

**BERNARDA TINIO DE GABALDON AND ISAURO GABALDON,
PLAINTIFFS AND APPELLEES, VS. GREGORIO VENTURA, DEFENDANT
AND APPELLANT.***G.R. No. 32056. December 31, 1931*

Ponente: IMPERIAL, J.

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This is an appeal taken by the defendant, Gregorio Ventura, from the judgment rendered by the Court of First Instance of Nueva Ecija, by virtue of which the plaintiff, Bernarda Tinio de Gabaldon, was declared the owner of the land in litigation; the deed of sale, Exhibit 5, was declared null and void; the appellant was ordered to return the possession of said property to the appellee and to pay to the latter, as value of the fruits illegally collected, the sum of P3,000 a year from May 4, 1927, to the date of delivery of the property in question.

From the evidence presented during the trial, the following facts may be deduced:

The land in question is situated in the barrios of Butao de Sapang Calibungan and Galavera in the municipality of Guimba, Nueva Ecija. It contains 118 hectares and is bounded on the north by the Calibungan Creek, also called Masalasa and the lands belonging to Cipriano Coloma and Regina Esguerra which formerly belonged to Candido Sarmiento but at present occupied by Gregorio Ventura; on the east by the Pinagpandayan Creek; on the south by the same Pinagpandayan Creek, also known as Galavera Creek and the lands of Gregorio Ventura, formerly belonging to Candido Sarmiento; and on the west by lands formerly belonging to Paulo Medina now owned by Juan Garcia.

Jacinto Buenavides originally possessed under claim of ownership a portion of the land in question which he later sold to Casimiro Paguirigan y Pascua. The latter broke and cleared another portion adjacent to it and thus the parcel in question was formed. After having been in possession of the same for the required period, he applied for and obtained a possessory information title in accordance with the Mortgage Law, which was recorded in the registry of deeds of Nueva Ecija (Exhibit A-3). On February 22, 1896, Paguirigan sold said land to Federico Mendez y Villa-Abrille, and the corresponding deed of sale, Exhibits A and A-2, was executed and recorded in the same registry. On December 17, 1896, Federico Mendez y Villa-Abrille, in turn, sold the same land to the herein appellee, Bernarda Tinio, the corresponding deed of sale being Exhibit A-1, which was also recorded in the registry of deeds of the aforementioned province.

Having become the murer of said property, the appellee turned over its management to her late father, Casimiro Tinio, who rented it on shares first to Simon Sawit, then to his relative, Eligio Tinio, and lastly, to the herein appellant, Gregorio Ventura, delivering to his daughter, the herein appellee, the yearly palay crop obtained as rent from the tenants mentioned above.

The appellant, Ventura, leased the land from 1910 but fearing he might suffer a loss, he succeeded in returning it to his predecessor, Eligio Tinio. However, the appellant again leased all of the land in 1914 from which time he cultivated it, delivering the yearly crop to the late Casimiro Tinio, who, in turn, delivered the same to his daughter

who was the real owner thereof. Thus, he continued possessing and cultivating the land in question until April 7, 1920, when he succeeded in buying from Casimiro Tinio all of the property for P25,000. The corresponding deed of sale, Exhibit 5, was executed but was not recorded in the registry of deeds due to the fact that the property was in the name of the appellee.

At that time the appellee, being unmarried but of age, established her residence in the municipality of Aliaga and looked after her father's rice fields in that municipality; and, inasmuch as the property recently acquired by her was located in the municipality of Guimba, where her father owned extensive fields, in reciprocation the latter looked after his daughter's property and, acting as his daughter's representative, leased said land to the aforesaid persons. Either because the property in question belonged to his principal, or, because of the intimate relationship existing between him and the appellee, the late Casimiro Tinio declared the property in his name for taxation purposes, without stating that it belonged exclusively to his daughter, and consequently the taxes paid by him as well as the receipts issued, were exclusively in his name and the property was thus recorded in the tax-list until the date of its conveyance to the herein appellant, who succeeded in transferring it in his name.

From the year 1920, the appellant appropriated the rice harvested from the land, which the court fixed in accordance with the evidence presented at 1,000 cavanese a year, or P3,000 yearly at the rate of P3 a cavan.

The appellee was not aware of the conveyance made by her father until the latter's death in 1923 when the appellant refused to deliver to her the crop harvested that year, alleging, for the first time, that he had already ceased to be a mere tenant and was then the absolute owner thereof.

The appellant assigns the following errors:

"1. The trial court erred in failing to find that Casimiro Tinio purchased the land in question thru his daughter and attorney-in-fact, Bernarda Tinio.

"2. The trial court erred in failing to find that Casimiro Tinio exercised undisputed dominion over the land in question from the time he purchased it in 1896 to the time he sold it to the defendant on April 7, 1920.

"3. The trial court erred in believing the uncorroborated and incredible declaration of the plaintiff, Bernarda Tinio, to the effect that her father merely administered the land in question for her and that he delivered to her the rent up to and including the year 1922.

"4. The trial court erred in believing the gratuitous assertions of the witnesses, Simon Sawit and Eligio Tinio, that the deceased, Casimiro Tinio, told them that the land in question belonged to his daughter, Bernarda Tinio.

"5. The trial court erred in not holding that plaintiff's cause of action, if any, had prescribed.

"6. The trial court erred in not holding that the plaintiff, Bernarda Tinio, is estopped from recovering the land in question.

"7. The trial court erred in declaring null and void the deed of sale, Exhibit 5; in ordering the defendant to deliver the possession of the land in question to the plaintiffs; in condemning the defendant to pay to the plaintiffs P3,000 a year from May 4, 1927, until the satisfaction of the judgment; and in not absolving the defendant from the complaint."

The first error is not supported by the evidence and is unfounded. There is nothing in the deed of sale, Exhibit A-1, which even remotely indicates that the herein appellee purchased the land in the capacity of attorney-in-fact for her father. It appears clearly that the transfer was made directly to her, she having paid the stipulated price herself. In the power of attorney executed by Casimiro Tinio in favor of his daughter, the herein appellee, there is nothing to show that the latter bought the land merely as her father's attorney-in-fact inasmuch as all the power

conferred upon her consisted in the exercise of general acts of administration and the special authority to transfer or mortgage the properties under her administration in the municipality of Aliaga, but she was not empowered to acquire real property in that municipality or anywhere else.

The evidence presented shows that from the date of the acquisition of the property in question up to the time of the death of Casimiro Tinio, he had been in possession of the land as his daughter's administrator or trustee delivering to her the rice crop produced by the tenants every year. From these facts, it cannot be inferred that, during the lifetime of the deceased, he had exercised acts of ownership over the land in question to the prejudice of its true owner. The second assignment of error is, therefore, untenable.

The third and fourth assignments' are not supported by the evidence. The testimony of the appellee to the effect that her late father had been delivering her the yearly crops until the year 1922, is corroborated to a certain extent by her deed of purchase, which was duly recorded, and by the testimony of the former tenants, Simon Sawit and Eligio Tinio, and has not been successfully contradicted by any other evidence. There is nothing improbable in Simon Sawit's and Eligio Tinio's testimony to the effect that the late Casimiro Tinio had told them that the land really belonged to his daughter, taking into consideration the fact that they had been tenants on the land and, as such, found it necessary to communicate with the deceased regarding the disposition of the crops which, as had been said, were periodically delivered to the appellee as soon as they were harvested.

The prescription invoked by the appellant is not supported either by the law or the facts of the case. His actual possession commenced only on April 7, 1920, when the deed of sale was executed, and the action for the recovery of the land was commenced by the appellee when she filed her complaint on May 3, 1927, that is, seven (7) years and a few days after the commencement of the alleged possession of the appellant. It is evident, therefore, that the period of ten years required by law for the acquisition of property by prescription had not yet elapsed.

There is nothing in the evidence to show the alleged existence of estoppel invoked by the appellee. The appellant's possession of the land and the improvements made thereon, if true, cannot be used against her inasmuch as it appears that she was entirely ignorant of the transfer made by her father until the appellant, in 1923, refused to deliver to her the crops and informed her, for the first time, that he had become the owner of the land through purchase from the deceased, Casimiro Tinio. The evidence shows that there was not even tolerance nor tacit consent on the part of the appellee because she continued to receive the crops until the year 1922, after her father had already died.

The last assignment of error, being a mere corollary of the preceding ones, need not be discussed. However, it must be noted that, according to the evidence, the appellant was not an innocent purchaser and therefore he would be bound to refund the value of the crops received from the year 1923, at least, were it not for the failure of the appellee to except to the decision of the trial court in this respect and to file the corresponding bill of exceptions. He was not an innocent purchaser because, according to his own admissions, he had some doubt, at least, as to the identity of the true owner of the land which he later purchased. According to him, he was not sure as to who was the real owner of the land because of the rumors he had heard that the owner could as well be Casimiro Tinio as his daughter, the appellee herein. This doubt could have no other significance than that he really suspected that Casimiro Tinio was not the true owner thereof. His assertion that he became convinced that Casimiro Tinio was the true owner because his sons told him they had seen Tinio visit the land on a certain occasion, is so childish that it can scarcely, if at all, convince anybody.

In view of the foregoing, and being of the opinion that the decision appealed from is in accordance with law, the same is hereby affirmed in toto, with costs of this instance against the appellant.

The right to claim from the intestate or legal representative of the deceased, Casimiro Tinio, or from his heirs, the

sum of P25,000 paid by the appellant, Gregorio Ventura, for the land in question, is hereby reserved to him. So ordered.

Avanceña, C. J., Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

Street, J., I dissent.

DISSENTING

OSTRAND, J.:

I dissent. Without here going into the details of the case, I am fully convinced that the appellant is in fact the true owner of the land in question.

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