

JOSE LL. VEGAS, PLAINTIFF AND APPELLANT, VS. LEONARDA VEGAS ET AL., DEFENDANTS. LEONARDA VEGAS, APPELLEE.

G. R. No. 33936. November 12, 1931

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from a judgment of the Court of First Instance of Cebu, absolving the defendant from the complaint, with costs against the plaintiff.

The plaintiff, Jose Vegas, is a nephew of the defendant, Leonarda Vegas, whose brother, Pedro Vegas, was Jose's father. Pedro and Leonarda were the only children of the spouses Januario Vegas and Longina Zulueta. Januario died intestate in the year 1896 and was survived by his widow, Longina Zulueta, and his children, Pedro and Leonarda Vegas. Pedro died, also intestate, in the year 1904, leaving his widow, Eulalia Llenos, and his only child, Jose Vegas.

It appears that Longina Zulueta died on March 23, 1910, leaving a will which was probated on June 4 of the same year over the opposition of Eulalia Llenos, widow of Pedro Vegas, wherein she bequeathed personal property and devised parcel C and one-half of parcel A, all described in the complaint, to the defendant Leonarda Vegas and the other half of parcel A to the plaintiff Jose Vegas.

The plaintiff in this action contends that the personal property and the three parcels of land mentioned in the complaint were the separate property of his grandfather, Januario Vegas, and that none of them belonged to his grandmother, Longina Zulueta, and that he, in representation of his deceased father, Pedro Vegas, is entitled to one-half of all the property. He further contends that, if parcels A and C belonged to his grandmother, Longina Zulueta, he was unlawfully deprived of his shares.

The plaintiff now prays for a judgment: (a) Declaring the plaintiff to be the owner of one-half of parcel A, parcel B, parcel C and of the improvements thereon, and one-half of the personal property; (b) ordering the defendant to return to the plaintiff one-half of parcel A, parcel B, parcel C, and one-half of the personal property or their values; (c) condemning the defendant and the estate of Fabio Beltran to pay to the plaintiff P16,200 as damages and to pay costs.

The defendant, in defense, alleges that she and her deceased husband, Fabio Beltran, were the only and absolute owners of the property described in the complaint; that parcel A was bought by the deceased Fabio Beltran from the estate of Longina Zulueta by virtue of a sale made by the executor of her will and approved by the court; that parcel B was bought by her from one Restituta Imperial; and that parcel C was her inheritance from Longina Zulueta in accordance with the will left by the latter and probated by the court, which parcel she received from the executor of the said will by order of court.

Upon trial the court below found that plaintiff's claim that the three parcels of land in question were the separate property of Januario Vegas is not sustained by any preponderance of the evidence; on the contrary the court finds

that two of the parcels of land in question—parcel A in Cogon and parcel C in the poblacion—were the paraphernal property of Longina Zulueta, and that the other parcel— parcel B in Tapon—was originally the property of Restituta Imperial, who sold it to Leonarda, and consequently the court rendered judgment as stated above. From this judgment the plaintiff appealed to this court and made the following assignments of error:

- The trial court erred in holding that the claim of the plaintiff that the three parcels of land in question were the separate property of Januario Vegas is not sustained by any preponderance of the evidence.
- The trial court erred in admitting Exhibit 1 of the defendant and in holding that the sale of parcel C to the defendant and the compromise of case No. 1068 are legal and valid, and not prejudicial to the plaintiff.
- The trial court erred in holding legal and valid the sale of parcel A by the executor to Fabio Beltran without the consent of the heirs.
- The trial court erred in holding that parcel B belonged to Restituta Imperial.
- The trial court erred in admitting Exhibit 2 of the defendant over the objection of the plaintiff and in giving it weight and credit.
- The trial court erred in not awarding damages to the plaintiff.
- The trial court erred in rendering judgment in favor of the defendant." We have, gone over the record of this case carefully and find that the evidence relied upon by the plaintiff consists of almost oral testimonies of his witnesses, while that of the defendant consists of both oral and documentary evidence. Civil cases such as the one at bar should be proved beyond preponderance of evidence, and the plaintiff failed to do so in this case. With the evidence before us, we cannot help but agree to the findings of the court below. The assignments of error made by the plaintiff are without merit.

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

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

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