

**ROBERTA DIAMA ET AL., PLAINTIFFS AND APPELLEES, VS.
MARGARITA MACALIBO AND GREGORIO CALIMOT, DEFENDANTS
AND APPELLANTS.***G.R. No. 48409, December 31, 1942*

Ponente: BOCOBO, J.

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This is a case of reivindication of a piece of land in Ronda, Province of Cebu. The complaint, by Roberta Diama and Cirilo Paglinawan, alleged that the former had inherited the land from her deceased mother, Monica Villagracia, and sold the same to Paglinawan in March, 1935. The defendants, Margarita Macalibo and Gregorio Calimot who are the daughter and son-in-law, respectively, of plaintiff Roberta Diama, alleged in their answer that they were the owners of the property by virtue of an oral contract of sale from plaintiff Roberta Diama to defendants in 1916, and that because of said sale, the land had been delivered to defendants.

At the original trial in April, 1937, defendants offered oral evidence to prove a consummated sale of the parcel of land in question from Roberta Diama to defendants in 1916. This oral evidence, objected to by plaintiffs, was allowed provisionally by the Court apparently for the purpose of determining whether its subject matter was an executed or executory sale. After trial, the Court found that the contract, according to the oral evidence thus admitted, was merely a promise to sell, and rendered judgment against defendants. On appeal, the Court of Appeals, in view of the loss of the stenographic notes, ordered a trial de novo for the purpose of taking the testimony of the same witnesses who had testified at the original trial.

At the new trial in November, 1939, Cirilo Paglinawan, plaintiff, again testified, stating that he had bought the land from the other plaintiff, Roberta Diama, for P130, by virtue of a deed of sale Exhibit A. The defendant Gregorio Calimot was placed on the witness stand and was asked by his counsel, certain questions which were objected to by plaintiffs' attorney, whose objection, based on the Statute of Frauds, was sustained by the Court of First Instance with the defendants' exception. Said questions were:

1. "How did you happen to be in possession of this land?"
2. "How did you become the owner of that land?"

The court at the second trial also ordered that the last part of the following answer of defendant to the question "How did you happen to be in possession of this land?" be expunged from the record:

"I came to possess that land, because during the time of my marriage I was living with my mother-in-law, and her share in that land was sold to me—."

The above questions as formulated called for an answer to the effect that the defendant Calimot was the owner because of some consummated act or contract in his favor. Considering that the Statute of Frauds does not forbid oral evidence to prove a consummated sale of real property (*Almirol vs. Monserrat*, 48 Phil., 67), the objection of plaintiffs' counsel to the questions should have been overruled.

It is true that, according to the finding of the Court of First Instance at the original trial, there was merely a promise to sell, but as the Court of Appeals ordered a trial de novo, and as no oral evidence of the sale was allowed at the second trial, such finding is now without foundation on the evidence.

Therefore, the ruling of the Court of First Instance of Cebu which excluded oral evidence of the alleged consummated sale of the land to defendant Caliraot is reversed. Let the case be remanded to that court for further proceedings, with instructions to said court to admit such oral evidence as may be offered by the parties regarding said alleged consummated sale, and to render a new decision. Without special pronouncement as to costs. So ordered.

Yulo, C. J., Moran, Ozaeta, and Paras, JJ., concur.

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