

JUAN BAGAYAS, PLAINTIFF AND APPELLEE, VS. PELAGIA GUILAO, DEFENDANT AND APPELLANT.*G. R. No. 42834. June 14, 1937*

Ponente: IMPERIAL, J.

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This is an appeal taken by the defendant from the judgment of the Court of First Instance of Tarlac declaring the plaintiff the owner of the portion of land in litigation, ordering the segregation thereof from lot No. 5956 of the cadastre of said province and ordering her to execute a deed of transfer of said portion of land in favor of the plaintiff to enable him to apply for the cancellation of certificate of title No. 11229 issued in the name of the defendant and to obtain another for the portion adjudicated to him, with costs.

The defendant and her brothers and sister, Ambrosio Guilao, Luis Guilao and Constancia Guilao were the pro-indiviso owners of a parcel of land situated in Surgui, Gamiling, Tarlac, surveyed in cadastral case No. 402 of Camiling as lot No. 5956 and covered by certificate of title No. 11229. Upon the death of Maxima Fernando, mother of the Guilao brothers and sisters, the latter needed money to defray her funeral expenses and Ambrosio Guilao, with the consent of his brother and sisters, sold to the plaintiff, their cousin, for P90, a portion of said land 39 meters long and 21 meters wide, bounded on the north by a country road, on the east by Ambrosio Guilao, on the south by Alfonso A. Pablo and on the west by Juan Bagayas and Juan Fernando, executing to that effect the deed of sale, Exhibit A, dated June 22, 1922, signed by the defendant and her brother Luis Guilao as witnesses. When the cadastre of Camiling was prepared, the entire land, including the portion sold to the plaintiff, was surveyed in the name of Ambrosio Guilao. As Ambrosio Guilao died, the defendant agreed with the plaintiff to file an answer in the cadastral case and to apply for the registration of the entire land in her name, without prejudice to subdividing it later and transferring to the plaintiff the portion already belonging to him. This agreement was made orally and was carried out in order to avoid subdividing the land before its registration and incurring double expenses for the survey thereof. Furthermore, all of them then had not sufficient money. As a result of the agreement, the entire land was finally decreed in the exclusive name of the defendant and the aforesaid certificate of title was issued to her. Two years after the plaintiff had purchased the portion of land now claimed by him, he built thereon a house of mixed materials valued at P700, and he and his family lived and are now living therein for more than ten years. To carry out the subdivision agreed upon, the defendant delivered her certificate of title to her relative, Attorney Alfonso A. Pablo, who was the same person who had prepared the deed of sale Exhibit A. Said attorney, however, was unable to finish the task entrusted to him because he had been elected assemblyman for the province and has to reside temporarily in the City of Manila. Sometime later, misunderstanding arose between the plaintiff and the defendant in connection with the partition of a certain inheritance left by a relative of both and thereafter the defendant refused to cede to the plaintiff the portion of land belonging to him and to make the stipulated subdivision, thereby compelling the plaintiff to bring this action.

The defendant assigns in the appealed judgment the following alleged errors, to wit: "1, The lower court erred in not dismissing the case as prayed in the demurrer for lack of jurisdiction, because the plaintiff-appellee is basing

his claim acquired before the cadastral registration, and, therefore, affected by the order of general default; 2. The lower court erred in reopening the case and in acquiring jurisdiction respecting the ownership of a parcel of land registered and adjudicated on September 11, 1924, while the corresponding decree of registration, issued on January 15, 1926, is long final and conclusive, and, therefore, it exceeded its authority; 3. The lower court erred in making a decision which is contrary to the positive disposition of the Land Registration Act; 4. The lower court erred in making a decision which is contrary to the established facts during the trial; 5. The lower court erred in permitting oral evidence during the trial respecting agreement on land contrary to section 335 of the Code of Civil Procedure and against the objection of the appellant; 6. The lower court erred in believing the testimony of a witness contrary to the testimony of the parties to the case at bar; 7. The lower court erred in depriving the defendant-appellant of her property without any consideration, contrary to article 349 of the Civil Code; and 8. The lower court erred in compelling the defendant-appellant to execute a deed of sale in favor of the plaintiff-appellee against her will."

The first four assignments of error refer to the effects of the registration obtained by the defendant and of the certificate of title issued exclusively in her name. The defendant contends that the appealed judgment virtually reopens cadastral case No. 402 of Camiling, with respect to lot No. 5956, and annuls the final decree as well as the certificate of title issued in her favor. However, it does neither the one nor the other. 'The action brought by the plaintiff is authorized by section 55 of Act No. 496, as amended by Act No. 3322,' which permits the legitimate owner of a parcel of land to bring an action against the person who, not being the rightful owner thereof, has registered it, for the purpose of compelling him to execute a deed of transfer or to pay him damages. It is well settled in this jurisdiction that a person who has fraudulently registered a real property belonging to another is obliged to execute a deed of transfer thereof in favor of the true owner, provided said property has not passed to an innocent purchaser, or to indemnify said owner for damages (section 55, Act No. 496, as amended by Act No. 3322; *Consunji vs. Tison*, 15 Phil., 81; *Macapinlac vs. Gutierrez Repide*, 43 Phil., 770; *Severino vs. Severino*, 44 Phil., 348; *Roman Catholic Bishop of Nueva Caceres vs. Municipality of Tabaco*, 46 Phil., 271; *Government of the Philippine Islands vs. Court of First Instance of Nueva Ecija*, 49 Phil., 433; *Rodriguez vs. Llorente*, 49 Phil., 823; *Philippine Land Improvement Co. vs. Bias*, 55 Phil., 540; *Palet vs. Tejedor*, 55 Phil., 790). This court, therefore, concludes that the first four assignments of error are unfounded.

During the trial, the plaintiff and Attorney Alfonso A. Pablo testified that said plaintiff and the defendant had agreed verbally that the defendant would ask in the cadastral case for the registration of the entire land, including the portion sold to the plaintiff; and later apply for the subdivision thereof to segregate the portion belonging to the plaintiff. The attorney for the defendant objected to both testimonies alleging that the agreement must be in writing and cannot be proven orally in accordance with; the provisions of section 335, paragraphs 1 and 5, of the Code of Civil Procedure. The court overruled the objections and said attorney excepted in connection with Pablo's testimony. He failed, however, to except with respect to the plaintiff's testimony. In her fifth and sixth assignments of error, the defendant contends that the court erred in admitting said oral evidence and in giving more weight to the plaintiff's testimony than to hers on the same point. This court is of the opinion that the errors assigned are without legal foundation. Paragraphs 1 and 5 of section 335 are not applicable to the evidence objected to on the ground that the oral agreement, by its terms, does not refer to a contract which could not be performed within one year and does not involve the sale of an interest in real property, but the registration of a parcel of land. The evidence offered by the plaintiff to prove the transfer is the deed Exhibit A. Even granting that the oral evidence were incompetent, the defendant cannot now raise any question relative to the admission thereof by the court because her attorney failed to except to the resolution overruling his objection and admitting the testimony of the plaintiff. With respect to the other point, this court holds that the lower court correctly gave more weight to the plaintiff's testimony in view of the fact that it was corroborated by the deed of sale signed by the

defendant herself, the delivery by the defendant of her certificate of title to Attorney Pablo, the construction by the plaintiff of his house of mixed materials valued at P700 and, lastly, the indisputable fact that the plaintiff is in the peaceful possession, under claim of ownership, of the portion acquired by him more than ten years ago. If the oral agreement in question had not existed, undoubtedly the plaintiff, as owner and possessor, would have separately sought the registration of the land on which he had his house already built.

It is not true that the defendant has) been deprived of her property without compensation because it appears proven that Ambrosio Guilao, acting in the name of his brother and sisters, received from the plaintiff the sum of P90 as the price of the portion of land sold by him. The defendant ceased to have an interest therein and succeeded in registering it with the obligation to execute the deed of transfer of said portion of land in favor of the plaintiff. Therefore, the seventh assignment of error is untenable.

The eighth and last assignment of error is with less legal foundation because, as already stated, the adequate remedy for the plaintiff, in this case is to compel the defendant to execute in his favor a deed of transfer of the portion of land acquired by him and of which he has legally become the owner.

For the foregoing reasons, the appealed judgment is affirmed, with the costs of this instance to the defendant-appellant. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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