

## **BIENVENIDO A. IBARLE, PLAINTIFF AND APPELLANT, VS. ESPERANZA, M. PO, DEFENDANT AND APPELLEE.**

*G. R. No. L-5064. February 26, 1953*

Ponente: TUASON, J.

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### **TUASON, J.:**

This action was commenced in the Court of First Instance of Cebu to annul a deed of sale conveying to the defendant, in consideration of P1,700, one undivided half of a parcel of land which previously had been sold, along with the other half, by the same vendor to the plaintiff's grantors. Judgment was against the plaintiff.

The case was submitted for decision upon an agreed statement of facts, the pertinent parts of which are thus summarized in the appealed decision:

"1st.—That Leonard J. Winstanley and Catalina Navarro were husband and wife, the former having died on June 6, 1946 leaving as heir the surviving spouse and some minor children;

"2nd.—That upon the death of L. J. Winstanley, he left a parcel of land described under Transfer Certificate of title No. 2391 of the Registry of Deeds of the Province of Cebu;

"3rd.—That the above mentioned property was a conjugal property;

"4th.—That on April 15, 1946, the surviving spouse Catalina Navarro Vda. de Winstanley sold the entire parcel of land to the spouses Maria Canoy and Roberto Canoy, alleging among other things, that she needed money for the support of her children;

"5th.—That on May 24, 1947, the spouses Maria Canoy and Roberto Canoy sold the same parcel of land to the plaintiff in this case named Bienvenido A. Ebarle;

"6th.—That the two deeds of sale referred to above were not registered and have never been registered up to date;

"7th.—That on January 17, 1948 surviving spouse Catalina Navarro Vda. de Winstanley, after her appointment as guardian of her children by this court (Special Proceeding No. 212-R) sold one-half of the land mentioned above to Esperanza M. Po, defendant in the instant case, which portion belongs to the children of the above named spouses."

As stated by the trial Judge, the sole question for determination is the validity of the sale to Esperanza M. Po, the last purchaser. This question in turn depends upon the validity of the prior sale to Maria Canoy and Roberto Canoy.

Article 657 of the old Civil Code provides: "The rights to the succession of a person are transmitted from the moment of his death." In a slightly different language, this article is incorporated in the new Civil Code as article 777.

Manresa, commending on article 657 of the Civil Code of Spain, says:

"The moment of death is the determining factor when the heirs acquire a definite right to the inheritance, whether such right be pure or contingent. It is immaterial whether a short or long period of time lapses between the death of the predecessor and the entry into possession of the property of the inheritance because the right is always deemed to be retroactive from the moment of death." (5 Manresa, 317.)

The above provision and comment make it clear that when Catalina Navarro Vda. de Winstanley sold the entire parcel to the Canoy spouses, one-half of it already belonged to the seller's children. No formal or judicial declaration being needed to confirm the children's title, it follows that the first sale was null and void in so far as it included the children's share.

On the other hand, the sale to the defendant having been made by authority of the competent court was undeniably legal and effective. The fact that it has not been recorded is of no consequence. If registration were necessary, still the non-registration would not avail the plaintiff because it was due to no other cause than his own opposition.

The decision will be affirmed subject to the reservation, made in said decision, of the right of the plaintiff and/or the Canoy spouses to bring such action against Catalina Navarro Vda. de Winstanley as may be appropriate for such damages as they may have incurred by reason of the voiding of the sale in their favor.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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