

FRANCISCA MAGHIRANG AND SERGIA GUTIERREZ, PLAINTIFFS AND APPELLANTS, VS. ATILANO BALCITA ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 22066. December 02, 1924*

Ponente: STREET, J.

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By the appeal in civil cause No. 2643 of the Court of First Instance of Laguna, Sergia Gutierrez seeks to reverse a decision of said court, whereby two parcels of land were declared to be the exclusive property of Gregorio Empalmado and of Esteban Reyes, respectively, free from the claim of Sergia Gutierrez that said lots are held by said defendants subject to a contingent reservable interest in her favor. Connected with the action above mentioned is the proceeding in the second appeal, wherein the trial court declared that the first of the two lots in controversy should be registered in the name of Gregorio Empalmado, free from the same claim. Because of the intimate relation between the action instituted in behalf of the appellant, Sergia Gutierrez, as reservee, and the registration proceeding in which she is opponent, the two causes were heard together in the trial court and will be here disposed of in a single opinion.

The basis of the claim put forth by the plaintiff Gutierrez is the same as to both parcels, but the facts constituting the respective defenses of the two defendants are different. It will therefore be convenient to state first the points pertaining to the two parcels in common and then such as pertain especially to the controversy over each.

It appears that the original owner of both parcels was one Bonifacio Gutierrez, who died about the year 1902, after having been thrice married. The first wife left no children, but the second wife left a daughter, Zoila Gutierrez, who intermarried with Atilano Balcita, one of the defendants herein. To this pair was born a daughter, Gertrudis Balcita. Zoila Gutierrez predeceased her father; and upon the death of the latter, the two parcels of land with which we are concerned passed by inheritance directly from Bonifacio to his granddaughter Gertrudis, then a mere child. Gertrudis Balcita herself died on December 9, 1912, at the age of 16, leaving no heir except her father, Atilano Balcita. The plaintiff, Sergia Gutierrez, is a daughter of Bonifacio Gutierrez by his third wife, one Francisca Maghirang. Sergia was therefore the aunt of Gertrudis Balcita, on her mother's side, and as reservee under article 811 of the Civil Code she should succeed to the title of the two parcels which Atilano Balcita inherited, or should have inherited, from Gertrudis, provided all the conditions necessary to the assertion of the reservable right are fulfilled.

GUTIERREZ vs. EMPALMADO

Parcel A.—In the year 1905 Atilano Balcita sold the parcel A to one Vicente Almario. As the land belonged to Gertrudis, a lawsuit was instituted in her behalf in 1912 with a view to recovering it. The litigation was compromised by the reconveyance of the land by Almario to Gertrudis and the payment to him of P1,200, which was the amount that he had paid for the property. The money necessary to effect this compromise had to be borrowed by Gertrudis, or those representing her; and although the point is subject to discussion, the

preponderance of the testimony is to the effect that the money was obtained from Gregorio Empalmado under an agreement by which Gertrudis Balcita undertook to convey the land to him for the sum of P2,100. The document, Exhibit B, constituting the evidence of this agreement is dated November 28, 1912. In addition to the signature of Gertrudis Balcita, which is questioned, it bears the signature of Atilano Balcita and two subscribing witnesses. Gertrudis Balcita died of dysentery on December 9, 1912, and on December 12 thereafter her father, Atilano Balcita, executed the document Exhibit C, whereby he conveyed, or purported to convey, the same parcel to Gregorio Empalmado, it being recited that he had inherited the land from his daughter Gertrudis. Gregorio Empalmado immediately entered into possession, and he has subsequently maintained possession under claim of ownership.

For the plaintiff, Gutierrez, it is insisted that the document, Exhibit B, is not authentic and that the name of Gertrudis Balcita subscribed thereto is a forgery. The trial judge was of the opinion that the due execution of this instrument had been proved by a preponderance of the evidence; and although the question is debatable, and the point not altogether free from doubt, we are of the opinion that the trial court's conclusion on this point should be affirmed. The two subscribing witnesses both say that they saw the girl sign the document upon the date stated therein, and this is corroborated not only by the testimony of Gregorio Empalmado, who was present at the execution of the instrument, but also by Atilano Balcita himself. The only testimony to the contrary is that of Sergia Gutierrez, who says that the girl was too sick for some time prior to her death to admit the possibility of her having signed the instrument. It is true that the questioned signature appears somewhat suspicious, but we have not sufficient data upon which to pronounce it a forgery, considered as a mere question of penmanship. Certainly, the instrument expresses the agreement that would naturally have been drawn up under the proven circumstances which gave rise to the transaction.

Upon the foregoing state of facts the trial judge found as a matter of law that the title to parcel A passed out of Gertrudis Balcita and became vested in Gregorio Empalmado before her death; and although Gertrudis was then a minor, the conveyance was only voidable and not void. Moreover, as his Honor pointed out, the contract was evidently advantageous to the minor because she thereby obtained the money necessary to get the property back from Vicente Almario, with the consequent saving of P900.

These conclusions of the trial court seem to us well founded, and the result is that, as to this parcel, the inchoate reservable right asserted by Sergia Gutierrez never came into existence. In this view the conveyance executed by Atilano Balcita a few days after the death of his daughter Gertrudis operated as a mere quit-claim from him, as title had already vested in Empalmado under the prior agreement with her.

No error was therefore committed by the trial judge in dismissing the complaint in case No. 2643 in so far as it affects parcel A and the right of the defendant Empalmado thereto; nor did his Honor err in ordering the registration of the same parcel in the name of Empalmado and his wife Felipa Brion, regardless of the opposition of the plaintiff Gutierrez.

GUTIERREZ vs. REYES

Parcel B.—As already stated, this parcel comes from the same source as the parcel A, that is, from the estate of Bonifacio Gutierrez. With respect to this parcel it appears that on May 28, 1906, Atilano Balcita, being then in possession and asserting a claim of ownership, sold the same by a contract of sale with pacto de retro for the sum of P200 to the defendant Esteban Reyes. In the document constituting the evidence of this sale Atilano Balcita falsely declared that he was owner by virtue of having inherited the property from his parents and that he had been in quiet and pacific possession for fifteen years. Esteban Reyes was a purchaser for value and bought in belief that the land really belonged to his vendor. The period for repurchase under this contract was ten years, which passed

in 1916 without redemption having been effected. It is not clear whether the purchaser under this contract entered into possession during the time stipulated for redemption or not; but it is agreed that, with this exception, the defendant Reyes had, until the institution of this action on May 10, 1918, exercised actual and adverse possession, to the exclusion of all other persons.

Upon the facts above stated the trial judge gave Reyes the benefit of prescription under the ten-year statute (sec. 41, Code of Civ. Proc.) and held that the right of Sergia Gutierrez, as reservee, had been thereby destroyed.

We are of the opinion that the conclusion thus reached is erroneous. We may accept the legal proposition that occupancy by Esteban Reyes, pursuant to the contract of sale with pacto de retro by which he acquired the property, and prior to the expiration of the period for redemption, may be considered an adverse possession as against everybody having a prescriptible interest, notwithstanding the existence of the stipulation for repurchase. As was said by this court in *Santos vs. Heirs of Crisostomo and Tiongson* (41 Phil., 342, 352), the insertion of a stipulation for repurchase by the vendor in a contract of sale does not necessarily create a right inconsistent with the right of ownership in the purchaser. Such a stipulation is in the nature of an option, and the possible exercise of it rests upon contingency. It creates no subsisting right whatever in the property, and so far from being inconsistent with the idea of full ownership in the purchaser, it really rests upon the assumption of ownership in him.

But it must be borne in mind that the true owner of this property was Gertrudis Balcita, a minor, and the period of limitation did not begin to run against her or any person claiming in her right until the date of her death, which was December 9, 1912. It must furthermore be remembered that the plaintiff does not claim in the character of an ordinary successor to the rights of Gertrudis Balcita; her claim is based upon a positive provision of law, which could not operate in any wise until the death of Gertrudis Balcita, when the reservable character first attached to the property in question. From this it is obvious that the right of the plaintiff—which even yet is of a purely contingent nature—could not be affected by anything that had occurred prior to the death of Gertrudis Balcita; and as this action was begun in May, 1918, the ten-year period necessary to confer a complete prescriptive title had not then elapsed.

What has been said makes it unnecessary to express any opinion upon the more recondite question whether Sergia Gutierrez really has a, prescriptible interest in the parcel B, but we may observe that the position of the reservee under the Spanish law is very much like that of the ordinary remainderman at common law, who is entitled to take after the termination of a particular life estate; and it is generally accepted doctrine in commonlaw jurisdictions that if the life tenant loses his life estate by adverse possession the interest of the remainderman is not thereby destroyed. (17 R. C. L., 982; 21 C. J., 972, 975, 1013.) The reason for the rule is said to be that, during the existence of the life estate, the remainderman has no right to possession and consequently cannot bring an action to recover it. (21 C. J., 974.) As was said by the Supreme Court of Ohio in *Webster vs. Pittsburg, etc., Railroad Co.* (15 L. R. A. [N. S.], 1154), "No possession can be deemed adverse to a party who has not at the time the right of entry and possession."

From what has been said it is apparent that the judgment must be affirmed in so far as concerns the registration of parcel A in expediente No. 409, G. L. R. O., record No. 14769, and in so far as relates to the dismissal of the complaint against Gregorio Empalmado in case No. 2643; but the judgment in the same case must be reversed in so far as relates to parcel B, now in the possession of Esteban Reyes, and it is hereby declared that said parcel is reservable property and upon the death of Atilano Balcita will pass to Sergia Gutierrez, if she be then living. Let a certified copy of this pronouncement be filed with the register of deeds of the Province of Laguna for record pursuant to the provisions of Act No. 2837 of the Philippine Legislature. So ordered, without special pronouncement as to costs.

Johnson, Malcolm, Avancena, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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