

DAVID SALVACION, PLAINTIFF AND APPELLANT, VS. EUSTAQUIO SALVACION, DEFENDANT AND APPELLEE.

G.R. No. 4192. March 29, 1909

Ponente: TORRES, J.

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TORRES, J.:

On the 10th of December, 1906, David Salvacion filed a complaint with the Court of First Instance of Ilocos Norte, against Eustaquio Salvacion and Andres Salting, alleging that the spouses Silverio Baltasar and Laureana Gamalindo Asuncion, who died intestate, were in life the owners of 35 parcels of land, the situation, area, and boundaries of which are as follows:

One parcel of rice land in the sitio of Paciencia, town of Badoc, of 136 meters, bounded on the north, east, and west by lands owned by several individuals, and on the south by land belonging to Timoteo Bautista.

Another parcel of rice land in the sitio of Turod in the same municipality, having an area of 352 meters, and is bounded on the north by land of David Salvacion, on the west by a ditch, on the east by lands of Martin Dagdagan, and on the south by that of Cipriano Valdes.

Another parcel of rice land in the same sitio of Turod, of 142 meters in area, and is bounded on the north by land of Cipriano Valdes, on the west by that of David Salvacion, on the east by land of Martin Dagdagan, and on the south by property of the said Valdes.

Another tract of rice land in the sitio of Paciencia, of Badoc, with an area of 243 meters; it is bounded on the north by land of Juan Rubio, on the east by that of Agapita Bautista, on the south by that of Leocadio Adsuara, and on the west by land of Narciso Cajimat.

Another parcel in the same sitio, with an area of 260 square meters, and is bounded on the north by the property of Romualdo Baesa, on the east by that of Tomas Cajimat, on the south by land of Pedro Cajigal, and on the west by that of Jacinto Baldovino.

Another in the same sitio; it has an area of 150 meters, and is bounded on the north by land of Maria Leido, on the east and south by that of Jacinto Baldovino, and on the west by that of Eduardo Bautista.

Another in Babaldes, of Badoc; it has an area of 158 meters, and is bounded on the north by land of Pascual Guidaoen, on the east by that of Don Tomas Rañon, on the south by a ditch, and on the west by the property of Eusebio Gudac.

Another in Paciencia, of Badoc; it has an area of 123 meters, and is bounded on the north by land of Pedro Calaycay, on the east by that of Cristina Garcia, and on the south and west by that of Jose Baldoria.

Another in the same sitio; it has an area of 112 meters, and is bounded on the north and east by land of Fermin Salvani, on the south by that of Exequiel Salva, and on the west by that of Rosendo Valdes.

Another in the same sitio; it has an area of 150 meters, and is bounded on the north by land of Timoteo Bautista, on the east and west by land belonging to several individuals, and on the south by that of Ambrosio Lacuesta.

Another parcel of rice land in Lungao, with an area of 195 meters; it is bounded on the north by land of Benito Luna, on the west by that of Diego Apuac, on the south by property owned by several individuals, and on the west by that of Monica Reyes.

Another in the same sitio, with an area of 330 meters, bounded on the north and south by a ditch, on the east by land of Diego Apuac, and on the west by that of Benito Luna.

Another in the same sitio, with an area of 475 meters, bounded on the north by land of Diego Apuac, on the east by a ditch, on the south by land of Faustino Apuac, and on the west by a ditch and land belonging to Pedro Raña.

Another in the same sitio, with an area of 280 meters, bounded on the north by land of Diego Apuac, on the east, south, and west by ditches.

Another parcel of land consisting of rice fields and orchards in the sitio of Cabaranbanan, of Badoc, having an area of 3,486 meters; it is bounded on the north and west by lands of Eudovigis Salting, on the east by those of Lorenzo Palafox and Pablo Salvacion, and on the south by the property of Andres Apongol.

An orchard in Lungao, with an area of 146 meters, bounded on the north by land of Diego Apuac, on the east by a creek, on the south by land of Faustino Apuac, and on the west by a ditch.

Another in the same sitio, with an area of 119 meters, bounded on the north, east and south by ditches, and on the west by land of Diego Apuac.

Another in the same sitio, with an area of 262 meters, bounded on the north by land of Diego Apuac, on the east by a ditch, on the south by land of Jacinto Maxia, and on the west by a ditch and a hill.

Another in the same sitio, a parcel of 150 meters, bounded on the north by land of Diego Apuac, on the east by that of Alejandro Apuac, on the south by a hill, and on the west by land of Segundo Caimare.

One parcel of land consisting of a rice field and orchard in Turod, of Badoc, with an area of 268 meters, bounded on the north by land of Gregorio Valera, on the east by that of Sabas Bautista, on the south by that of David Salvacion, and on the west by the highway.

One parcel of rice land in the same sitio of Turod, with an area of 126 meters, bounded on the north by land of David Salvacion, on the east and south by that of Sabas Bautista, and on the west by land belonging to Paula Baesa.

Another in Sinalamaguian, of Badoc, with an area of 113 meters, bounded on the north by land of Eusebio Cajimat, on the east by that of Nicolas Cajigal, on the south by a road, and on the west by land of Maria Laeda.

Another in Paciencia, of Badoc, with an area of 111 meters; it is bounded on the north by land of Francisca Arzadon, on the east by that of Pedro Calaycay, on the south by that of Sabas Bautista, and on the west by land belonging to Jose Baldovia.

Another parcel of rice land in the same sitio of Paciencia, with an area of 54 meters; it is bounded on the north by land of Bonifacio Iclectia, on the west by that of Juan Ranon, on the east by that of Gregorio Salmasan, and on the south by land belonging to Andres Salting.

Another rice land in the sitio above indicated, with an area of 76 meters; it is bounded on the north by land of Maria Laida, on the west by that of Simplicio Tacloy, on the east by that of Regino Pelarta, and on the south by

land of Hilario Lafrades.

Another parcel of rice land in the sitio of Catanubungan, of Badoc, with an area of 256 meters; it is bounded on the north by a creek, on the west, east, and south by highways.

One parcel consisting of rice land and orchard, with an area of 1,032 meters; it is bounded on the north by a mountain, on the west, east, and south by highways; it is located in the sitio of Turod, in the municipality of Badoc.

Another piece of rice land in the sitio of Sinalamaguian, of Badoc, with an area of 125 meters; it is bounded on the north by land of Andres Salting, on the west and east by that of Apolonia Baisa, and on the south by a mountain.

Another tract of rice land in the same sitio of Sinalamaguian, with an area of 108 meters; it is bounded on the north by land of Esteban Cajimat, on the west by that of Eusebio Cajimat, on the east by that of Anastasio Cajigal, and on the south by property of Jose Baldovia.

Another parcel of rice land in the sitio of Turod, in the municipality of Badoc, with an area of 258 meters; it is bounded on the north by land of Ciriaco Calaycay, on the west by that of Pedro Calaycay, on the east by that of Hipolito Apostol, and on the south by land belonging to Sabas Bautista.

Another parcel of rice land in the same sitio of Turod, with an area of 246 meters; it is bounded on the north by land of Anacleto Cajimat, on the west by a mountain, on the east by land of Andres Salting, and on the south by land of Eustaquio Salvacion.

Another piece of rice land in the said sitio of Turod, with an area of 111 meters; it is bounded on the north by land of Cipriano Valdes, on the east by that of Eustaquio Salvacion, on the south by that of Martin Salvacion, and on the west by that of Gregoria Valera.

Another in Sideg, with an area of 188 meters; it is bounded on the north by land of Francisco Salvani, on the east and west by a ditch, and on the south by land pertaining to Claro Bautista.

Another in Paciencia, with an area of 170 meters; it is bounded on the north and west by land of Prudencia Pascua, on the east by that of Martin Valera, and on the south by that of Dionisio Ladera.

One parcel of land consisting of rice field and orchard, in Turod, of Badoc, with an area of 278 meters; it is bounded on the north by land belonging to Martin Salvacion, on the east by that of Sabas Bautista, on the south by that of Paula Baisa, and on the west by a mountain.

That after the death of the original owners, the above-described lands went to their three children, Lazaro, Evaristo, and Dorotea Salvacion; that these latter also died; the first named was the father of the plaintiff; the second was the father of the defendant Eustaquio Salvacion; and the last named was the mother of the other defendant, Andres Salting; that the said lands are now in the possession of the defendants and have not been divided among the heirs, as the plaintiff, notwithstanding the extrajudicial actions taken by him, has been unable to obtain the apportionment of the same, for which reason he prays the court below to enter judgment ordering that the lands in question be divided into equal parts between the plaintiff and the defendants, and that the latter be sentenced to pay the costs and damages.

The representative of the defendant Eustaquio Salvacion, in answer to the foregoing complaint, denied the first allegation as being false, and set forth that the said lands had already been apportioned during the lifetime of the children, Lazaro, Evaristo, and Dorotea Salvacion, that each of them had received his share to which the plaintiff and the defendants had particularly succeeded as the respective children of the above-named brothers. As a

special defense he alleged that the question of the ownership of the lands possessed by Eustaquio Salvacion had already been ventilated in a civil action before the same court, the same David Salvacion being the plaintiff therein; the suit was decided in favor of the former, who afterwards, out of affection and regard for the said plaintiff, made him a present of one of the parcels of land in question, which David Salvacion received and of which he is now in possession; for said reason he asked that judgment with costs be entered against the plaintiff.

According to a telegraphic communication of the 5th of January, 1906, addressed to the clerk of the court by Silvestre Arzadon, Andres Salvacion was unable to appear before the court for the reason that he was seriously ill, and he conformed to the petition of the plaintiff.

The case was tried and evidence was adduced by the parties; the trial judge in view of the evidence adduced and of the documents that were made of record, entered judgment on the 20th of February, 1907, absolving the defendants Eustaquio Salvacion and Andres Salting of the complaint, without any special ruling as to costs.

The plaintiff excepted to the above decision and moved for a new trial on the ground that the evidence did not justify the decision and that said decision was contrary to law. The motion was overruled, whereupon the petitioner at once gave notice of his intention to appeal by means of the corresponding bill of exceptions. The court below, while overruling the motion, admitted the statement of the plaintiff and directed the clerk of the court to enter the same in the corresponding register, and the bill of exceptions, together with the record of the case, was submitted to this court. By an order of May 25, 1907, the appellant was authorized to appeal to this court as a pauper in accordance with the provisions of Act No. 1123 of the Philippine Commission.

It is an established rule of this court, in consonance with the provisions of section 497, paragraph 3, of the Code of Civil Procedure, as amended by Act No. 1596, that, where a motion for a new trial is overruled by a lower court, and no exception is taken to the overruling, the Supreme Court has no authority to review the evidence, and, admitting the facts held to be proven, it shall limit its jurisdiction to the questions of law. (Decision in case No. 4,100, among others, *Singayan vs. Mabborang*, 10 Phil. Rep., 601.)

It appears from the bill of exceptions submitted by the appellant that he did not except to the order of the court below of the 30th of March, 1907, by which his motion for the reopening of the case and the holding of a new trial was denied; for said reason, in accordance with the law and the established rules, we are not permitted to review the evidence in the present case, and this court of appeal, after admitting the facts established by the court below in its judgment and the conclusions therein contained, will limit its jurisdiction to reviewing and deciding such questions of law as may have arisen between the contending parties.

It is held in the judgment appealed from that it has been proven that a partition had already been made of the property belonging to the inheritance of the grandparents of the plaintiff and the defendant, between the parents of the same, and among the said property appears the greater part of the lands now claimed; and that the lands referred to in some of the documents produced by the defendant did not come from the said inheritance and that they were acquired by the latter; therefore, the plaintiff has no right to claim a participation in them.

As to the fact alleged that the partition as made was unequal, and that the lands already apportioned were again taken possession of by the defendant, the judgment states that a different action should be brought, and not one for the partition of the property already distributed.

We consider that the judgment appealed from is in accordance with the facts and the merits of the case.

It should be noted that, under article 406 of the Civil Code, the rules relating to the division of an estate shall be applicable to division among the coowners.

The special remedy authorized by sections 181 et seq. of the Code of Civil Procedure can only be availed of by the person who is a coowner of real estate possessed in common and undivided; without these requisites no action can be brought by a person who is not entitled to real estate owned exclusively by a third party without the characteristics of joint ownership and undivided interest mentioned.

In view of the foregoing, it is our opinion that the judgment appealed from should be affirmed, and we do hereby affirm it with the costs against the appellant.

Arellano, C. J., Mapa, Johnson, Carson, and Willard, JJ., concur.

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