

PAULINA DURAN, PLAINTIFF AND APPELLANT, VS. BERNARDINO PAGARIGAN, DEFENDANT AND APPELLEE.*G.R. No. 12573. January 29, 1960*

Ponente: PADILLA, J.

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On 7 July 1953 Paulina Duran brought in the Court of First Instance of Cagayan an action to recover possession of one and one-half (1-½) hectares of a parcel of land lying in the western side of 10.1765 hectares situate at sitio Lacta, barrio of Bangan, municipality of Sanchez Mira, province of Cagayan, donated to her by Antonio Duran, her deceased grandfather, which part of the parcel of land she alleged Bernardino Pagarigan, the defendant had usurped sometime in December 1948; that said part of the parcel of land is planted to about 130 coconut trees yielding an income of P500 more or less annually derived from the sale of the fruits thereof; and that notwithstanding repeated demands to vacate that part of the parcel of land and to recognize her ownership thereof and to deliver to her its possession, the defendant had refused to do so. She prays that after hearing, judgment be rendered ordering the defendant to restore to her the possession of that part of the parcel of land; to pay her the sum of P2,000, the value of the fruits of the coconut trees planted in the land harvested by the defendant from January 1949 to the date of the filing of the complaint; and to pay the costs of the suit. She also prays for other just and equitable relief (civil No. 600-A).

In his answer and amended answer filed on 12 August and 19 September 1953 the defendant claims that that part of the parcel of land the possession of which the plaintiff seeks to recover, was acquired by him by purchase from Ignacio Duran, the father of the plaintiff, in 1919 by means of a verbal contract which was ratified in a public instrument on 11 March 1936; that on 19 September 1936, for and in consideration of the sum of P20 paid by the defendant to the plaintiff and her father, they agreed to settle amicably their case involving the same part of the parcel of land pending in the Justice of the Peace Court of Sanchez Mira, Cagayan; and that the plaintiff's cause of action is already barred by the statute of limitations. The defendant prays that the plaintiff's complaint be dismissed that she be ordered to pay him P1,000 as damages for filing a malicious complaint against him in court and to pay the costs; and that he be granted other just and equitable relief.

After trial, on 12 March 1954 the Court found and rendered judgment as follows:

From the evidence presented in this case, it appears that the defendant has been in possession of the land in question since 1919 when he exchanged it with one carabao valued at P80.00 from Ignacio Duran, father of the plaintiff, under and by virtue of the Deed of Sale exhibit 1; that the land covered by said deed of sale is as follows:

"RESIDENTIAL LAND

"On the North by properties of Carlos Perdido, Juan Tabao-nan and Saturnino Constantino, 133 meters; on the East, by property of Ignacio Duran, 145 meters; on the South by property of Ignacio Duran, 111 meters; and on the West by property of Rufino Blanco, 145 meters or having an area of 1,7960 has., the said land is declared

under taxation No. 17920 in the name of Ignacio Duran of the Municipality of Sanchez Mira, Province of Cagayan."

that in 1936 the defendant built his house on said land; that Paulina Duran and her grandfather, Antonio Duran, questioned the sale made by Ignacio Duran, but the case was settled by virtue of Exhibit 2, whereby the defendant paid Antonio Duran and Paulina Duran the sum of P20.00 and that thereafter Antonio Duran and Ignacio Duran have respected the possession of said defendant over the said land. Hence, the plaintiff may not now question the defendant's ownership of the land covered by the Deed of Sale, Exhibit 1.

At the ocular inspection conducted by the Court, it was found out that the defendant was occupying a bigger portion than what is covered by said Exhibit 1, and he should deliver to plaintiff the excess. He should limit his possession and occupation of said portion as follows: On the northern side 133 meters from West to East; on the eastern side from North to South 145 meters; on the southern side from West to East 111 meters; and on the western side from North to South 145 meters.

No sufficient evidence has been presented to support any claim for damages.

In view of the foregoing, the Court hereby renders judgment—(a) ordering the defendant to deliver to the plaintiff those portions of the land in excess of what is covered by the Deed of Sale, Exhibit I, as follows: on the northern side 133 meters from West to East; on the eastern side from North to South 145 meters; on the southern side from West to East 111 meters; and on the western side from North to South 145 meters; and (b) to pay the costs.

On 30 November 1954 the plaintiff filed a "petition to set aside judgment" on the ground of fraud, mistake and excusable neglect. On 7 January 1955 the Court denied the plaintiff's petition. On 15 January 1955 the plaintiff filed a motion for reconsideration. On 10 February 1955 the Court denied the plaintiff's motion. The plaintiff has appealed to this Court.

It appears that after trial, on 12 March 1954 the Court rendered judgment for the defendant; that on 22 March 1954 counsel for the appellant received notice of the judgment; that on 10 September 1954 the appellee filed a motion for execution of the judgment of 12 March 1954; that on 20 September 1954 the Court granted the appellee's motion for execution; that on 30 November 1954 the appellant filed a motion to set aside the judgment; that on 7 January 1955 the Court denied the appellant's petition to set aside the judgment; that on 15 January 1955 the appellant filed a motion for reconsideration ; and that on 10 February 1955 the Court denied the appellant's motion for reconsideration.

The appellant having filed her "petition to set aside judgment" under Rule 38 on 30 November 1954 beyond six months after the judgment had been rendered on 12 March 1954, the same was filed out of time and the Court correctly denied her petition.[1] The failure of her counsel to notify her on time of the adverse judgment to enable her to appeal therefrom does not constitute excusable negligence. Notice sent to counsel of record is binding upon the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment valid and regular on its face.

The judgment and the order denying the petition to set aside judgment appealed from are affirmed, with costs against the appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia, Barrera, and Gutierrez David, JJ., concur.

[1] Section 3, Rule 38; Isaac vs. Mendoza, 89 Phil., 279; Gana vs. Abaya, 98 Phil., 165; 52 Off. Gaz., 231.

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