

UDE SOLIMAN (BAGOB), PLAINTIFF AND APPELLEE, VS. ICDANG (BAGOBO) AND YO-ON (BAGOB), DEFENDANTS AND APPELLANTS.*G.R. No. 15924. May 31, 1961*

Ponente: CONCEPCION, J.

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Appeal, taken by defendants Icdang and Yo-on, both Bagobos, from a decision of the Court of First Instance of Davao. Although the record on appeal was, as requested by appellants, originally certified to the Court of Appeals, the same subsequently forwarded the case to us, there being no dispute about the main facts and only questions of law being raised in the appeal.

Defendants Icdang and Yo-on are husband and wife. Sometime in 1940, their son Adolfo Icdang married plaintiff Ude Soliman. On September 18, 1941, the Director of Lands approved a homestead application filed by Adolfo Icdang prior thereto, on a date not stated in the record, covering two (2) parcels of land situated in Kudalian, Davao City, and more particularly described in the complaint herein. Presently, war broke out and Davao was occupied by the Japanese. Sometime in 1944, Adolfo Icdang was arrested by the Japanese and, soon, thereafter, he was considered dead, for nothing was heard about him since then. Being childless and, hence, alone, plaintiff—who up to that time, and since shortly after her wedding, had been living on said land—left the same and rejoined her parents, in Sirib, District of Guiana, Davao City, where she established her residence. On March 18, 1954, after defraying the cost of survey and other incidental expenses, she managed to have a patent and Original Certificate of Title No. P-549, covering the aforementioned land, issued in the name of the heirs of Adolfo Icdang. Meanwhile—according to plaintiff's evidence—or since she left the land in 1944, defendants stayed therein and received the fruits or products thereof, although defendants maintain that they had been in possession of the land even before the marriage of their son to plaintiff herein. Alleging that defendants had refused, upon demand, to deliver the land to her, one-half of which she claims to be her share of her conjugal partnership with the deceased, plaintiff began, on March 1, 1956, the present action, for the partition of said property and an accounting of the products thereof, as well as for damages, attorney's fees and costs.

In their answer, defendants admitted some allegations of the complaint and denied other allegations thereof, and alleged as special defense that, as early as 1933, defendant Icdang was the possessor of, and had filed Homestead Application No. 511582 covering Lot No. 2699, which, defendants aver, is the subject of the complaint; that they had continuously lived in said land and fully cultivated the same; that, after entrusting to one Landawe the task of securing the corresponding patent, they found subsequently that a patent had been issued in favor of the heirs of Adolfo Icdang; and that neither the latter nor plaintiff had ever lived or stayed in the land in question or introduced any improvement thereof. Defendants prayed, therefore, that the Solicitor General be ordered, to investigate how plaintiff had fraudulently succeeded in obtaining the patent and said Original Certificate of Title No. P-549, with a view to cancelling both, and that plaintiff be sentenced to pay damages, attorney's fees, and costs.

During the hearing of the case, in the lower court, for the reception of evidence, both parties agreed—upon

indication of His Honor, the trial Judge—to submit the case for decision on one single issue, namely: Who are the heirs of Adolfo Icdang? In due course, thereafter, the lower court rendered judgment: (1) holding that the land in dispute belonged to the conjugal partnership of Adolfo Icdang and Ude Soliman and that one-half pro-indiviso of said land, with the buildings and improvements existing thereon, is plaintiff's exclusive property, and the other half that of the defendants; (2) ordering the defendants within ninety (90) days from the promulgation of the judgment (September 30, 1957) to render accounts of the products of the abaca plantation on said land, from 1946 up to the destruction of said plantation, as well as of the corn and palay produced in the land, from 1946 up to the presentation of said accounts; and (3) sentencing the defendants, jointly and severally, to pay the plaintiff, (a) P10.00 a month, for the use of the portion of the land belonging to her, from September 30, 1957 up to the delivery of said portion to plaintiff; (b) P350.00, representing one-half ($\frac{1}{2}$) of the expenses incurred by plaintiff to secure the title of said land, with interest on said amount, at the rate of 6% per annum, from the filing of the complaint; (c) one-half ($\frac{1}{2}$) of the amounts paid by her as real estate tax from 1946, (d) P1,000.00 as attorney's fees; and (e) the costs.

Hence, this appeal by the defendants, who maintain that the decision appealed from is erroneous because the parties had, in effect, agreed that the land in dispute belongs to the heirs of Adolfo Icdang, and the only issue submitted for determination by the lower court was the identity of said heirs; because, in holding that the land formed part of the conjugal partnership of Adolfo Icdang and plaintiff herein, and that the latter is the sole owner of one-half pro-indiviso of said land, the lower court had implicitly declared that plaintiff had acquired her aforementioned ownership, not by succession, or as heir of the deceased, but of her own right, and, accordingly, that the heirs of Adolfo Icdang own only one-half of said land, in contravention of the aforementioned agreement of the parties, beyond the issue submitted for decision—and, therefore, beyond the jurisdiction of the lower court—and contrary to the tenor of the original certificate of title above mentioned—issued in favor of the heirs of Adolfo Icdang—which, according to the very lower court, is incontrovertible.

We agree with the defendants that said finding of the lower court is untenable. In addition to the reasons adduced by the defendants, we should bear in mind that, although Adolfo Icdang was married to plaintiff when he filed the homestead application, "an applicant may be said to have acquired a vested right over a homestead only by the presentation of the final proof and its approval by the Director of Lands". (*Ingara vs. Ramelo*, 107 Phil., 498; *Balboa vs. Farrales*, 51 Phil., 498; *Republic vs. Diamon*, 97 Phil., 838.) In the case at bar, the final proof appears to have been presented to, and approved by the Director of Lands, in 1954, or several years after the death of Adolfo Icdang and the dissolution of his conjugal partnership with plaintiff herein. Hence, the land in question could not have formed part of the assets of said partnership. It belonged to the heirs of Adolfo Icdang, pursuant to section 105 of Commonwealth Act No. 141, reading:

"If at any time the applicant or grantee shall die before the issuance of the patent or the final grant of the land, or during the life of the lease, or while the applicant or grantee still has obligations pending towards the Government, in accordance with this Act, he shall be succeeded in his rights and obligations with respect to the land applied for or granted or leased under this Act by his heirs in law, who shall be entitled to have issued to them the patent or final concession if they show that they have complied with the requirements therefor, and who shall be subrogated in all his rights and obligations for the purpose of this Act."

It is worthy of notice that, under the Public Land Act of 1903 (Act No. 926, section 3), "in the event of the death of an applicant prior to the issuance of a patent, his widow shall be entitled to have a patent for the land applied for issue to her upon showing that she has consummated the requirements of law for homesteading the lands", and that only in case the deceased applicant leaves no widow shall his interest in the land descend and the patent issue to his legal heirs. Incorporated substantially in section 103 of the Public Land Act of 1919 (Act No. 2874), this policy was changed by Act No. 3517, pursuant to which the deceased shall be succeeded no longer by his widow,

but "by his heirs in law, who shall be entitled to have issued to them the patent—if they show that they have complied with the requirements therefor". And this is, in effect, the rule maintained in the above quoted section 105 of Commonwealth Act No. 141.

It is apparent from the foregoing that the present law had advisedly abolished the right of the widow of a deceased homestead applicant to secure, under the old law, a patent in her own name; that, even under the old law, she could not obtain such patent, except "upon showing that she had consummated the requirements of law for homesteading"; that, under the law now in force, the patent shall issue to the "heirs in law" of the deceased, not to his widow, if the former "show that they have complied with the requirements therefor"; and that the issuance of the patent and of the corresponding certificate of title, in the case at bar, in favor of the "heirs of the late Adolfo Icdang", shows that the Director of Lands had found that the aforementioned requirements were complied with, not by plaintiff herein—despite the fact that it was she who urged the issuance of said patent and defrayed the expenses necessary therefor—but by the heirs of the deceased.

Indeed, said finding was the most plausible one, for war broke out and the occupation of Davao by the enemy began barely three (3) months after the approval of the homestead application; Adolfo Icdang was taken by the enemy in 1944 and presumably killed by them; immediately thereafter, plaintiff abandoned the land and stayed with her parents in another part of Davao; and defendants remained or took possession of the land and cultivated it. Under these circumstances, it is most probable that the requirements of Commonwealth Act No. 141 relative to the cultivation of homestead were complied with, not by Adolfo Icdang, or by his widow, but by herein defendants. At any rate, the latter, like plaintiff herein, are heirs of the deceased.

It is clear, therefore, that the land in dispute belongs to the heirs of Adolfo Icdang, not to the conjugal partnership aforementioned. Now, then, who are such heirs? Defendants claim that, since Adolfo Icdang had left no descendants, they as his legitimate parents, are his sole heirs, to the exclusion of his widow, relying evidently upon Article 935 of the Civil Code of Spain, the law in force at the time of the death of the decedent, which provides:

"In default of legitimate children and descendants of the deceased, his ascendants shall inherit from them, to the exclusion of collaterals".

Said Article 935 should be read, however, in relation to Article 836 of the same Code, which provides that, "if the testator leaves no descendant, but does leave ascendants, the surviving spouse shall be entitled to a third of the estate in usufruct". Hence, defendants herein, as parents of Adolfo Icdang, inherit the land in question, share and share alike, but one-third of the share of each (representing one-sixth of the land) shall be subject to said usufruct of plaintiff herein.

Accordingly, the decision appealed from should be, as it is hereby, modified, in the sense that the property in dispute belongs, not to the conjugal partnership of plaintiff and Adolfo Icdang, but to the heirs of the latter; that said heirs are plaintiff Ude Soliman, as widow of the deceased, and defendants Icdang and Yo-on (both Bagobos), as his surviving parents; that the share of Icdang shall be three-sixths (3/6) of said land, one-third (1/3) of which share (or one-sixth [1/6] of the land) shall be subject to the usufruct of Ude Soliman; that the share of Yo-on shall be the remaining three-sixths (3/6) of said land, one-third (1/3) of which share (or one-sixth [1/6] of the land) shall, similarly, be subject to the usufruct of Ude Soliman; that the share of Ude Soliman shall consist of a usufruct over two-sixths (2/6) of the land, to be exercised, as above stated, over one-third (1/3) of the share of Icdang and that of Yo-on; and that plaintiff shall be entitled to recover from the defendants the value of one-third (1/3) of the net produce of the land, in addition to five-sixth (5/6) of the expenses incurred by her to secure the homestead patent and the certificate of title, and of the sums paid by her as real estate taxes. In all other respects, said decision is hereby affirmed.

Wherefore, let the record of this case be remanded to the lower court for further proceedings, pursuant to Rule 71 of the Rules of Court, not inconsistent with this decision, without special pronouncement as to the costs of this instance. It is so ordered.

Bengzon, C.J., Bautista Angelo, Labrador, Reyes, J.B.L., Paredes, Dizon, De Leon and Natividad, JJ., concur.

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