

CONCEPCION NAVAL AND FRANCISCO NAVAL, PLAINTIFFS AND APPELLANTS, VS. DOLORES JONSAY, SERAFIN NAVAL, AND JOSE NAVAL, DEFENDANTS AND APPELLEES.

G.R. No. L-7199. September 30, 1954

Ponente: REYES, A., J.

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REYES, A., J.:

This is a dispute over the ownership of a piece of land left by Elias Naval, who died on January 1, 1942. The dispute is between the surviving children of the deceased's first marriage on the one hand and his widow and surviving children of the second marriage on the other.

It appears that Elias Naval married his first wife, Dorotea Malanyaon, in 1888. He had 11 children with her but only two of them—Francisco and Concepcion—survived, the others having died in infancy. Dorotea died in 1908, and in 1912 Elias married his second wife, Dolores Jonsay. With her he had three children: Serafin, Jose, and one who died in childhood.

During the existence of the first marriage, Elias Naval took possession of the land in question and commenced to cultivate it in a small scale; but it was not until 1917, that is, nine years after the death of his first wife, that he applied for a free patent therefor. At that time he was already married to his second wife. On February 10, 1925, the application was approved by the Director of Lands who, on that same day, ordered applicant's entry to be recorded in his name. Then on August 29, 1928 a free patent was issued to applicant, who, upon the patent being registered, received Original Certificate of Title No. 346 from the register of deeds for the province.

As the occupation and cultivation of the land began during the first marriage but title thereto was applied for and granted during the second marriage, the question arose as to whether the land should belong to the first conjugal partnership or to the second. To settle the question the surviving children of the first marriage, claiming that the land should belong to them, instituted the present action in the Court of First Instance of Camarines Sur against the widow and the surviving children of the second marriage, who on their part claim that the land belongs to the second conjugal partnership. Upon hearing the cause the court decided in favor of defendants, whereupon plaintiffs appealed to the Court of Appeals, but that court has endorsed the case here on the ground that the questions raised are purely legal.

Plaintiffs-appellants' position is that the patent granted to Elias Naval is a mere confirmation of a vested right acquired since 1907 through continuous possession and cultivation of the land in question. The trial judge, after analyzing the applicable sections of the Public Land Law, held that mere possession and cultivation since 1907 does not give the entry man a vested right to the land. He says:

"El Juzgado, sin embargo, del analysis de los terminos en que estan concebidos dichos articulos, es de opinion que Elias Naval, per su posesion y cultivo interrumpidos desde el afio 1907, solo tuvo un derecho para obtener titulo gratuito sobre el terreno en litigio de acuerdo con el articulo 41; y dicho derecho era entonces imperfecto o incoativo, porque dependia de una contingencia posterior, cual es el resultado de la investigacion que mas

despues practico el Director de Terrenos tal como se ordena en el art. 43. Aquel derecho solo se quedo establecido y se convertio en real, perfecto y absolute cuando, despues de la investigacion practicada el efecto, el Director de Terrenos dicto el 10 de Febrero de 1925 la orden. de expedicion del titulo. En este momento fue cuando Elias Naval Be hizo dueno del terreno en cuestion y tuvo un derecho adquirido sobre el mismo, que se patentizo y se hizo efectivo mediante la expedicion del correspondiente titulo.

We are inclined to agree with the view taken by the lower court. Occupation and cultivation of the land in question since 1907 unquestionably gave Elias Naval the right to apply for a free patent therefor under the provisions of the Public Land Law. But in order that that right might ripen into a free patent title, it was necessary, among other things, that an application be actually filed. Without this requisite no such title could be acquired, so that if Elias Naval had never filed his application, he could have acquired no right of ownership which he could transmit to his heirs. As was said in a case, it is an erroneous theory, adopted by some courts, that the entryman acquired an equitable title piecemeal, or on the installment plan, until he earned a perfect or complete title by having complied with all the conditions prerequisite to obtaining a patent. The entryman in fact acquired nothing until the instant he was entitled to everything. If his compliance with the statutory conditions fell short in any essential, he had nothing, but the instant he had fully complied with them, the equitable estate burst into full blossom as his property, and simultaneously therewith he acquired the right to a patent. (Petition of S. R. A. Inc., 18 NW 2d 447, 449.)

While no case directly in point has been found, the following from American Jurisprudence is illuminating:

"The rights and interests of the spouses in land acquired from the United States are governed by the Federal laws until the title thereto is completed by the issuance of a patent and, thereafter, the state laws control the determination of whether the land is separate or community property. Hence, in order that a right to such land initiated during coverture but not consummated until the dissolution of the marriage shall fall into the community, it is necessary that it should have proceeded beyond a mere occupancy or possessory right and arisen to the dignity of ownership!.; In respect of lands acquired under the Federal Homestead Act, upon the death of one spouse after the initiation but before the completion of the right to the homestead, the survivor acquires the absolute title thereto as his separate property free from any community interest under the laws of the state, especially where "the Homestead entry was commuted by the survivor; after the death of the other spouse. Where the wife is divorced after Tier husband's entry on the land but before the completion of his right to the homestead, she acquires no interest in the property. Where the entry was made before marriage and the patent was issued afterwards, the land is the separate property of the entryman. But where the title was initiated and the patent was issued during the existence of the marriage, the land is community property." (11 Am. Jur. 193, citing *McCune vs. Essig*, 199 U. S. 362; italics supplied.)

In view of the foregoing, we are with the trial court in holding that the land in question belongs to the second conjugal partnership, so that one-half of it should pertain to Elias Naval's second wife, while the other half, which corresponds to the deceased Elias Naval, should be divided equally among his surviving children: Francisco, Concepcion, Serafin, and Jose, all surnamed Naval. And it being understood that the shares of the children shall be subject to the usufruct of the surviving spouse as provided by law, the judgment appealed from is affirmed, without special pronouncement as to costs.

Paras, C.J., Pablo, Bengzon, Padilla, Jugo, Bautista, Angelo, and Reyes, J.B.L., JJ., concur.

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