

MARIANO TAMAYO, PETITIONER, VS. AURELIO CALLEJO AND THE HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. L-25563. July 28, 1972

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

This action, initiated in the Court of First Instance of Pangasinan, was brought by Aurelio Callejo, originally against Mariano Tamayo only, and, later, against his brother Marcos Tamayo, also, for the reconveyance of the northern portion of a parcel of land formerly covered by Original Certificate of Title No. 2612, in the names of said brothers. In due course, said court dismissed the complaint, with costs against the plaintiff. The latter appealed to the Court of Appeals which, in turn, rendered a decision the dispositive part of which reads:

"IN VIEW WHEREOF, judgment must have to be as it is hereby, reversed, and the land in question claimed in par. 2 of the original and amended complaint and graphically shown in Exh. Q in the name of appellant, is declared reconveyed unto him, but the expenses of registration of this decision once it should have become final, shall be at his, appellant's cost; no other pronouncement as to costs whether here, whether in Lower Court; all other claims between appellant and appellee within their respective pleadings are hereby dismissed."

It appears that the spouses Vicente Tamayo and Cirila Velasco-Tamayo owned a parcel of land in the barrio of Oalsic or Gualsic between the municipalities of Alcala and Malasiqui, Pangasinan. Prior to February 1, 1912, said spouses sold part of the northern portion of said land, with an area of 22.125-1/3 square meters, to Fernando Domantay, who took possession thereof. Sometime after this sale, but before said date, Vicente Tamayo died. His widow having waived her rights to the remaining portion of their original property in favor of her children Mariano Tamayo and Marcos Tamayo, these brothers were, on February 1, 1912, declared, in Civil Case No. 136 of the Court of First Instance of Pangasinan, sole heirs of the deceased. On September 29, 1913, Mariano Tamayo and Marcos Tamayo applied, in Cadastral Case No. 61, G.L.R.O. Record No. 10548 of the same court, for the registration in their names, of a tract of land of about 383,509 square meters, alleging that they had thus inherited the same from their deceased father.

After appropriate proceedings, judgment was rendered, directing the registration, in the name of Mariano Tamayo and Marcos Tamayo, of 205, 421 square meters only of the land applied for, said applicants having acknowledged that the remaining portion thereof belonged to the estate of Gregorio Flor Mata, deceased. Upon the issuance of the corresponding decree thereafter, said OCT No. 2612 was on November 15, 1915, issued in favor of the brothers Mariano Tamayo and Marcos Tamayo. Not long after, or on August 12, 1918. Fernando Domantay sold his above-mentioned land of 22,125-1/3 square meters to Aurelio Callejo, who took possession thereof since then. Subsequently, or on May 23, 1930, Marcos Tamayo sold his undivided share in the property covered by OCT No. 2612 to his brother Mariano Tamayo who, accordingly, obtained, on May 26, 1930, Transfer Certificate of Title No. 5486 in his name, in lieu of OCT No. 2612. Then, on February 24, 1940, Mariano Tamayo sold 70,000 square meters, more or less, on the western portion of said property, to Proceso Estacio, upon whose request surveyor Fidel Diaz went, sometime in June 1952, to the land covered by said TCT No. 5486, for the purpose of preparing

a subdivision plan and segregating the seven (7) hectares thus conveyed by Mariano Tamayo, but Diaz did not accomplish his purpose, for he was not allowed by Callejo to enter the portion held by the latter. What is more, Callejo asked Mariano Tamayo to cause to be excluded from TCT No. 5486 the land held by the former, but the latter refused to do so. Hence, on June 16, 1952, Callejo registered his adverse claim over said land, which claim was annotated in TCT No. 5486.

Then, on June 25, 1952, Callejo filed, with the Court of First Instance of Pangasinan, his present complaint, for reconveyance and damages, against Mariano Tamayo. The complaint was later amended to include Marcos Tamayo as one of the defendants he having, meanwhile, reacquired his share in the land covered before by OCT No. 2612, and then TCT No. 5486. Having failed to answer the amended complaint, defendant Marcos Tamayo was declared in default, whereas defendant Mariano Tamayo filed his answer with counterclaim. His main defense was that the land claimed by Callejo is outside the perimeter of the area covered by the aforementioned certificates of title. In his amended answer, Mariano Tamayo pleaded, also, the statute of limitations. After due trial, said court rendered a decision dismissing the complaint, upon the ground that the land purchased by Fernando Domantay from the parents of Mariano and Marcos Tamayo is not included in said titles. On appeal taken by plaintiff Callejo, this decision was reversed by the Court of Appeal, which found, as a fact, that the land claimed by him is part of the land covered by the aforementioned certificates of title, and overruled the plea of prescription set up by Mariano Tamayo, upon the theory that the title to said portion of land now claimed by Callejo, and, before, by Fernando Domantay, is held in trust by the Tamayos and that the action to enforce said trust does not prescribe. The case is now before Us on petition for review filed by Mariano Tamayo. The petition was, at first denied by minute resolution, which was later reconsidered and the petition given due course.

In his brief before this Court, Tamayo maintains that the Court of Appeals has erred: (1) "in not holding that the respondent Aurelio Callejo's cause of action, if any, had already prescribed"; (2) "in holding that the petitioner's failure to appeal from the decision that did not grant him affirmative relief on the matter of possession, constituted *res adjudicata* thereon"; (3) "in disregarding the judicial admission made by the respondent Callejo and his counsel"; (4) "in making conclusions not supported by the facts on record"; (5) "in not affirming the decision rendered by the trial court."

Under his first assignment of error, Tamayo argues that, if the erroneous inclusion in his certificate of title of the parcel of land formerly sold by his parents to Fernando Domantay created, by operation of law, an implied trust, the corresponding action for reconveyance of said parcel prescribed ten (10) years from the accrual of the cause of action, on November 15, 1915, when OCT No. 2612 was issued, or long before the institution of this case on June 25, 1952.

It should be noted, however, that although the trust created by the application for registration filed by Mariano and Marcos Tamayo, on or about September 29, 1913, and the inclusion in OCT No. 2612, issued in their names, on November 15, 1915, of the tract of land previously sold by their parents to Fernando Domantay – and later conveyed by him to Aurelio Callejo – may have had a constructive or implied nature, its status was substantially affected on June 28, 1918, by the following facts, namely: On the date last mentioned, Fernando Domantay and petitioner Mariano Tamayo the latter acting in his own behalf and on that of his brother Marcos Tamayo – executed the public instrument Exhibit I whereby Mariano Tamayo explicitly acknowledged that his deceased parents, Vicente Tamayo and Cirila Velasco, had sold to Fernando Domantay; for the sum of P200, the parcel of land of about 22,125/3 square meters, then held by the latter, and stipulating, *inter alia*, that Fernando Domantay is the absolute owner of said land, free from any lien or encumbrance thereon, and that, in view of the sale thus made by his parents, he (Mariano Tamayo) "quedo responsable al susodicho Don Fernando Domantay, sus herederos y causa habientes por la propiedad, cuyo titulo me comprometo a defender contra las reclamaciones * *

* de quienes las presentare.[1] "

This express recognition by Mariano Tamayo – on his behalf and that of his brother Marcos Tamayo – of the previous sale, made by their parents, to Fernando Domantay had the effect of imparting to the aforementioned trust the nature of an express trust – it having been created by the will of the parties, "no particular words" being "required for the creation of an express trust, it being sufficient that a trust is clearly intended"[2] which express trust is a "continuing and subsisting" trust, not subject to the statute of limitations, at least until, repudiated, in which event the period of prescription begins to run only from the time of the repudiation.[3] The latter did not take place, in the case at bar, until early in June, 1952, when Mariano Tamayo rejected Aurelio Callejo's demand that the now disputed portion be excluded from TCT No. 5486 in the farmer's name. But, then, the case at bar was filed weeks later, or on June 25, 1952, when the period of prescription had barely begun to run.

It is thus apparent that the Court of Appeals did not err in overruling the plea of prescription.

Under his second assignment of error petitioner Tamayo maintains that "the Court of Appeals erred in holding that the petitioner's failure to appeal from the decision that did not grant him affirmative relief on the matter or possession, constituted *res adjudicata* thereon." This pretense is manifestly devoid of merit, for the Court of Appeals had explicitly acknowledged Callejo's title over the disputed land and declared the same reconveyed to him. This necessarily implied that Callejo is entitled to remain in possession of said land.

The third assignment of error impugns the following observations made in the decision of the Court of Appeals.

"* * * it is true that appellees sought to show that it was outside of their titled land, and north of this, and is now identified as Lot 12340 of the Malasiqui cadastre, and peculiarly enough, there is an answer in cross by appellant himself that might indicate that he indeed admitted that this land in question is Lot 12340 of the Malasiqui cadastre, *tsn.* 21, Abalos, but his counsel must have apparently discovered that this was an error, so much so that even in Lower Court, in the memorandum that he filed, he contended that the questioned land could not be Lot 12340, *R.A.*, p. 48, so that even were this testimony to be given the category of a judicial admission, Rule 129, sec. 2 of the Revised Rules of Court, the same must have to give way to the truth if the latter were shown to be otherwise from the evidence, because then it would have been shown to have been due to palpable mistake, and let it be remembered that technical numerations of their lots very probably are not known with exactness by lay witnesses; * * * . "

Petitioner maintains that "it has not been shown by clear evidence" that respondent Callejo had made the admission in question "through palpable mistake"; and that Callejo's counsel and said appellate court had, in turn, admitted the inexistence of evidence of such "palpable mistake."

The Court of Appeals did not make the admission imputed thereto. Neither did it "disregard" the admission of Callejo. The latter is to the effect that in cadastral case No. 92, Cadastral Record No. 1860, he had asserted his claim to the "land in question" by filing an answer dated June 25, 1952, which refers to Lot No. 12340 of the cadastral survey. Callejo's counsel had, also, made a similar admission, in the trial court. Callejo did not admit, however, that Lot No. 12340 is the property conveyed to Fernando Domantay — his predecessor in interest — by the parents of Mariano and Marcos Tamayo. Needless to say, in the answer (Exhibits P and 1) filed by him in said Case No. 92, on June 25, 1952, to which petitioner referred in connection with said "admission" — Callejo could not have legally claimed any portion of Lot No. 12341 — covered by TCT No. 5486, in the name of Mariano Tamayo — for the very reason that the latter's right to the registration of this Lot 12341 had already been settled in the decision and decree upon which OCT No. 2612 — from which said TCT No. 5486 has been derived — was based and such decision is no longer subject to review, although without prejudice to the corresponding action for reconveyance, if proper. Hence, coetaneously with the filing of said answer (Exhibits P and 1), Callejo had commenced the present action for reconveyance and damages.

Thus, Callejo claimed both Lot No. 12340 and the northern portion of Lot No. 12341. Indeed, said answer describes the southern boundary of said Lot No. 12340 as Lot No. "12341, Mariano Tamayo - portion claimed by Aurelio Callejo." Thus, Callejo alleged in said pleading that, aside from Lot No. 12340, he claimed, also, a portion of the land included in Lot No. 12341. What is more, he alleged, in paragraph 5 of the aforementioned answer, that he had acquired said Lot No. 12340 by "purchase from Maximo Rico," not from Fernando Domantay, his predecessor in interest with respect to his title to the northern portion of Lot No. 12341. And this is borne out by the very testimony of petitioner herein, who admitted that the property inherited by him from his parents is bounded on the north by the land formerly belonging to said Maximo Rico, and, more significantly, by the deed Exhibit I, in which petitioner acknowledged that the property sold by his parents to Fernando Domantay is bounded "al norte, con el terreno de la propiedad de Maximo Rico." These admissions by petitioner herein leave no room for doubt that Lot No. 12340 is not the property so conveyed to Domantay and then assigned by the latter to Callejo.

The full text of the finding of the Court of Appeals — of which the contested observations are but a part — reads:

"CONSIDERING: Therefore, that question of whether or not appellees' titled land had included appellant's portion bought from Fernando Dumantay, and since an examination of the evidence would show that the said land that had been bought by appellant was bounded on the North by Maximo Rico and Moises Rosal, on the East by Felomena Macaraeg, on the South by Mariano Tamayo and on the West by Maria Olea, see Exh. F and I, while the land that had been titled in the name of defendants was bounded on the North by Felipe Novida, on the NE by properties of Felomena Macaraeg and Santiago Tamayo, on the South by property of the estate of Gregorio Flor Mata, on the West by Macaro Creek and on the Northwest by the property of Felipe Novida, see Exh. B, and since appellant's purchase referred only to a portion of the Tamayo land, the fact that it was bounded on the south by Mariano Tamayo according to Exh. E and I would support his claim that said portion was really part, the northern part, of the original Tamayo land; the fact that the boundary on the north of the land he purchased was Maximo Rico and Moises Rosal as shown in Exh. F and I, in the light of the proven fact that Maximo Rico was the successor in interest to that land toward the north, formerly of Felipe Novida, — and this is admitted by appellee himself:

'Q. That land north of the land described in your title TCT 5486 was later owned by Maximo Rico, is it not?

'A. Not only Maximo Rico, also Fernando Dumantay, tsn. 39, Rollazo,'

which confirms the testimony of witness, Fernando Rico, son of Maximo:

'Q. That land bought by your father from Matias Lomibao used to be the property of one Felipe Novida, is that right?

'A. Matias Lomibao bought that land from Felipe Novida and Matias Lomibao sold that land to Maximo Rico.' tsn. 36, Rollazo;

therefore, the portion bought by appellant in 1918 is persuasively shown by these details to be really that northern portion within the former Tamayo land; it is true that appellees sought to show that it was outside of their titled land, and north of this, and is now, identified as Lot 12340 of the Malasiqui cadastre, and peculiarly enough, there is an answer in cross by appellant himself that might indicate that he indeed admitted that this land in question is Lot 12340 of the Malasiqui cadastre, tsn. 21, Abalos, but his counsel must have apparently discovered that this was an error, so much so that even in Lower Court, in the memorandum that he filed, he contended that the questioned land could not be Lot 12340, R.A., p. 48, so that even were this testimony to be given the category of a judicial admission, Rule 129, sec. 2 of the Revised Rules of Court the same must have to give way to the truth if the latter were shown to be otherwise from the evidence, because then it would have been shown to have been due to a palpable mistake, and let it be remembered that technical numerations of their lots very probably are not

known with exactness by lay witnesses; at any rate, and indeed, a further examination of the proofs would demonstrate that this Lot 12340 is not really the land that had been bought by appellant from Fernando Dumatay, but is a land north of that; because:

1st - This Lot 12340 is shown by the very Exh. 2 of defendants-appellees, to have been acquired by appellant, not from Fernando Dumatay but from Maximo Rico, – see par. 5 thereof;

2nd - The fact that appellant had bought a portion of said Maximo Rico's land north of the titled property that is to say, north of Lot 12341, is admitted by appellee himself in cross:

'Q. That land north of the land described in your title, TCT 5486 was later owned by Maximo Rico, is it not?

'A. Not only Maximo Rico, also Fernando Dumatay.

'Q. Who is the owner now of that land north of the land covered by TCT 5486?

'A. It was sold to Aurelio Callejo, now the heirs of Aurelio Callejo, now the heirs of Aurelio Callejo and Fernando Dumatay.' tsn. 39, Rollazo, witness, Mariano Tamayo:

3rd. - This can only mean that Lot 12340, which is[4] the Lot 12341, – which is appellee's land, -- had been acquired by appellant Aurelio, not from Fernando Dumatay, – but from Maximo Rico, – successor in interest of Felipe Novida, the former boundary owner north of the titled land, as shown indeed in appellant's answer in the cadastral case, Exh. 2, exhibited by appellees themselves;

4th - Appellee's own exhibit 2, which is a verified copy of the plan in the Bureau of Lands of Lots 12340 and 12341, would indicate that Lot 12340 is as so testified by surveyor Diaz, outside of land surveyed in Plan 11-7384 which is the plan of the titled property; but on the other hand, surveyor Diaz it must be remembered, also prepared and identified his own plan, Exh. Q, which is a 'sketch plan of 11-7384 – Amd', and here it is graphically seen that Lot A thereof, therein denominated as part of the land described in the plan 11-7384-Amd. – is for and in the name of, 'Aurelio Callejo', so much so that it even indicates the position and location of Aurelio's house."

None of the premises on which the foregoing finding is based has been assailed by petitioner herein. Hence, the third assignment of error is clearly untenable.

Under petitioner's fourth assignment of error, it is urged that the conclusion of the Court of Appeals to the effect that Lot No. 12340 was acquired by respondent Callejo from Maximo Rico "is not supported by any direct testimonial evidence." This argument is in the nature of a negative pregnant. It does not deny the existence of indirect testimonial evidence, such as the circumstances pointed out in the above-quoted finding of the Court of Appeals. Neither does it assail the existence of direct documentary evidence, such as petitioner's aforementioned admission in Exhibit I. In short, it does not deny the existence of substantial evidence in support of the contested conclusion of fact of the Court of Appeals.

Apart from the foregoing, this assignment of error, like the third, tends to impugn the finding of the Court of Appeals to the effect that the land sold by petitioner's parents to Domantay is within the perimeter of the property covered by TCT No. 5486. This, however, is essentially a question of fact, and, consequently, the finding to this effect is final and not subject to review in the present appeal on certiorari.[5] Indeed, its determination would require an examination of all the evidence introduced before the trial court, a consideration of the credibility of witnesses, and of the circumstances surrounding the case, and their relevancy or relation to one another and to the whole, as well as an appraisal of the probabilities of the entire situation.[6] It would thus abolish the distinction between an ordinary appeal on the one hand, and a review on certiorari, on the other, and thus defeat the purpose for which the latter procedure has been established. In short, the issue raised in petitioner's third and fourth

assignments of error is basically one of fact, not reviewable by Us on certiorari.

Under the last assignment of error, petitioner questions the right of Callejo to demand a reconveyance, insofar as it may affect the portion of 70,000 square meters sold by him to Proceso Estacio, upon the ground that the latter is a purchaser in good faith for value. This is, however, a defense not available to petitioner herein, aside from the fact that he has not even pleaded it in the trial court or otherwise raised it either in that court or in the Court of Appeals.

We note that the dispositive part of the decision of the Court of Appeals declares that the land in question is "declared reconveyed" to said respondent. Such reconveyance cannot, however, be deemed made without a survey defining with precision the metes and bounds of the area to be segregated for herein respondent. Aurelio Callejo. Accordingly, this case should be remanded to the court of origin for the preparation of a subdivision plan of the portion thus to be segregated and the judicial approval of such plan and only after such approval has become final and executory may the reconveyance be either made or deemed effected.

SO MODIFIED, the appealed decision of the Court of Appeals is hereby affirmed in all other respects, with the costs of this instance against petitioner Mariano Tamayo.

SO ORDERED.

Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Makasiar, Antonio and Esguerra, JJ., concur.

[1] I am responsible to said Mr. Fernando Domantay, his heirs and successors for the property, the title to which I bind myself to defend against the claims of whomsoever shall file the same.

[2] Julio vs. Dalandan, L-19012, Oct. 10, 1967.

[3] See Fabian vs. Fabian, L-20449, Jan. 29, 1968; Buencamino vs. Matias, L-19397, April 30, 1966; De Leon vs. Molo-Peckson, L-17809, Dec. 29, 1962; J.M. Tuason & Co. vs. MagdangaI, L-15539, Jan. 30, 1962; Tolentino vs. Baltazar, L-14597 March ??? 1961 Candelaria vs. Romero, L-12149, Sept. 30, 1960.

[4] Something must have been omitted inadvertently.

[5] Municipality (now City) of Legaspi vs. A.L. Ammen Transp., L-22377, Nov. 29, 1968; Insular Lumber Co. vs. Court of Appeals, L-23857, Aug. 29, 1969; Agolto vs. Court of Appeals, L-23025, June 30, 1970; Garcia vs. Court of Appeals, L-26490, June 30, 1970; Vda. de Serrano vs. Court of Appeals, L-28332, June 30, 1970; Alvero vs. Reas, L-28337, Sept. 30, 1970.

[6] See Lim vs. Calaguas, 83 Phil. 796, 799; Fortus vs. Novero, L-22378, June 29, 1968; Mackay Radio & Telegraph Co., Inc. vs. Rich, L- 22608, June 30, 1969.

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