

MAURA RAMOS, PLAINTIFF AND APPELLEE, VS. MARIA CASTELO, LORENZO LOPEZ AND MARIANO LOPEZ, AS ADMINISTRATORS OF THE ESTATE OF NATALIO LOPEZ, DECEASED, DEFENDANTS AND APPELLANTS.

G.R. No. 11599. September 20, 1917

Ponente: JOHNSON, J.

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JOHNSON, J.:

The plaintiff claims that she is the owner of a certain piece or parcel of land described in paragraph 2 of the complaint. This action was brought to recover the possession of the same as such owner. The lower court, after a consideration of the evidence adduced during the trial of the cause, reached the conclusion that the plaintiff was the sole and only owner of the parcel of land in question and rendered a judgment in accordance with that conclusion. From that judgment the defendants appealed to this court.

The appeal presents two questions: (1) Could the plaintiff, as a married woman, maintain the present action without the intervention of her husband? and (2) Does the proof show that she is the owner of said parcel of land?

To the complaint the defendants demurred upon the ground that the plaintiff was without right to maintain the action without the intervention of her husband. The plaintiff prayed that she be declared to be the owner of said parcel of land and to be given possession thereof. Her claim of ownership was based upon the fact that it was her sole and separate property; that it was her paraphernal property. In her petition she made no claim for damages for the illegal use and occupation by the defendants. The lower court, in considering the demurrer, overruled it, thereby holding, following the decision of this court in the case of *Jacinto vs. Salvador* (22 Phil. Rep., 376), that a married woman may maintain an action to recover the possession of her sole and separate property without the intervention of her husband when he has no interest therein. In that case this court held that, by virtue of the provisions of section 115 of the Code of Civil Procedure, the wife can now appear in court alone and litigate with regard to her property in which her husband has no interest. The same doctrine had been heretofore announced in the case of *Quison vs. Salud* (12 Phil. Rep., 109). (See also *Bismorte vs. Aldecoa & Co.*, 17 Phil. Rep., 480.)

In view of the foregoing doctrine, we are of the opinion and so hold that no error was committed in overruling the demurrer.

With reference to the second question presented by the appellants, it may be said that the plaintiff claims to be the owner of the land in question by virtue of having inherited the same from her mother Clemencia Buhay. The defendants claim that they are the owners of the land in question by virtue of having purchased the same at a sheriff's sale.

With reference to the claim of the defendants it may be said that the proof shows, that sometime prior to the commencement of the present action, the husband of the plaintiff executed and delivered a mortgage upon a house located upon the land in question; that her husband having failed to satisfy the debt for the payment of which the

said mortgage was given to secure, an action was instituted upon said mortgage, and judgment was rendered in favor of the plaintiffs in that action and against the husband of the plaintiff herein. An execution was issued upon said judgment, and the house and other personal property covered by said mortgage were sold at public auction by the sheriff, including the parcel of land now claimed by the plaintiff. An examination of said mortgage shows conclusively that it only covered the house and other personal property belonging to the husband of the plaintiff. The mortgage did not cover the land now in question. The sale, therefore, of the land which was not included in the mortgage must be considered null and void. The sale of the land being null and void did not affect the title of the plaintiff thereto. The plaintiff, therefore, being the sole and separate owner of said parcel of land as her paraphernal property, is entitled to recover the possession of the same. While there is some proof to the contrary, we are of the opinion that a large preponderance of evidence adduced during the trial of the cause supports the conclusions of the lower court.

The judgment appealed from, therefore, is hereby affirmed, with costs. So ordered.

Arellano, C. J., Carson, Araullo, Street, and Malcolm, JJ., concur.

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