals so found—that the land in question originally belonged to the now deceased spouses Andres Jacinto and Maria C. Santos, both of whom died intestate survived by their children named Melchor, Sr. (husband of Pilar Lazaro and father of Melchor, Jr.) and Pedro (husband of Salud del Rosario and father of her coparties). Melchor, Sr. also died intestate before the estate of his parents could be partitioned. After the estate was partitioned (Exh. A), their surviving son, Pedro, besides receiving his share, continued administering the properties which corresponded to the heirs of his deceased brother. Amongst them was a riceland located in barrio Sto. Rosario, Paombong, with an area of 11 hectares, 34 areas and 3 centiares. Pedro

Jacinto himself, according to Exhibit A, received as part of his share a riceland in the same barrio, but with an area of 3 hectares, 57 area and 69 centiares only.

In the year 1926 Pedro Jacinto delivered to the widow of his deceased brother the properties that corresponded to the latter. This delivery according to the Court of Appeals, was made only "in paper" because Pedro did not make an actual delivery of the properties but limited himself to telling his sister-in-law that there were "kasamas" working for her. One year thereafter, although the properties composing the estate of his deceased parents had already been surveyed since June 10, 1913, as shown by Exhibit B, Pedro caused them to be resurveyed, this resulting in the drawing of Exhibit C. The practical result of the resurvey—as found by the Court of Appeals—was that a portion of lot 2 described in Exhibit B which was subsequently one of the properties allotted to the heirs of Melchor, was segregated therefrom and was designated as lot 5 in Exh. C. After the resurvey, Pedro applied to register, and succeeded in having lot 5 and other properties registered in his name, for which reason ACT No. 12515 was issued covering three lots numbered 2, 4 and 5. Lot 2 was subsequently sold, so the original certificate of title was cancelled and TCT No. 5830 was issued.

From all the evidence of record the Court of Appeals found that Pilar Lazaro and her son "were always of the belief, until the latter part of 1953, that he (Pedro) delivered to them all that which were rightfully theirs"; that they discovered the shortage only when Pilar—less than one year before the action was filed—decided to sell the parcel of more than 11 hectares that she was supposed to have received from her brother-in-law; that it was only then that she realized for the first time that the parcel delivered to her had only an area of 5,8820 hectares. The Court further found that the land in question was not the same parcel allotted to Pedro Jacinto, and located in the same barrio, which had an area of a little over three hectares only.

On the basis of the facts stated above—which are now final and beyond review—the Court of Appeals made the following considerations:

"It is not also controverted that upon a survey of the property (item No. 1 of Exhibit "A", which should have an area of 11.3403 hectares), when appellant Pilar Lazaro Vda. de Jacinto decided to sell four (4) hectares of the supposed 11.3403 hectares, there was lacking 54,574 square meters therefrom which incidentally corresponded exactly to Lot No. 5, item No. 2 TCT No. 5830, in the name of Pedro Jacinto. Appellees claim, however, that the supposed 11.3403 hectares appearing in Exhibit "A", could have been short of 54,574 square meters and that the 3.5769 hectares appearing in the receipt Exhibit "I", item No. 3 thereof, could have been really 5.4574 hectares, which is not the lot in question. The striking coincidence in the area disputed and that registered in the name of appellees' predecessor-in-interest, more than catches the eye. Under the partition, the appellants were to receive a» one of the properties, 11.3403 hectares of riceland. This being the case, there are no reasons discernible in the records why, after an actual survey of the said property, 54,574 meters should be lacking therefrom. It could not be said that the area was just a product of a calculation. When Exhibit "A" was executed, the boundaries were plainly indicated thereon. As a matter of fact, Exhibit "A" designated the number of hectares, area and centiares, which is indicative of the preciseness of the area to be delivered to the respective heirs. The fact that the lacking measurement fits exactly with Lot No. 5 of Pedro Jacinto under TCT No. 5830, warrants the conclusion that Pedro Jacinto had deprived the appellants herein of their just share. * *

*"

"There are sufficient proofs to show that fraud was practiced by Pedro Jacinto against the appellants herein. When Pedro supposedly delivered the property, he did it only in paper, without bringing plaintiff Pilar Lazaro to the premises, although he told her that there were "kasamas" working for her. On December 15, 1927, Pedro Jacinto caused that the properties be resurveyed, which resulted in the drawing of Exhibit "C", which in effect amended Exhibit "B". Part of Lot 2 was segregated and had been designated as Lot 5 in Exhibit "C". And this Lot 5 has an area exactly equal to the area which was found lacking in the 11.3403 hectares belonging to the plaintiff-appellants." (pp. 6-7 & 8, decision).

As a result of the foregoing, the Court of Appeals held that Pedro Jacinto must be deemed to have registered the land in question as a trustee for and in behalf of the widow and son of his deceased brother. The pertinent portion of its decision reads as follows:

"Implied trusts have been said to be those which are raised by legal implication from the facts and circumstances of the case, to effect the presumed intention of the parties or to satisfy demands of justice or to protect against fraud (65 C.J. 222), or those enforced by equity because morality, justice, conscience, and fair dealing demand that the relation be established (supra). The new Civil Code provides that, 'If 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' (Art. 1456). That there was fraud on the part of Pedro Jacinto in registering the property in his name to the prejudice of the appellants is revealed by the records. It will be seen that on Exhibit "C", the amended survey of the properties which Pedro Jacinto and Melchor Jacinto, Sr. inherited from their parents, changes were made. This resurvey was done at the instance of Pedro Jacinto, in spite of the fact that on June 10, 1913, the same properties were already surveyed, divided and delineated (Exhibit "B"). The boundaries of Lot 5 as appearing in Exhibit "G" (the amended plan) are the same as those appearing in Exhibit "B" minus the designation as Lot 5 and its segregation from the greater mass of Lot 2. In Exhibit "E" or "I", a receipt of the properties inherited by Pedro Jacinto from his father Andres, no property coincide in boundaries with the properties given to Pedro. Under the above set of facts, it is quite evident that the property in question rightfully belonged to the plaintiffs and that an implied trust was created between the plaintiffs and the appellees' father Pedro Jacinto." (pp. 9-10, decision)

The heirs of Pedro Jacinto now contend that the Court of Appeals erred in applying to, this case the law of implied or constructive trusts, and, in holding that, under the facts of the case, the right of the heirs of Melchor Jacinto to recover the property in question is imprescriptible. We find these contentions to be without merit.

The following findings of fact made by the Court of Appeals cannot now be questioned: (1) after the partition of the estate of the deceased spouses Andres Jacinto and Maria C. Santos, Pedro Jacinto, their surviving son, continued administering the properties allotted to the heirs of his deceased brother; (2) when he delivered the share of the latter, he withheld delivery of the parcel in question, although it formed part of the parcel of more than 11 hectares allotted, among others, to his aforesaid coheirs; (3) one year thereafter he caused the portion withheld from his cohiers to be registered in his name; (4) the widow and son of his deceased brother did not know that the parcel of land delivered to them by their coheir was short of 5 hectares, 45 ares and 74 centiares, and said parties "were always of the belief, until the latter part of 1953, that he (Pedro) delivered to them all that which were rightfully theirs". In view of these facts, it would be against reason and good conscience not to hold that Pedro Jacinto committed a breach of trust which enabled him to secure registration of the land in question to the prejudice of his coheirs. Therefore, in an action like the present, he may be ordered to make reconveyance of the property to the persons rightfully entitled to it. In fact, it has been held that even in the absence of fraud in obtaining registration, or even after the lapse of one year after the issuance of a decree of registration, a co-owner of land who applied for and secured its adjudication and registration in his name knowing that it had not been allotted to him in the partition, may be compelled to convey the same to whoever received it in the apportionment, so long as no innocent third party had acquired rights therein in the meantime for a valuable consideration (*Palet vs. Tejedor*, 55 Phil. 790-798). Indeed, any rule to the contrary would sanction one's enrichment at the expense of another. Public policy demands that a person guilty of fraud or, at least, of breach of trust, should not be allowed to use a Torrens title as a shield against the consequences of his own wrongdoing (*Cabanos vs. Register of Deeds*, etc., 40 Phil. 620; *Severino vs. Severino*, 41 Phil. 343).

Lastly, the claim of the heirs of Pedro Jacinto that the latter had acquired ownership of the property in litigation by prescription, is likewise untenable. As we have recently held in *Juan et al. vs. Zuniga*, G. R. No. L-17044, April 28, 1962, an action to enforce a trust is imprescriptible. Consequently, a coheir who, through fraud,

succeeds in obtaining a certificate of title in his name to the prejudice of his coheirs, is deemed to hold the land in trust for the latter, and the action by them to recover the property does not prescribe.

On the other hand, in their appeal Pilar Lazaro and her son contend that the Court of Appeals erred in holding that they had abandoned their claim for damages. We also find this to be without merit.

As stated heretofore, the Court of First Instance of Bulacan, after due trial, dismissed this case and the plaintiffs (Pilar Lazaro Vda. de Jacinto and her son) appealed to the Court of Appeals. In rendering judgment the latter court held that said appellants had abandoned their claim for damages, presumably because of their failure to make in their brief an assignment of error to the effect that the Court of First Instance had erred in not awarding them damages. It is now their contention that having appealed from the dismissal, they were no longer in duty bound to make a separate specific assignment of error regarding the courts failure to award damages, because their right to them was entirely dependent upon the favorable resolution of the assignment of errors made in their brief assailing the dismissal. This argument loses force upon consideration of the fact that their right to have the reconveyance was one thing, and their right to damages, another. There could be reconveyance in their favor, without this necessarily entitling them to damages, as for instance, if they produced no evidence to prove them, or that produced does not sufficiently prove the claim. It seems clear, therefore, that it was their duty as appellants to bring up before the Court of Appeals, by specific assignment of error, this particular question.

Wherefore, the decision appealed from being in accordance with law, the same is hereby affirmed, with costs.

Padilla, Labrador, Concepcion, Reyes, J. B. L. and Barrera, JJ., concur.

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