

**PEDRO DIZON AND SEVERINA DIZON, PLAINTIFFS AND APPELLANTS,
VS. VICENTE GALANG, JUAN MEDINA AND TEODORO JURADO,
DEFENDANTS AND APPELLEES.**

G.R. No. 23144. January 14, 1926

Ponente: AVANCEÑA, C.J.

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AVANCEÑA, C.J.:

Rufina Dizon, who was married to Vicente Galang and by whom she had a son named Francisco, inherited from "her parents the three parcels of land described in the complaint.

On October 4, 1904, Rufina Dizon died and her son Francisco inherited from her the said three parcels of land. Francisco Galang died on December 8, 1904, and his father Vicente Galang, by operation of law, inherited from him the said land. In accordance with article 811 of the Civil Code these three parcels of land are considered as reservable property although they do not appear as such in the registry of deeds.

In 1913, Vicente Galang sold the first two parcels to Juan Medina and in 1909 the third to Teodoro Jurado, without informing them that they were reservable property.

The plaintiffs Pedro and Severina Dizon, brother and sister of the deceased Rufina Dizon, being related to her within the third degree, brought this action against Vicente Galang, Juan Medina and Teodoro Jurado. The complaint prays that the sales of this land by Vicente Galang to Juan Medina and Teodoro Jurado be set aside; that Juan Medina and Teodoro Jurado be ordered to return the said parcels of land; that Vicente Galang be compelled to record in the registry of deeds the reservable character of this land and to execute a mortgage to secure its value. The appealed judgment dismissed the complaint with costs against the plaintiffs.

It is settled by jurisprudence that the provisions regarding a reservation by the widowed spouse referred to in article 968 of the Civil Code, for the purpose of assuring its efficacy, are also applicable to the reservation known as troncal referred to in article 811 so far as they insure the efficacy of the reservation. Article 975 permits the sale of reservable property by the widower, after contracting a second marriage, subject, however, to the reservation as a resolutive condition, in case, at the time of the death of the vendor bound to make the reservation, there should be legitimate children or descendants of the first marriage, without prejudice to the provisions of the Mortgage Law.

According to the foregoing, the sales made by Vicente Galang (who was bound to make the reservation) of the three parcels of land, which are reservable property, in favor of Juan Medina and Teodoro Jurado, cannot be set aside unless the resolutive condition imposed by the reservation shall have occurred, which is not the case here.

Since these parcels of land have been legally transferred to third persons, Vicente Galang has lost ownership thereof and cannot now register nor record in the registry of deeds their reservable character; neither can he affect the fee simple, which does not belong to him, to the damage of Juan Medina and Teodoro Jurado, who acquired the said land in good faith, free of all incumbrances. An attempt was made to prove that when Juan Medina was

advised not to buy the land he remarked, "why, did he (Vicente Galang) not inherit it from his son?" Aside from the fact that it is not clear whether this conversation took place in 1913 or 1914, that is, before or after the sale, it does not signify that he had any knowledge of the reservation. This did not arise from the fact alone that Vicente Galang had inherited the land from his son, but also from the fact that, by operation of law, the son had inherited it from his mother Rufina Dizon, which circumstance, so far as the record shows, Juan Medina had not been aware of. We do not decide, however, whether or not Juan Medina and Teodoro Jurado are obliged to acknowledge the reservation and to note the same in their deeds, for the reason that there was no prayer to this effect in the complaint and no question raised in regard thereto. Neither can Vicente Galang be compelled to execute a mortgage to secure the value of the three parcels of land.

As already intimated, the provisions of the law tending to give efficacy to a reservation by the widowed spouse mentioned in article 968 are applicable to the reserva troncal provided for in article 811. But as these two reservations vary in some respects, these rules may be applied to the reserva troncal only in so far as the latter is similar to reservation by the widowed spouse. In the reserva troncal the property goes to the reservor as reservable property and it remains so until the reservation takes place or is extinguished. In a reservation by the widowed spouse- there are two distinct stages, one when the property goes to the widower without being reservable, and the other when the widower contracts a second marriage, whereupon the property, which theretofore had been in his possession free of any incumbrance, becomes reservable. These two stages also affect differently the transfer that may be made of the property. If the property is sold during the first stage, before becoming reservable, it is absolutely free and is transferred to the purchaser unencumbered. But if the sale is made during the second stage, that is, when the duty to reserve has arisen, the property goes to the purchaser subject to the reservation, without prejudice to the provisions of the Mortgage Law. This is the reason why the law provides that should the property be sold before it becomes reservable, or before the widower contracts another marriage, he will be compelled to secure the value of the property by a mortgage upon contracting a new marriage, so that the reservation may not lose its efficacy and that the rights of those for whom the reservation is made may be assured. This mortgage is not required by law when the sale is made after the reservation has arisen, for the reason that the reservation will follow the property, without prejudice to the contrary provisions of the Mortgage Law and the rights of innocent purchasers, there being no need to secure the value of the property since it is liable for the efficacy of the reservation. For this reason the rules established for reservation by a widowed spouse to secure the value of the property sold by the widower, before becoming reservable, are not applicable to the reserva troncal where the property goes to the ascendant already reservable in character. A sale in the case of reserva troncal might be analogous to a sale made by the widower after contracting a second marriage in the case of reservation by the widowed spouse.

The judgment appealed from is affirmed with costs against the appellants. So ordered.

Street, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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