

**DIONICIA J. CID, AMADOR JULIAN, ESCOLASTICA J. AGCAOILI,
DOMINGA J. SALMO AND TEODORO JULIAN, PETITIONERS, VS.
NANCY W. BURNAMAN, ELIS J. BURNAMAN, AND THE COURT OF
APPEALS, RES...**

G.R. No. L-24414. July 31, 1968

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Petitioners, surnamed Julian, seek review and reversal of the judgment rendered by the Court of Appeals, in Case No. CA-32182-R, ordering the dismissal of their complaint against the validity of the sale to respondents Burnamans of an undivided one-fourth (1/4) of urban Lot No. 9008 of the Cadastral Survey of Laoag, Ilocos Norte, and reversing the decision of the Court of First Instance of said province in its Civil Case No. 2609.

The following facts were found by the Court of Appeals:

The aforesaid lot was originally decreed in undivided halves, one in favor of Gregoria Bonoan (1/2) and the other half in favor of the five petitioners Julians (Dionicia, Amador, Escolastica, Dominga and Teodoro), as owners in equal shares of said moiety.

Gregoria had in her possession Original Certificate of Title No. 7139, covering the land in question. When she died on 19 November 1938, the Certificate passed to the hands of her son, Cenon Bonoan @ Cenon Hernando. The land tax assessment was also in the name of Gregoria, but when she died, it was placed in the names of Cenon Hernando (Cenon Bonoan) and Engracia Hernando, her children. Engracia was the mother of the petitioners Julians.

On 4 May 1950, Cenon executed a sworn affidavit (Exhibit "A") adjudicating unto himself the entire half interest of his mother, Gregoria Bonoan, in Cadastral Lot No. 9008, as "her only legal heir the affiant named herein who is her only child", and this sworn statement was entered, recorded on the same day, and annotated on the back of the certificate of title, subject to a 2-year reservation in favor of possible claimants, in conformity with Rule 74 of the Rules of Court. On the very same day, there was entered in the Registry of Deeds a special power of attorney, executed by the Julians in favor of Cenon as their attorney-in-fact, empowering him to mortgage the principals' share and interest to the Philippine National Bank. This mortgage was executed the next day and, likewise, recorded.

Six (6) years later, on 7 April 1956, Cenon ceded by way of absolute sale -

"all his rights, participation and interest over his entire share of one fourth unto Nancy Warwick Burnaman"

for the price of P1,500.00 (Exhibit "2"), but the deed was not recorded.

Eight months afterward, on 5 December 1956, Cenon Bonoan, or Hernando subscribed another deed of sale (Exhibit "3") wherein, for a price of P2,500.00 he conveyed unto the same vendee, Nancy W. Burnaman, not

one-fourth but an undivided half (1/2) interest of Lot 9008, stating in the deed of sale that he was "the absolute owner and actual possessor of the said undivided half interest in the above-described parcel of land". This deed of sale was recorded on 17 December 1956. A new Certificate of Title No. T-4215 was issued, with Nancy as owner of an undivided half and with the Julians as holders of the other half (Exhibit "7"). Original Certificate of Title No. 719 was cancelled. On 2 January 1957, at the instance of Nancy Burnaman, the court ordered the cancellation of the two-year reservation in favor of possible claimants, since more than two years had lapsed from the recording in 1950 of the extra judicial adjudication in favor of Cenon.

Petitioners Julians filed, on 18 July 1957, a complaint against Nancy Burnaman, her husband, Ells J. Burnaman, and Cenon Hernando, seeking the avoidance of the sale by the latter in so far as concerned a one-fourth (1/4) undivided interest in the lot, on the basis that the original half owner, Gregoria Bonoan, died leaving two children, Cenon and Engracia, the latter being the mother of plaintiffs Julians; that upon Engracia's death, her children, the Julia, became entitled to half of Gregoria's half interest (i. e. 1/4 of the whole) in addition to their recorded half share; that the Burnamans were duly informed of the Julians' claim and were purchasers in bad faith. They prayed to be declared owners of an undivided three-fourths (3/4) of Lot No. 9008, and to be awarded damages and other relief.

The defendants Burnamans denied the allegations of the complaint; pleaded good faith in their purchase from Cenon Hernando and counterclaimed damages; while Cenon answered admitting that Engracia B. Hernando was his sister, but denied that she had any right or participation in the land in question and pleaded that the lot was purchased with his earnings as a soldier in the Philippine Scouts, and that his mother, Gregoria, and his sister, Engracia, had recognized his rights to the undivided half of Lot No. 9008 of the Laoag Cadastre.

After trial, the court of first instance found for the plaintiffs Julians; declared them owners of an undivided 3/4 of the lot; annulled pro tanto the adjudication in favor of Cenon, and his sale in favor of the Burnaman spouses; ordered the cancellation of Transfer Certificate of Title No. 4215; and ordered defendants to pay damages at P5.00 per month from 6 December 1956.

Upon appeal by the defendants, the Court of Appeals found, in its turn, that Engracia (mother of the Julians) was an illegitimate child of Gregoria Bonoan, and was never recognized voluntarily or compulsorily, by her mother; that her certificate of baptism on 16 April 1879, even if considered a public document at the time it was issued, was incompetent evidence of her acknowledgment; that not being acknowledged, expressly or tacitly, she could not inherit from Gregoria, unlike Cenon who was acknowledged, according to Dionicia Julian Cid's testimony; that Cenon's admission that Engracia was his sister did not make the former an acknowledged natural child of his mother. The Court of Appeals, likewise, declared that the buyers acted in good faith, although this issue was subordinate to the previous one. Reversing the court of first instance, the appellate court decreed that the Julians' complaint be dismissed. Hence, this appeal.

The first attack levelled at the appealed decision by petitioners-appellants is that, their action being "an ordinary civil action on the ground of fraud" (Brief, page 10), it was Improper for the appellate court to "make a declaration of heirship which is within the exclusive competence and jurisdiction of the court in special proceedings," citing *Litam vs. Espiritu*, 100 Phil. 365.

Appellants suffer from a misconception of the true purpose of the inquiry by the Court of Appeals into the filiation and status of their mother, Engracia Bonoan (or Hernando). Plaintiffs, as claimants of an additional undivided fourth (1/4) of Lot 9008 are duty bound to rely on the strength of their title thereto, and not on the weakness of the defendants' claim (Civil Code, Article 434; *Misamis Lumber Co. vs. Director of Lands*, 57 Phil 881). Since the plaintiffs Julians based their title upon hereditary succession from the original recorded owner,

Gregoria Bonoan, through their mother, Engracia Bonoan, it was perfectly proper for the appellate court to inquire whether Engracia was, or could be, an heir of Gregoria. To be such heir, it is not enough that Engracia was Gregoria's daughter; for not every child is entitled to inherit. To succeed, a child must be, under the rules of the Civil Code of 1889 (in force when Gregoria died in 1938), either a child legitimate, legitimated, or adopted, or else an acknowledged natural child, for illegitimates not natural are disqualified to inherit (Civil Code of 1889, Article 807, 939). As appellants' own Exhibits "G" and "H" showed that both Cenon and Engracia were children of Gregoria but with father unknown, their legitimacy or legitimation was out of the question. Hence, it became imperative to ascertain whether Engracia was properly acknowledged, assuming that her parents could marry each other when she was conceived. Because if Engracia was not recognized, she could not inherit from her mother Gregoria and, consequently, could not transmit to her own issue any successional rights to Gregoria's estate.

The court of first instance held that Engracia was deemed acknowledged by a public instrument, because her baptismal certificate in the parish records was a public document before General Order No. 68 and Act 190; but the Court of Appeals correctly held that this certificate did not constitute a sufficient acknowledgment since the latter must be executed by the child's father or mother, and the parish priest can not acknowledge in their stead (Canales vs. Arrogante, 91 Phil. 6). This action of the appellate court was not a declaration of heirship but a testing of the chain of title of herein petitioners-appellant plaintiffs in first instance. There being no other evidence of her acknowledgement, Engracia and her children were properly refused a share in her mother's property.

It is true that Cenon Herrando (or Bonoan) admitted in his answer that Engracia was his sister, but this certainly is not an admission that she was acknowledged by their common mother. For acknowledgment is not a consequent of filiation.

Petitioners also contest the finding in the decision of the Court of Appellee that Cenon Bonoan was acknowledged by his mother, Engracia; but they do impugn the testimony of Dionicia Julian, cited by the appellate court (Decision page 22), that he was acknowledged when their old grandfather was sick in bed. At any rate, even if Cenon was not properly acknowledged, that will not help plaintiffs-appellants' case at all; for it will not make Engracia an heir, and complaint must still be dismissed for lack of a cause of action.

The same thing can be said about the appellate court's finding that Burnamans were purchasers in good faith. Even if they were in bad faith, such fact would be irrelevant for the purposes of the present case, since they are not entitled to the proprietary interest that they claim to have inherited through their mother, Engracia. The question of appellees Burnamans' good or bad faith can be put in issue only by someone entitled to the ownership of that undivided interest; either Cenon, if he was properly acknowledged; and if not by some other heir of Gregoria, whether ascendant or collateral, who may be found to be entitled thereto.

The other assignments of error, being mere consequence of those here discussed, need not be separately resolved.

WHEREFORE, the decision of the Court of Appeals is affirmed. Costs against appellants Julians.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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