

**CRISANTA SUAREZ ET AL., PLAINTIFFS AND APPELLANTS, VS.
PRUDENCIO TIRAMBULO ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 37090. December 23, 1933*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of the Province of Oriental Negros by Crisanta, Raymunda, and Guillerma, of the surname Suarez, the first two being assisted by their husbands. The defendants are Prudencio Tirambulo and his wife, Elisea Buntigao, with whom are joined Policarpia Mogillo and the Philippine National Bank. The purpose of the complaint is, in effect, to obtain a judicial decree declaring the plaintiffs of the surname Suarez entitled to certain portions of two pieces of property located in the municipality of Guihulngan, Oriental Negros, and to compel Tirambulo to transfer to them the undivided portions of which they claim to be owners, with other relief. Upon hearing the cause the trial court dismissed the complaint, without express pronouncement as to costs, and the plaintiffs appealed.

On September 16, 1914, Prudencio Tirambulo filed an application in the Court of Land Registration of the Province of Oriental Negros for the registration of two parcels of land. In this proceeding default was taken and no one appeared to contest the proceedings. Accordingly, when the cause was heard, on January 18, 1915, the property was adjudicated to him and his wife; and on April 19, 1915, the original certificate of title No. 62 was issued to the applicant. That decree has never been questioned in any proceeding for review, and no contention even now is made to the effect that there was anything wrong with the title other than hereinafter explained. The certificate referred to includes over one hundred hectares, and the plaintiffs, as well as the defendant Tirambulo and wife, have all lived thereon for a long period of time.

Since Tirambulo acquired the Torrens certificate to this property, he—and he alone—has exercised the power of ownership in various ways. Thus,, on March 30, 1917, he mortgaged the property to the Philippine National Bank for P2,500. On August 8, 1923, he again mortgaged it to the Philippine National Bank; and after the mortgage was paid off, he sold it under pacto de retro to Jose Garcia for P2,952. On January 11, 1926, he again sold the property to the same Garcia, with pacto de retro, for P5,800. In March, 1927, he mortgaged the property a second time to the Philippine National Bank, and on December 12, 1928, through his attorney in fact, E. Villanueva, he again mortgaged it to the same bank. During these years his right as absolute owner of the property has not been questioned by any one, although, when the property was first mortgaged to the bank, an inspector for the bank visited the property and investigated it to discover any adverse claim. The last mortgage to the bank was made to secure a debt for P35,000, and there was included in this mortgage property belonging to others, but nothing appears as to the relative value of properties so mortgaged. In the end the mortgage debt has not been paid, and we take judicial knowledge of the fact that judgment has been rendered in favor of the bank in an action for foreclosure brought against the defendant Tirambulo. The decision of the Court of First Instance in that case was brought to this court by appeal, but that appeal has been dismissed and the cause remanded for execution. It is obvious that the mortgage made by Tirambulo was valid, and it is undeniable that the bank was an innocent

purchaser for value. The result will therefore undoubtedly be, unless the property has been or will be redeemed from the bank's mortgage, that a sale will be made which will vest a valid title in the purchaser.

This action was begun on February 16, 1931, and an amended complaint was filed on May 26 of the same year. The principal basis of the action consists in the allegation that the female plaintiffs of the name Suarez are coheirs of Elisea Buntigao, who is their half sister, and that they all are owners in common of the property covered by the Torrens title. In this connection it is claimed that, before Prudencio Tirambulo procured the Torrens title above-mentioned, he had agreed with the plaintiffs to represent them and to act for them as well as for himself and wife in the procurement of the Torrens title, and that, in violation of this promise, he took the title exclusively in his own name. It is further asserted that until the year 1930 the plaintiffs did not know that the Torrens title had been thus taken exclusively in the name of Tirambulo.

As a legal proposition a contention of this kind is tenable, for, if a person acts for another in procuring a Torrens title, he will not be permitted, in breach of faith, to deprive his principals of their interest and to claim the whole for himself. But the point where this case fails is in the proof. It is a well settled rule of law that, where a trust is to be established by oral proof, the testimony supporting it must be sufficiently strong to prove the right of the alleged beneficiary with as much certainty as if a document were shown. To understand this feature of the case, it is necessary to take account of the relations of the parties and of the history of the title.

Back in Spanish times, a generation before the advent of the Americans, there lived in Guihulngan one Casimiro Suarez. His wife was Policarpia Mogillo, and they had three children who have survived, namely, the plaintiffs Crisanta, Raymunda, and Guillerma. Casimiro died long ago and Policarpia Mogillo married, as her second husband, one Mateo Buntigao. It is the contention of the plaintiffs that the land now sued for was acquired during the first marriage, with the result that the plaintiffs inherited from their deceased father his half in the conjugal property.

Elisea Buntigao, wife of Prudencio Tirambulo, is a daughter of Policarpia Mogillo by her second marriage, and it is the theory of the defense that the property which is the subject of this contention was acquired by Policarpia Mogillo during her second marriage. This accords with the finding of the court from the proof submitted in the land registration case, and the truth of this finding is indicated by the proof in this case. One of the things that has given trouble is that, on November 9, 1911, Policarpia Mogillo, by document acknowledged before a notary public, assigned in partition to her four children of first and second marriages certain specific portions of her property, and the plaintiffs have, since that date, been actually occupying the portions so assigned to them, and this document is relied upon as proof of their ownership of such parcels. But this document, the execution of which is unquestioned, contains in its last paragraph a statement that this division was intended to be definitive so long as the grantor should not otherwise dispose (*va en caracter de definitivo interin no disponga otra cosa*). This clearly indicates that the grantor intended to reserve a power of absolute disposition.

Finally, on May 13, 1914, or shortly before the registration proceeding was begun by Prudencio Tirambulo, Policarpia Mogillo sold and conveyed to him the two parcels of land which were presently the subject of registration proceedings, and that transfer supplied the basis upon which registration was effected. At that time Policarpia Mogillo was living with one of the plaintiffs, though later she has been living with the Tirambulos.

As to how and when Policarpia Mogillo acquired the property which she thus conveyed to Tirambulo, the court of registration found that she acquired it during her second marriage by purchase from one Nicolas Planas, and the proof showing such acquisition is at least more convincing than the proof that she acquired it during the first marriage. It is evident that the long occupation of portions of the property by the plaintiffs has tended to engender in their mind in late days the belief that they ought, any way, to be owners of the parcels so held by them. But the

decree of the Court of Land Registration refutes this, and there is no proof before us which would justify any court in annulling the title, or holding Tirambulo to the obligations of a trustee with respect to the property. We note that the only witness whose testimony tends to show an agreement on the part of Tirambulo to procure the Torrens title in behalf of the three plaintiffs, as well as in behalf of his own wife, is Marcelino Buntigao. But he is a highly interested party, being the husband of Crisanta Suarez. His testimony is denied by the defendant Tirambulo and wife, and we are of the opinion that the trial judge was correct in finding the issue of fact in favor of the defendants.

The long lapse of time during which the plaintiffs have made no move looking towards the assertion of their claim, when it is absolutely certain that they knew the state of the title, and acquiesced in the claim of the defendants, is convincing that the agreement was not made. Upon this point it is proved that, after the property was registered in the name of Tirambulo, the tax assessor appeared among these plaintiffs and they voluntarily signed the transfers authorizing the assessment of the property thereafter in the name of Tirambulo. Since that time he has uniformly paid the taxes; and although the plaintiffs claim that they have accounted to him for their share of the taxes, the trial judge found that this pretense was not supported by the evidence, and we think that he committed no error in so holding.

The judgment appealed from will be affirmed, and it is so ordered, without pronouncement as to costs.

Abad Santos, Vickers, Butte, and Diaz, JJ., concur.

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