

MAXIMO BENUSA ET AL., PLAINTIFFS AND APPELLEES, VS. JOSE Y. TORRES ET AL., DEFENDANTS AND APPELLANTS.

G. R.No. 33811. March 02, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an action for the recovery of two parcels of land described in the complaint, with damages.

The case was tried by the Court of First Instance of Capiz, and judgment rendered, the dispositive part of which reads as follows:

"Wherefore, the court adjudges in favor of the plaintiffs and against the defendants as follows: (a) Holding the plaintiffs to be the co-owners of the land here in question, and ordering the defendants to make immediate delivery thereof to them; (b) holding the deed of sale of the property in question executed on November 13, 1920, by Lucas Benusa in favor of Jose Y. Torres, the deed of sale of the same property subsequently executed by the heirs of Palmo Dadivas in favor of said Jose Y. Torres, and the deed of sale of said property executed by Jose Y. Torres in favor of Avelino V. Mationg on October 6, 1926, to be unlawful, void, and fraudulent; (c) requiring the defendant Jose Y. Torres to execute, within the period of ten days from notice hereof, the deed of transfer to the property in litigation, in favor of Lucas Benusa, in the same manner as he, himself, acquired it by purchase without any consideration; (d) requiring the registrar of deeds of Gapiz to cancel and annul any entry or annotation that there may be in the registry with regard to the property here in litigation, to the effect that the defendants are the owners or have any share or interest in said property; (e) awarding the plaintiffs damages in the amount of 91,000 per annum against defendant Jose Y. Torres, for the fruits not received from the lands in question from November 13, 1920, to October 6, 1926; (f) awarding the plaintiffs damages in the amount of P1,000 per annum against defendants Jose Y. Torres and Avelino V. Mationg, from October 6, 1926, until the land in question is restored to the plaintiffs; and (g) awarding costs against the defendants. The plaintiffs are absolved from the cross-complaint interposed against them by the defendant Jose Y. Torres. So ordered." (Pp. 62 and 63, Bill of Exceptions.)

Dissatisfied with this decision, the defendants have appealed, Jose Y. Torres assigning the following errors:

- The trial court erred in denying to admit as evidence and in overruling the petition of the appellant herein to attach in the record of the present case the following Exhibits, to wit: 5, 6, 7, 8, 9, 23, 25, 26, 27, 28, 29, 80, 31, 34, 35, 38, 40, 41, 42, 43, 44, 45, 46, 47, 52, 53, 54, 65, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, and 68.
- The trial judge Hon. Leonardo Garduño erred in denying the petition (pp. 23-25, B. E.) filed by the appellants respectfully requesting said judge to disqualify himself to try and decide the present case upon the grounds alleged in the said petition.
- The trial court erred in declaring the plaintiffs-appellees as joint owners of the lands in litigation.
- The trial court erred in declaring null, fictitious and fraudulent the deed of sale Exhibit B executed on November 13, 1920, by the appellee Lucas Benusa transferring to the appellant Jose Y. Torres the lands in litigation.

- The trial court erred in denying the motion for a new trial.
- The trial court erred in not dismissing the plaintiffs-appellees' complaint."

Counsel for appellant Avelino V. Mationg, in turn, makes the following assignments of error:

- The trial court erred in declaring the appellees as joint owners of the lands in litigation.
- The trial court erred in declaring null, fictitious and fraudulent the deed of sale Exhibit 22 or F.
- The trial court erred in denying the motion for a new trial.
- The trial court erred in not dismissing the plaintiffs-appellees' complaint with respect to the defendant-appellant Avelino V. Mationg and in not declaring said appellant owner of the lands in litigation."

Taking up the errors assigned by the appellant Torres, we find that the exhibits referred to in the first assignment of error, which were rejected by the trial court, should have been permitted by the judge a quo to be attached to the record even if not admitted in evidence, so that in case of an appeal, as in the instant case, the court ad quem may thus be able to examine said exhibits and to judge whether or not their rejection was erroneous. The appellants have not insisted upon having them brought up to this court, which is tantamount to a waiver of their right to have such evidence examined de viso.

But in the absence of said documents, we have the description given during the hearing, which is sufficient to enable us to declare that even if admitted, they would not have altered the result of the case.

For this reason, said error on the part of the court below is of no consequence.

With regard to the recusation against the trial judge, we note that the grounds alleged are prejudice and animosity or hostility on the part of said judge against defendant Torres. The order overruling said motion affirms that there is neither prejudice nor animosity nor hostility as alleged. In order to convince ourselves that there has been no such prejudice, animosity, or hostility on the part of the trial judge, and hence that this case has not been unfairly judged, we have gone over the evidence presented, with special care, and must state that the basic conclusions of the judgment appealed from find solid support in the record. It is true that if Judge Garduno had abstained from trying the case at bar, there would have been less susceptibility to suspicion. But, as a matter of law, the grounds for the motion of recusation do not constitute a legal cause for the disqualification of a judge. Section 8 of the Code of Civil Procedure does not mention them, and it is not clear, according to North American jurisprudence, that prejudice is a ground for inhibition, in the absence of an express provision of law to that effect. (15 R. C. L., 539.)

Consequently, the trial judge cannot be declared to be disqualified to act in the instant case.

Taking up the principal question discussed in this case, to which the third and fourth errors assigned by appellant Torres and the first two assigned by appellant Mationg refer, we find it established by a preponderance of evidence that the conveyances sought to be proved by the deeds Exhibits B and 22, are fictitious and therefore, null and void.

The remaining errors assigned in the appellants' briefs are a consequence of those already considered, and we deem them not sufficiently proved in the trial.

The amount of damages awarded has not been discussed by the appellants in their briefs. At all events, the plaintiffs' evidence on the point has not been rebutted and is, to our mind, sufficient.

Finding no error in the judgment appealed from, it is hereby affirmed, with costs against the appellants. So

ordered.

Johnson, Street, Ostrand, and Johns, JJ., concur.

MALCOLM, VILLAMOR, and VILLA-REAL, JJ., dissenting:

We dissent as to the damages, which should be eliminated.

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