

**EVANGELINE WENZEL PRESTON, ASSITED BY HER HUSBAND
CLEMENTE A. PRESTON, JOSEPHINE WENZEL OCENA, ASSITED BY
HER HUSBAND ANACLETO OCENA, AND EVANGELINE WENZEL,
PRESTON, AS GUARDIAN...**

G.R. No. L-3832. November 21, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an action in which plaintiffs originally prayed for the annulment of the sale of one-half interest of a parcel of land situated in barrio Tubod, Mainit, Surigao, executed by Balbina Baguio Vda. de Wenzel, plaintiffs' predecessor in interest, in favor of the Surigao Mainit Mining Syndicate, for an accounting of the profits and benefits derived by the defendant company from the use, operation and possession of said one-half interest from 1949 up to the filing of the complaint, and for the partition of the property in question in accordance with rule 71 of the Rules of Court.

The complaint was later amended to enable the plaintiffs to change their original theory, which change consists in that instead of merely asking for a partial rescission of the sale they pray that it be totally nullified for the reason that Balbina Baguio had been the victim of cajolery and fraud on the part of some directors of Defendant Corporation. Defendant in its answer denied the imputation of fraud pleading as a special defense that the sale had been executed by Balbina Baguio voluntarily and with the approval of the court in the guardianship proceedings wherein she was appointed as guardian of the persons and property of her minor children.

After a protracted trial at which both parties presented voluminous evidence both testimonial and documentary, the court, in a well written opinion, found the claim of plaintiffs to be without justification and dismissed the case with costs against the plaintiffs. From this decision the plaintiffs appealed.

The following facts appear to be undisputed: Chester A. Wenzel and Balbina Baguio was husband and wife, having been married in 1928 Chester died on September 30, 1930, while Balbina in January 1942. Plaintiffs Evangeline, Josephine, John and Elizabeth are their children. Clement A. Preston is the husband of Evangeline while Anacleto Ocena is the husband of Josephine Wenzel.

In 1925, Chester A. Wenzel declared for taxation, under Tax Declaration No. 2131, a parcel of land situated in barrio Tubod, municipality of Placer, province of Surigao, containing an area of two (2) hectares. These parcels of land, as well as the lands surrounding it, are mineral in nature and before his death he located thereon one mining claim known as the Boston Placer claim.

The Surigao Consolidated Mining Company, Inc., defendant herein, is a corporation organized in 1935 under the laws of the Philippines and is the successor in interest of the Surigao Mainit Mining Syndicate, an unregistered mining association. Among the members of the association were Otto F. Weber, W.V. Gemperle and C. Harris.

By virtue of a contract entered into on September 24, 1934, by and between Balbina Baguio and C. Harris, the

former agreed to sell, and the latter, in representation of the Surigao Mainit Mining Syndicate, agreed to buy the Boston Placer claim, which sale was later carried out on September 28, 1935 (Exhibit "7"). Instead of resuming work on the claim, however, Harris proceeded to locate new claims on the land in question. On July 13, 1935, Balbina Baguio, acting for herself and on behalf of her children, plaintiffs herein, who were then minors, executed the deed of sale Exhibit "A" conveying to the Surigao Mainit Mining Syndicate a parcel of land of thirty-three (33) hectares located in barrio Tubod, municipality of Mainit, province of Surigao.

Before the end of 1935, the Surigao Consolidated Mining Company, Inc., was organized, and conformably to one of the conditions of the deed of sale, Exhibit "A", the new corporation issued in the name of Balbina Baguio and her children the following certificates of stocks: 1,000 shares in the name of Evangeline Wenzel, 1,000 shares in the name of Josephine Wenzel, 1,000 shares in the name of John Wenzel, 1,000 shares in the name of Elizabeth Wenzel, and 1,000 shares in the name of Balbina Baguio.

Upon the dissolution of the Surigao Mainit Mining Syndicate, its assets were transferred to and taken over by the new corporation. Among the assets so transferred was included the parcel of land sold by Balbina Baguio to the dissolved association on July 13, 1935. Between January, 1935 and September, 1935, C. Harris, acting for the Surigao Mainit Mining Syndicate, first, and for the defendant, subsequently, perfected the locations thereon of four mining claims; the Yes Sir, the Siana, the Bellang and the Lorry Lode. These four claims, however, are not wholly located inside the land in question.

After locating these four mining claims the defendant worked thereon and introduced such improvements as are necessary to exploit the claims. Defendant has already invested in these claims from 5,000,000 to 6,000,000. Portions of this investment have been spent for the exploitation of the claims inside the land in question.

After the last war, the defendant, in compliance with the requirement of the mining laws and with a circular of the Director of the Bureau of Mines, submitted affidavits to re-establish its rights to the above named claims. No similar affidavits were submitted by the plaintiffs, nor have they done any assessment or mining work on said claims after the war.

We will now discuss the issues raised in connection with the foregoing facts in the light of the evidence submitted by both parties in support of their respective contentions.

The only issues which in the opinion of the court need to be determined in this appeal are: (1) is the land in question the exclusive property of Chester A. Wenzel as claimed by plaintiffs, or is it a part of the public domain which Chester A. Wenzel merely worked for mining purposes, as claimed by the defendant? and (2) in the supposition that the property was acquired by Chester A. Wenzel after his marriage to Balbina Baguio, has the deed of sale Exhibit "A" been validly executed by Balbina Baguio as claimed by the defendant, or was it executed by her through cajolery and fraud as claimed by the plaintiffs?

1. In support of their claim that the land in question is the exclusive property of Chester A. Wenzel, plaintiffs presented as evidence the testimony of Evangeline Wenzel and Lucas Carreon. These two witnesses testified that Chester A. Wenzel bought the land in question from Ambrosio Paqueros in 1916, and afterwards he occupied it and declared it for taxation in 1925. It should be noted that, according to the theory of the plaintiffs, the land acquired by Wenzel was bounded on the north, east and south by public lands, and on the west by Timag-an river, and contained two hectares only, as described in tax declaration No. 2131 on which they heavily rely to establish the ownership of Wenzel. Note that the land herein controverted is the one referred to in the deed of sale Exhibit "A" which contains 33 hectares. The description of the land appearing in said deed of sale is different from the one referred to in tax declaration No. 2131, for, according to said deed of sale, that land is bounded on the north by Ambrosio Paqueros; on the east by public land; on the south by Santiago Ahok, Dayano River and Domingo

Duma; and on the west by Timag-an river. On the other hand, the boundaries given by Lucas Carreon are different from those appearing in tax declaration No. 2131, which is relied upon by the plaintiffs. Thus, according to Carreon, the land bought by Wenzel was bounded on the north by Felipe Dapal; on the east, by a mountain, on the south, by a forest; and on the west, by the property of Pedro Manlquez. The evidence of the plaintiffs, therefore, with regard to the property allegedly bought by Chester A. Wenzel is in utter confusion, a circumstance which casts doubt on the claim that the property in question is the one acquired by him from one Ambrosio Paqueros. This doubt is aggravated when we consider the statement of Evangeline Wenzel to the effect that she knows that her father bought the land somewhere in 1916 because she read the document itself, when the truth was that at that time she has not yet been born.

But there is another circumstance which inclines our mind to the conclusion that this claim of the plaintiffs is but a mere afterthought. As it will be recalled, the original theory entertained by the plaintiffs in filing the present action was that the property in question was conjugal in nature it having been acquired by Chester A. Wenzel after his marriage to Balbina Baguio. This is what they stated in their original complaints that the land "belonged to the conjugal partnership of said deceased spouses, having said property been acquired by Chester A. Wenzel during his lifetime and during their marriage". And when the trial of this case was set for the first time counsel for plaintiffs made it very plain to the court that their only purpose is to avoid the sale of only one-half of the property because their theory was that that property was acquired during their marriage. But when the trial was later continued and the plaintiffs changed their theory and amended their complaint, their counsel did not adduce any additional evidence in support of their new theory that defendant employed cajolery and fraud in the execution of the sale, therefore, no wonder why in their attempt to prove that the property belongs exclusively to Chester A. Wenzel on the strength of the same evidence we would witness glaring inconsistencies between plaintiffs' claim and their evidence.

The most that can be said after a consideration of the evidence of the plaintiffs is that the land supposedly acquired by Chester A. Wenzel in 1916 from Ambrosio Paqueros and which only consisted of two hectares is not the same land which appears described in the deed of sale Exhibit "A", not only because of the glaring discrepancies in their boundaries but also in their areas. Be that as it may, the fact remains that that land is a public land, or part of the public domain, which can only be acquired from the Government either by purchase or by grant. The only exception to the rule is when the land, had been in possession of an occupant and of his predecessors in interest since time immemorial, or that it had been a private property even before the Spanish conquest, and in order that the occupant may enjoy the benefit of this privilege it is necessary that he proves that he had been in possession of the land at least since July 26, 1894 (*Oh Cho v. Director of Lands*, 43 Off. Gaz., 866). Here there is no such evidence. There is nothing to show that Ambrosio Paqueros acquired the land from the Government either by purchase or by grant, or that it was a private property before the Spanish conquest, or had been possessed by Ambrosio Paqueros since July 26, 1894. The most that was proven was that it was acquired by Chester A. Wenzel in 1916, and was declared by him for taxation in 1925, and that when Wenzel died in 1930; his widow and heirs continued his possession and paid taxes thereon. These facts are not sufficient to give to Wenzel a valid title against the Government.

We are, therefore, of the opinion that the lower court did not err in finding that the land in question was part of the public domain and that neither Chester A. Wenzel, nor his successors in interest, acquired any valid title over the same.

2. In the supposition that the land in question is a conjugal property of the spouses Chester A. Wenzel and Balbina Baguio, the next issue to be determined is: has the deed of sale Exhibit "A" been validly executed by Balbina Baguio? After a careful consideration of all the evidences presented both by plaintiffs and the defendant on this

matter, we are of the opinion that Balbina Baguio executed said deed of sale fully conscious of its real import and with due authority from the court.

In the first place, the very deed of sale Exhibit "A" recites that Balbina Baguio made the transfer not only in her own right but in behalf of her children. In the second place, it is an undisputed fact that at that time Balbina Baguio was the guardian of the persons and property of her minor children as shown by the pleadings in special proceeding No. 1261 of the Court of First Instance of Surigao, and being their guardian it is only reasonable to presume that when she transferred the property which she knew belonged to her and her children, she did so not only in her behalf but in behalf of her children as she actually expressed in the deed of sale. The claim of Evangeline Wenzel that her mother Balbina Baguio was only acting as guardian of her children for the purpose of collecting their pension cannot be sustained in the light of the very exhibits submitted by plaintiffs who show that she is also administering other properties of the minors (Exhibits "C" and "R"). It finally appears that the deed of sale was submitted to the court in the guardianship proceedings for approval and the court granted its approval not after making some suggestions which would best protect the Interests of the minors.

At this juncture, it is interesting to note the steps that had been taken leading to the preparation and execution of the deed of sale Exhibit "A". It appears that Ricardo Garcia, who was then a practicing lawyer in the employ of the Surigao Mainit Mining Syndicate, was requested by Christian Harris to draw up the contract. After consulting Harris and Balbina Baguio on the matter, Garcia prepared the contract and submitted it to the Court in the guardianship proceedings for approval. In this connection, the court appointed the then provincial fiscal Patricio Cenlza curator ad litem of the minors so that he may study the contract and submit his recommendation, Fiscal Geniza, after studying the terms of the contract, submitted his report, and the court, following Ibis recommendation, suggested that the Surigao Mainit Mining Syndicate be organised into a corporation and that, besides the payment of P100 in cash, the widow and her children be paid in shares to the aggregate par value of P500 as part of the consideration of the sale. With the inclusion of this condition the contract was finally approved. The contract was later registered in the office of the register of deeds of Surigao on July 15, 1935. All this appears in the testimony of Ricardo Garcia, who is at present the incumbent provincial fiscal of Surigao. This also appears in exhibits "14", "14-A", "15", "15-A" and "15-B" which have reference to the correspondence that was exchanged between fiscal Garcia and attorneys Johnston and Armstrong who were apparently representing Otto F. Weber in the transaction. The court found no reason to doubt the credibility of fiscal Garcia, The court also gave full faith and credit to said exhibits for, as the court remarked, "These letters were written long before this case was filed or even contemplated, and their writers could not have foreseen that the same would one day be used as evidence in this case".

Having reached the foregoing conclusion, it would appear clear that the claim of the plaintiffs to the effect that Balbina Baguio was the victim, of cajolery and fraud on the part of some members of Defendant Corporation is without merit. Indeed, this is the new theory advanced by the plaintiffs after they had filed their original, complaint upon the pretense that they merely discovered these facts after the commencement of the hearing. But it should be noted that the so called newly discovered evidence consists merely in the claim that Christian Harris and Otto F. Weber used to give canned, food and fruits and even money to Balbina Baguio in an attempt to appease her and thus prevent her from taking steps to annul the sale, and if these facts are true we wonder why plaintiffs remained silent and failed to communicate them to their lawyers when they referred this case to them for the first time. In any event, there is no clear evidence to show that said gifts and payments of money had actually the effect of persuading Balbina Baguio to sign a contract which she did not intend to execute, or the contents of which she was not aware, nor are they of such a nature that could a contract which is valid in every other respect. On the contrary, there are circumstances which point to a contrary conclusion, such as those which the lower court well pointed out in its decision. We quote:

"The plaintiffs contend that Balbina Baguio did not know what she was signing and that the deed of sale does not represent the true intent and agreement of the parties. According to them, Balbina Baguio thought that she was signing a contract whereby she permitted the Surlgao Mainit Mining Syndicate to exploit the mine for the benefit of the plaintiffs'. This is not true, in the first place, the sale was approved by this court only after a hearings and considering the precautions it took before giving its approval to the transaction, it must have apprised Balbina Baguio of the contents of the documents. In the second place, Balbina Baguio was not illiterate, as the plaintiffs would picture their own mother. Judged from her signatures on Exhibits 6 and 7 she was not unlettered, and J. B. Harrison testified that she spoke good English. She was the wife of an English-speaking husband she must have possessed sufficient English to enable her to understand the difference between a sale and a mere permission to exploit mining claims. In the third place, Balbina Baguio could not have failed to realize that the defendant was making profits from its mining operations on the land in question and that the dividends she and her children received from time to time on their shares of stock of the par value of P500.00 were paltry sums compared with what they should have received if the mines were really exploited for their benefit. If it is true that it was her understanding that the mines were being operated for her and her children's benefit, it has not been explained why she did not protest or take steps to annul the contract until she was allegedly forbidden, to enter the premises".

It only remain for us to say one word with respect to the Boston Placer claim which plaintiffs claim to have originally belonged to their father and is now allegedly being developed profitably by the defendant corporation. Their theory is that, inasmuch as the defendant corporation has worked and developed said mining claim in bad faith, defendant should render an accounting of the profits it has derived there from and should turn over to them the Improvements it has made in connection with its exploitation without being required to reimburse their value.

It is undisputed that as far back as 1917, the deceased Chester A. Wenzel located a mining claim on the land in question which he registered in the office of the mining recorder in his name and that later on he worked, and introduced, some improvements thereon up to, the time of his death on September 30, 1930, it does not appear clear if this work has been continued by his widow and children, although the latter claim that they carried on the work of their father after his death. But the record shows that on September 24, 1934, Balbina Baguio sold said mining claim to the Surigao Mainit Mining Syndicate for a consideration of P100 which sale she later acknowledged on September 28, 1934 (Exhibit "7"). It further appears that when the contract Exhibit "A" was executed by Balbina Baguio in 1935, the defendant discovered that the land wherein this mining claim was located was in the state of complete neglect and abandonment so much so that it deemed it wise to locate other claims either in the same land or in its surroundings which resulted in the location of the mining claims "Yes Sir" "Siana", "Bellang" and "Lorry". And that it is on these four mining claims where the defendant concentrated its efforts and made improvements to the tune of P6,000,000. To this investment plaintiffs did not contribute any amount, although they shared, in the profits to the extent of their interest as stockholders. In the face of these facts, it would certainly appear nonsensical to entertain their claim that said improvements should be adjudicated to them without any reimbursement on their part. Such claim is untenable in fact as well as in law.

Wherefore, the decision appealed from is hereby affirmed without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, and Labrador, JJ., concur. Feria, Tuason, and Reyes, JJ., did not take part.

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