TEODORA SALTIGA DE ROMERO, PRESENTACION ROMERO MAMA, REPRESENTED BY SABDULLAH MAMA, LUCITA ROMERO PACAS, GLORIOSA ROMERO RASONABLE AND MINDALINA ROMERO NUENAY, PETITIONERS, VS. ...

G.R. No. 109307. November 25, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is a Petition for Review on Certiorari of the decision of the Court of Appeals[1] in CA-G.R. CV No. 33164 entitled TEODORA SALTIGA DE ROMERO ET. AL. vs. LUCERO ROMERO ET. AL. and LUTERO ROMERO, ET. AL. vs. SPOUSES MELITON PACAS, ET. AL. involving two civil cases which were tried jointly by the Regional Trial Court of Lanao Del Norte, Branch 7, namely:

- Civil Case No. 591, which was filed by herein Petitioners Teodora Saltiga De Romero, Presentacion Romero-Mama (PRESENTACION), Lucita Romero-Pacas (LUCITA), Gloriosa Romero-Rasonable (GLORIOSA), and Mindalina Romero-Nuenay (MINDALINA) against Lutero Romero (LUTERO) and the Development Bank of the Philippines (DBP) for reconveyance of their share in a parcel of land, Lot 23 Pls-35, titled in the name of LUTERO; and

- Civil Case No. 1056, which was filed by LUTERO and his wife Natividad S. Romero against LUCITA and her husband Meliton Pacas, PRESENTACION and her husband Sabdullah Mama and GLORIOSA and her husband Dionisio Rasonable for annulment of three affidavits wherein LUTERO supposedly sold to them shares over Lot No. 23 Pls-35.

The facts as found by the Court of Appeals are as follows:

"From the evidence presented by the appellants, it appears that on December 12, 1939 Eugenio Romero bought from spouses Celedonio Jaug and Sofia Macan the latter's `rights, interest, participation, ownership and possession' of 12 hectares of land. The land in question was then public land. When Eugenio Romero applied for a homestead patent for said land, the same was disapproved by the Bureau of Lands because said Romero already had applied for a homestead patent for 24 hectares and was disqualified from owning the additional 12 hectares.

Eugenio Romero placed the application in the name of his eldest son, Eutiquio Romero, allegedly in trust for all the children of Eugenio. When Eutiquio got married and had children, his brothers and sisters got worried that his heirs may claim the land so the application was transferred in the name of Lutero Romero, the second son of Eugenio who was then still single. When Lutero in turn got married, he relinquished the application in favor of his younger brother Ricardo through an instrument dated July 5, 1952.

The spouses Eugenio Romero and Teodora Saltiga had nine (9) children. Other than the three (3) sons aforenamed, they had six (6) daughters, namely Generosa, Diosdada, Mindalina, Lucita, Presentacion and Gloriosa.

Eugenio Romero died sometime in 1948. In 1961 his widow Teodora caused the land in question to be subdivided among six (6) of her children, the other three (3) having already been given their shares in the other properties of the Romero spouses. The twelve (12) hectares were supposedly divided equally among Lutero, Ricardo, Mindalina, Lucita, Presentacion, and Gloriosa who all got about two (2) hectares each. Subsequently, however, Ricardo conveyed his share to Lucita and Gloriosa who therefore had 3 hectares each. On the other hand, Mindalina left her share in the care of her mother Teodora and her sister Presentacion because she left for Davao City. Lutero later requested that he be allowed to farm this share of Mindalina, thus he occupied a total of 4 hectares with the consent of his mother Teodora and sister Presentacion.

The appellants further claimed that after the partition, they had been in occupancy of their respective shares through their tenants.

However, appellee Lutero Romero presented evidence to the effect that sometime in 1969 a policeman picked him up and brought him to the office of Mayor Pablito Abragan of Kapatagan where he found his mother Teodora and his three (3) sisters Gloriosa, Presentacion and Lucita and the respective husbands of the latter two. He testified that when he arrived at the office, he was presented three (3) affidavits for his signature. Said affidavits were to the effect that he sold three (3) hectares each out of the 12 hectares of land to his sister Gloriosa, his brother-in-law Sabdullah Mama married to Presentacion Romero, and to Meliton Pacas married to Lucita Romero for a consideration of P3,000.00 each.

Appellee Lutero Romero testified that he told the mayor that he was not selling the land and that he could not do so because the five-year period had not yet elapsed but the mayor told him to just sign the affidavits because after five (5) years his sisters will get the land and pay for them and that if they would not pay, the mayor will take steps to return the land personally to him. Lutero stated that he has not been paid for the land by his sisters.

Lutero Romeo claimed that as early as 1940-1941 he had already been in occupancy of the 12 hectares in question when it was shown to him by this father who owned the adjoining parcel; and that the said land had been titled in his name even while his father Eugenio was still alive. Indeed it appears that the title to the property, O.C. T No. P-2,261, had been issued to Lutero Romero as early as April 26, 1967, after the homestead patent was issued in his favor on April 7, 1967. He said that his three (3) sisters occupied portions of the property only in 1969, after he was forced to sign the affidavits by Mayor Abragan.

Lutero Romero had thereafter repudiated the three (3) affidavits on August 12, 1974. Because of this, estafa charges were filed against him by the three (3) parties concerned but said charges were dismissed.

It further appears that Lutero Romero obtained a loan from the Development Bank of the Philippines on December 3, 1975 and mortgaged the land in question as collateral for said loan. Appellants claim that only then did they know that the land had been titled in the name of Lutero Romero. Thereafter, through a letter dated August 2, 1976, Lutero Romero asked his sisters to vacate the land in question.

A few days thereafter, or on August 14, 1976, Civil Case No. 591 was filed against Lutero Romero."[2]

On March 11, 1991, the RTC rendered a decision the dispositive portion of which reads:

> "WHEREFORE, judgment is hereby rendered:
>
> - Declaring the three (3) affidavits of sale as null and void and no effect;
>
> - Ordering the plaintiffs in Civil Case No. 591 and defendants in Civil Case No. 1056, namely Sabdullah Mama, Presentation Romero-Mama Gloriosa Romero Rasonable, Meliton Pacas and Lucita Romero to surrender and to deliver to Lutero Romero the possession of all the portions of Lot 23, Pls-35;

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- Ordering the Municipal Assessor of Kapatagan, Lanao del Norte to cancel Tax Declaration Nos. 6029, 6030, 6031 and 6032 in the names of defendants (Civil Case No.1056) Sabdullah Mama, Gloriosa Rasonable, plaintiff Lutero Romero and defendant Meliton Pacas and to restore Tax Declaration No. 1347 in the name of Lutero Romero for the entire Lot 23, Pls-35;

- Ordering the defendants (Civil Case No. 1056) to pay to the plaintiff the sum of TEN THOUSAND (P10,000.00) PESOS as actual damages;

- Ordering the defendants (Civil Case no. 1056) to pay to the plaintiffs the sum of TEN THOUSAND (P10,000.00) Pesos as moral damages; and

- Ordering the defendants (Civil Case No. 1056) to pay the cost of this proceeding.

SO ORDERED."[3]

Not satisfied with the decision of the RTC, petitioners appealed to the Court of Appeals, which affirmed the decision of the RTC in favor of LUTERO. Hence this petition where the petitioners assign the following issues:

"WHETHER OR NOT LUTERO ROMERO IS A TRUSTEE OF LOT 23 PLS-35 FOR THE BENEFIT OF THE HEIRS OF EUGENIO ROMERO.

WHETHER OR NOT WITH OR WITHOUT SAID THREE (3) AFFIDAVITS IN QUESTION PETITIONERS' VALID CAUSE OF ACTION CAN STAND OR NOT."[4]

DBP filed its comment to the petition and seeks the dismissal of the case against it considering that the agricultural loan in favor of LUTERO has been paid in full. DBP maintains that since the mortgage was already cancelled, petitioners have no cause of action against it.[5]

Petitioners contend that LUTERO merely holds Lot 23 Pls-35 in trust for the benefit of the heirs of his father EUGENIO since it was actually EUGENIO who first applied for the homestead but considering that EUGENIO was already granted a homestead, the application had to be placed in the name of his eldest son EUTIQUIO. The application was subsequently transferred to the name of LUTERO who later transferred the application in the name of Ricardo Romero (RICARDO), his younger brother. To support their contention, petitioners point to the testimony of LUTERO during the investigation of the homestead application of RICARDO to the effect that he transferred and relinquished his rights as trustee of the lot to RICARDO. The fact that LUTERO was able to cause the issuance of the Homestead title of the land in question under his name clearly shows that LUTERO employed fraud in procuring the same. Consequently, herein petitioners are entitled to recover the said lot. Petitioners also rely on the three affidavits of sale executed by LUTERO wherein he sold portions of Lot 23 Pls-35 in favor of GLORIOSA, PRESENTACION and her husband and LUCITA and her husband. They claim that pursuant to these three affidavits, LUTERO no longer has a claim over Lot 23 Pls-35.[6]

On the other hand, respondents maintain that LUTERO did not commit fraud in the titling of Lot 23 Pls-35. They allege that the petitioners failed to prove this during the trial of the case. On the contrary, LUTERO complied with all the requirements of the law when he successfully obtained title to the lot. Respondents also deny that LUTERO held the land in trust for the benefit of the heirs of his father EUGENIO. According to them, this violates the provisions of The Public Land Act. Even assuming that a trust in fact was created, such is null and void for being contrary to law. Finally, respondents maintain that the three affidavits of sale executed in favor of the petitioners are void since they were simulated and not supported by any consideration; and they were executed within the five-year prohibitory period from the issuance of the patent.[7]

The Court of Appeals ruled in favor of LUTERO, stating:

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> "Appellants herein maintain that the land was held by Lutero Romero, only in trust for his brothers and sisters because the land belonged to their father Eugenio Romero. We do not find any basis for this posture. Eugenio Romero was never the owner of the land in question because all he bought from the Jaug spouses were the alleged rights and interests, if there was any, to the said land which was then part of the public domain. The Jaugs could not have sold said land to Eugenio as they did not own it. Eugenio Romero was not granted, and could not have been granted, a patent for said land because he was disqualified by virtue of the fact that he already had applied for the maximum limit of 24 hectares to which he was entitled. The land in question could not therefore have passed on from him to his children.
>
> On the other hand, Lutero Romero applied for a homestead patent over the land in question and his application was duly approved. The appellants have not established that there was any fraud committed in this application. In fact it appears that there was even a hearing conducted by the Bureau of Lands on the application because a certain Potenciano Jaug had been contesting the application. Under the presumption of law, that official duty has been regularly performed, there appears to be no ground to question the grant of the patent to Lutero Romero in 1967.
>
> His sisters Gloriosa, Presentacion, and Lucita apparently recognized Lutero's ownership of the property when in 1969 they sought the help of the mayor of Kapatagan to convince Lutero to execute affidavits of sale in their favor. However, Lutero could not have sold any portion of the property to them. Any such sale executed within five (5) year period from the date of the issuance of the title is null and void even if the sale was made by the homesteader in favor of his/her descendants (Gayapano vs. IAC, 199 SCRA 309). Furthermore, it has been established that the three supposed vendees never paid any consideration for the supposed sale of the lots they occupied.
>
> We agree with the observation of the appellee that under the theory of the appellants, the latter had sought to circumvent the law. It would appear that because Eugenio Romero could not legally qualify to have the land in question, he had allegedly sought to place the application in another's name with the same intention to own it through another. This certainly cannot be countenanced."[8]

We find no reversible error committed by the Court of Appeals.

The core issue in this case is whether LUTERO acquired Lot 23 Pls-35 in trust for the benefit of the heirs of EUGENIO.

"A trust is the legal relationship between a person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to performance of certain duties and the exercise of certain powers by the latter."[9] Trust relations between parties may be express or implied.[10] Express trusts are those which are created by the direct and positive acts of the parties, by some writing or deed, or will, or by words evidencing an intention to create a trust.[11] Implied trusts are those which without being express, are deducible from the nature of the transaction as matters of intent, or which are superinduced on the transaction by operation of law as a matter of equity, independently of the particular intention of the parties.[12] Implied trusts may either be resulting or constructive trusts, both coming into by operation of law.

Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another. On the other hand, constructive trusts are created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or hold the legal right to property, which he ought not, in equity and good conscience, to

hold.[13]

However, it has been held that a trust will not be created when, for the purpose of evading the law prohibiting one from taking or holding real property, he takes a conveyance thereof in the name of a third person.[14]

In the present case, the petitioners did not present any evidence to prove the existence of the trust. Petitioners merely alleged that LUTERO, through fraudulent means, had the title of Lot 23 Pls-35 issued in his name contrary to the alleged agreement between the family that LUTERO would merely hold the lot in trust for the benefit of EUGENIO's heirs. The alleged agreement was not proven and even assuming that the petitioners duly proved the existence of the trust, said trust would be of doubtful validity considering that it would promote a direct violation of the provisions of the Public Land Act as regards the acquisition of a homestead patent. A homestead applicant is required by law to occupy and cultivate the land for his own benefit, and not for the benefit of someone else.[15] Furthermore, under Section 12 of The Public Land Act (CA 141), a person is allowed to enter a homestead not exceeding twenty-four (24) hectares. In the present case, it is not disputed that EUGENIO already applied for a homestead patent for twenty-four (24) hectares of land and was disqualified from applying for an additional twelve (12) hectares. If we uphold the theory of the petitioners and rule that a trust in fact existed, we would be abetting a circumvention of the statutory prohibitions stated under the Public Land Act. We therefore find no legal or factual basis to sustain the contention of the petitioners that LUTERO merely held Lot 23 Pls-35 in trust for the benefit of the heirs of EUGENIO.

As for the alleged sale of three portions of the lot for a consideration of P3,000.00 each evidenced by the three affidavits of sale executed by LUTERO in favor of GLORIOSA, PRESENTACION and LUCITA, the Court of Appeals correctly declared the three conveyances void. CA 141 prohibits the alienation of a homestead within five years from the issuance of the patent and grant under Section 118, which states:

> "Sec. 118. Except in favor of the Government or any of its branches, units, or institutions, lands acquired under free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after the date of issuance of the patent and grant, nor shall they become liable to the satisfaction of any debt contracted prior to the expiration of said period, but the improvements or crops on the land may be mortgaged or pledged to qualified persons, associations, or corporations.

No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after the issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds."

> "The conveyance of a homestead before the expiration of the five-year prohibitory period following the issuance of the homestead patent is null and void and cannot be enforced, for `it is not within the competence of any citizen to barter away what public policy by law seeks to preserve'."[16] In the present case, since the sales were made on January 17, 1969 or less than two years after the issuance of LUTERO's title to the homestead on April 7, 1967, the sales are clearly void.

Finally, we cannot grant DBP's prayer to be dropped from the case even if the mortgage in its favor has been cancelled. DBP did not appeal the decision of the Court of Appeals and cannot therefore seek affirmative relief from this Court other than the ones granted in the decision of the court below.[17] All that said appellee can do is to make a counter-assignment of errors or to argue on issues raised at the trial only for he purpose of sustaining the judgment in his favor, even on grounds not included in the decision of the court a quo nor raised in the appellant's assignment of errors or arguments.

WHEREFORE, the instant petition is hereby DENIED.

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SO ORDERED.

Melo, (Chairman) Vitug, Panganiban, and Purisima, JJ., concur

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[1] Seventeenth Division composed of the ponente, J. Saolme A. Montoya; and the members J. Oscar M. Herrera (Chairman) and J. Eduardo G. Montenegro concurring.

[2] Decision pp. 5-7.

[3] Rollo, p. 23.

[4] Memorandum for Petitioners, p. 2.

[5] Memorandum for Respondent DBP, pp 3-4; Rollo, pp. 167-168.

[6] Memorandum for Petitioners, pp. 2-6.

[7] Memorandum for the Private Respondents, pp. 5-13.

[8] Decision, pp. 7-8; Rollo, pp. 30-31.

[9] Tolentino. Civil Code of the Philippines, Vol. IV, 1991 ed., p. 669.

[10] Article 1441, New Civil Code.

[11] O'laco Co Cho Chit, 220 SCRA 656 at p. 662 [1993].

[12] Sps. Rosario CA, G.R. No. 127005, July 19, 1999 at p. 12; Tigno CA, 280 SCRA 262 at p. 271 [1997].

[13] Sps. Rosario CA, Supra.

[14] Kiel Estate of P.S. Sabert, 46 PHIL 193 at p. 196 [1924].

[15] Section 90 (e), Public Land Act.

[16] Ortega vs. Tan, 181 SCRA 350 at p. 356 [1990].

[17] Medida CA, 208 SCRA 887 at pp. 898-899 [1992].

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