

QUINTIN DE BORJA, JUDICIAL ADMINISTRATOR OF THE INTESTATE OF THE DECEASED, MARCELO DE BORJA, PLAINTIFF AND APPELLANT, VS. FRANCISCO DE BORJA, DEFENDANT AND APPELLEE.

G.R. No. 37792. December 07, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a decision of the Court of First Instance of Nueva Ecija in an action of reivindicacion.

On the 15th of November, 1929, Quintin de Borja, as administrator of the estate of his deceased father, Marcelo de Borja, filed suit in the said court against his brother, Francisco de Borja, in which it is alleged, in substance, that Marcelo de Borja, in the year 1909, purchased from Hermogena Romero for a consideration of P5,000, two parcels of land situated in the municipality of Santa Rosa, Province of Nueva Ecija. The first contained 22 hectares, 30 ares and 25 centiares more or less, and the second, 9 hectares, 94 ares and 54 centiares; that at that time Marcelo de Borja resided in the municipality of Pateros, in the Province of Rizal; that his son Francisco resided in the municipality of Santa Rosa aforesaid and as Marcelo de Borja could not give personal attention to his lands in the Province of Nueva Ecija, he confided his interests to said son Francisco and recognized him as his representative and trustee in the administration of his properties in said province, including the two tracts of land purchased from Hermogena Romero; that Francisco de Borja accounted to his father for the rents and profits of said lands until the year 1922; that Marcelo de Borja died at his home in Rizal on the 12th of June, 1922, since when the defendant Francisco de Borja has refused to render any accounts to the plaintiff as administrator of the estate of the deceased Marcelo de Borja notwithstanding repeated demands; that it was not until the year 1924 that the plaintiff learned that the defendant Francisco claimed said lands as his exclusive property. The petition prays for a judgment declaring that said lands are the exclusive property of the estate of the deceased Marcelo de Borja, and further prays for possession and a judgment for P51,600 as damages for the wrongful detention.

The defendant filed a general denial and a special defense, namely, that the cause of action has prescribed.

The defendant claims that he bought the land in question from Hermogena Romero in 1909, acting for himself and not for his father; that the deed which Hermogena Romero signed named him as the grantee and he paid the purchase price of P4,000 with his own money.

Neither the plaintiff nor the defendant produced any deed from Hermogena Romero. That Hermogena Romero actually sold the land in 1909 is unquestioned. Who was the grantee named in the deed of sale? She was 71 years of age when she testified in this case in 1931. Although she testified that she sold the land to Francisco de Borja, her testimony is not inconsistent with the theory of the plaintiff that Francisco was the agent of his father. Moreover, at her advanced age and after the lapse of twenty-two years, it is quite possible that she might be confused as to the details of the transaction in other respects as she was with reference to the time and place when she received the purchase price. She testified that she received P3,000 from Francisco's wife in the house of the

latter's father who was present and witnessed the payment and gave her "algunos nuevos baluts". It is established in the record that the old man, Francisco's father-in-law, died on January 10, 1905, in other words, four years before the transaction to which Hermogena testified took place. The testimony of Francisco de Borja that he paid said P3,000 with money which he kept in a box in the house of his father-in-law, Mariano Tangco, in Pateros, Rizal, in the year 1909, must be rejected for the reason that his father-in-law at that time had been dead four years or more.

As against the testimony of Hermogena Romero and the defendant, we are more inclined to accept the testimony of Quintin de Borja, Juliana de Borja, and Crisanta de Borja to the effect that Hermogena Romero was in Pateros, Rizal, in the house of Marcelo de Borja some three times in the year 1909 in relation to the sale of the lands here in question; that after they agreed upon the purchase price of P5,000, this sum was paid to Hermogena by Marcelo de Borja in his house, there being present besides Marcelo de Borja and Hermogena Romero, the plaintiff Quintin, his sister Juliana and the justice of the peace and notary public of Pateros, Esteban Quiogue; that the deed was signed by both Hermogena and Marcelo then and there; that P2,000 of the P5,000 was taken from the "camarin" of the rice mill of the Borja partnership by Quintin de Borja by order of his father (t. s. n., pp. 99-101, 103-104, 131-137, 152-155, 185-187).

The said deed is lost. But it appears from the testimony of Quintin de Borja (t. s. n., 105) that in 1912 Marcelo de Borja wished to obtain a Torrens title to said lands and asked his son, the defendant, to make application; that the said son Francisco de Borja asked his father for the deed because the title could not be registered without presenting the document; and thereupon the deed was sent to Francisco de Borja together with other deeds relating to other lands. It appears, however, that although the other lands were registered in the name of Marcelo de Borja by Francisco, the land purchased from Hermogena was not; nor was the deed returned by Francisco to his father. He told his father that the lands here in question were included in the certificates issued to contiguous lands (t. s. n., 106). Francisco now denies having ever received the deed.

The deed under which Francisco claims for himself is alleged to be lost. As to this, the defendant testified as follows:

"P. ¿Y usted dice que despues de aquella inundation o crecida de agua, ya desaparecio el documento que habia traído Doña Hermogena Romero referente a dichas dos parcelas de terreno?—R. No solamente aquel documento sino otros tambien se han perdido, aunque me figuro que fue mi padre quien los recogio porque el tenia la llave." and also as follows:

"R. Los documentos que se quedaron aqui no se perdieron, pero los que se llevaron a Pateros desaparecieron, inclusive un titulo de un terreno mio donde esta instalada la fabrica de tinajas, y cuyos documentos me figuro que deberian estar en poder de mi padre, y como ahora tenemos administrador, deberian estar en poder de ese administrador que es mi hermano Quintin de Borja." There is no evidence in the record that the defendant made any effort to produce the alleged deed or any copy thereof. Section 321 of the Code of Civil Procedure reads as follows:

"Secondary evidence of the contents of a lost writing.—An original writing must be produced and proved, except as otherwise provided in this Act. If it has been lost, proof of the loss must first be made before evidence can be given of its contents. Upon such proof being made, together with proof of the execution of the writing, its contents may be proved by a copy or by a recital of its contents in some authentic document, or by the recollection of a witness." The proof of the disappearance of the alleged deed to Francisco de Borja is far from convincing, if the said deed ever existed. We are constrained under section 321 aforesaid to exclude the oral evidence of its contents, because the predicate for the introduction of secondary evidence is not established. (Cf. *E. Michael & Co. vs. Enriquez*, 33 Phil., 87.)

We think it well established by the preponderance of the evidence that the defendant Francisco was at all times mentioned in the petition, that is to say from 1909 to the year 1922, the agent and trustee of his father in the management of the lands embraced in this suit together with other lands in the Province of Nueva Ecija (t. s. n., 159-181, 189-207, 211-217, 220, 234-241; Exhibit X-2, Exhibit 1-1 and Exhibit 1-5). As such, he could not acquire title by prescription because his possession was not adverse.

It is admitted in the amended complaint that the defendant, as such agent and trustee, rendered due account and made settlement with Marcelo de Borja of the rents and profits of said lands up to the year 1922. Since said date he has refused to render any account or make any payments. It remains, therefore, to be determined what damages the plaintiff is entitled to for the years succeeding 1922 to date. After a careful examination of the entire record both in civil case No. 4709 and in civil case No. 5444, we have found it impossible to determine these damages. As the lower court made no finding on this question of damages, the cause is remanded to receive the evidence of both parties and determine a just and proper amount of damages to be paid to the plaintiff-appellant for the unlawful detention of said lands beginning with the year 1922 up to, and including, the year 1933.

With respect to the reconvention of the defendant which was introduced by way of amendment to his answer near the close of the trial and in which he prays for judgment for the sum of P230 per hectare for the cleaning and improvement of the lands here involved, it suffices to say that we find no merit in this claim. If the defendant in fact advanced any of his own funds for the purposes aforesaid, it was during the time that he was the agent and trustee of his father, Marcelo de Borja, and it is safe to assume that he presented this claim in the regular annual accounting which he had with his father and that the matter was settled long before the latter's death.

With respect to the ownership of the two parcels of land mentioned in the plaintiff's petition and referred to herein, the judgment of the court below is reversed and the said lands are declared to be the exclusive property of the estate of the deceased Marcelo de Borja and the defendant-appellee Francisco de Borja is required and ordered to deliver and transfer the possession of said lands to Quintin de Borja, the administrator of the estate of the deceased Marcelo de Borja. Without special pronouncement of costs in this instance.

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

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