

GABINA DARACAN, ET AL., PETITIONERS, VS. THE COURT OF APPEALS, LEOVIGILDO DARACAN, ET AL., RESPONDENTS.*G.R. No. 12949. June 30, 1960*

Ponente: PADILLA, J.

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This is a petition for a writ of certiorari under Rule 46 to have a judgment rendered by the Court of Appeals reviewed on questions of law, and after hearing to have it set aside and the complaint filed by the respondents, plaintiffs and appellees in the Courts below, dismissed, with costs against them. In the sixth paragraph of the petition the petitioners, defendants and appellants in the Courts below, raise two questions: (1) That the award of P2,850.00 (should be P2,050.00) by the respondent Court to the other respondents which had not been awarded by the trial court constitutes a grave abuse of discretion, because the respondents did not appeal from the judgment of the trial court which for that reason became final in so far as the respondents, plaintiffs and appellees in the Courts below, are concerned; and (2) That the fact that the respondents, plaintiffs and appellees in the Courts below, tire surnamed or bear the family name of Daracan is not a conclusive proof that they are the descendants of the late Reginaldo Daracan and entitled as such to share in his estate. The respondent Court found and held that—

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Liborio, Fruto and Reginaldo, all surnamed Daracan, were the legitimate children of Tomas Daracan who died intestate in 1929. Reginaldo died intestate in 1910; Fruto died intestate in 1921 and Liborio died intestate in 1944. Defendants Gabina, Victorio, Lorenzo, Domingo, Jovito, Mercedes, Bonifacia and Pacita, all surnamed Daracan, are the legitimate children of Liborio Daracan. Fruto was survived by only one legitimate child, called Fruto Daracan 2^o who died intestate and single in 1938 or 1939. Reginaldo Daracan was legally married to Maria Malabug and out of their wedlock, they had only one issue, named Domingo Daracan. Domingo Daracan married Concepcion Lago on December 27, 1926 (Exhibit "D"), and they had 5 children named: Leovigildo, Romulo, Deogracias, Margarita and Alberta, all surnamed Daracan, who are the plaintiffs herein. After the death of Reginaldo Daracan, (when Domingo Daracan was only about two years old), Maria Malabug married Salvador de la Fuente from whom she begot 5 children, 3 of whom are already dead. Upon the death of Tomas Daracan in 1929, he left a homestead covered by O.C.T. No. I-1130, issued in his name. During the pendency of the present case, however, defendant Victorio Daracan, succeeded in obtaining the cancellation of the said title by registering, with the Register of Deeds of Isabela, a deed of extra-judicial partition executed by the defendants on February 1, 1951, adjudicating to themselves the property described therein. The defendants deeded to their co-defendant and co-heir Victorio Daracan, for valuable consideration, their respective shares in the property, notwithstanding the notice of lis pendens filed with the Register of Deeds on July 12, 1951, by the plaintiffs. T.C.T. No. 3168 was therefore, issued on November 7, 1951, in favor of defendant Victorio Daracan. During the lifetime of Domingo Daracan, he and his son, Leovigildo Daracan, worked on a portion of 3 hectares, planting the same to tobacco and corn, but after the filing of the present action, defendant Victorio Daracan prevented Leovigildo and his brothers from working on the homestead. The residential lot, designated as parcel No. 3 in the complaint, was also originally owned by Tomas Daracan, who erected a big house therein but was destroyed. Domingo Daracan-constructed a house on said lot, where he and his family had

lived for a long time. Before his death in 1941, Domingo Daracan, as co-heir, also worked the tobacco-corn land, containing an area of more than 1 hectare, and designated as parcel No. 2 in the complaint. Since the death of Domingo Daracan (predecessor-in-interest of the plaintiffs), the defendants had been in possession of the estate of the deceased Tomas Daracan, and harvested the fruits of the same, with the exception of the said 1 hectare portion known as parcel No. 2. The plaintiffs, thru, their mother Concepcion Lago, had been demanding since 1947, upon the defendants to divide the properties in question and to account for the products thereof, but the defendants turned a deaf ear. The action, therefore, seeks for a judgment: (1) ordering the partition of all the real properties described in paragraph 12 and awarding the plaintiffs one-half (½) thereof; ordering the defendants to render an accounting of the products of the properties in question from, the year 1941, up to the termination of the suit and to pay the costs.

Upon the other hand, defendant's evidence tends to show the following: That Reginaldo Daracan died of typhoid fever at the age of 13 years and he had never married Maria Malabug. "The person known as Domingo Daracan, is surnamed de la Fuente and is one of the 6 children of Salvador de la Fuente and Maria Malabug who married in 1914 on Holy Saturday (Sabado de Gloria). Domingo de la Fuente was legally married to Concepcion Lago, with whom he had five children, the plaintiffs herein. The homestead was owned by Tomas Daracan who possessed it for nine years and after the latter's death, the land passed into the hands of Victorio Daracan who is now its owner by virtue of the extra-judicial partition had between him and his brothers and sisters who sold to him their respective shares in the inheritance, as heirs of Liborio Daracan. The title of the homestead was delivered by Tomas Daracan to Liborio Daracan before the former died. The taxes for the homestead have been paid by Victorio Daracan (Exhibit 4) and T.C.T. No. 8168 was issued in his name. The land designated as parcel No. 2 in the complaint, had been, possessed by Victorio since 1921, his father (Liborio) having advised him to work on it. Victorio cleaned and cultivated it and reaped the products thereof; declared it for taxation purposes in his name and paid the land taxes therefor (Exhibits 6, 7 to 7-b). The residential lot designated as parcel No. 3 in the complaint, is possessed in common by the defendants, having inherited same from their father, Liborio, who had possessed the same from the time he married, up to his death, having declared the same for taxation purposes (Exhibits 8, 9, 9-a to 9-b).

After due hearing, the lower court rendered judgment, the dispositive portion of which is hereunder reproduced:

WHEREFORE, the Court hereby enters judgment ordering the partition of the land covered by Transfer Certificate of Title No. 3168 and the residential lot, covered by Tax Declaration No. 1489 in the following manner, to wit: One-half of the said properties is awarded to the plaintiffs who are hereby declared the owners thereof, and the other half to accrue to the defendants. Victorio Daracan is hereby ordered to execute a deed of reconveyance of one-half of the lots covered by Transfer Certificate of Title No. 3168 in favor of the plaintiffs Leovigildo, Romulo, Deogracias, Margarita, and Alberta, all surnamed Daracan, immediately after the decision has become final, and the Register of Deeds of Isabela, is hereby ordered to cancel the deed of extra-judicial partition, Exh. "2", which resulted in the issuance of said transfer certificate of title. Without pronouncement as to costs.

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The pivotal issues, however which need proper determination are: (1) whether Reginaldo Daracan was married to Maria Malabug; and (2) whether the plaintiffs are really the legitimate grand-children of the late Reginaldo Daracan, one of the forced heirs of Tomas Daracan. The plaintiffs contend, and the trial court sided with them, that Reginaldo Daracan was married to Maria Malabug and that Domingo Daracan, father of the plaintiffs-appellees was their legitimate son.

The evidence for the appellees fully shows that Reginaldo Daracan, who died intestate in 1910, was legally married to Maria Malabug, and that out of this wedlock Domingo Daracan was born; that Domingo Daracan was baptized in the Roman Catholic Church of Echague, Isabela, with Policarpio Labuguen (one of the

appellees witnesses) acting as Godfather; that Domingo Daracan married Concepcion Lago on December 27, 1926 (Exhibit "D"), and had 6 children namely, Leovigildo, Romulo, Deogracias, Margarita and Alberta, all surnamed Daracan, the appellees herein. Appellee Leovigildo Daracan was baptized in the Roman Catholic Church of Angadanan, Isabela, on January 11, 1931, and in his baptismal certificate Exhibit "A", he appears to be the son of Domingo Daracan and Concepcion Lago, with Reginaldo Daracan and Maria Malabug as his paternal grand parents and Matias and Reginaldo Malabug as his maternal grand parents; that after the death of Reginaldo Daracan, when Domingo Daracan was only about 2 years old, Maria Malabug remarried Salvador de la Fuente and out of Maria's second marriage, she begot 5 children, 3 of whom are already dead.

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* * * Counsel for appellees made a counter-assignment of errors, alleging that the lower court erred: (1) In not ordering the partition of parcel No. 2 in the complaint, under Tax Declaration No. 1535 and in not adjudicating to the appellees the one-half portion thereof; and (2) In not ordering the appellants to render an account of the products of parcel No. 1 covered by Transfer Certificate of Title No. T-3168, starting from the institution of the suit at bar on June 28, 1951. It is of record that the appellees did not appeal from the judgment, and the making of counter-assignment of errors would seem improper, because same would amount to attacking a judgment from which no appeal was taken. However, in a case, it was held that although the appellee may not have to file an assignment of errors, it remains incumbent upon him to point out in his brief any errors against himself into which the court may be supposed to have fallen (*Relativo vs. Castro et al.*, 76 Phil., 563; 43 Off. Gaz. No. 1, 108, 111, see also *Lucero vs. De Guzman*, 45 Phil., 852). With respect to the supposed, errors pointed out by the appellee, we find that the first assignment is not well taken. We find no reason to disagree with the observation of the trial judge, that there is no conclusive evidence tending to show that parcel No. 2, really formed part of the estate left by Tomas Daracan. The fact that defendant Victorio Daracan had been possessing the parcel in question, reaping the produce thereof and declaring the same for taxation purposes, since 1921, shows that he possessed the property to the exclusion of others, in the concept of owner. Anent the second assignment, we share the view of counsel for the appellees, that the trial court erred in not ordering the appellants to render an accounting of the products of parcel No. 1. Inasmuch as in the decision, the same parcel was found to be the common property of the plaintiffs and the defendants, it follows that they are entitled to the products of their corresponding share. The defendants must therefore account to the plaintiffs, the products of parcel No. 1.

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In view hereof, we declare that the plaintiffs-appellees herein, are the legitimate children of the late Domingo Daracan; that the latter, was the only child of the spouses Reginaldo Daracan and Maria Malabug and are, therefore, entitled to inherit one-half (½) of the estate of the late Tomas Daracan, consisting of parcels 1 and 3 described in the complaint and that the remaining half, belongs to the defendants-appellants. . * * * The "defendants-appellants are ordered to pay, within the same period above cited, to the plaintiffs-appellees, the sum of P2,050.00 as their rightful share in the produce of parcel No. 1, per year, starting from 1951 until the said property shall have been partitioned and the possession of the ½ portion thereof, delivered to the plaintiffs-appellees.

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The second point raised by the petitioners is of fact. The respondent Court decided it against the petitioners.

Not having appealed from the judgment of the trial court which did not grant them their prayer for accounting of the products of the land and the value of such products to which they as co-owners are entitled, that part of the judgment, after the lapse of the period provided for the perfection of an appeal, became final in so far as the petitioners plaintiffs and appellees in the Courts below, are concerned. The case cited by the respondent Court[1] does not support its opinion on the point, because in that case, this Court held—

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From that judgment only the plaintiff has appealed. The defendants, however, without having presented a notice of appeal and a record on appeal, have also filed a brief as appellants for the sole purpose of assailing the findings of fact made by the trial court. However, in the concluding part of their brief as appellants they not only ask that the judgment of the trial court be affirmed but also pray that the plaintiff be ordered to pay to them the sum of P108 representing the unpaid rents.

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2. It was not necessary for the defendants to assume the role and file a brief as appellants for the purpose of assailing the findings of fact of the trial court whose judgment was in their favor. It is not incumbent on appellee, who occupies a purely defensive position, and is seeking no affirmative relief, to make assignments of error. When the trial judge decides a case in favor of a party on certain ground, the appellate court may base its decision upon some other point, ignored or erroneously decided in favor of appellant by the trial court. (Garcia Valdez vs. Soteraña Tuason, 40 Phil., 943.) An appellee does not have to file an assignment of errors but it is incumbent upon him to point out in his brief any errors against himself into which the court may be supposed to have fallen. (Lucero vs. De Guzman, 45 Phil., 852.)

3. We cannot grant that portion of the relief prayed for by the defendants-appellees consisting of the payment to them of the unpaid rents of P108, for two insurmountable reasons: (1) they did not allege it in the lower court by way of counterclaim and (2) they did not appeal from the judgment of the trial court and therefore are not now in a position to seek any affirmative relief in this court;

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That part of the judgment of the respondent Court under review that orders the petitioners, defendants and appellants in the Courts below, to pay to the respondents, plaintiffs and appellees in the Courts below, "the sum of P2,050.00 as their rightful share in the produce of parcel No. 1, per year, starting from 1951 until the said property shall have been partitioned and the possession of the ½ portion thereof, delivered to the plaintiffs-appellees," should be as is hereby stricken from such judgment, without pronouncement as to costs.

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

[1] Relativo vs. Castro, 76 Phil., 563.

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