

GREGORIA DE CASTRO Y PEREZ ET AL., PLAINTIFFS AND APPELLEES, VS. INOCENTE ECHARRI Y GONZALEZ, DEFENDANT AND APPELLANT.

G.R. No. 5609. September 01, 1911

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

On December 10, 1868, Antonio Perez acquired by purchase a parcel of land for building purposes, situate in the district of Ermita of this city, at No. 148 Calle San Luis. He died on May 15, 1881, leaving a widow, Angela Echarri, and a daughter named Luisa Perez Echarri, who on March 28, 1904, sold the said lot to Inocente Echarri, and the latter erected thereon a house valued at P8,000.

On July 22, 1908, or twenty-seven years after the decease of Antonio Perez, the original owner of the lot, certain parties named Gregoria Castro and Mercedes Calderon sued Inocente Echarri for five-twelfths of said lot, calling themselves daughters of one Maria and nieces of one Justa whom they say were daughters of Antonio Perez in his first marriage with a woman named Eugenia Garcia. The Court of First Instance of the city of Manila awarded them 8,333.33/17,500 of the lot.

Defendant appealed, and from this appeal, with the briefs of the litigants, it appears:

- That it is a fact proven by the purchase deed that the original owner of the lot was Antonio Perez, without any mention whatsoever in said deed that he was married.

- That in no way, either by documentary or oral evidence, has it been directly proven by the plaintiffs that at that time he was married to any woman with whom he must under the law share the property acquired during marriage.

- That it is an established fact, admitted by both parties, that Antonio Perez was married in 1872 to Maria Meneses, by whom he had a son, but both said wife and son died before Antonio Perez did; so that they in no way figure in this suit.

- That it is also an established fact, admitted by both parties, that Antonio Perez at his death left a widow named Angela Echarri and a daughter by her, Luisa Perez Echarri.

- That this Luisa Perez Echarri is the only person who appears undoubtedly to be the successor in interest and the heir of Antonio Perez by operation of law, both in the testate and the intestate succession.

- That it appears from a piece of documentary evidence, consisting of an authentic public document, that before dying Antonio Perez executed a will; but this will could not be produced, and therefore his final statements and dispositions can not be known.

- That for the purpose of making a partition of inheritance in the intestate succession of Antonio Perez in which." the plaintiffs may figure, it is in every way necessary to prove that the original owner married Eugenia Garcia before he married his other two successive wives, whose marriages are satisfactorily proven; that he was already married to Eugenia Garcia when he purchased the lot in question; that in this first marriage he had two daughters, named Maria and Justa; and that from Maria sprang legitimately, that is, as daughters of a legal marriage under the laws then in force, Gregoria de Castro and Mercedes Calderon, who claim to be the lawful granddaughters of Antonio Perez.

- That there is not the least evidence in the record of the fact that Gregoria de Castro and Mercedes Calderon are the lawful daughters of this Maria; that there is only fragmentary evidence of the fact that this Maria was the lawful daughter of Antonio Perez.

These facts are denied in the defendant's reply, and in the brief accompanying his assignment of errors, in arguing upon the second assignment of error, he elucidates with a prolixity of data the legal impossibility of such facts. But such contention need not be considered here, especially as there are other arguments more conclusive, which the court must necessarily consider.

These arguments are as follows:

The present action does not concern a partition of inheritance but is an action for recovery against a third party who possesses the lot in question by single deed of purchase. This third party is not a successor in interest of Antonio Perez, and thus called upon either to defend or impugn the rights of succession of the alleged children of Antonio Perez, but he is the sole successor of Luisa Perez in ownership and possession of said lot, for the acquisition of which he had before him facts and documents that have not been denied, not even indirectly, nor in any way impugned. He is now disturbed in his possession by this suit, based upon facts which he could not have conveniently taken into account when he made such acquisition in good faith, nor was he under obligation, in the ordinary course of business, to make any inquiries.

The facts contained in the title deeds to the lot in question, which that third party had before him in making his purchase, are established facts, adduced by the plaintiffs themselves. He saw, first, in the original deed, that Inocencio and Perfecto Gallego, with a sister of theirs, were the true and lawful owners of the lot, which was perfectly identified in the deed by location, dimensions and boundaries; second, he saw how Inocencio and Perfecto Gallego, having become owners also of the part belonging to their sister, had on December 10, 1868, sold the lot, described in the same terms as in the deed, to Antonio Perez, the sale having taken place in this city of Manila before a notary public who, for that purpose, witnessed a document, the most formal that could be drawn up for the contract; and, finally, he saw another public document also witnessed by a notary, bearing date of January 11, 1888, seven years after the death of Antonio Perez, wherein it appears that Angela Echarri, widow of Antonio Perez, sold with right of repurchase to a merchant of Manila, Antonio de Marcaida, said lot, identified by boundaries, dimensions and location, according to the foregoing documents of which mention has been made, and stating "that said lot had been acquired by her deceased husband, Don Antonio Perez, according to the bill of sale executed on December 10, 1868, in the presence of the notary public, Don Baltazar de Ocampo, the original

whereof, with another original document of ownership, was, exhibited at the time and read by me [says the notary] and after they had been signed by me were attached here-to, to which I certify." And although the period for the repurchase was one year, he saw that on December 17, 1888, the lot had been resold to Angela Echarri by Antonio de Marcaida.

This transaction of Angela Echarri's shows plainly: That she held the muniments of title to the lot; that she exclusively possessed the lot for seven years after the death of her husband, Antonio Perez; that during such time, no one had questioned the ownership or possession of the lot; and, therefore, that she could freely dispose of it by sale. and the purchaser, an intelligent merchant of this city, had no hesitation in buying it.

She held the lot and disposed of it, it may be supposed, in the name and on behalf of her daughter, Luisa Perez, who was then a minor, and who was apparently the one who lawfully owned it. It was hers, as the legal heir of the deceased Antonio Perez, and his only successor in interest after his death; and when she became of age, she, on March 28, 1904, that is, after twenty-three years of undisturbed and peaceful possession, sold it to the defendant in this case.

The Maria who is said to be the mother of the plaintiffs, died in this city, in Calle Mercado, Intramuros, according to the certificate submitted; and there Mercedes Calderon says she lives. It does not appear that during her lifetime, and up to 1908, when she appears to have died, Maria made any pretense of being a co-owner of that lot; nor did she or Justa, who is also said to have been a daughter of Antonio Perez, institute any action for the partition of what was said to be a legacy of their alleged father. Only after the death of Maria and of Justa was an attempt made to make a partition of Antonio Perez's legacy.

The following facts are clearly proven in this case:

- That the defendant acquired the lot from one who, for twenty-seven years, was in fact before the world and in law, according to title deeds, the sole legal owner through inheritance, to wit, Luisa Perez.
- That it in no way appears in the case that she possessed the lot jointly and pro indiviso with any other person having an equal or a better right than hers to the legacy of her father, Antonio Perez.
- That after May 16, 1887, Luisa Perez's ownership was by individual title, as the only heir of Antonio Perez and the sole proprietor of the lot.
- That at no time has this sole proprietor been either judicially or extra judicially cited or questioned, so that she should understand her ownership to be in common or shared with other persons.

The purchaser having bought the lot under these circumstances, he acquired it by a clear title, in a regular manner, and for a consideration.

So then, even supposing what is not proven - that is, that the plaintiffs really are legitimate descendants of the women whom they claims as their mothers, and that these latter were really legitimate daughters of Antonio Perez, with better or equal right over Luisa Perez - they can not, after twenty-seven years, disturb a third-party, the defendant, a purchaser in good faith, who at present holds the lot by a clear title, because he is thereby protected; for, even should the title be in some way defective, he would still be protected by the prescription for a period of ten, and even of twenty years, by which possession of real property may be obtained. (Civil Code, arts. 1940 and 1957.) In the present case the defendant would have acquired the lot by prescription for a period of ten

years, especially when it is proven by the testimony of one of the plaintiffs and by documentary evidence that neither they nor their mothers have been abroad or out of the country, in order to make the required period twenty years. (Art. 1958.)

The claim of prescription having been presented in such form, it must not be understood to be restricted to the prescription of right of action, but must also include prescription of possession.

The "right to commence action" having been prescribed, it applies to negative as well as positive prescription, since the right of action lapses as to the person who acquires the possession or ownership as well as to the one who is liable to lose the ownership or possession.

It is true that, under article 1965:

"Among coheirs, co-owners, or proprietors of adjacent estates, the right of action to demand the division of the inheritance, of the thing held in common, or the survey of the adjacent properties does not prescribe; * * * nevertheless, the imprescriptibility of the action to demand the division of a succession known in Roman Law as *familiae erciscundae*, can not be invoked when one of the co-heirs has possessed the inheritance as owner and for a period sufficient to acquire it by prescription, because such action necessarily arises from the possession in common or pro indiviso of the inheritance, as laid down by the Supreme Court in a judgment of April 15, 1904 * * *. Moreover, it must be remembered that, as was stated in judgments of the same court of January 15, 1902, and June 22, 1904, the action among coheirs or co-owners to demand partition of the inheritance or division of a fund, to which said article applies, is distinct from the action for recovery involving ownership pro solido of the same fund, and if the question is one relating to the recovery of inherited property or a part of a common estate, and not of partition, the prohibition in said article is not applicable." (12 Manresa, Com. on Civil Code, 858.)

For the foregoing reasons, the judgment appealed from is reversed, without special finding as to costs. So ordered.

Torres, Mapa, Johnson, and Moreland, JJ., concur.

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