

MARIA CONSOLACION SUMIRA, ASSISTED BY HER HUSBAND JUAN AQUINO, GODOFREDO INONG AND TEODORA INONG, PLAINTIFF AND APPELLANTS VS SEVERA VLSTAN, NICOLAS BONUS AND PHILIPPINE NATIONA...

G.R. No. 48635. February 26, 1943

Ponente: MORAN, J.

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MORAN, J.:

In an action instituted in the Court of First Instance of Tarlac, plaintiffs Maria Consolacion Sumira, Godofredo Inong and Teodora Inong sought to recover their respective portions in the land situated in Barrio O'Donnell, Capas, Tarlac, conveyed to defendant Severa Vistan. The complaint, as twice amended, alleges that plaintiffs are legitimate grandchildren of spouses Gregorio Sumira and Inocencia Rivera, now deceased and original owners of the land in question; that on June 4, 1914, Inocencia Rivera, legitimate mother of Agapito, Apolonia, Emilio, Flora, Delfina and Andres, all sumamed Sumira (Delfina, now deceased, being the mother of Godofredo and Teodora Inong; and Andres, also deceased, being the father of Maria Consolacion Sumira), sold under pacto de retro one-fourth of the land to defendant Severa Vistan, and the vendor failed to make the repurchase in her lifetime; that on May 14, 1925, after the death of the spouses Gresorio Sumira and Inocencia Rivera, some of their children—Agapito, Emilio, Flora and Apolonia—conveyed under pacto de retro to the same defendant the whole land and the vendors were also unable to redeem; that of these conveyances, first, by Inocencia Rivera and, second, by her children Agapito, Emilio, Flora and Apolonia, to defendant Severa Vistan, plaintiffs had no knowledge and that accordingly they have been deprived of their lawful portions thereof as heirs: that subsequently defendant Severa Vistan petitioned for the registration of said land in her name on the strength of the deeds of sale in her favor and, without disclosing plaintiffs' ownership of their undivided portions, succeeded in obtaining the corresponding title thereto; that, thereafter, defendant Severa Vistan fictitiously conveyed the same land to her co-defendant Nicolas Bonus who afterwards mortgaged the same to defendant Philippine National Bank for the amounts of P1,800 and P400; that as defendant Severa Vistan and later Nicolas Bonus had taken possession of the land which yielded an annual produce of 2,000 cavanos of palay, plaintiffs have been deprived of their portions in said produce in the estimated amount of P500 per annum.

Upon these allegations, plaintiffs prayed that they be declared absolute owners of an undivided one-twelfth portion each of the land, free from all liens and encumbrances; that defendants Severa Vistan and Nicolas Bonus be ordered to reconvey to the plaintiffs said portions or to pay the sum of P800; and that the deed of sale executed by Severa Vistan in favor of Nicolas Bonus and the deeds of mortgage later executed by Nicolas Bonus in favor of the Philippine National Bank be declared null and void in so far as all these transactions affect the rights of the plaintiffs. Defendants Severa Vistan and Nicolas Bonus on the one hand, and the Philippine National Bank on the other, presented separate motions to dismiss the action upon the ground, among others, that the complaint states no cause of action. The trial Court sustained the motion, hence this appeal.

We hold that the motion was rightly sustained with respect to the Philippine National Bank and erroneously with

respect to defendants Severa Vistan and Nicolas Bonus. Plaintiffs' complaint alleges no vice whatsoever in the execution of the deeds of mortgage by Nicolas Bonus in favor of the Philippine National Bank. The Philippine National Bank is, therefore, an innocent mortgagee for a valuable consideration and as such it is fully protected by law (section 38, Act No. 496) in its rights in the mortgage, regardless of whether the title under the land has been secured fraudulently or not by the mortgagor.

With respect, however, to defendant Severa Vistan, plaintiffs' complaint alleges fraud and misrepresentation in her acquisition of the Torrens title to the land in question, and on the strength of such allegation prays that plaintiffs' lawful portions be reconveyed to them or that they be awarded damages. Equitable action for reconveyance is proper if based on breach of fiduciary relations on the part of the defendant and the property has not yet been conveyed to an innocent third person. (*Severino vs. Severino*, 44 Phil., 343). It appears from the complaint that the property bought by Vistan belonged not only to her vendors but also to the plaintiffs here. Since Vistan is presumed to have made the necessary inquiry as to the title of her vendors, she may be deemed to have knowledge that only three-fourth of the property could legally be conveyed to her and that one-fourth thereof remained with the plaintiffs. As a mere co-owner, she stands in a fiduciary relation to the other co-owners with respect to the community property, and her acquisition of a Torrens title thereto in her exclusive name constitutes a breach of trust which may be a ground for an equitable action for reconveyance. The conveyance of the property to defendant Nicolas Bonus is no obstacle to the action, said conveyance being alleged in the complaint to be fictitious.

As to the action for damages, actual fraud need not be pleaded and proved, constructive fraud being sufficient. Constructive fraud as distinguished from actual fraud does not mean downright dishonesty of some sort, but an unintentional deception, negligence, mistake of fact or any transaction which equity regards as wrongful and to which it attributes the same or similar effects as those which follow from actual fraud. Here, defendant Vistan may have acted without malice in procuring exclusive Torrens title in her name, but as in truth she is not the owner of the whole land and plaintiffs have been deprived of their rights with no fault of their own, an equitable remedy for damages may be granted them (*Estrellado vs. Martinez*, 48 Phil., 265) even if the property has already been conveyed to an innocent third person (*Dizon vs. Lacap*, 50 Phil., 193). The reason for the rule is that nobody should be allowed to enrich himself at the expense of another.

As another ground for their motion to dismiss, defendants Vistan and Bonus alleged that the action has prescribed because the one-year period for the revision of the decree has long expired. But the action is not for the re-opening of the decree but for reconveyance or damages. The law affords various remedies to persons who have been deprived of their lands or interests therein by virtue of the operation of the Land Registration system. Upon proper and timely application, relief may be procured under Rule 38, section 2, of the new Rules of Court. Relief may also be obtained on the ground of fraud under section 38 of the Land Registration Act provided that one year has not yet elapsed from entry of the final decree. An action for reconveyance or damages may also be maintained. And, in appropriate cases, a recourse may be had to the Assurance Fund. The equitable action for reconveyance or damages is not barred by the lapse of one year.

Prescription of action or of possession for ten years not having been pleaded, need not be considered. It may not be amiss, however, to state that in the last amended complaint, there is an allegation that defendants took possession of the property since 1938 only. And, further, there are indications in the record that two of the plaintiffs were minors when the sales took place. Also a question of trust is involved in this case. And well-known is the rule that a silent exclusive possession of the trustee might be adverse to strangers but not against the cestui que trust. An open disavowal of the trust must have been made by positive and equivocal acts amounting to an ouster of and made known to the cestui que trust, in order that the latter may become affected (*Bargayo vs.*

Camumot, 40 Phil., 857; Cortes vs. Oliva, 33 Phil., 480). Although it has also been held that possession by some co-heirs or co-owners may be ground for prescriptive title if held in good faith without knowledge that others might have interest in the property (Ramos vs. Ramos, 45 Phil., 362; see also De Castro vs. Echarri, 20 Phil., 23). But all these questions cannot properly be determined upon the facts now of record.

The appealed order is affirmed with respect to the motion to dismiss of the Philippine National Bank, and reversed with respect to that of defendants Severa Vistan and Nicola Bonus. The record of this case is ordered remanded to the Court of First Instance of Tar lac for further proceedings with respect to defendants Severa Vistan and Nicolas Bonus.

Without costs.

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

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