

VALERIANA VELAYO BERNARDO, PLAINTIFF AND APPELLANT, VS. MIGUEL SIOJO, DEFENDANT AND APPELLEE.*G.R. No. 36078. March 11, 1933*

Ponente: IMPERIAL, J.

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Valeriana Velayo Bernardo brought this action in the Court of First Instance of Bulacan to compel her nephew, Miguel Siojo, to partition the seven parcels of land described in the complaint; to have her declared entitled to a share consisting in five-sixths (5/6) thereof; to have the above-mentioned appellee render an accounting of all the fruits derived by him therefrom since the death of his father-in-law, Pablo Aguirre, on May 20, 1928, and to deliver to her the amount corresponding to her said share, with costs against the appellee.

This is an appeal taken by her from the judgment of the trial court dismissing the complaint, without costs.

In addition to other evidence presented therein, the parties agreed on the following stipulation of facts:

"The parties agree and stipulate to ask that judgment be rendered in this case as well as in special proceedings No. 2425 of this court, In re estate of Maximina Aguirre, deceased, the following basis:

"1. That the defendant, Miguel Siojo, shall remain in possession of all the lands described in the complaint in this case with the exception of Lot G which shall remain in the possession and ownership of the defendant, Cristino Hilario. The defendant, Miguel Siojo, shall, likewise, remain in possession of all the property and succeed to all rights and actions left by the deceased, Maximina Aguirre, which are now the subject matter of the proceedings in said civil case No. 2425, and that the plaintiff herein, Pablo Aguirre, renounces all his rights, interests or participation in said property as heir to both Roman Aguirre and Maximina Aguirre.

"2. On the other hand, the defendant herein, Miguel Siojo, in return for all that has been stated in the first paragraph, binds himself to pay to the plaintiff herein, Pablo Aguirre, the sum of three thousand two hundred and fifty pesos (P3,250) and at the same time renounces in favor of Valeriana Velayo all the interests and participation which his late wife, Maximina Aguirre, has or might have in the 'camarin' of strong materials built on said Valeriana Velayo's lot in San Miguel, Bulacan.

"3. That the defendant herein, Miguel Siojo, likewise, states that by virtue of an amicable agreement reached between him and Valeriana Velayo, he binds himself to execute with the consent of said Valeriana Velayo, another document amending a former one executed by them on March 28, 1927, before the notary public Javier Pabalan, which document forms part of the proceedings in the abovementioned case No. 2425 in the matter of the estate of the late Maximina Aguirre, to the effect that Miguel Siojo and Valeriana Velayo will exchange between themselves the lands described therein so that lot A which appears therein as belonging to Valeriana Velayo shall become the property of Miguel Siojo and lot B shall become the property of Valeriana Velayo; provided however, that the portion of lot A claimed in a cadastral case by Ismael Velayo shall henceforth be exclusively contested by the present owner thereof, Miguel Siojo, and that the claim thereto presented by Attorney Tengco in the name of Valeriana Velayo shall be withdrawn.

"4. That all the lands which are the subject matter of this transaction, together with those mentioned in

paragraphs 1 and 2 hereof, are reservable property and the only person who would be entitled to such reservation is Valeriana Velayo who, being present here, declares in open court that she renounces all her rights over said reservation to the effect that said property shall definitely pass to the defendant herein, Miguel Siojo, and his heirs, without prejudice to any particular arrangement said Valeriana Velayo may make with the plaintiff herein, Pablo Aguirre, anent the sum of three thousand two hundred and fifty pesos (P3,250) to be paid within this month of September by the defendant herein, Miguel Siojo, to said Pablo Aguirre, said amount to be deposited with the clerk of this court; provided however, that no matter what may be the result of such arrangement between Valeriana Velayo and the plaintiff herein, Pablo Aguirre, as to the said sum of three thousand two hundred and fifty pesos (P3,250), it shall in no way affect the already vested rights of Miguel Siojo in the property in question.

"A copy of this stipulation together with the decision to be rendered herein shall be attached to the proceedings in case No. 2425 in the matter of the Estate of Maximina Aguirre, pending in this court, the same to, be considered as final thereon."

The facts which may be deduced from the evidence presented are as follows:

The spouses, Marcelo Velayo Bernardo and Florentina de los Santos, had two daughters named Valeriana, the appellant herein, and Maria Trinidad. The latter was married to Pablo Aguirre who died on May 20, 1928, with whom she had two children, Roman and Maximina. The first died on August 30, 1906, without any descendant and the latter, who was married to Miguel Siojo, the defendant herein, likewise died without leaving any children.

The lands which are the subject matter of this suit proceeded from the Velayo spouses and were inherited by Maximina Aguirre in the following manner: parcels A, B, C, D and F, from her grandfather and G and H, from her grandmother.

In her will which was allowed to probate, Maximina Aguirre bequeathed two-thirds (2/3) of said property to her father, Pablo Aguirre, and the remaining one-third (1/3) to her husband, Miguel Siojo. The latter was appointed executor of the said Maximina Aguirre's will, administered said property and reaped the benefits derived therefrom with Pablo Aguirre.

Sometime later, Pablo Aguirre brought an action against the appellee herein for partition of the lands in question which action was withdrawn through a compromise agreement between the parties by virtue of which Siojo was to remain in possession of all the lands which belonged to his wife in lieu of payment by him to Pablo Aguirre of the sum of P3,250.

The appellant herein was not a party to either the action for partition or the compromise agreement between the appellee and Pablo Aguirre, yet, in spite of the fact that these two understood the reservable nature of all the lands in question; they made it appear in their written agreement that the appellant herein was present in the court when said agreement was made and that she had given her consent thereto, renouncing whatever right she might have in said lands. It was likewise stated in the compromise agreement that Pablo Aguirre would deliver a certain portion of the sum of P3,250 to the appellant herein. This compromise agreement was approved by the then presiding judge and was made a part of the decision rendered therein which terminated the litigation.

After Miguel Siojo became the owner of the property in question, it appeared that her wife's estate, of which he was administrator, was indebted to various creditors and in order to pay such indebtedness he sold half of the parcels B, C and F to his father-in-law, Pablo Aguirre, who, in turn, sold them at a profit to the appellant herein. This is how the appellant herein came into possession of half of the three parcels mentioned above.

Subsequently, cadastral proceedings were held in San Miguel, Bulacan, where the lands in question are situated, and all of them were included in said proceedings in the following manner: parcel A was surveyed as lot No. 156;

parcels B and C as lot No. 2324; parcel D as lot No. 2311; parcel E as part of lot No. 2306; parcel F as lot No. 2326; parcel G as part of lot No. 2863, and parcel H as part of lot No. 2323.

In the proceedings, lot No. 156 was contested by the appellee herein, Pablo Aguirre and the appellant, but the last two later abandoned their claim and the land was adjudicated to the above-mentioned appellee who obtained certificate of title No. 10700 on February 27, 1929.

Lot No. 2324 is disputed by the appellant and appellee herein and is pending trial awaiting the result of this litigation.

Lot No. 2311 was adjudicated to the estate of the deceased Maximina Aguirre and subsequently the appellee obtained transfer certificate of title No. 5845.

Lots Nos. 2326 and 2863 are still pending trial while lots Nos. 2306 and 2323 are pending adjudication.

The appellant herein assigns the following errors:

"I. The trial court erred in declaring that the plaintiff had renounced her rights to the reservation of the lands in question through the compromise agreement entered into between the parties in civil case No. 2954 which agreement was made a part of the decision presented by the defendant as Exhibit 1.

"II. The trial court erred in giving credit to Judge Anastacio R. Teodoro's testimony which had not been duly admitted, over and above the latter's final decision marked as the defendant's Exhibit 1.

"III. The trial court erred in holding that the plaintiff's acts during and subsequent to the compromise agreement in civil case No. 2954 justify the plaintiff's acceptance and consent to the contents of said agreement.

"IV. The trial court erred in not holding that the decision (Exhibit 1) which approves the said compromise agreement in civil case No. 2954 is not effective against or binding on the plaintiff who is not a party to the aforementioned case.

"V. The trial court erred in not holding that the alleged waiver or transfer of the plaintiff's reservable right in the lands in question is null and void it having been made during the lifetime of the reserver.

"VI. The trial court erred in not holding that the alleged transfer or waiver of the plaintiff's reservable rights in the lands in question is likewise null and void for lack of consideration.

"VII. The trial court erred in not ordering the partition of the lands in question and the adjudication of five-sixths (5/6) thereof to the plaintiff herein, and an accounting of the fruits thereof from May 20, 1928, and in dismissing the amended complaint in this case."

We believe it unnecessary to discuss separately the assignments of error in this decision. In our opinion, there are only three points raised by the appeal which must be decided separately. The first is whether this is reservable property the second is whether the alleged compromise agreement constituted a transfer or waiver by the appellant of her right to the reservable property and the third is whether the proceedings followed in the cadastral case in San Miguel had the effect of depriving said appellant of every right to claim participation in said lands.

The reservable nature of the property is not discussed in the briefs filed by the attorneys. The parties admit that all the lands partake of the character of reservable property having been inherited by an ascendant who was found to reserve them for the benefit of relatives within the third degree belonging to the line from which such property came, in accordance with article 811 of the Civil Code.

The question really originated with the compromise agreement entered into between Pablo Aguirre and the

appellee, Miguel Siojo, in civil case No. 2954. The latter contends that the appellant herein waived her right to the reservable property inasmuch as it appears in the stipulation that she had given her consent thereto in open court.

In order to prove that there is no ground for the claim suffice it to say that the appellant herein, Valeriana Velayo had not been made a party to the aforementioned case as well as to the stipulation. We do not believe that the statement appearing in the stipulation and inserted in the decision, to the effect that she had given her consent thereto, had made her an interested or contracting party. With respect to the alleged consideration of P3,250, we do not find sufficient evidence to justify the appellee's contention that the appellant received any part thereof from Pablo Aguirre; and even granting that she did, such fact would not justify the transfer or waiver of reservable property on the ground that it is an act or contract expressly prohibited by law, as will be shown later.

Referring to the appellant's intervention in the aforementioned compromise agreement it appears that if she actually took part therein, she transferred during the lifetime of the reserver Pablo Aguirre, reservable property to which she was entitled, which act is prohibited by article 1271 of the Civil Code forbidding the execution of contracts with respect to future inheritances, except those the object of which is to make a division inter vivos of the estate, in accordance with article 1056. In this case, we do not see the essential difference between the transfer and waiver of rights to reservable property mentioned in the decision appealed from. Call it what you may, the fact remains that, according to the appellee herein, the appellant lost all of her rights to claim the reservable property by virtue of the compromise agreement in which she did not take part.

"All rights to voluntary conveyance, whether inter vivos or mortis causa, granted to relatives of the third degree before actually acquiring ownership of the property subject to reservation, are in conflict with the nature of the reservation created by article 811. It is sufficient to note that this provision, in definitely specifying the persons entitled to the reservable property, admits of no other solution than that of the tendency to keep the property within the family to which such property belongs. In fact the voluntary transfer, in the hope of receiving the property in due time would, after all, infer the liberty to dispose of it. Reservation made in favor of strangers or relatives of a different line or degree or, briefly, in favor of persons to whom the law does not grant such right, is impossible, because in such case the ascendant would be making the reservation of no avail and the property would pass to a strange family, a thing which the law tries to avoid. Made in favor of relatives of the same line and within the third degree, it is entirely superfluous and useless because these relatives, by operation of law, already have the right or hope that it might be transmitted to them, so that in reality there is nothing new or useful received by them." (Vol. VI Manresa, pp. 252, 253, 1898 edition.)

This same question had already been discussed by this court in the decision of Edroso vs. Sablan (25 Phil., 295). Speaking of the reservee's rights, it said:

"On the other hand, the relatives within the third degree in whose favor the right is reserved cannot dispose of the property, first because it is in no way, either actually, constructively or formally, in their possession; and, moreover, because they have no title of ownership or of fee simple which they can transmit to another, on the hypothesis that only when the person who must reserve the right should die before them will they acquire it, thus creating a fee simple, and only then will they take their place in the succession of the descendant of whom they are relatives within the third degree, that is to say, a second contingent place in said legitimate succession in the fashion of aspirants to a possible future legacy. If any of the persons in whose favor the right is reserved should, after their right has been assured in the registry, dare to dispose of even nothing more than the fee simple of the property to be reserved his act would be null and void, for, as was definitely decided in the decision on appeal of December 30, 1897, it is impossible to determine the part 'that might pertain therein to the relative at the time he exercised the right, because in view of the nature and scope of the right required by law to be reserved the extent of his right cannot be foreseen, for it may disappear by his dying before the person required to reserve it, just as it may even become absolute should that person die.' "

We conclude that, strictly speaking, the appellant did not intervene in civil case No. 2954 or in the compromise

agreement entered into by the parties to that suit, and even in the supposition that she had voluntarily given her consent thereto, the contract thus executed was null and void or without effect for the reason that it anticipated the transfer or waiver of reservable property during the lifetime of the reserver thereof.

With respect to the last question, we hold that even if the appellee obtained the certificates of title Nos. 10700 and 5845 corresponding to parcels A and B, respectively, he is, nevertheless, bound to transfer to the herein appellant the portions to which she is entitled in view of the fact that he obtained said certificate of title thereto knowing that such properties did not belong to him but to the reservee, the appellant herein. (*Severino vs. Severino*, 44 Phil., 343; *Government of the Philippine Islands vs. Court of First Instance of Nueva Ecija*, 49 Phil., 433.)

In view of the foregoing considerations, the judgment appealed from is hereby reversed; the appellant herein is declared entitled to five-sixths (5/6) of parcels A, D, G and H described in the complaint and to five-sixths (5/6) of half of the parcels B, C and F as well as to the same proportion in the fruits realized and derived by the appellee from said lands from May 20, 1928, for which purpose the said appellee shall render an accounting thereof, and the trial court shall, in accordance with law, proceed to the partition of the aforementioned lands in question adjudicating to the herein appellant, after the proper proceedings therein, her share hereinbefore fixed, with costs against the appellee. So ordered.

Avanceña, C. J., Street, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Vickers, and Butte, JJ., concur.

DECISION ON THE MOTION FOR RECONSIDERATION FILED BY
THE DEFENDANT-APPELLEE

December 21, 1933

IMPERIAL, J.:

The defendant-appellee herein filed a motion for reconsideration of the judgment rendered in this case, promulgated on March 11, 1933.

Before passing upon the grounds in support thereof enumerated in the said motion for reconsideration, we would like to state that the stipulation of facts agreed upon by the parties in case No. 2954 of the Court of First Instance of Bulacan was deliberately quoted in the decision, not only because the greater portion of the facts stated therein constitutes the stipulation of facts in the instant case, but also because the former gives a clearer and more concise statement of the origin of the properties in litigation, and of the relation between the parties and the other persons who intervened in the distribution of the said properties.

After the foregoing explanation, we shall now proceed to pass upon the merits of the motion for reconsideration. The defendant's contention, in brief, is as follows: (1) That the properties in litigation are not reservable in character; (2) that even under the theory that they are reservable, one-fourth thereof would correspond to the defendant and only three-fourths, instead of the five-sixths stated in the decision, would correspond to the plaintiff and (3) that the parcels of land now registered in the name of the defendant cannot be adjudicated to the plaintiff because to do so would be tantamount to revising the final decrees issued in the registration proceedings and annulling the certificates of title issued therein.

The first contention is obviously untenable on the ground that even in the very answer of the defendant, page 11 of the bill of exceptions, he admitted the reservable character of all the properties in question. His contention and defense then consisted in that the plaintiff could not enforce her claim to the reservable properties because she had

ceded and waived her right therein in his favor.

The second contention has caused no little embarrassment to the members of this court due to the fact that in the briefs submitted, none of the parties, particularly the defendant, has ever made any mention of the claim now made by the latter party. In deciding the instant case, we were guided by the theory then sustained by the plaintiff that in the event the properties in litigation were reservable, her participation would consist in five-sixths while that of the defendant would be one-sixth thereof. The defendant, then, contrary to what he should have stated in his brief, neither intimated nor claimed therein that he was entitled to one-fourth of all the property in question.

Notwithstanding the foregoing, we are of the opinion that, strictly applying the provisions of article 811 of the Civil Code, the defendant herein is really entitled to one-fourth of all the property in question instead of one-sixth thereof as stated in the decision. The reason for this is that only those properties acquired by the reserver by operation of law are reservable, as claimed in the motion for reconsideration.

With respect to the last contention, we are convinced that the law has been applied correctly. The defendant cannot invoke the irrevocability of titles issued under the Torrens system on the ground that, technically speaking, he committed fraud by deliberately omitting in his application the fact that the plaintiff herein was a coowner of the lands he attempted to register and that, as such, she was entitled to the participation therein prescribed by law. As we have already held in the case of *Government of the Philippine Islands vs. Court of First Instance of Nueva Ecija* (49 Phil., 433), the real owner of a piece of land cannot be legally deprived thereof, and the person who succeeds in registering it fraudulently in his own name does not acquire an irrevocable title thereto, and the title irregularly issued should be cancelled. Such person may be compelled either to convey the land to the defrauded party or to pay damages. In the case at bar, the title obtained by the defendant cannot be given force and effect merely by the fact that the plaintiff appeared in the registration proceedings, opposed the registration thereof and later abandoned her opposition, on the ground that this proceeding did not relieve the defendant of his duty to state in his application the names of the true owners of the land sought to be registered in order that the court might issue the decree of adjudication in their name. Furthermore, the records show that if the plaintiff herein abandoned her opposition at all, it was because the defendant in other judicial proceedings had led her to believe, without any basis therefor, that she had lost all her right to the reservation in view of her alleged cession and waiver thereof, which was found later to be illegal and of no force and effect.

"When the original registration of a title has been procured by fraud in not notifying the owner of the land of the pendency of the proceeding, as required by the statute, the decree and the certificate of title issued under it may be vacated and set aside, unless an innocent purchaser for value has obtained rights in or title to the land on the faith of the record. As long as the title remains registered in the name of the person who was guilty of the fraud, the decree and certificate of registration may be set aside, in an action brought by the defrauded person within a reasonable time after notice of the fraud. The mere fact that the statute does not in express words declare that a registration of title procured by fraud may be set aside as between the parties, does not deprive a court of equity of its general jurisdiction to protect parties from the consequences of fraud. Fraud vitiates every transaction, and equity will not permit a person to hold the benefits of a fraudulent transaction, obtained under forms of law." (Niblack on Analysis of Torrens System, p. 217.)

"Statutory provisions as to the conclusiveness of registration and of the certificate of title ordinarily except cases of fraud. Fraud in this connection has been construed to mean actual, as distinguished from constructive or equitable, fraud, and must be brought home to the person whose registered title is impeached, or to his agents. The procurement of an unqualified certificate of title by means of suppression of information as to rights of third persons by applicant is fraud. Even in the absence of an express exception of cases of fraud from the statute, where the registration of title is secured by fraud, the decree and certificate of registration may be set aside in an action brought by the defrauded party within a reasonable time after notice of the fraud, so long

as the title remains registered in the name of the person guilty of fraud." (53 C. J., par. 112, pp. 1128, 1129.)

In view of the foregoing, the dispositive part of the decision is hereby modified and it is held that the plaintiff is entitled to three-fourths of parcels A, D, G, and H described in the complaint and to three-fourths of one-half of parcels B, C and F, and to the same proportion of the products thereof, the rest of the decision to remain in full force and effect. The other grounds of the motion for reconsideration are denied. So ordered.

Avanceña, C. J., Street, Villa-Real, Abad Santos, Hull, and Butte, JJ., concur.

CONCURRING AND DISSENTING

VICKERS, J.:

I concur in the foregoing opinion, except as to parcels (a) and (d), which are registered in the name of the defendant, without any reservable rights being noted.

In the case of Edroso vs. Sablan (25 Phil., 295), it was held that the owners of the reservable right are entitled to have said right noted in the certificate of registration as a valid lien against the property.

In De los Reyes vs. Paterno (34 Phil., 420, 425), this court said that the provisions of section 38 of Act No. 496 seem to prohibit absolutely the raising of any question concerning the validity of a title registered under the Torrens system, after the expiration of one year, and expressed the opinion that the prohibitions contained in said section apply to every claim, of whatever nature, which persons may have had against said registered land, and concluded as follows:

"In the case of Edroso vs. Sablan, supra, the parties interested went to the Court of Land Registration during the pendency of the action there and fully protected their rights. In the present case the plaintiff did not, thereby losing his right given him under the law to the land in question. Whether he has any other remedy for the purpose of recovering damages to cover his loss is a question which we do not now discuss or decide. The appellee apparently has the idea that the decision in the present case destroys 'el derecho reservable'. That was not the purpose of the decision. The effect of the decision simply is that unless such right is protected during the pendency of the action for the registration of the land, or within a period of one year thereafter, such right is lost forever. We are of the opinion that there is no conflict between the decision in the present case and that in the case of Edroso vs. Sablan, supra."

This court held in Villarosa vs. Sarmiento (46 Phil., 814), that after one year from the registration, no action can be maintained by any person to recover a part of said land, alleged to be his and to have been erroneously included in said registration by the applicant.

In the case of Macasa and Macasa vs. Heirs of Garcia (49 Phil., 698, 701), December 8, 1926, Justice Malcolm speaking for the court in banc said:

"In our opinion, it is a complete misuse of the term to speak of this property as reservable. When Apolonio Garcia died, his widow had accruing to her her usufructuary rights in the estate. That is true. But in addition, by partition by the heirs of Apolonio Garcia in a public document in 1906 'se adjudicaron * * * en propiedad' certain properties to Eusebia Macasa. These property rights have ripened into indefeasible titles, if we are permitted to take into consideration documents offered with the motion for a new trial, showing Eusebia Macasa to have acquired Torrens titles to the same in 1917 without any reservable rights being noted. (See De los Reyes vs. Paterno [1916], 34 Phil., 420.)"

In the majority opinion in the present case it is held with respect to the two parcels (a) and (d) that "The defendant cannot invoke the irrevocability of titles issued under the Torrens system on the ground that, technically speaking, he committed fraud by deliberately omitting in his application the fact that the plaintiff herein was a coowner of the lands he attempted to register and that, as such, she was entitled to, the participation therein prescribed by law." In support of that conclusion, we are referred to the decision of this court in the case of the Government of the Philippine Islands vs. Court of First Instance of Nueva Ecija (49 Phil., 433).

I maintain that the defendant and appellee, Miguel Siojo, is not guilty of any fraud, actual or constructive, "technically speaking" or otherwise.

It appears that the defendant applied for the registration of the two parcels of land in question, and the plaintiff filed an opposition thereto; that subsequently in the course of another proceeding the plaintiff herein agreed to waive any claims that she had or might have on these two parcels of land, or at least acquiesced in what the trial judge declared to be a renunciation of her rights thereto, and withdrew her opposition to defendant's application. The land was then registered in the name of the defendant, free from all liens and encumbrances, and more than one year has elapsed since the certificates of title were issued to him. The defendant obtained the registration of the two parcels of land in his name in the belief that he was the sole owner of them, because the plaintiff had agreed to waive any interest she had therein. Although this court subsequently held that the plaintiff was not authorized by law to make such an agreement, this mistake of law did not make the defendant guilty of fraud. The defendant had no intention of depriving the plaintiff of her just rights.

In my opinion the decision of this court in the case of the Government of the Philippine Islands vs. Court of First Instance of Nueva Ecija is not sufficient authority for the holding of the majority in the present case. In that case a motion for the review of a decision in a land registration case on the ground of fraud was presented to the trial court about seventeen months after the decision was rendered but before the issuance of the final decree. On due notice and hearing the decision was set aside and the land adjudicated to the party who presented the motion. Upon a petition to the Supreme Court for a writ of certiorari, it was held that the motion for the review of the original decision on, the ground of fraud was in effect a petition for the review of the decree under section 38 of the Land Registration Act; that the trial court therefore had jurisdiction over the matter and consequently certiorari would not lie.

That was a complete disposition of the matter, but the writer of the opinion did not stop there; he went on to say that where a person takes a certificate of title in his own name to land belonging to another and the circumstances are such that he must be presumed to have had full knowledge of the rights of the true owner he is guilty of fraud and may be compelled to convey the land to the defrauded party or to pay damages. It is apparent that this latter statement is dictum and has no binding force.

My contention is sustained by the later decision of this court in the case of the Government of the Philippine Islands vs. Del Rosario and Tiangco (54 Phil., 138), where it was held that in a contest openly conducted between two claimants, it cannot be said that a title has been obtained by fraud merely because a judicial mistake was made in the decision of the controverted matter, nor because the claimant in that proceeding asked for more than his deed covered. The court held that the action to compel the defendant to surrender a part of the property covered by his Torrens certificate was not maintainable.

The present case is easily distinguishable from that of the Philippine Land Improvement Co. vs. Bias (55 Phil., 540), where it was held that the person in whose name the land was registered was required to convey it to the person entitled to it, by virtue of the obligation to do so which arose from a contract; and Palet vs. Tejedor (55 Phil., 790), where it was held that a coowner of land who applies for and obtains the adjudication and registration

in his name of a lot which he knows has not been allotted to him in the partition, acts in bad faith, and the decree issued to him may be reviewed within the year following such issuance, in accordance with section 38 of Act No. 496. It is further stated in said case that even in the absence of fraud in obtaining said decree, or after the lapse of one year from the issuance thereof to said coowner, he may be compelled to convey said lot to whoever received it in the apportionment, so long as it remains registered in his name, and a third person has not acquired it in good faith and for a valuable consideration. This latter statement was unnecessary to the decision of the case. Presumably it was based on the relation between the parties.

This court has held that if there is a fiduciary relation between the parties, and one of them secures the registration of the land in his name in breach of the trust, he may be compelled to convey it to the cestui que trust (*Severino vs. Severino*, 44 Phil., 343) ; but in the case at bar there was no breach of trust. The parties did not know they were coowners. The holding of the majority does not rest upon any finding to that effect, but upon the conclusion that the defendant is technically guilty of fraud, because he failed to mention the plaintiff as a coowner in his application. Furthermore it will be observed that the facts of this case do not bring it within the rule stated in the dictum in the case of the *Government of the Philippine Islands vs. Court of First Instance of Nueva Ecija*, supra, to the effect that the circumstances must be such that the person taking the title must be presumed to have had full knowledge of the rights of the true owner.

The holding of the majority takes away all the finality of a Torrens title so far as the person in whose name the land was registered is concerned. In other words, five years after he has secured the registration of the land in accordance with Act No. 496, he may be required to convey a part of it to another person, because he is technically guilty of fraud, in that he is presumed to have known that the other person had an interest in the land but failed to state that fact in his application.

Such a holding is in conflict with the established doctrine of this court denying relief to persons who have lost their lands through lack of personal notice of the registration proceedings because the person who secured the title did not state in his application that they were occupying under a claim of ownership a part of the land included therein.

In the case of the *Heirs of Enriquez and Villanueva vs. Enriquez and Treasurer of the Philippine Islands* (44 Phil., 885), the plaintiffs alleged that they had been deprived of a real right or mortgage credit over the registered property through the fraudulent means employed by the defendant Enriquez in obtaining the title. In sustaining the demurrer, this court said that the plaintiffs could have taken advantage of the provisions of section 38 of Act No. 496 within one year following the date of the decree of registration, but after the expiration of that period, their only right of action was that provided for in section 107 of Act No. 496 (an action for compensation by reason of loss or damage or deprivation of land), which might be brought only within six years; that the registration of the property under Act No. 496 having been decreed, it must be presumed that the requirements of the law as to the publication of notices had been complied with, and although in the application for registration no mention was made of the right of which the appellants claim to have been deprived, this fact did not relieve them from diligently appearing in court at the opportune time if they did not intend to waive such right.

If the court persists in this policy of attrition as to Torrens titles, and restricts their indefeasibility to innocent purchasers for value, excluding therefrom the original registered owner, it will not only foment litigation by enabling persons to assert claims to lands long since registered, but seriously impair the value of such titles, discourage registration, and largely defeat the purpose of the law.

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