

## TEODORO ACAP, PETITIONER, VS. COURT OF APPEALS AND EDY DE LOS REYES, RESPONDENTS.

*G.R. No. 118114. December 07, 1995*

Ponente: PADILLA, J.

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### **PADILLA, J.:**

This is a petition for review on certiorari of the decision[1] of the Court of Appeals, 2nd Division, in CA-G.R. No. 36177, which affirmed the decision[2] of the Regional Trial Court of Himamaylan, Negros Occidental holding that private respondent Edy de los Reyes had acquired ownership of Lot No. 1130 of the Cadastral Survey of Hinigaran, Negros Occidental based on a document entitled "Declaration of Heirship and Waiver of Rights", and ordering the dispossession of petitioner as leasehold tenant of the land for failure to pay rentals.

The facts of the case are as follows:

The title to Lot No. 1130 of the Cadastral Survey of Hinigaran, Negros Occidental was evidenced by OCT No. R-12179. The lot has an area of 13,720 sq. meters. The title was issued and is registered in the name of spouses Santiago Vasquez and Lorenza Oruma. After both spouses died, their only son Felixberto inherited the lot. In 1975, Felixberto executed a duly notarized document entitled "Declaration of Heirship and Deed of Absolute Sale" in favor of Cosme Pido.

The evidence before the court a quo established that since 1960, petitioner Teodoro Acap had been the tenant of a portion of the said land, covering an area of nine thousand five hundred (9,500) square meters. When ownership was transferred in 1975 by Felixberto to Cosme Pido, Acap continued to be the registered tenant thereof and religiously paid his leasehold rentals to Pido and thereafter, upon Pido's death, to his widow Laurenciana.

The controversy began when Pido died intestate and on 27 November 1981, his surviving heirs executed a notarized document denominated as "Declaration of Heirship and Waiver of Rights of Lot No. 1130 Hinigaran Cadastre," wherein they declared, to quote its pertinent portions, that:

"x x x Cosme Pido died in the Municipality of Hinigaran, Negros Occidental, he died intestate and without any known debts and obligations which the said parcel of land is (sic) held liable.

That Cosme Pido was survived by his/her legitimate heirs, namely: LAURENCIANA PIDO, wife, ELY, ERVIN, ELMER, and ELECHOR all surnamed PIDO; children;

That invoking the provision of Section 1, Rule 74 of the Rules of Court, the above-mentioned heirs do hereby declare unto [sic] ourselves the only heirs of the late Cosme Pido and that we hereby adjudicate unto ourselves the above-mentioned parcel of land in equal shares.

Now, therefore, We LAURENCIANA[3], ELY, ELMER, ERVIN and ELECHOR all surnamed PIDO, do hereby waive, quitclaim all our rights, interests and participation over the said parcel of land in favor of EDY DE LOS REYES, of legal age, (f)ilipino, married to VIRGINIA DE LOS REYES, and resident of Hinigaran, Negros Occidental, Philippines. x x x"[4] (Italics supplied)

The document was signed by all of Pido's heirs. Private respondent Edy de los Reyes did not sign said document.

It will be noted that at the time of Cosme Pido's death, title to the property continued to be registered in the name of the Vasquez spouses. Upon obtaining the Declaration of Heirship with Waiver of Rights in his favor, private respondent Edy de los Reyes filed the same with the Registry of Deeds as part of a notice of an adverse claim against the original certificate of title.

Thereafter, private respondent sought for petitioner (Acap) to personally inform him that he (Edy) had become the new owner of the land and that the lease rentals thereon should be paid to him. Private respondent further alleged that he and petitioner entered into an oral lease agreement wherein petitioner agreed to pay ten (10) cavans of palay per annum as lease rental. In 1982, petitioner allegedly complied with said obligation. In 1983, however, petitioner refused to pay any further lease rentals on the land, prompting private respondent to seek the assistance of the then Ministry of Agrarian Reform (MAR) in Hinigaran, Negros Occidental. The MAR invited petitioner to a conference scheduled on 13 October 1983. Petitioner did not attend the conference but sent his wife instead to the conference. During the meeting, an officer of the Ministry informed Acap's wife about private respondent's ownership of the said land but she stated that she and her husband (Teodoro) did not recognize private respondent's claim of ownership over the land.

On 28 April 1988, after the lapse of four (4) years, private respondent filed a complaint for recovery of possession and damages against petitioner, alleging in the main that as his leasehold tenant, petitioner refused and failed to pay the agreed annual rental of ten (10) cavans of palay despite repeated demands.

During the trial before the court a quo, petitioner reiterated his refusal to recognize private respondent's ownership over the subject land. He averred that he continues to recognize Cosme Pido as the owner of the said land, and having been a registered tenant therein since 1960, he never reneged on his rental obligations. When Pido died, he continued to pay rentals to Pido's widow. When the latter left for abroad, she instructed him to stay in the landholding and to pay the accumulated rentals upon her demand or return from abroad.

Petitioner further claimed before the trial court that he had no knowledge about any transfer or sale of the lot to private respondent in 1981 and even the following year after Laurenciana's departure for abroad. He denied having entered into a verbal lease tenancy contract with private respondent and that assuming that the said lot was indeed sold to private respondent without his knowledge, R.A. 3844, as amended, grants him the right to redeem the same at a reasonable price. Petitioner also bewailed private respondent's ejectment action as a violation of his right to security of tenure under P.D. 27.

On 20 August 1991, the lower court rendered a decision in favor of private respondent, the dispositive part of which reads:

"WHEREFORE, premises considered, the Court renders judgment in favor of the plaintiff, Edy de los Reyes, and against the defendant, Teodoro Acap, ordering the following, to wit:

1. Declaring forfeiture of defendant's preferred right to issuance of a Certificate of Land Transfer under Presidential Decree No. 27 and his farmholdings;
2. Ordering the defendant Teodoro Acap to deliver possession of said farm to plaintiff, and;
3. Ordering the defendant to pay P5,000.00 as attorney's fees, the sum of P1,000.00 as expenses of litigation and the amount of P10,000.00 as actual damages."<sup>[5]</sup>

In arriving at the above-mentioned judgment, the trial court stated that the evidence had established that the subject land was "sold" by the heirs of Cosme Pido to private respondent. This is clear from the following

disquisitions contained in the trial court's six (6) page decision:

"There is no doubt that defendant is a registered tenant of Cosme Pido. However, when the latter died their tenancy relations changed since ownership of said land was passed on to his heirs who, by executing a Deed of Sale, which defendant admitted in his affidavit, likewise passed on their ownership of Lot 1130 to herein plaintiff (private respondent). As owner hereof, plaintiff has the right to demand payment of rental and the tenant is obligated to pay rentals due from the time demand is made. x x x[6]

x x x x x x x x

Certainly, the sale of the Pido family of Lot 1130 to herein plaintiff does not of itself extinguish the relationship. There was only a change of the personality of the lessor in the person of herein plaintiff Edy de los Reyes who being the purchaser or transferee, assumes the rights and obligations of the former landowner to the tenant Teodoro Acap, herein defendant."[7]

Aggrieved, petitioner appealed to the Court of Appeals, imputing error to the lower court when it ruled that private respondent acquired ownership of Lot No. 1130 and that he, as tenant, should pay rentals to private respondent and that failing to pay the same from 1983 to 1987, his right to a certificate of land transfer under P.D. 27 was deemed forfeited.

The Court of Appeals brushed aside petitioner's argument that the Declaration of Heirship and Waiver of Rights (Exhibit "D"), the document relied upon by private respondent to prove his ownership to the lot, was excluded by the lower court in its order dated 27 August 1990. The order indeed noted that the document was not identified by Cosme Pido's heirs and was not registered with the Registry of Deeds of Negros Occidental. According to respondent court, however, since the Declaration of Heirship and Waiver of Rights appears to have been duly notarized, no further proof of its due execution was necessary. Like the trial court, respondent court was also convinced that the said document stands as prima facie proof of appellee's (private respondent's) ownership of the land in dispute.

With respect to its non-registration, respondent court noted that petitioner had actual knowledge of the subject sale of the land in dispute to private respondent because as early as 1983, he (petitioner) already knew of private respondent's claim over the said land but which he thereafter denied, and that in 1982, he (petitioner) actually paid rent to private respondent. Otherwise stated, respondent court considered this fact of rental payment in 1982 as estoppel on petitioner's part to thereafter refute private respondent's claim of ownership over the said land. Under these circumstances, respondent court ruled that indeed there was deliberate refusal by petitioner to pay rent for a continued period of five years that merited forfeiture of his otherwise preferred right to the issuance of a certificate of land transfer.

In the present petition, petitioner impugns the decision of the Court of Appeals as not in accord with the law and evidence when it rules that private respondent acquired ownership of Lot No. 1130 through the aforementioned Declaration of Heirship and Waiver of Rights.

Hence, the issues to be resolved presently are the following:

1. WHETHER OR NOT THE SUBJECT DECLARATION OF HEIRSHIP AND WAIVER OF RIGHTS IS A RECOGNIZED MODE OF ACQUIRING OWNERSHIP BY PRIVATE RESPONDENT OVER THE LOT IN QUESTION.
2. WHETHER OR NOT THE SAID DOCUMENT CAN BE CONSIDERED A DEED OF SALE IN FAVOR OF PRIVATE RESPONDENT OF THE LOT IN QUESTION.

Petitioner argues that the Regional Trial Court, in its order dated 7 August 1990, explicitly excluded the document

marked as Exhibit "D" (Declaration of Heirship, etc.) as private respondent's evidence because it was not registered with the Registry of Deeds and was not identified by anyone of the heirs of Cosme Pido. The Court of Appeals, however, held the same to be admissible, it being a notarized document, hence, a prima facie proof of private respondents' ownership of the lot to which it refers.

Petitioner points out that the Declaration of Heirship and Waiver of Rights is not one of the recognized modes of acquiring ownership under Article 712 of the Civil Code. Neither can the same be considered a deed of sale so as to transfer ownership of the land to private respondent because no consideration is stated in the contract (assuming it is a contract or deed of sale).

Private respondent defends the decision of respondent Court of Appeals as in accord with the evidence and the law. He posits that while it may indeed be true that the trial court excluded his Exhibit "D" which is the Declaration of Heirship and Waiver of Rights as part of his evidence, the trial court declared him nonetheless owner of the subject lot based on other evidence adduced during the trial, namely, the notice of adverse claim (Exhibit "E") duly registered by him with the Registry of Deeds, which contains the questioned Declaration of Heirship and Waiver of Rights as an integral part thereof.

We find the petition impressed with merit.

In the first place, an asserted right or claim to ownership or a real right over a thing arising from a juridical act, however justified, is not per se sufficient to give rise to ownership over the res. That right or title must be completed by fulfilling certain conditions imposed by law. Hence, ownership and real rights are acquired only pursuant to a legal mode or process. While title is the juridical justification, mode is the actual process of acquisition or transfer of ownership over a thing in question.[8]

Under Article 712 of the Civil Code, the modes of acquiring ownership are generally classified into two (2) classes, namely, the original mode (i.e., through occupation, acquisitive prescription, law or intellectual creation) and the derivative mode (i.e., through succession mortis causa or tradition as a result of certain contracts, such as sale, barter, donation, assignment or mutuum).

In the case at bench, the trial court was obviously confused as to the nature and effect of the Declaration of Heirship and Waiver of Rights, equating the same with a contract (deed) of sale. They are not the same.

In a Contract of Sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other party to pay a price certain in money or its equivalent.[9]

Upon the other hand, a declaration of heirship and waiver of rights operates as a public instrument when filed with the Registry of Deeds whereby the intestate heirs adjudicate and divide the estate left by the decedent among themselves as they see fit. It is in effect an extrajudicial settlement between the heirs under Rule 74 of the Rules of Court.[10]

Hence, there is a marked difference between a sale of hereditary rights and a waiver of hereditary rights. The first presumes the existence of a contract or deed of sale between the parties.[11] The second is, technically speaking, a mode of extinction of ownership where there is an abdication or intentional relinquishment of a known right with knowledge of its existence and intention to relinquish it, in favor of other persons who are co-heirs in the succession.[12] Private respondent, being then a stranger to the succession of Cosme Pido, cannot conclusively claim ownership over the subject lot on the sole basis of the waiver document which neither recites the elements of either a sale,[13] or a donation,[14] or any other derivative mode of acquiring ownership.

Quite surprisingly, both the trial court and public respondent Court of Appeals concluded that a "sale" transpired

between Cosme Pido's heirs and private respondent and that petitioner acquired actual knowledge of said sale when he was summoned by the Ministry of Agrarian Reform to discuss private respondent's claim over the lot in question. This conclusion has no basis both in fact and in law.

On record, Exhibit "D", which is the "Declaration of Heirship and Waiver of Rights" was excluded by the trial court in its order dated 27 August 1990 because the document was neither registered with the Registry of Deeds nor identified by the heirs of Cosme Pido. There is no showing that private respondent had the same document attached to or made part of the record. What the trial court admitted was Annex "E", a notice of adverse claim filed with the Registry of Deeds which contained the Declaration of Heirship with Waiver of rights and was annotated at the back of the Original Certificate of Title to the land in question.

A notice of adverse claim, by its nature, does not however prove private respondent's ownership over the tenanted lot. "A notice of adverse claim is nothing but a notice of a claim adverse to the registered owner, the validity of which is yet to be established in court at some future date, and is no better than a notice of lis pendens which is a notice of a case already pending in court." [15]

It is to be noted that while the existence of said adverse claim was duly proven, there is no evidence whatsoever that a deed of sale was executed between Cosme Pido's heirs and private respondent transferring the rights of Pido's heirs to the land in favor of private respondent. Private respondent's right or interest therefore in the tenanted lot remains an adverse claim which cannot by itself be sufficient to cancel the OCT to the land and title the same in private respondent's name.

Consequently, while the transaction between Pido's heirs and private respondent may be binding on both parties, the right of petitioner as a registered tenant to the land cannot be perfunctorily forfeited on a mere allegation of private respondent's ownership without the corresponding proof thereof.

Petitioner had been a registered tenant in the subject land since 1960 and religiously paid lease rentals thereon. In his mind, he continued to be the registered tenant of Cosme Pido and his family (after Pido's death), even if in 1982, private respondent allegedly informed petitioner that he had become the new owner of the land.

Under the circumstances, petitioner may have, in good faith, assumed such statement of private respondent to be true and may have in fact delivered 10 cavans of palay as annual rental for 1982 to private respondent. But in 1983, it is clear that petitioner had misgivings over private respondent's claim of ownership over the said land because in the October 1983 MAR conference, his wife Laurenciana categorically denied all of private respondent's allegations. In fact, petitioner even secured a certificate from the MAR dated 9 May 1988 to the effect that he continued to be the registered tenant of Cosme Pido and not of private respondent. The reason is that private respondent never registered the Declaration of Heirship with Waiver of Rights with the Registry of Deeds or with the MAR. Instead, he (private respondent) sought to do indirectly what could not be done directly, i.e., file a notice of adverse claim on the said lot to establish ownership thereof.

It stands to reason, therefore, to hold that there was no unjustified or deliberate refusal by petitioner to pay the lease rentals or amortizations to the landowner/agricultural lessor which, in this case, private respondent failed to establish in his favor by clear and convincing evidence. [16]

Consequently, the sanction of forfeiture of his preferred right to be issued a Certificate of Land Transfer under P.D. 27 and to the possession of his farmholdings should not be applied against petitioners, since private respondent has not established a cause of action for recovery of possession against petitioner.

WHEREFORE, premises considered, the Court hereby GRANTS the petition and the decision of the Court of Appeals dated 1 May 1994 which affirmed the decision of the RTC of Himamaylan, Negros Occidental dated 20

August 1991 is hereby SET ASIDE. The private respondent's complaint for recovery of possession and damages against petitioner Acap is hereby DISMISSED for failure to properly state a cause of action, without prejudice to private respondent taking the proper legal steps to establish the legal mode by which he claims to have acquired ownership of the land in question.

**SO ORDERED.**

Davide, Jr., Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

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- [1] Penned by Purisima, J., Chairman, with Isnani, J. and Ibay-Somera, J. concurring.
- [2] Penned by Executive Judge Jose Aguirre, Jr.
- [3] The RTC decision used the name Luzviminda. The CA used the name Laudenciana.
- [4] Annex A, Petition; Rollo, p. 14.
- [5] Annex "D", Petition Rollo, p. 29.
- [6] Ibid., p. 27.
- [7] Ibid., p. 28.
- [8] Reyes, An Outline of Philippine Civil Law, Vol. II p. 20.
- [9] Article 1458, Civil Code.
- [10] Paulmitos v. CA, G.R. No. 61584, Nov. 25, 1992, 215 SCRA 867, 868; Uberas v. CFI of Negros, G.R. No. 4248, October 30, 1978, 86 SCRA 145, 147; Abrasia v. Carian, G.R. No. 9510, October 31, 1957.
- [11] See Aguirre v. Atienza, G.R. No. L-10665, Aug. 30, 1958; Mari v. Bonilla, G.R. No. 852, March 19, 1949; Robles v. CA, 647494 83 SCRA 181, 182, May 15, 1978.
- [12] See Borromeo Herrera v. Borromeo, G.R. No. L-41171, July 23, 1987, 152 SCRA 171.
- [13] See note 10 - supra.
- [14] Osorio v. Osorio and Ynchausti Steamship Co. No. 16544, March 20, 1921.
- [15] Somes v. Government of the Philippines, No. 42754, October 30, 1935 62 Phil. 432.
- [16] See Laureto v. CA, G.R. No. 95838, August 7, 1992, 212 SCRA 397. Cuno v. CA, G.R. L-62985, April 2, 1984, 128 SCRA 567.

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