

ANTONIO CONSUNJI, PETITIONER AND APPELLEE, VS. MARIA D. TISON, OPPONENT AND APPELLANT.*G.R. No. 5504. January 24, 1910*

Ponente: CARSON, J.

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The ground of appellant's opposition to the adjudication and registry of the land in question in favor of the applicant therefor, under the provisions of the Land Registration Act, is her claim to an interest therein as one of the heirs of her deceased father, Domiciano Tison, who died in 1885, and in whose name a composition title to the land in question was issued on the 19th of March, 1883, by the Direccion General de Administracion Civil de Filipinas, which was duly registered in the old land registry.

Applicant for adjudication and registry does not deny the fact that the composition title was issued as alleged by the objector, nor does he question objector's right to an undivided interest by inheritance in any property owned by Domiciano Tison at the time of his death.

Applicant relies on the terms of a notarial instrument dated April 12, 1904, whereby Dolores Singian, the widow of Domiciano Tison (the father of the objector), sold to the applicant the land in question, reserving a right to repurchase on the terms and conditions set out in the deed; and contends that the land in question was the separate property (*bienes propios*) of Dolores Singian, his vendor, inherited from her father, and that her husband Domiciano Tison, although he procured the granting of the composition title thereto in his own name, never had any real right of ownership in or to the land.

The evidence of record discloses that Domiciano Tison owned no real estate whatever in the vicinity wherein the land in question is located prior to the time when he secured the issuance of the composition title in his own name; and in a formal instrument (Exhibit H) executed by him less than a year prior to the issuance of the composition title (June 26, 1882), before a local official in San Fernando de Pampanga, styling himself juez mayor de sementeras, and in the presence of various members of the principalia, or headmen, of the locality, he acknowledged and declared that certain lands located in that vicinity were the separate property (*bienes propios*) of his wife, Dolores. This evidence together with the evidence contained in various other private documents, including the *hijuela* (apportionment instrument) setting out the share of the estate of her father which was apportioned to Dolores Singian, tends strongly to sustain the finding of the trial court that the greater part of the land described in the composition title was the property of her ancestors and was inherited by her from them, and that the remainder of the land described in the composition title was purchased by or for her from funds which constituted a part of her separate estate (*bienes propios*).

The only evidence tending to put these facts in doubt is the apparent discrepancy between the superficial extent of the land contained in the tract to which composition title was issued in the name of Domiciano Tison, and the amount of land which appears to have been apportioned to Dolores Singian from the estate of her father, as shown by the *hijuela* (apportionment instrument) and by the other documents describing the land in that vicinity owned

by her ancestors and claimed by her as her separate property (*bienes propios*). These discrepancies, however, may be and must be accounted for and explained by the fact that ancient documents describing lands in these Islands by metes and boundaries frequently set out extremely inaccurate estimated areas of the lands thus described, the superficial extent never having been ascertained by a formal survey.

Upon the whole record, we are of opinion that the evidence sustains the finding by the trial court that the greater part of the land described in the composition title was the separate property (*bienes propios*.) of Dolores Singian acquired by her by inheritance from her father who died in 1879, and that the remainder was also her separate property (*bienes propios*) purchased by or for her with funds which constituted a part of her separate estate (*bienes propios*).

It does not appear that the wife consented to the taking by her husband of the title to her separate property (*bienes propios*) in his own name or that he had any lawful authority so to do, and after his death she appears to have asserted her separate right thereto, notwithstanding the fact that it was registered in her husband's name, and to have exercised all the rights of ownership therein up to the time when she sold it to the applicant in these proceedings and put him in possession. Under these circumstances, we are of opinion that the husband had not and that his heirs have not such a right, title, or interest in or to the property in question as would sustain an opposition by them to the adjudication and registry of the land in question in favor of the applicant in these proceedings. At the time when the husband obtained the composition title to the land in his own name, he was the legal administrator of the conjugal property, and it is clear that in procuring the issuance of the composition title, in his own name, he must be held to have done so, first, merely as a step toward the placing of the title in her name by means of a later conveyance, which for some reason never was executed, or, second, by mistake either in the preparation of the formal documents or of his rights as legal administrator of the conjugal property, or, third, in fraud of his wife's rights thereto, for this purpose taking advantage of his position as administrator of the conjugal property. It is not necessary for us to determine the precise reason which induced him to act as he did, because it is quite clear that in any event, so long as the land remained in his name, his wife and her assigns had a perfect right to compel him during his lifetime, or his heirs after his death, to make the necessary conveyance placing the property in her name on the old land registry.

"The heirs of a deceased person can not be held to be 'third persons' (as that phrase is used in article 27 of the Mortgage Law) in relation to any contracts touching the real estate of their decedent which comes into their hands by right of inheritance; they take such property subject to all the obligations resting thereon in the hands of him from whom they derive their rights." (*Mojica vs. Fernandez*, 9 Phil. Rep., 403; decisions of the supreme court of Spain of January 27, 1881, and January 28, 1892.)

The only question submitted on this appeal, resting as it does on the claim of appellant to an interest in the land in question, as heir of her father in whose name the composition title was issued, and it appearing that, as one of his heirs, she has no real interest or right of ownership therein and is under an obligation to join in a proper conveyance of the title to the land in question to Dolores Singian or her assignee, it is evident that the judge below properly rejected her opposition to the adjudication and registration of the land in favor of the applicant, and held that she could not be heard to deny the right of ownership set up by him or to assert title in herself.

It is not necessary for us to decide and we do not decide what would have been the effect of a transfer on the old land registry by Domiciano Tison or his heirs of title to the land in question to a third person, a purchaser in good faith, because the record clearly discloses that no such transfer of title was in fact made.

The judgment of the court below adjudicating the land in question in favor of the applicant and directing its registry in his name should be affirmed with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Moreland, and Elliott, JJ., concur.

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