

CONSORCIA ALANO, ET AL., PLAINTIFFS AND APPELLANTS, VS. CARMEN IGNACIO, ET AL., DEFENDANTS AND APPELLEES.

G. R. No. L-16434. February 28, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Rizal, Hon. Andres Reyes, presiding, dismissing the complaint in the above entitled case, for failure of the plaintiffs to adduce evidence to prove the allegations of the complaint.

The facts necessary to an understanding of the issues involved and the relationship between the parties thereto may be briefly stated as follows: Manuel Ignacio (deceased) had three children by Lorenza Santos, namely, Victoriana, Pedro and Antonio. Victoriana left three children (by her first husband), namely, Genoveva, Francisca and Juana. Genoveva left four children; Francisca, with her husband Tomas Alano, left four children, namely, Consorcia, Ruben, Eligio and Primitivo. Juana, who was married to Cipriano Sta. Teresa, left six children, namely, Pilar, Librada, Luisa, Fidela, Alejandra and Maria.

The eldest child of Manuel Ignacio is named Pedro Ignacio and he left the following children, namely, Estanislao, Benigna, Maria, Emilia and Leocadio (deceased). For his part, Leocadio Ignacio left as his children Carmen, Paula, Petra, Fausto, Gertrudes and Gliserla.

It is the claim of the plaintiffs in their complaint that upon the death of the original predecessor Manuel Ignacio, his heirs, namely, Pedro Ignacio and Francisca, Juana and Genoveva Pagsisihan, children of Victoriana Ignacio, inherited the five parcels of land described in the complaint; that upon the death of Manuel Ignacio, Pedro Ignacio possessed the property as administrator until his death in 1946; that since the death of Pedro Ignacio his son Estanislao Ignacio has been in possession of the lands. The prayer is that the above mentioned properties be partitioned and defendants pay plaintiffs' attorney's fees.

The defendants in their answer deny, (1) the allegation that the property described in the complaint had been inherited jointly and that the real fact is that the said properties are the exclusive properties of Pedro Ignacio who since time immemorial had possessed them continuously, adversely and publicly in the concept of owner until his death, (2) that Pedro Ignacio had never been administrator of any property left by Manuel Ignacio because it was Victoriana Ignacio and Antonio Ignacio who took possession of the estate left by the deceased Manuel Ignacio; (3) that Estanislao Ignacio succeeded in the administration of the properties left by Pedro Ignacio and that the fact is that Estanislao Ignacio had actually possessed them as owner continuously, publicly and adversely since he acquired the same from his father Pedro Ignacio; (4) that no demand has ever been made upon defendants, either verbally or in writing, before the filing of the complaint for partition, regarding their claim on the lands. As special defense it is claimed that both Pedro Ignacio and Estanislao Ignacio had been in the uninterrupted possession of the property subject of the complaint continuously, adversely and publicly. A counter claim was also presented but it need not be mentioned here as the same was dismissed and the lower court did not grant the

prayer contained therein, and the defendants have not appealed from the decision.

The plaintiffs presented only testimonial evidence to support the allegations of their complaint. The defendants on the other hand presented various documents showing that the properties subject of the action have been declared in the name of the defendants as early as the year 1913 originally in the name of Pedro Ignacio. Two properties described in the complaint had been previously mortgaged to one Zoilo Pagkalinawan in 1935 by Pedro Ignacio, this fact to show exercise of ownership thereto.

After trial the court rendered the judgment of dismissal in the following terms—

"As can be seen clearly, the evidence of the plaintiff consisted merely of surmise to the effect that Manuel Ignacio owned the properties in question and that during his lifetime he divided them among his three children, Victoriana, Antonio and Pedro. They based this conclusion merely on their claim that when they reached the age of reason, they were already occupying the properties in question. But no convincing evidence however, direct or indirect was ever presented to show that Manuel Ignacio in fact really owned the properties in question and was seen or heard, verbally or in writing to have divided the same among his three children. Furthermore, no sound reason was given by the plaintiffs to explain why Pedro and his heirs if it is true that they do not own the properties exclusively, were allowed to keep the same from the death of said Manuel Ignacio up to the present time.

"Plaintiff Genoveva claimed that she had been asking Pedro to return the property to her as early as 1912 but however, Pedro consistently refused and made several promises to do so. The failure of the plaintiff to take any legal steps to enforce their alleged right despite the fact that they knew that Pedro Ignacio and his heirs has consistently refused to return the property, and has since 1913 up to the present time been declaring the same in their name, only shows that plaintiffs were not sure of their so called right and do not believe that the property belonged to Manuel Ignacio and as such therefore they are entitled to a share. Otherwise, they would not have waited for more than four generations to file the present complaint after those who were competent and were in a position to testify as to whether Manuel Ignacio really left some properties, are already dead." (pp. 26-27, R.O.A)

Against the above decision the plaintiffs have prosecuted this appeal. In this Court the appeal was given course in view of the evidence submitted that the value of the property subject of the litigation has increased to such an extent that the total value of all reached the jurisdictional amount of this Court.

The brief of the plaintiffs-appellants questions the correctness of the findings of the trial court; so, it has been necessary for us to review the testimonial evidence by a study of the transcript and the documentary evidence, and the result of our study is to the effect that the findings of facts of the lower court are justified. Two witnesses, namely, Genoveva Pagsisihan de Alano and Cipriano Sta. Teresa, the husband of one of the children of Victoriana Ignacio testified for the plaintiff. Genoveva testified that when she reached the age of reason her mother Victoriana Ignacio was already married to her second husband; that her brothers, the eldest age 10 and the next age 3, witness being the youngest; that the second husband of her mother was the one who worked on the land subject of the action; that upon the death of her mother she lived in the house of Pedro Ignacio, and Pedro Ignacio from that time on began working the land that her family had been working; that she and her sisters left the house of Pedro Ignacio having come to Manila to work in a tobacco factory; that they asked from Pedro Ignacio that their property be given to them and that this took place around 1912; that upon the demand Pedro Ignacio was angry and so they let the matter go; that an uncle of theirs by the name of Antonio Ignacio had interceded in their behalf for the return of the property as a result of which a quarrel took place between Antonio and Pedro Ignacio although the fact of this quarrel was only told to her.

Our attention is called to the fact that this witness did not expressly declare that the properties that her father

supposedly worked and were subsequently taken over by Pedro Ignacio, were the properties inherited from their mother, who in turn inherited the same from Manuel Ignacio. All that she said is that her stepfather worked the land for a few years until the death of her mother and that this land was worked by Pedro Ignacio upon the death of her mother. In what capacity the land was worked by her father or her stepfather is not declared. The mere fact of working over a land without expressing the concept in which the land was being worked, is no proof that the land is owned by her mother. Besides, at the time that the land was supposedly being worked, she was only about seven years old, and she could not be in a position to state categorically what the nature or character of the possession was, as the possession may have been as mere tenant. No other witness for the plaintiffs testified that the cultivation of the land was in the concept of owner. Consequently the testimony is of no value whatsoever to support the claim of ownership.

We also noticed that when the land was taken over by Pedro Ignacio to work, the latter actually took possession of the property as if it were his own, as witness the following portion of the testimony of Genoveva Pagsisihan—

"Q.

After Pedro took over that property and farmed the property, what happened?

"A.

There having it for themselves alone because we were living together. (Sinasarili niya mangyari sama-sama kami sa bahay nila.)" (tsn, 20, March 31, 1958)

But assuming that the above evidence submitted by the plaintiffs is prima facie proof of their case, the same is completely overcome by the conclusive evidence of possession as owner submitted by the defendants. The defendants submitted tax declarations of the properties which date as far back as 1913 as well as the evidence of payment of the land taxes thereon from that time up to the present (Exhibits 1 to 11, inclusive). The deed of mortgage, Exhibit 12, submitted by the defendants also show that Pedro Ignacio exercised ownership over two of the lots described in paragraphs 4 and 5 of the complaint, having mortgaged the same; these lands are also assessed in the name of the defendants.

The testimonial evidence of the defendants consisted in the testimony of Simplicio Marcelo, 90 years old, who described the properties belonging to Pedro Ignacio evidently mentioned in the complaint consisting of 4 parcels of land. He further declared that one of the parcels of land was acquired by Pedro Ignacio from his (witness') father in payment of a debt he, owed Pedro Ignacio. This land was the rice field. This witness also denied that properties supposedly inherited by Victoriana Ignacio from her father Manuel Ignacio were ever worked or farmed by Ireneo Santos a witness for the plaintiffs. Another witness, Estanislao Ignacio, one of the defendants testified that the lands of his father were the bukid, the riceland, the solar and the looban; that the bukid was acquired by his father by purchase from Luis Marcelo, thus corroborating a previous witness. He identified the tax declarations, Exhibits 1 to 3, and declared that the other tax declarations have been lost in the war; he also identified the payment of the taxes.

Witness Genoveva Pagsisihan was called for the second time as rebuttal witness and testified to the fact of their living in Manila and working in the tobacco factory of the Tabacalera. But on cross-examination she admitted that the house in which they were living when her father was still alive was the house in Wawa located in the "solar" of Pedro Ignacio; that during the time she and her sisters were working in Manila they rarely went back to Bagumbayan, Taguig, the place where the properties are located and where their uncle Pedro Ignacio and his children lived. Another witness for the plaintiffs on rebuttal is Ireneo Santos who declared also to the supposed working of the lands subject of the complaint by the family of plaintiffs; but however, his testimony can not be given much weight because he says that he had been living with the children of Victoriana or Genoveva in

Manila.

The above facts indicate clearly that plaintiffs have failed to prove the following allegations; that the properties sought to be partitioned were inherited by their mother from the alleged owner Manuel Ignacio; that their mother and their father possessed the properties as owners during their lifetime. The plaintiffs also failed to prove that the possession by the defendants of the properties was in trust. On the other hand, defendants have proved conclusively that they have been in possession of the lands as owner as early as 1912, so that the possession lasted for 45 years up to the filing of the action in 1957.

This adverse and exclusive possession and ownership of the property by the defendants for 45 years is attested to not only by the witnesses for the defendants but also by declaration of properties, payment of taxes, deed of mortgage executed by their predecessors in interests as owners of the property, etc.

In view of the foregoing, We find that the evidence fully support the finding of facts made by the trial court, and, judgment is hereby rendered absolving the defendants of the complaint, with costs against the plaintiffs.

Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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