

LICOTEDRA PARCOTILO, ET AL., PLAINTIFFS AND APPELLANTS, VS. FILOMENA PARCOTILO, CRISPIN PRIETO, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 17249, November 28, 1964

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

An appeal from the decision of the Court of First Instance of Occidental Misamis in its Civil Case No. 1858, which was an action for partition.

The plaintiffs, Licotedra Parcotilo, Maria Parcotilo, Epifania Parcotilo, Raymundo Parcotilo, Corazon Parcotilo, Perpetua Parcotilo, Aladino Parcotilo and Francisco Parcotilo, are nephews and/or nieces of one Pablo Parcotilo. The defendant Filomena Parcotilo is the sister of Pablo Parcotilo; the defendant Demetrio Parcotilo is the son of defendant Filomena Parcotilo, and, therefore, is another nephew of Pablo Parcotilo; the defendant Victor Parcotilo is the son of the defendant Demetrio Parcotilo; and the defendant Vicenta Parcotilo Baji is another niece of Pablo Parcotilo. The defendant Crispin Prieto is made a party in the present case because it is alleged that he had bought from the defendant Demetrio Parcotilo a portion of one of the two parcels of land that are in question.

The defendant Vicenta Parcotilo Baji is included as defendant because she was not willing to join as a party plaintiff.

The plaintiffs alleged that Pablo Parcotilo, during his lifetime, owned and possessed two parcels of land locate at Sitio Tuburan, Barrio Villaflor, Municipality of Oroquieta, in the province of Misamis Occidental; that Parcotilo was married to Filomena Dipolog, that both died during the cholera epidemic of the year 1918, and that they were not survived by any descendant or ascendant. It was therefore claimed by the plaintiffs, who are the children of the brothers and/or sisters of Pablo Parcotilo, that they are the co-owners, together with the defendant Filomena Parcotilo who was the surviving sister of Pablo Parcotilo and Vicenta Parcotilo Baji who was also a niece of Pablo Parcotilo, of the two parcels of land left by said Pablo Parcotilo.

The complaint which was filed on January 23, 1956, seeks, to partition among the plaintiffs and the defendants Filomena Parcotilo and Vicenta Parcotilo Baji the two parcels of land in question. The plaintiffs claimed that sometime on July 30, 1936, the defendant Demetrio Parcotilo subscribed and swore to an affidavit before the Deputy Provincial Assessor declaring that he was the only son and heir of the late Pablo Parcotilo, and in so doing he procured the transfer to his name of the tax declarations covering the two parcels of land which were in the name of Pablo Parcotilo. The plaintiffs also alleged that in 1936 the defendant Demetrio Parcotilo sold to the defendant Crispin Prieto a portion of one of the two parcels of land that were left by Pablo Parcotilo. It was further alleged by the plaintiffs that defendant Victor Parcotilo, in collusion with his father, the defendant Demetrio Parcotilo, procured the transfer to his name of the tax declarations which were in the name of his father.

The defendant Vicenta Parcotilo Baji, in her answer, manifested that she had no interest whatsoever in the property under litigation and that she was not interested in whatever would be the outcome of the case.

The defendant Crispin Prieto, in his answer, alleged that in 1936 he purchased an area of about 4312 hectares of rice land from his co-defendant Demetrio Parcotilo, which was a portion of one of the two parcels of land that were then in the possession of Demetrio Parcotilo. Crispin Prieto claimed that he bought that portion in the belief that Demetrio Parcotilo was the true and absolute owner of the land, the transaction being evidenced by a public instrument; and that since 1936 he had been in possession of the portion that he had bought, actually, openly, and continuously up to the time when the complaint in this case was filed on January 23, 1956.

The defendant Demetrio Parcotilo, in his answer, alleged that he acquired the lands in question by virtue of a donation mortis causa, executed by the late Pablo Parcotilo and Filomena Dipolog on July 20, 1917, and that after the death of these spouses in 1918 he immediately took possession of those two parcels of land in good faith, he had introduced improvements thereon, and had since then been in possession of said lands actually, publicly, and uninterruptedly, under a claim of ownership adverse to all other rights up to the time when the complaint in this case was filed on January 23, 1956.

The other defendants, Filomena Parcotilo and Victor Parcotilo, who are mother and son respectively of defendant Demetrio Parcotilo, join in the claim that said Demetrio Parcotilo had acquired the two parcels of land in question from the late spouses Pablo Parcotilo and Filomena Dipolog and had become the absolute owner thereof, with right to convey same to other persons.

After trial, the lower court rendered a decision dismissing the complaint. The pertinent portion of said decision, which embodies the findings of facts and conclusions of the lower court, reads as follows:

"That the two parcels of land described in the complaint were conjugal properties of the late spouses Pablo Parcotilo and Filomena Dipolog, otherwise called and known as Filomena Botanog; that on July 20, 1917, Filomena Dotanog, alias Dipolog executed a testament without the requisite of law, conveying the conjugal property in question to Demetrio Parcotilo a nephew of her husband Pablo Parcotilo. Pablo Parcotilo, however also signed the said testament Exh. '1', with translation Exh. '1-a'. Upon the death of the spouses in 1918, Demetrio Parcotilo asserted ownership of the land in question without anybody raising any protest, and only recently the plaintiffs claim to be entitled to share with the land in question as co-heirs in the estate of the late Pablo Parcotilo.

"The plaintiffs tried to prove that Luis Parcotilo youngest brother of Pablo Parcotito was the one who lately possessed and enjoyed the land in question, but it is an uncontradicted fact that in the document of sale whereby Demetrio Parcotilo conveyed thru sale a portion of the land in question in favor of Crispin Prieto, said Luis Parcotilo signed only as a witness implying that he never asserted ownership of said land.

"In short, the Court finds that although the testament Exh. '1' is null and void for lack of legal requisites, it is nevertheless a good ground on which to base acquisitive prescription. There is no doubt that the plaintiffs would have the right to demand shares to the land in question if they acted promptly before the period of prescription had elapsed.

"It is regrettable that the filing of this case has been too late when they had already lost their right thereto.

"WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint with costs against the plaintiffs."

The plaintiffs appealed from the decision of the trial court.

The findings of the lower court that the defendant Demetrio Parcotilo had acquired ownership of the two parcels of land in question through adverse possession are amply supported by the record. The document which was executed jointly by the spouses Pablo Parcotilo and Filomena Botanog on July 20, 1917 (Exh. 1-A) contains the following provisions, among others:

"3. TESTAMENT - The said land and the house that we bequeath to no other person but to my nephew already mentioned above because he is the only one who served us throughout, that is why we love him and favor him because of his services to us spouses; that our immovable properties, to make known to all residents in this District No. 7, Tuburan and in order to make perfect the truth of this written present testament, my nephews, as well as the nephews of my wife are excluded, likewise my relatives on both sides including the relatives of my wife on both sides, no one of them can question the properties above mentioned because they have no right of ownership except the one served us as we consider him our faithful son."

We agree with the court that even if the document Exh. "1-a" was not executed with all the requisites of a valid will or of a valid donation mortis causa the said document supplied the basis for the claim of ownership by the defendant Demetrio Parcotilo of the two parcels of land in question after the death of the spouses Pablo Parcotilo and Filomena Botanog. This claim of ownership by Demetrio Parcotilo, coupled with his open, continuous and adverse possession for a period of thirty-eight years had ripened into a title by prescription (*Pensader vs. Pensader*, 47 Phil. 959, 961).

In their complaint the plaintiffs-appellants had alleged that in 1936 Demetrio Parcotilo caused the tax declarations of those two parcels of land, which were formerly in the name of Pablo Parcotilo, to be transferred to his name. It is also alleged in the complaint that in 1936 Demetrio Parcotilo sold a portion of one of the two parcels of land in question to his co-defendant Crispin Prieto. Incidentally, the trial court found that Luis Parcotilo, one of the brothers of the late Pablo Parcotilo, was a witness to the deed of sale executed by Demetrio Parcotilo in favor of Crispin Prieto; and this indicated that Luis Parcotilo, as a brother of Pablo Parcotilo, had recognized the ownership of Demetrio Parcotilo of the land that was sold to Crispin Prieto. It is further alleged in the complaint that in 1952 the defendant Demetrio Parcotilo caused the tax declarations of these lands in question to be transferred to the name of his son Victor Parcotilo. All these circumstances, as brought forth by the plaintiffs-appellants in their pleadings, were indications of the claim of ownership of Demetrio Parcotilo over the two parcels of land in question, exclusive of any other right and adverse to all other claimants; and this adverse claim of Demetrio Parcotilo bolstered by his actual, open and continuous possession for a period of over thirty years had ripened into a title. The adverse possession of defendant Demetrio Parcotilo from 1918 to 1936 had redounded to the benefit of the defendant Crispin Prieto as far as the portion that the latter had brought from Demetrio Parcotilo was concerned; and the defendant Crispin Prieto had adverse possession of the portion which he had brought from Demetrio Parcotilo for a period of about twenty years before the filing of the complaint in the present case.

The lands in question being unregistered lands, and the rights of the defendants Demetrio Parcotilo and Crispin Prieto having accrued before the New Civil Code went into effect, the law applicable is Sec. 41 of Act 190, the old Code of Civil Procedure, which provide as follows:

"SEC. 41. Title to land by prescription. — Ten years actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the persons under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants" (Italics supplied).

Even the provisions of Article 1137 of the New Civil Code on extraordinary prescription through uninterrupted adverse possession for thirty years, regardless of whether there was title or good faith, uphold the right of the defendant Pablo Parcotilo as owner through adverse possession in this present case.

The decision of the lower court is in accordance with law and finds support in a long line of decisions of this Court (Bargayo vs. Camumot, 40 Phil. 857; Pensader vs. Pensander, 47 Phil. 959; Dimanlig vs. Cusi, 48 Phil. 394; Dadivas vs. Bunayon, 54 Phil. 632).

WHEREFORE, the decision appealed from is affirmed, with costs against the plaintiffs-appellants.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L. Barrera, Paredes, Dizon, Regain, Makalintal and Bengzon, J. P., JJ. concur.

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