

JULIAN SANTIAGO ET AL., PLAINTIFFS AND APPELLANTS, VS. PEDRO SANTOS ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 24003. December 31, 1925

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The controversy in this case is concerned with the recovery of the land described in paragraph 4 of the complaint, and which is a part of a property of greater area of the deceased Fabian Tiongson.

The plaintiff Julian Santiago is father of his coplaintiffs Gaspara and Santiago, and the three of them allege that they are the owners pro indiviso of said portion of land, the same having been partly inherited by the wife and mother, respectively, of said plaintiffs, who was a granddaughter of the original owner Fabian Tiongson, and partly purchased from other owners.

The defendant Pedro Santos who is in possession of the land in question (the defendant Teodorico Santos has no interest in, or right over, the land), asserts that he is the absolute owner of said realty, setting up prescription as special defense against the complaint, and a counter-claim which does not concern us in this appeal, the same having been overruled by the trial court and no appeal having been taken from said overruling.

The trial court absolved the defendants from the complaint.

The errors assigned to said judgment are as follows:

- The finding that the plaintiffs have not proven who was the granddaughter of Fabian Tiongson, with whom the plaintiff Julian Santiago was married, nor what portion was allotted to her as heir of said Tiongson.
- The finding that it was not shown by any proof how the plaintiff Julian Santiago acquired his right to the land in question, which was sold with a right of repurchase by said plaintiff Julian Santiago to one Hilarion Reyes.
- The failure to adjudge the plaintiffs absolute owners of the land in question.
- The failure to render judgment against the defendant Pedro Santos and in favor of the plaintiffs for the payment of the sum of P600 yearly from the year 1918, as the rents collected and received by said defendant for the land in question until delivery thereof.
- The denial of the motion for new trial.

As to the first error, it really does not appear to have been proven who is the granddaughter of Fabian Tiongson, and above all, what portion of the land of said deceased was allotted to said granddaughter. Exhibit 8 cited by the appellants in their brief was presented as evidence only as to the 3,000 nipa plants which were destroyed, and not that part of it as to who was the alleged granddaughter of Fabian Tiongson, which part was not used by the plaintiff as evidence. In order that said part concerning the said granddaughter may be considered as evidence in this case, the plaintiffs should have presented it as such. (Sec. 283, Code of Civil Procedure; *Matias vs. Alvarez*,

10 Phil., 398.) And not only did the plaintiffs not offer said Exhibit 8 as evidence, but objected to said document, as being immaterial and incompetent, and took exception to its admission.

At any rate, said Exhibit 8 does not show the portion which, is said, was allotted to the aforesaid granddaughter of Fabian Tiongson. Once she is identified, it matters not that her individual name is unknown. What mattered in this case was to specify the portion of the land of her grandfather which is alleged to have been allotted to her, so that it might be determined whether such portion was the parcel here in question or said parcel was a part thereof. This does not appear, nor are the portions alleged to have been bought by the plaintiff Julian Santiago specified.

The second error assigned chiefly raises a question of fact. The evidence of record does not warrant a different conclusion from that of the lower court with regard to said question.

As to the third error assigned, it is a consequence of the preceding ones. With respect to the land tax receipts constituting Exhibit C, said receipts do not contain a description of the land and are not otherwise identified with the land here in dispute.

The other errors assigned are deductions from the above.

The judgment of the lower court is affirmed, with the costs against the appellants. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Johns, and Villa-Real, JJ., concur.

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