

**TEODORA ESTABILLO, MARIA ESTABILLO, FAUSTA ESTABILLO,  
CATALINA ESTABILLO AND MARIANO BENITEZ, PLAINTIFFS AND  
APPELLANTS, VS. NICOLAS ESTABILLO 1.<sup>o</sup>, DEFENDANT AND  
APPELLEE.**

*G.R. No. 23340. December 07, 1925*

Ponente: OSTRAND, J.

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**OSTRAND, J.:**

In the present case the plaintiffs allege that they are the owners of a parcel of land measuring some thirty hectares and situated in the municipalities of Pura and Gerona, Province of Tarlac; that in the year 1916 said plaintiffs, through their confidence in the defendant, authorized him to represent them in cadastral case No. 4 of the Province of Tarlac and there file a claim in their behalf for the registration of the eastern portion of said parcel, which portion was designated as lot No. 1359 in the cadastral survey and contained an area of 117,692 square meters; that the defendant, betraying the trust reposed in him, filed a claim in his own name and obtained a decree in his favor for said lot in September, 1917; that the plaintiffs did not discover the fraud committed by the defendant until the year 1919, when said defendant, taking advantage of the decree issued in his favor, obtained possession of the lot, ousting the plaintiffs therefrom.

The plaintiffs therefore ask that it be declared that they were the owners of the land in question prior to the year 1917; that the decree of registration issued in favor of the defendant be declared illegal and fraudulent; and that the plaintiffs be awarded damages in the sum of P23,000. The defendant's answer is a general denial.

Upon trial the court below found that the plaintiffs had failed to establish their title to the land and rendered judgment in favor of the defendant, absolving him from the complaint, with the costs against the plaintiffs. From this judgment the plaintiffs appeal.

The appellants present seven assignments of error, of which Nos. 1, 2, 4, 5, 6 and 7 relate only to questions of fact in regard to which the findings of the court below are, in our opinion, fully sustained by the evidence.

Under the third assignment of error the appellants maintain that the court below erred in overruling plaintiffs' objection to the admission in evidence of the defendant's Exhibit 1, an affidavit made in May, 1908, by one Simon Estabillo, and in which the affiant states that he is the son and only heir of Santiago Estabillo and that he knows to a certainty that his father had sold the land here in question to the defendant, though no document of sale was executed, and that he, the affiant, therefore relinquished "all rights, actions and interest" in said land. The document is signed by three witnesses, among them one Mateo Oclaray, and sworn to before a notary public.

Counsel for the appellants argues that the document was inadmissible (1) because its authenticity was testified to by only one witness, Mateo Oclaray, who, on the witness stand, admitted that he was not present when it was written and did not see the other witnesses to the instrument sign; (2) that being nothing but an affidavit, it can only be regarded as hearsay evidence and that the best evidence of the facts stated in the document would be the

testimony of the affiant himself; and (3) that in any event the document is not admissible as against the plaintiffs who did not take part in its execution. At first glance, this argument seems plausible, but the matter presents a different aspect when it is considered that it is not disputed that Santiago Estabillo, the father of Simon, was the original owner of the land, and that both the plaintiffs and the defendant claim title through him; that neither is it disputed that Simon Estabillo was the son of Santiago and is the father of the appellant Fausta Estabillo; and that both Santiago and Simon Estabillo died before this action was brought. The document is therefore an admission against interest by the predecessor of one of the appellants and constitutes an exception to the hearsay rule. As such it is evidence against Simon's daughter, the appellant Fausta Estabillo. It is further admissible to show that the defendant has been in possession of the land under a claim of ownership adverse to the claims of the descendants of Santiago Estabillo. The fact that the only witness who testified to its authenticity was not present when the document was written and signed by the other subscribing witnesses, may lessen its probatory value, but does not render it inadmissible as evidence.

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

Avanceña, C. J., Street, Malcolm, Villamor, Johns, and Romualdez, JJ., concur.

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