

**ROSENDO HERNAEZ Y ESPINOSA, PLAINTIFF AND APPELLANT, VS.
MATEO HERNAEZ Y ESPINOSA ET AL., DEFENDANTS AND
APPELLANTS.***G.R. No. 10027. November 13, 1915*

Ponente: TRENT, J.

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The spouses, Pedro Hernaez and Juana Espinosa, died, leaving several legitimate descendants. Neither of their estates had been divided up to the date of the institution of this action, but were both under administration. Their son, Domingo Hernaez y Espinosa, sold all his interest in both his father's and mother's estate to his son, Vicente Hernaez y Tuason, on November 6, 1901. Notwithstanding the fact that Domingo Hernaez y Espinosa had thus parted with all his interest in the estates of his two parents, he executed a document of sale in favor of Alejandro Montelibano y Ramos on February 27, 1907, in which he purported to convey all his undivided interest in his father's estate and one-eighteenth of his undivided interest in his mother's estate. On the same date he executed another document of sale in which he purported to convey to Jose Montelibano Uy-Cana four-eighteenths of his interest in his mother's estate. Both of these sales were made with the connivance of his son, Vicente Hernaez y Tuason. Hence, although Vicente Hernaez y Tuason had actually purchased all of his father's interest in the estates of Pedro Hernaez and Juana Espinosa as early as November 6, 1901, and was, on February 27, 1907, the undoubted owner thereof, he is effectually estopped from asserting his title as against either of the vendees mentioned in the documents of sale dated February 27, 1907, to which we have just referred. (Code Civ. Pro., sec. 333, No. 1.) Bigelow on Estoppel (p. 607) says:

" * * * it is now a well-established principle that where the true owner of property, for however short a time, holds out another, or, with knowledge of his own right, allows another to appear as the owner of or as having full power of disposition over the property, the same being in the latter's actual possession, and innocent third parties are thus led into dealing with such apparent owner, they will be protected."

On August 19, 1912, Jose Montelibano Uy-Cana sold his interest in the estate to Alejandro Montelibano y Ramos. By this transfer, the latter stood owner of all the interest of Domingo Hernaez y Espinosa in the estate of Pedro Hernaez, and five-eighteenths of his interest in the estate of Juana Espinosa as against Vicente Hernaez y Espinosa.

It is admitted that Rosendo Hernaez y Espinosa, another son of the deceased spouses and administrator of the estates, was notified of Montelibano's purchases on January 8, 1913, when he received notice of Montelibano's motion, entered in the administration proceedings, asking that he (Montelibano) be substituted as assignee of the interests of various heirs of the estate which he had acquired by purchase. Notwithstanding this knowledge, Rosendo Hernaez y Espinosa entered into a contract of sale with Vicente Hernaez y Tuason, whereby the latter purported to convey all the interest, which he had acquired from his father, in the estate of the deceased spouses, Pedro Hernaez and Juana Espinosa. It will be remembered that he purchased his father's share of the estate on November 6, 1901; that he is estopped from asserting title to any interest in his grandfather's estate and in

five-eighteenths of his grandmother's estate. Rosendo Hernaez y Espinosa purchased with full knowledge of these facts. He, therefore, acquired thirteeneighteenths of the interest of Domingo Hernaez y Espinosa in the estate of the latter's mother and nothing more.

"That rule is that the holder [Alejandro Montelibano y Ramos] of a prior equitable right has priority over the purchaser [Rosendo Hernaez y Espinosa] of a subsequent estate (whether legal or equitable) without value, or with notice of the equitable right, but not as against a subsequent purchaser for value and without notice." (Ewart on Estoppel, p. 199.)

Alejandro Montelibano y Ramos has acquired his interest in the estate of the deceased spouses for a valuable consideration and in good faith, and there remains to the plaintiff, Rosendo Hernaez y Espinosa, only the right of subrogation allowed him by article 1067 of the Civil Code, which reads as follows:

"If any of the heirs should sell his hereditary rights to a stranger before the division, all or any of the coheirs may subrogate himself in the place of the purchaser, reimbursing him for the value of the purchase, provided they do so within the period of a month, to be counted from the time they were informed thereof."

On January 24, 1913, the plaintiff instituted this action seeking to subrogate himself in the rights acquired by Montelibano in the estate. Unless the plaintiff can be charged with actual notice of the conveyance by which Montelibano acquired these interests, prior to January 8, 1913, it is clear that he has opportunely asserted his right of subrogation. This is purely a question of fact. As to the sales whereby Domingo Hernaez y Espinosa parted with that portion of his interest in the estate which is now held by Alejandro Montelibano, as well as to those sales made by other heirs to Montelibano, the trial court found that the plaintiff, Rosendo Hernaez y Espinosa, was not chargeable with notice prior to January 8, 1913. After a careful examination of the record we see no reason for disturbing this finding of fact. As a consequence, the plaintiff, Rosendo Hernaez y Espinosa, is entitled to exercise his right of subrogation in accordance with article 1067, above quoted.

The interest which Jose Montelibano Uy-Cana purchased from Domingo Hernaez y Espinosa on February 27, 1907, for the sum of P4,500, he afterwards transferred to Alejandro Montelibano y Ramos for the sum of P10,000. In rendering judgment, the trial court decreed that the plaintiff, Rosendo Hernaez y Espinosa, should pay the latter sum for the privilege of exercising the right of subrogation. This was error. Article 1067 of the Civil Code provides that the coheir may exercise this right of subrogation upon the payment to the purchaser of another heir's interest, "el predo de la compra" (the purchase price). Obviously, if the interest had not been resold, the plaintiff, Rosendo Hernaez y Espinosa, would have had to pay only the price for which Uy-Cana acquired it. The purpose of the article cannot be evaded by a reconveyance of the interest to a third person at a higher price. Subsequent purchasers of the interest acquire it burdened with the right of subrogation of coheirs at the price for which the heir who sold it parted with it.

It is urged that the prices in some of the deeds of sale by which Alejandro Montelibano y Ramos purchased the interests of various heirs in the estates are fictitious. This is a question of fact upon which both parties adduced evidence, and we concur in the opinion of the trial court that there is no basis to the charge. For the foregoing reasons, the judgment of the court is modified by substituting, as the price of subrogation of the interest originally purchased by Jose Montelibano Uy-Cana, the sum of P4,500, as set out in Exhibit 7, for the sum of P10,000, the consideration expressed in Exhibit 10. As modified, the judgment appealed from is affirmed, without costs. So ordered.

Arellano, C. J., Torres, and Carson, JJ., concur.

Johnson, J., concurs in the result.

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