

**INTESTATE ESTATE OF CLEMENTE DEL CASTILLO, REPRESENTED
BY THE ADMINISTRATRIX LUISA A. VDA. DE DEL CASTILLO,
PLAINTIFF AND APPELLANT, VS. RAFAEL P. GUERRERO, DEFENDANT
AND APPELL...**

G.R. No. 11994. July 26, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Plaintiff seeks to recover damages for alleged breach of contract. Defendant denied having violated the same and set up a counterclaim for damages allegedly sustained by reason of the institution of this case. In due course, the Court of First Instance of Negros Occidental, presided over by Honorable Jose S. de la Cruz, Judge, dismissed plaintiff's complaint as amended, as well as defendant's counterclaim, with costs against the plaintiff. Both parties have appealed.

It is not disputed that on May 10, 1946, the Intestate Estate of Clemente del Castillo, deceased, acting thru one of his heirs, namely, Atty. Sergio del Castillo, and defendant Rafael P. Guerrero entered into a contract whereby the latter, who is another member of the bar, as well as a duly licensed surveyor, bound himself to subdivide and make a parcellary survey of "Lots Nos. 2171, 2172, 2176, 2177, 2178, 2182 and 2283 of Bago Cadastre, Occidental Negros", belonging to said Estate, in consideration of the aggregate sum of P800.00, to be paid by the same as follows: P270.00, upon the signing of the contract; P270.00, upon completion of the survey work; and P260.00, upon approval of the corresponding plans by the Bureau of Lands.

The subdivision surveys of the aforementioned lots, except Lot No. 2283, were made on June 20 and 25, 1946, and the subdivision plan was approved on April 24, 1947. On defendant's motion, dated December 2, 1950, filed in the proceedings for the settlement of said Intestate Estate, the Court of First Instance of Negros Occidental ordered the then administratrix of the estate, on February 7, 1951, to pay defendant herein P380.00, as the balance due him under the contract above referred to. This order was complied with on April 30, 1951. About three (3) years later, or on February 12, 1954, the Intestate Estate of Clemente del Castillo, deceased, represented by his aforementioned heir, Atty. Sergio del Castillo, brought this action for damages—aggregating P1,610.90, which, by amendments to the original complaint, was, subsequently, increased to P2,910.90—upon the ground that defendant had failed to subdivide Lot No. "2983" of the Bago Cadastre, which was allegedly what the parties had in mind, in lieu of Lot No. "2283", erroneously mentioned in the contract already adverted to, as well as to make the parcellary survey agreed upon. However, this pretense was not sustained by the lower court. Hence, in its brief, plaintiff alleges that:

"1. The trial court erred in holding that the parties did not intend to include Lot No. 2983, instead of Lot No. 2283, in their contract of subdivision.

"2. The trial court erred in holding that inasmuch as Lot No. 2983 appears as a road in the cadastral plan of the Bureau of Lands, it is therefore, presumed to be a public road.

"3. The trial court erred in giving much weight to the argument of the defendant that inasmuch as plaintiff has failed to complain till eight (8) years later, plaintiff is, therefore, guilty of laches.

"4. Granting, arguendo, that Lot No. 2283 is the one intended by the parties to be subdivided, the trial court erred in holding that the defendant, by parol evidence, or the heirs, who are not parties thereto, can vary the terms of a written agreement.

"5. Granting, arguendo, that Lot No. 2283 is the one intended by the parties, to be subdivided, the trial court erred in holding that the admitted failure of the defendant to subdivide said lot and to provide each heir with a parcellary plan of their individual portion do not constitute a breach of contract on the part of the defendant so as to entitle plaintiff to recover damages or to demand reimbursement for the price of the one, out of the eight lots, not subdivided as well as the price of the parcellary plans made by other surveyors."

The first assignment of error involves a question of fact, the right to raise which is deemed to have been waived by the plaintiff, for it filed with the lower court, notice of its "desire to appeal * * * to the Supreme Court", and submitted, together with the defendant, a joint record on appeal, with a prayer that the same be approved and "transmitted to the Supreme Court", and it, not only, failed to object to the order of the lower court approving said joint record on appeal and directing that "the case be elevated to the Supreme Court", but, also, submitted therein its brief, thereby indicating clearly its intent to submit to the appellate jurisdiction of this Court to review decisions of courts of first instance, which, in cases like the one at bar, is limited to purely questions of law.

Considering that the property mentioned in the contract is Lot No. "2283", not Lot No. "2983", which the lower court found not to be covered by said contract, and that plaintiff is now barred from assailing this conclusion of fact, the second assignment of error, in which the status of said Lot No. "2983" is sought to be put in issue, need not be passed upon.

Under the third and fourth assignments of error, plaintiff maintains that defendant is guilty of breach of contract he having failed to subdivide Lot No. 2283. In this connection, there is evidence to the effect that the same was not subdivided at the behest of some of the heirs of the deceased, although the aforementioned Atty. Del Castillo did not consent thereto. We are inclined to agree with His Honor, the trial Judge, that the successors of the deceased were agreeable to said arrangement for—with the exception of said counsel—they have shown no interest in the case at bar. Indeed, neither the heirs of the deceased (including Atty. Del Castillo), nor the administratrix of his estate opposed defendant's motion of December 2, 1950, for payment of the balance allegedly due him under the aforementioned contract of services and no appeal has been taken from the order granting said motion, which order was soon complied with by said administratrix. Unless and until annulled, and in the absence of fraud in securing said order—and there is neither proof nor allegation to such effect—the same should be considered as determinative of the rights arising from the contract already mentioned, binding upon the parties thereto, and, hence, upon plaintiff herein.

For the same reason, we find no merit in plaintiff's last assignment of error, in which it maintains that defendant's failure to make a parcellary survey of the lots described in the contract in question constitutes a violation thereof. Besides, as correctly stated by the lower court:

"This brings the Court to the second question, namely, whether the defendant violated his contract of services in failing to make a parcellary survey of the subdivided lots. The defendant contends that, at or about the time of the subdivision survey, the fields had not been planted to sugar cane, or other crops, and it was therefore impossible to prepare any parcellary plan. By the very admission of Atty. Castillo during his testimony, it appears that he planted sugar cane only in 1947, almost one year after the completion of subdivision survey. The defendant presented as a witness Private Land Surveyor Cristino Ceballos who testified that he made the parcellary survey of the lots composing haciendas Florida, Emma and Trincavil in November, 1949 for the

Ma-ao Sugar Central to which the lots involved in defendant's contract of services were adhered; that the fields were then already planted to sugar; that a parcellary survey cannot be accomplished when sugar canes or other crops are not actually planted; that even if the defendant had made the parcellary plans of the lots, the Ma-ao Sugar Central would not take them, into account because the defendant was not under the control and supervision of said Central which paid one half of the cost of the parcellary survey. There is evidence to the effect that the defendant had informed the plaintiff of his inability to make any parcellary survey due to the absence, of sugar fields, and that after said fields were formed, the defendant was not notified thereof.

"It is urged on behalf of the plaintiff, through the testimony of Private Land Surveyor Vicente Tibudan, that a parcellary survey may be made even without field formation, just to indicate areas. The point brought out in the testimony of Surveyor Tibudan is not inconsistent with the theory of Surveyor Ceballos that there should be actual plantings of sugar or other crops in order to make a parcellary survey in its common acceptance, and the admission of Surveyor Tibudan that areas may be determined and parcelled regardless of actual field formations does not imply actual survey. It suggests rather the mechanical drawing of fields and plans by imagination which may be made by a draftsman in his office. Surveyor Tibudan himself admitted that in ordinary sense a parcellary plan cannot be made in the absence of standing crops; and there is absolutely no intimation that the contract of services intended to depart from the common technical meaning of 'parcellary survey.'

"It is very improbable that, considering that a parcellary survey is the easiest and cheapest, as testified to by Surveyor Ceballos, the defendant would have unjustifiably failed to make the same. With similar force, the unfavorable inference drawn from the long delay on the part of the plaintiff to complain of defendant's alleged failure to subdivide lot No. 2983, and from the lack of interest of the other heirs in the prosecution of this case, is applicable to the matter of parcellary survey.

"It is no less significant that in the original complaint filed by the plaintiff, and signed by Attorney Castillo as counsel, the damages claimed against the defendant were in the aggregate amount of less than P2,000.00 (as a matter of fact only P1,610.00); and it was not after defendant's special appearance impugning the jurisdiction of this Court that an amended complaint was filed increasing said damages to more than P2,000.00 (as a matter of fact P2,910.90). This obvious uncertainty detracts somewhat from the merit of the suit in general."

Referring now to defendant's appeal contesting the dismissal of his counterclaim, we are fully in accord with the following observations made in the decision appealed from:

"* * * defendant's overwhelming evidence proves that he has an excellent reputation in the community, and while the defendant may allege or suspect otherwise, the Court is convinced more than ever that his high standing and good record remain unhurt. This is a mere civil action, and there is absolutely no pretense that it had been given any publicity, much less at the instance of the plaintiff or its counsel. The defendant is a veteran lawyer and the Court assumes his complete familiarity with various implications of a judicial proceeding, such that it is hard to believe that he could have been really affected by this suit. It is unlikely that the law would arbitrarily intend to penalize by way of enormous damages those who elect to submit in good faith their grievances to the Court for adjudication. Need it be said that the Court (not the plaintiff) finally decides whether a given case will prosper? More than what pecuniary values can mean, defendant's absolution from the complaint should give him a better reward and bolster up his professional prominence."

Moreover, under Article 2216 of the Civil Code, courts are vested with discretion in the assessment of moral, nominal, temperate, liquidated or exemplary damages, and we are satisfied, from the record before us, that the lower court had made a judicious use of such discretion.

Wherefore, the decision appealed from is hereby affirmed, with costs against plaintiff-appellant. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, Barrera, and

Gutierrez David, JJ., concur.

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