

ESPERANZA DIMALIWAT, CANDIDA MORENO, AND MANUEL MORENO, APPLICANTS AND APPELLANTS, VS. DOMINGA ASUNCION ET AL., OPPONENTS. VICENTA DIMALIWAT, APPELLANT.

G. R. No. 38069. January 20, 1934

Ponente: VICKERS, J.

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VICKERS, J.:

This is an appeal by both parties from a decision of the Court of First Instance of Nueva Ecija, the dispositive part of which is as follows:

"In accordance with the conclusions hereinbefore stated, the court:

"1. Orders the party-applicant to amend the plan of lot No. 3, Psu No. 18817, sheet No. 1, by segregating therefrom (a) the portion marked with the words 'conflict with lot No. 1, II-Heirs of Valeriano Moreno', which portion has been finally decided and decreed as part of a piece of land belonging to the herein applicant, and (b) another portion marked with the words 'conflict with lot No. 2, 11-11119, Cipriano Bocoboc' as to which Juana Dimaliwat filed an opposition, which is hereby sustained in part.

"2. Orders, likewise, that after the segregation of the two portions mentioned in the preceding paragraph, the amended plan of lot No. 3 to be submitted, be subdivided into three (3) portions, to be marked Nos. 3-A, 3-B and 3-C, as follows: the northeast portion of lot No. 3, purchased by the applicant from Luisa Carballo, to be designated as lot No. 3-A; the portion situated on the southwest of said lot No. 3, purchased from Alejandra Lavandan and from the Soro family, as lot No. 3-B; and the remaining portion of 139 hectares, 80 ares and 46 centares, more or less, in area and situated between lots Nos. 3-A and 3-B, as lot No. 3-C.

"3. Decrees the registration of the property mentioned in the preceding paragraph as follows: Lot No. 3-A in favor of Esperanza Dimaliwat, widow; the undivided one-half of lot No. 3-B in favor of Esperanza Dimaliwat, widow, and the remaining undivided one-half in equal shares in favor of her children, Candida Moreno and Manuel Moreno, both single and of age; one-half of lot No. 3-C in favor of Esperanza Dimaliwat, widow, and the other half in favor of the estate of the deceased Eustacio Dimaliwat, represented by the judicial administratrix, Vicenta Dimaliwat, the whole of lot No. 3-C subject to a mortgage lien in favor of the opponent, Lucia Matias, viuda de Tinio, in the sum of P9,000, with interest thereon at the rate of 12 per cent per annum from July 30, 1930, payable on April 30, 1932; the undivided half of lots Nos. 4, 5 and 6 of plan Psu No. 18817, sheet No. 1, in favor of Esperanza Dimaliwat, widow, and the other undivided one-half in equal shares in favor of her children, Candida Moreno and Manuel Moreno, both single and of legal age; the undivided half of lot No. 8 of plan Psu No. 18817, sheet No. 2, together with the improvements thereon in favor of Esperanza Dimaliwat, widow, and the other undivided one-half with the improvements thereon in favor of the estate of the deceased Eustacio Dimaliwat, represented by the judicial administratrix, Vicenta Dimaliwat.

"When this judgment has become final and the amended plan of lot No. 3 has been presented, as herein ordered, let the final decrees be issued in accordance with the law."

The petitioners make the following assignments of error:

"I. The trial court erred in not declaring the question of the authenticity of the signature of the priest Teofilo Dimaliwat in Exhibit 2 as *res judicata* by reason of the judgment rendered by this court in the case of Vicenta Dimaliwat vs. Esperanza Dimaliwat, G. R. No. 33590, which sustained the validity of the assignment of lot No. 3-C in question by said priest in favor of the appellant Esperanza Dimaliwat;

"II. The trial court erred in not holding the afore-mentioned judgment of this court as a conclusive adjudication of the rights of the parties therein, who are also the same parties in this case, with respect to lot No. 3-C; and

"III. The trial court erred in not declaring the applicant and appellant Esperanza Dimaliwat the lawful heiress to lot No. 3-C in question regardless of the deed of assignment Exhibit 2 made in her favor of said lot."

Vicenta Dimaliwat, one of the opponents and administratrix of the estate of Eustacio Dimaliwat, assigns the following errors:

"I. The lower court erred in holding that the one-half of lot 3-C decreed in favor of the testate estate of the deceased Eustacio Dimaliwat represented by his judicial administratrix Vicenta Dimaliwat be subject to the mortgage encumbrance in favor of Lucia Matias, widow of Tinio, in the sum of P9,000 with 12 per cent interest from July 30, 1930 to April 30, 1932.

"II. The lower court also erred in adjudging lots 4, 5 and 6 of plan Psu-No, 18817 to petitioners Esperanza Dimaliwat and Candida Moreno and Manuel Moreno in equal parts between the former and the two last named persons; and in not holding that said lots 4, 5 and 6 of plan Psu-No. 18817 are the property of oppositor, testate estate of the deceased Eustacio Dimaliwat represented by her administratrix Vicenta Dimaliwat.

"III. The lower court further erred in giving more weight and credit to the testimony of petitioners' witnesses rather than that of oppositor administratrix Vicenta Dimaliwat's witnesses and her exhibits."

The appeal of the petitioners is confined to lot No. 3-C, which the lower court ordered to be registered in favor of the estate of the deceased Eustacio Dimaliwat, subject together with lots Nos. 3-A and 3-B to a mortgage in favor of Lucia Matias, viuda de Tinio, for the sum of P9,000, with interest at 12 per cent a year from July 30, 1930 payable April 30, 1932. The appeal of Vicenta Dimaliwat respecting lot No. 3-C relates only to that part of the decision which subjects this lot to the mortgage in favor of Lucia Matias.

After considering the arguments of counsel, we are of the opinion that the petitioners' third assignment of error is well taken. Eustacio Dimaliwat, the former owner of lot No. 3-C, was married three times. The children by his first wife were Esperanza Dimaliwat and Teofilo Dimaliwat. He had no children by his second wife. Vicenta Dimaliwat, Vicentica Dimaliwat, and Josefina Dimaliwat are the children of Eustacio Dimaliwat by his third wife.

Esperanza Dimaliwat and Teofilo Dimaliwat, the children of the first marriage, acquired title to lot No. 3-C by adverse possession. One-half of this lot belonged to Teofilo Dimaliwat. He died before his father and without leaving any descendants. One-half of lot No. 3-C was therefore inherited by Eustacio Dimaliwat from Teofilo Dimaliwat, but when Eustacio Dimaliwat remarried this property became subject to a reservation in favor of the children of the first marriage in accordance with the following provisions of the Civil Code:

("ART. 968. *Ademas de la reserva impuesta en el articulo 811, el viudo o viuda que pase a segundo matrimonio estara obligado a reservar a los hijos y descendientes del primero la propiedad de todos los bienes que haya adquirido de su difunto consorte por testamento, por sucesion intestada, donacion u otro cualquier titulo lucrativo, pero no su mitad de ganancias.*")

"ART. 968. *Eeside the reservation imposed by article 811, any widower or widow who contracts a second marriage shall be obliged to reserve for the children and descendants of the former marriage the ownership of*

all the property he or she may have acquired from the deceased spouse by will, intestate succession, gift, or by any other gratuitous title, but not his or her half of the profits of the conjugal partnership."

("ART. 969. La disposicion del articulo anterior es aplicable a los bienes que, por los titulos en el expresados, haya adquirido el viudo o viuda de cualquiera de los hijos de su primer matrimonio, y los que haya habido de los parientes del difunto por consideracion a este.")

"ART. 969. The provisions of the next preceding article shall be applicable to any property which may have been acquired in any of the manners mentioned therein by the widower or widow from any of the children of the first marriage or which any relative of the deceased spouse may have given such widow or widower out of consideration for the former."

As Esperanza Dimaliwat was the only remaining child of the first marriage, Eustacio Dimaliwat was obliged to reserve for her the ownership of the property now in question which he had inherited from her brother, Teofilo Dimaliwat.

"Que la obligacitfn de reservar impuesta en los articulos 968 y 969 delCodigo Civil, al viudo o viuda que pase a segundas nupcias en los casos que expresa, es absoluta, sin distincion alguna, por lo tocante al momento en que el sobreviviente haya adquirido los bienes objeto de tal gravamen, puesto que por su sola procedencia estan sometidos al mismo, sin que cese tal obligacion mas que cuando se dan las circunstancias de los articulos 970 y 971 del propio Cuerpo legal, tanto mas cuanto que nada indica que aquellos se hayan propuesto reformar, en cuanto a ese particular, nuestra legislacion tradicional y la jurisprudencia a su tenor establecida." (Decision of the Supreme Court of Spain of February 25, 1914.)

Vicenta Dimaliwat contends that Esperanza Dimaliwat has no right to claim the ownership of the property in question to the exclusion of the children of the third marriage, under the foregoing provisions of the Civil Code, because the case was not tried on that theory in the lower court. We find no merit in that contention. The decisions cited are not in point Articles 968 and 969 of the Civil Code are rules of substantive law, and if they are applicable to the facts of this case they must be given effect. The attorneys for Vicenta Dimaliwat maintain, however, that even if Esperanza Dimaliwat is not estopped from now invoking the benefit of said articles, the facts of the case take it out of the principle of the reserva viudal for the following reasons: Lot No. 3-C was donated by Eustacio Dimaliwat to Esperanza and Teofilo Dimaliwat in equal shares in 1905; Eustacio Dimaliwat executed a deed of sale in favor of Teofilo Dimaliwat on June 16, 1914 (Exhibit 3) ; Teofilo Dimaliwat conveyed the land to Esperanza, Vicenta, Vicentica, and Josefina Dimaliwat on June 13, 1927 (Exhibit 4); the same land, together with other parcels, was the subject of the will of Eustacio Dimaliwat, dated October 27, 1928, which was probated (Exhibit 16); and Esperanza Dimaliwat renounced whatever right she had to claim the land under the doctrine of the reserva viudal by means of Exhibit 18, or the offer made by her to the children of the third marriage in August, 1928.

Let us examine the reasons advanced in support of the contention that the facts of the case render articles 968 and 969 inapplicable.

As we have already stated, Esperanza and Teofilo Dimaliwat acquired title to lot No. 3-C by adverse possession. That was settled by the decision in case No. 5070 of the Court of First Instance of Nueva Ecija, which was affirmed by this court (Dimaliwat vs. Dimaliwat, 55 Phil., 673). Esperanza Dimaliwat claimed in her answer to be the owner of the land through adverse possession, and both the lower court and this court found that Esperanza and Teofilo Dimaliwat had acquired title to the land by acquisitive prescription. This court said: "They therefore acquired the land by prescription if not by the donation because of the alleged lack of formal acceptance, although under the circumstances surrounding this donation, we think that the formality of acceptance is not necessary for its validity. (Article 622 of the Civil Code)."

It is true that in the decision of this court the opinion is expressed that the donation was valid, notwithstanding the fact that it was not accepted in the manner prescribed by law, but that was not the issue raised by Esperanza Dimaliwat's answer. She claimed the land through adverse possession, both in her original and her amended answer.

Furthermore, if Teofilo Dimaliwat had acquired title to the property now in question by donation from his father, Eustacio Dimaliwat, the attorneys for Vicenta Dimaliwat have cited no authority to sustain their contention that in that case Eustacio Dimaliwat was not obliged to reserve the property for the children of the first marriage.

On the other hand, Manresa, referring to the articles in question, says:

"El Codigo, en evitacion de toda duda, habla en el articulo 968 de lo adquirido por testamento, sucesion intestada, donacion u otro cualquier titulo lucrativo; en el 969, al referirse a bienes procedentes de log hijos, lo hace a los mismos titulos expresados en el articulo anterior, y al referirse a los parientes del difunto, a los bienes que el viuda o viuda haya habido de los mismos, por consideracion al cOnyuge difunto.

"En la frase haya habido, debemos ver, como nemos expuesto en otro lugar, una repetition de lo dispuesto anteriormente en dichos articulos. No es todo lo adquirido o habido de los parientes, sino solo lo que se adquiriera por titulo lucrativo, y precisamente por consideracion al difunto.

"Han desaparecido las multiples cuestiones que existian en lo antiguo sobre esta materia. Verifiquese la adquisicion por voluntad del transmitente o por ministerio de la ley, y sea la que fuere la procedencia anterior de los bienes, el conyuge viudo ha de reservar cuanto hubiese adquirido por titulo lucrativo de sus hijos del primer matrimonio, del conyuge premuerto, o de los parientes de este y por consideracion al mismo. Solo se atiende a que el viudo disfruta bienes que eran de su esposa o de sus hijos y los disfruta gratuitamente, por lo que es mas justo que vuelvan a esos hijos, que no que pasen a log descendientes de otra union, pues la ley supone que tal debio ser la voluntad del transmitente.

"Son, pues, reservables los bienes adquiridos por titulo de legitima, lo mismo que los dejados como herencia o legado de la parte de libre disposicion, y los adquiridos por donation relacionada o no con el matrimonio, siempre que se trate de propias donaciones, teniendo solo en cuenta en las remuneratorias o en las en que se impusiere alguna carga, la parte en que excediere el beneficio al servicio o gravamen. Y son reservables los bienes procedentes de una vinculacion, como ya declaro, antes¹ de regir el Codigo, la sentencia de 26 de octubre de 1858, y los procedentes de un modo remoto o indirecto del mismo c6nyuge obligado a la reserva, tales como los que hubiese donado o entregado al hijo de quien despues directamente los adquiere por titulo lucrativo, y, por tanto, los que so devuelven al ascendiente en el caso del articulo 812. Es lucrativo todo acto aparente- mente oneroso que se pruebe que fue en realidad gratuito." (Vol. 7, pp. 259-261, 5th edition.)

The other reasons advanced for holding that the property in question is not subject to articles 968 and 969 of the Civil Code are clearly without merit. If Teofilo Dimaliwat had acquired title to the land by adverse possession from 1905 or by reason of the donation made by his father in that year, his title to the land was unaffected by the deed of sale executed by Eustacio Dimaliwat in 1914 or by his will made in 1928.

With respect to the deed of sale (Exhibit 4) executed by Teofilo Dimaliwat on June 13, 1927 in favor of Esperanza, Vicenta, Vicentica, and Josefina Dimaliwat, we are of the opinion that this instrument never became effective, and cannot now be invoked by Vicenta Dimaliwat and the other heirs of the third marriage. In the first place, this instrument purports to convey the whole property to the vendees, when as a matter of fact Teofilo Dimaliwat was the owner of only one-half of it. In the second place it is a conditional conveyance. The vendees were to assume the debt of P8,000 or P9,000, for which the land had been mortgaged to Casimiro Tinio. It does

not appear, however, that any of the vendees accepted the conveyance. Two of them, Vicentica and Josefina, were minors at that time. This document was not presented by Vicenta Dimaliwat in the trial of case No. 5070. It was of course entirely inconsistent with her contention in that case, and it is likewise incompatible with her theory in the present case, which is that the property was inherited by Eustacio Dimaliwat from Teofilo Dimaliwat, and now forms a part of the estate left by him.

As to Exhibit 18, which, it is contended, amounts to a waiver by Esperanza Dimaliwat of her rights to the reservation of the property in question, it is sufficient to say that this proposed partition was never accepted by the parties. No fact has been adduced that brings the case within the provisions of article 970, which is as follows:

"The obligation to reserve shall cease when the children of the former marriage who may have a right to such property shall expressly renounce it on coming of age, or when such property has been given or left by the children to their father or mother, with the knowledge that he or she had married a second time." Our conclusion is that Eustacio Dimaliwat was obliged to reserve the land in question for Esperanza Dimaliwat, the only surviving child of the first marriage; that she did not renounce her right thereto, but became the owner of said property by operation of law to the exclusion of the children of the third marriage. This finding makes it unnecessary for us to consider the other assignments of error as to lot No. 3-C.

As to Vicenta Dimaliwat's assignments of error respecting lots Nos. 4, 5, and 6, which raise only questions of fact depending chiefly on the credibility of the witnesses, we perceive no reason for disturbing the following conclusions of the lower court:

"Vicenta Dimaliwat, in the capacity in which she appeared at the trial, also objects with respect to lots Nos. 4, 5, and 6, on the ground that said lots belonged to Eustacio Dimaliwat, presenting as a part of her evidence the possessory information, Exhibit 17-Vicenta Dimaliwat, said land being designated therein as the second parcel. The description of this second parcel does not agree with that of lots Nos. 4, 5, and 6, even considering them as a single parcel of land. In said possessory information, Exhibit 17, it appears that this land is bounded on the north by Cabancalan creek and on the south by Corriente creek. Lots Nos. 4, 5 and 6 are not bounded by Cabancalan creek. Corriente creek is not to the south of these lots, but directly north of them. To the south of these lots is the Jueves creek, which is not mentioned in the description stated in the possessory information, Exhibit 17. Furthermore, it is proved that Esperanza Dimaliwat has been in possession of these lots even during the lifetime of Eustacio Dimaliwat, enjoying exclusively the products thereof.

"If it is true that said lands belonged to Eustacio Dimaliwat, it is not understood why said Eustacio Dimaliwat did not include them in civil case No. 5070, in which he was the plaintiff and Esperanza Dimaliwat the defendant.

"On the other hand, the applicant has proved conclusively that she bought these lands from Florentino Bocoboc, years before the revolution of 1896, and since then has possessed them as the owner thereof.

"The opposition, therefore, of Vicenta Dimaliwat with respect to lots Nos. 4, 5, and 6 should be denied."

Esperanza Dimaliwat and her witnesses impress us as being entitled to more credit than the witnesses for the opponent-appellant, some of whom at least were not in a position to know the facts as to which they testified. The evidence in our opinion sustains the findings of the trial judge. If Esperanza Dimaliwat did not purchase the lots in question, she acquired title to them by adverse, possession. The contention that she was merely administering the land for her father is not proved.

For the foregoing reasons, the decision appealed from is reversed as to lot No. 3-C, and it is ordered that said lot be registered in the name of Esperanza Dimaliwat. In all other respects the decision of the lower court is affirmed, with the costs of this instance against the opponent-appellant.

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

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