

**VICENTA DIMALIWAT, ADMINISTRATRIX OF THE ESTATE OF THE
DECEASED EUSTACIO DIMALIWAT, PLAINTIFF AND APPELLANT, VS.
ESPERANZA DIMALIWAT, DEFENDANT AND APPELLEE.**

G. R. No. 33590. February 21, 1931

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced by Eustacio Dimaliwat in the Court of First Instance of the Province of Nueva Ecija on the 19th day of November, 1928. Its purpose was to recover, as owner, the possession of a large tract of land situated in the municipality of Aliaga of said province, containing an area of 139 hectares, 80 ares and 46 centares, more particularly described by metes and bounds in the second paragraph of the complaint.

In the first cause of action the original plaintiff Eustacio Dimaliwat alleged that he was the owner of said land by virtue of a Titulo de Composición con el Estado, No. 3501, issued by the Spanish Government; that his older daughter, the defendant herein, has been administering the land, with his consent, since 1901; that she has never rendered to him an account of her administration of said land in spite of his repeated demands therefor; that she refused to return the land and claimed that she was the owner thereof; that said land yields an annual crop of 10,000 cavans of palay; and that the land was assessed for taxation purposes in the sum of P44,740.

In his second cause of action the plaintiff alleged that the defendant, by means of fraud and deceit, succeeded in obtaining from him a special power to administer the land, which power turned out to be a deed of donation in her favor and in favor of her brother Teofilo Dimaliwat (Exhibit 3); that said donation has never been accepted by the donees; and that at the time said alleged donation was made, the plaintiff had three other children of his third marriage.

In the third and last cause of action the plaintiff alleged that the defendant Esperanza Dimaliwat, in collusion with her brother Teofilo Dimaliwat, induced him to execute a fictitious deed of sale of said land in favor of Teofilo Dimaliwat; and that the defendant, acting as agent of Teofilo Dimaliwat, mortgaged said land in favor of Casimiro Tinio for the sum of P3,000.

The plaintiff prayed that a judgment be rendered in his favor and against the defendant—(a) declaring that the land in question was the exclusive property of the plaintiff; (b) ordering the defendant to immediately return the land to him; (c) ordering the defendant to pay damages on the basis of 5,000 cavans of palay per year, from the year 1901, at P3 a cavan; (d) declaring null and void the deed of donation executed by the plaintiff in favor of the defendant or of any other person; and (e) declaring also null and void the deed of sale of said land executed by the plaintiff in favor of Teofilo Dimaliwat.

The defendant in her amended answer denied generally and specifically each and every allegation of the complaint. By way of special defense she alleged (a) that she has been in the quiet, peaceful, adverse, and uninterrupted possession of the land, as owner, for more than ten years, and (b) that the plaintiff's right of action had prescribed.

Eustacio Dimaliwat died, and an amended complaint, containing substantially the same allegations of the original complaint, was presented on September 18, 1929, by Vicenta Dimaliwat, daughter of the deceased in his third marriage. She filed the amended complaint in her capacity as administratrix of the estate of her deceased father. The amendment consisted only in the substitution of Vicenta Dimaliwat as plaintiff, in place of the deceased Eustacio Dimaliwat.

Upon the issue raised by the pleadings the cause was brought on for trial. After hearing the evidence Eduardo Gutierrez David, judge, in a very carefully prepared opinion, containing: a brief summary of all the important facts of the case, arrived at the conclusion that the defendant was the owner of the land in question, and rendered a judgment in her favor and against the plaintiff, dismissing the complaint with costs.

From that judgment the plaintiff appealed.

Before the appeal was perfected the plaintiff filed two motions for new trial; the first, dated February 7, 1930, was based on the ground that the judgment was contrary to both the facts and the law, which motion was denied by the court in its order of February 24, 1930. Notice of this order was sent to the plaintiff on March 13, 1930. The second motion, based on newly discovered evidence tending to show that the signature on Exhibit 4 was forged, was filed, on March 8, 1930. While this second motion was pending, the plaintiff fled the bill of exceptions on March 22, 1930, Said motion was later denied by the court on March 29, 1930, for lack of merits.

The appellant now makes the following assignments of error:

- The lower court erred in refusing the plaintiff-appellant's motion for continuance of the trial, in order that said party might produce expert testimony on the genuineness of defendant-appellee's Exhibit 4.
- The lower court erred in denying the plaintiff-appellant's motion for new trial.
- The lower court erred in declaring defendant-appellee absolute owner of the controverted land."

We shall discuss the foregoing assignments of error according to the order of their importance and in harmony with the logical sequence of the facts of this case. For that purpose we shall take up first, the third assignment of error, then the first and lastly the second.

A careful examination of the evidence discloses the following facts:

The deceased Eustacio Dimaliwat was the original owner of the land in question as shown by the Titulo de Composicion con el Estado issued to him by the Spanish Government in 1887 (Exhibit A), duly recorded in the registry of property. On January 7, 1901 he executed an instrument, Exhibit 3, donating said land to his children in his first marriage, Esperanza Dimaliwat and Teofilo Dimaliwat. Said instrument is in the handwriting of the donor himself, and was acknowledged before a notary public about live years thereafter, or on December 12, 1905. Thus, by virtue of said donation, Esperanza became the owner of one-half of the land, and Teofilo of the other half. When that donation was made, the donor did not have any other children.

From January 7, 1901, Esperanza Dimaliwat took possession of the land and enjoyed the fruits thereof jointly with her brother Teofilo Dimaliwat. She has had since then the exclusive administration of the whole land including the portion belonging to her brother, who was a priest and could not very well attend to the administration of his share. They therefore acquired the land by prescription if not by the donation because of the alleged lack of formal acceptance, although under the circumstances surrounding this donation, we think that the formality of acceptance is not necessary for its validity. (Art. 622 of the Civil Code.)

A period of almost twenty-eight years has thus elapsed from January 7, 1901, when said land was donated by Eustacio Dimaliwat to his children, to November 19, 1928, when this action was instituted in his name. It appears,

however, from his deposition (Exhibit 2), taken on January 10, 1929, that he did not have any knowledge of this action, neither did he authorize any person to commence this action against his daughter Esperanza Dimaliwat.

On June 15, 1923, Teofilo Dimaliwat, for a lawful and valid consideration in the sum of P12,430, made an assignment in favor of his sister Esperanza of his one-half of the land. The deed of assignment is known in the record as Exhibit 4. Esperanza testified that she saw her brother affix his signature to said exhibit. From the date of said assignment up to the time of his death, which occurred in July, 1928, Teofilo had never claimed any right to the land nor to the fruits thereof. It also appears that after the death of Teofilo no claim has ever been presented in behalf of his estate or his heirs to recover the land so assigned to Esperanza, or to question the validity or genuineness of the deed of assignment (Exhibit 4) executed by him in her favor.

The facts above stated clearly show that the appellee Esperanza Dimaliwat became the owner of one-half of the land in question by virtue of the deed of donation (Exhibit 8) executed by her father on January 7, 1901, and by prescription. She also became the owner of the other half by virtue of the deed of assignment (Exhibit 4) executed in her favor by her brother Teofilo Dimaliwat. Therefore, the lower court did not err in declaring that Esperanza Dimaliwat was the absolute owner of the land in question.

With reference to the first assignment of error, to wit, that the lower court erred in denying the motion for continuance of the plaintiff in order to question the validity of Exhibit 4, the evidence shows that said motion was presented at the close of the trial and when the case was ready to be submitted for decision. The motion was presented, not because the plaintiff believed that the signature "Teofilo Dimaliwat" appearing on said exhibit was not authentic, but simply because she wanted to consult a handwriting expert about said document. In effect, the plaintiff asked for a continuance, not necessarily to secure an expert to testify in her favor, but simply to consult an expert and incidentally to present him as a witness should his opinion turn out to be in conformity with her interest. Thus, the ground in support of the motion for continuance was a mere contingency. The motion was worded as follows:

"Sr. Reyes (counsel for plaintiff). Sobre ese punto, Su Senoria, pediriamos que esta causa sea sefialada para otro dia con un solo fin y es para que podamos consultar a un caligrafo con respecto al Exhibit 4"

Under all the circumstances found in the record the lower court acted in the use of a sound discretion in denying said motion", especially in view of the fact that Esperanza saw her brother Teofilo sign said document Exhibit 4.

Cases should not be held in abeyance simply because one of the parties believes that after a consultation with other witnesses he might secure further evidence to bolster up his case. Unnecessary delay in the speedy administration of justice should not be tolerated for such reasons.

Furthermore, under the allegations of the complaint, which we have purposely set out in detail above, we are of the opinion that the plaintiff is precluded from presenting evidence tending to question the authenticity of the signature appearing on Exhibit 4. Before she can do so, the complaint should be amended, the validity of the donation should be expressly admitted, and an express allegation should be inserted to the effect that the estate of the deceased Eustacio Dimaliwat derived its title to one-half of the land by inheritance from the deceased Teonlo Dimaliwat. In other words, the plaintiff will have to change her entire theory.

With reference to the second assignment of error, to wit, that the lower court erred in denying the plaintiff's motion for new trial, it appears from the appellant's arguments that she is referring to the second motion for new trial based on newly discovered evidence. As above stated, while said motion was pending the appellant filed her bill of exceptions. Now the filing of the bill of exceptions, while a motion for new trial is pending, constitutes a waiver of said motion (*Conspecto vs. Fruto*, 31 Phil., 144, 147). The motion, however, was not denied on that ground, but on the ground of lack of merits. So, even admitting that the motion was meritorious, as contended by

the appellant, it should have been denied just the same because of abandonment.

The land in question belongs to the appellee as shown by the following chain of title:

Exhibit A, Titulo de Composicion eon el Estado, issued in 1887 in favor of the appellee's father, Eustacio Dimaliwat, duly recdrded in the registry of property?

Exhibit 3, deed of donation executed by Eustacio Dima- liwat on January 7, 1901, in favor of the appellee and her brother Teofilo Dimaliwat. Any possible irregularity or defect in this donation was cured by prescription; and

Exhibit 4, deed of assignment of one-half of the land executed by Teofilo Dimaliwat in favor of the appellee on June 15,1923. The appellant is precluded from questioning the signature of Teofilo Dimaliwat on this Exhibit 4, as we have demonstrated above.

The judgment appealed from is in accordance with the facts and the law, and the same should be and is hereby affirmed, with costs. However, there is hereby reserved to the heirs of Teofilo Dimaliwat the right, if any they have in the land in question, to litigate that right in a proper form and in a proper proceeding. So ordered.

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

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