

**SOFIA PAMITTAN ET AL., PLAINTIFFS AND APPELLANTS, VS.
GABRIEL LASAM AND QUIRINO MALLONGA, DEFENDANTS. GABRIEL
LASAM, APPELLANT.**

G. R. No. 41056. November 14, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Cagayan in a civil action for the partition of fourteen tracts of land situated in said province and described in paragraph 2 of the petition.

The parties filed a partial agreement as to the facts in which it is recited in substance that the plaintiffs are the only surviving heirs of Bernarda Pamittan; that Bernarda Pamittan and the defendant Gabriel Lasam were married on June 10, 1880; that Bernarda died intestate in the month of September, 1908, without having left descendants or ascendants; that Bernarda Pamittan and Gabriel Lasam during their married life acquired the fourteen parcels of land described in paragraph 2 of the complaint with the exception of parcels 7 and 8; that on January 24, 1930, Gabriel Lasam filed a petition in the Court of First Instance of Cagayan for the registration of the title to parcels 2, 3, 4, 5, 6, 7, and 12, alleging that he is the absolute and exclusive owner of the same; that on March 30, 1932, after a declaration of general default, a decree was entered in his favor as to all of the said parcels except parcel No. 7 which is still pending. On April 12, 1933, the General Land Registration Office issued the certificates in accordance with the said decree of March 30, 1932; that Gabriel Lasam had paid various taxes on said lots since 1908 amounting to P13,506.22; and the parties reserved the right to present additional evidence. After due hearing, the trial court rendered judgment for the plaintiffs and decreed the partition of lots Nos. 1, 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13. The court found that parcels Nos. 7 and 8 were the exclusive property of the defendant Lasam and that parcel No. 8 had been validly donated to and accepted by the municipality of Solano on March 13, 1906, and therefore ceased to be a part of the conjugal property of Gabriel Lasam and Bernarda Pamittan.

Both parties appealed from the decision. The plaintiffs as appellants excepted to the decision of the court with relation to parcel No. 7. The trial court found that this parcel of land, although acquired during the existence of the conjugal partnership, was proven to be the exclusive property of the husband Gabriel Lasam. This parcel of land belonged originally to Domingo Narab who had a possessory title to the same duly registered on June 27, 1873. This Domingo Narab was indebted to Isidro Lasam, the father of the defendant Gabriel Lasam, in the sum of P1,000 about the year 1880; in payment of this debt, Narab transferred the title to the said parcel No. 7 to Isidro Lasam who in turn gave it to his son Gabriel Lasam, then recently married, as advancement on his inheritance. Although Gabriel Lasam's claim as to the manner in which he acquired parcel No. 7 rests largely on his testimony and although the evidence to overcome the presumption that property acquired by either spouse during marriage is conjugal property, must be clear and convincing, we find no valid reason for overturning the findings of the trial court with respect to parcel No. 7. The transaction took place nearly fifty years ago and both the original owner and the father of the witness are dead. Although there was no formal transfer from the father to the son, the documentary evidence of the possessory information was given to the son which was, according to a prevalent

custom, deemed sufficient transfer when accompanied by delivery of possession. No evidence to the contrary was offered so that in this case the question whether the presumption has been overcome turns on the credibility of the witness Gabriel Lasam and the incidental inferences that may be drawn from all the facts and circumstances of the case. We accept the findings of the trial court under the familiar rule applicable as to the weight to be given to such findings on appeal.

The defendant Lasam submits the following first assignment of error:

"The trial court erred in declaring that the parcels of land described in paragraphs Nos. 9, 10, 11 and 13 of the plaintiffs' complaint still belong to the conjugal partnership of the defendant-appellant, Gabriel Lasam, and his deceased wife, Bernarda Pamittan, simply because the cessions or donations made by said spouses of said parcels in favor of the third persons now occupying them, were not reduced to writing in accordance with article 633 of the Civil Code (page 23, B. of E.)."

It appears that parcels 9 (3 hectares 42 ares) and 10 (1 hectare 40 ares) were donated by the spouses Gabriel Lasam and Bernarda Pamittan during their marriage to Tomas Lasam, the brother of Gabriel Lasam, who has been in continuous possession ever since; that parcel 11 was donated by the spouses to Pedro Taguinod, brother-in-law of Gabriel Lasam, who was succeeded in 1929 by his son; Taguinod and his son have been in continuous possession of said lots since the donation; that parcel No. 13 (1,628 square meters) was donated by the spouses to Vicente Carag who has been in continuous possession since the donation.

These small tracts of land appear to have been given to the donees by the spouses without the execution of any public instrument by either the donors or the donees, as required by article 633 of the Civil Code. The donees were not made parties to this suit and we are therefore not called upon to determine what rights if any they acquired by prescription. (Cf. *Pensader vs. Pensader*, 47 Phil., 959.) The trial court therefore correctly held article 633 of the Civil Code applicable, which conditions the validity of the donation of real property upon the execution and delivery of a public instrument specifically describing the property donated and a similar acceptance by the donee. The first assignment of error of the appellant Lasam must therefore be overruled.

His second assignment of error is as follows:

"The trial court erred in not declaring that the defendant-appellant, Gabriel Lasam had acquired ownership by prescription over the parcels described in paragraphs Nos. 1, 2, 3, 4, 6, 6 and 12 of the plaintiffs' complaint."

We find no merit in this assignment. It was agreed in paragraph 2 of the stipulation of facts that Bernarda Pamittan and the defendant Lasam acquired said tracts of land during their married life; but Lasam contends that "he has acquired ownership of the same by prescription and hence said properties no longer form part of the conjugal partnership." (Brief, page 4.)

Upon the death of Bernarda in September, 1903, said lands continued to be conjugal property in the hands of the defendant Lasam. It is provided in article 1418 of the Civil Code that upon the dissolution of the conjugal partnership, an inventory without delay (*desde luego*). (*Alfonso vs. Natividad*, 6 Phil., 240; *Prado vs. Lagera*, 7 Phil., 395; *De la Rama vs. De la Rama*, 7 Phil., 745; *Enriquez vs. Victoria*, 10 Phil., 10; *Amancio vs. Pardo*, 13 Phil., 297; *Rojas vs. Singson Tongson*, 17 Phil., 476; *Sochayseng vs. Trujillo*, 31 Phil., 123; *Molera vs. Molera*, 40 Phil., 566; *Nable Jose vs. Nable Jose*, 41 Phil., 713.)

In the last mentioned case this court quoted with approval the case of *Leatherwood vs. Arnold* (66 Texas, 414, 416, 417), in which that court discussed the powers of the surviving spouse in the administration of the community property. Attention was called to the fact that the surviving husband, in the management of the conjugal property after the death of the wife, was a trustee of unique character who is liable for any fraud

committed by him with relation to the property while he is charged with its administration. In the liquidation of the conjugal partnership, he had wide powers (as the law stood prior to Act No. 3176) and the high degree of trust reposed in him stands out more clearly in view of the fact that he was the owner of a half interest in his own right of the conjugal estate which he was charged to administer. He could therefore no more acquire a title by prescription against those for whom he was administering the conjugal estate than could a guardian against his ward or a judicial administrator against the heirs of an estate. Section 38 of Chapter III of the Code of Civil Procedure, with relation to prescription, provides that "this chapter shall not apply * * * in the case of a continuing and subsisting trust." The surviving husband in the administration and liquidation of the conjugal estate occupies the position of a trustee of the highest order and is not permitted by the law to hold that estate or any portion thereof adversely to those for whose benefit the law imposes upon him the duty of administration and liquidation. No liquidation was ever made by Lasam—hence, the conjugal property which came into his possession on the death of his wife in September, 1908, still remains conjugal property, a continuing and subsisting trust. He should have made a liquidation immediately (*desde luego*). He cannot now be permitted to take advantage of his own wrong. One of the conditions of title by prescription (section 41, Code of Civil Procedure) is possession "under a claim of title exclusive of any other right". For a trustee to make such a claim would be a manifest fraud.

Under this view, the decision of this court in the case of *Palma vs. Palma* (G. R. No. 36299, 57 Phil., 990), relied upon by the appellant Lasam, and the decision of this court in the case of *Bargayo vs. Camumot* (40 Phil., 857), relied upon by the appellees are not in point.

Finding no error, we affirm the judgment of the trial court without special pronouncement as to costs in this instance.

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

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