

GENEROSA JARCIA ET AL., PLAINTIFFS-APPELLEES VS. GREGORIO JARCIA ET AL., DEFENDANTS-APPELLANTS.

CA-G.R. No. 737. May 20, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

A parcel of land located in the barrio of Maliksi, municipality of Bacoar, Cavite, containing an area of 759 square meters, is the object of this litigation in which plaintiffs seek the partition of the property among themselves and defendants Gregorio, Iluminada, Constanca, and Aurora, all surnamed Jarcia.

Plaintiffs allege that the property was owned by the deceased Juan Jarcia and Fabiana Medina and should be divided in three equal parts: one-third to their daughter Generosa Jarcia, one-third to the heirs of their deceased son Melencio Jarcia, and the remaining one-third to the heirs of their deceased daughter Irene Jarcia.

Defendants contested plaintiffs' claim alleging that the property belongs to Macario Eusebio and his brothers and sisters, including defendant Gaudencio Eusebio, as children and heirs of the deceased Tomas Eusebio.

The plaintiffs are Generosa Jarcia, the surviving daughter of the deceased Juan Jarcia and Fabiana Medina, and the heirs of Irene Jarcia.

The lower court found for the plaintiffs and ordered the partition of the property as prayed for in the complaint. Defendants appealed.

The main issue in this case boils down to the question whether the litigated property belonged to the deceased Juan Jarcia and his wife and therefore to their heirs, as maintained by plaintiffs; or to the heirs of Tomas Eusebio, as maintained by defendants.

Plaintiffs' evidence tended to prove that in 1927 during the lifetime of Juan Jarcia and his wife, Simon Eusebio was allowed to construct his house on the property, that from 1903 up to 1937 the Jarcia family had been paying the corresponding land taxes as evidenced by Exhibits F to F-17, and that Juan Jarcia had been in continuous possession of the land since before the revolution against Spain until his death.

The parties agreed that on the land in question there are built two houses: one belonged to the deceased Juan Jarcia, now occupied by his daughter-in-law, Paulina Ugalde, who is the second wife of the deceased Melencio Jarcia, son of Juan Jarcia; and the other, to Simon Eusebio. From the documentary evidence, it appears that the lot in question had been recorded for land tax purposes since 1903 in the name of Juan Jarcia, that on September 3, 1937, it was recorded in the name of defendant Gaudencio Eusebio, but the tax declaration issued in his name was cancelled on September 20, 1937, and substituted by another tax declaration in the name of the heirs of Juan Jarcia.

Escolastico Cuevas, Justice of the Peace of Carmona, 30 years old, testified that he came to know the land in question when he was 10 or 12 years old age and that it was occupied by the house of Juan Jarcia and his children;

that Juan Jarcia died some 15 years ago, and that during his lifetime he was occupying the land as owner quietly, continuously, peaceably and adversely; that Simon Eusebio has had a house on the land since around 10 years ago; that the land in question has been the subject of litigation between the parties in this case some 5 or 4 years before, in a case instituted in 1937 in the Court of First instance of Cavite, the case having been dropped to be substituted by the present case; that the first case had to be dismissed for some technicality, due to non-inclusion of certain party defendants; that the case was initiated simultaneously with the discovery of the tax declaration made in the name of Gaudencio Eusebio; that he is the one who, on petition of the interested parties, had the tax declaration in the name of Gaudencio Eusebio cancelled to be substituted by one in name of the heirs of Juan Jarcia.

Generosa Jarcia, 44 years of age, one of the three children left by Juan Jarcia, testified that from the time she was 8 years of age, she knew that her father Juan Jarcia had been in the possession of the land in question, and he remained in said possession until he died; that her father and her older brother, Melencio Jarcia, were collecting the fruits of the land and they used to fence, clean and cultivate the same; that when her father died, her brother Melencio Jarcia succeeded him in the possession of the land; that no third persons had ever claimed-ownership of the land; that the house of Juan Jarcia has been existing on the land even since the revolution; that the house Of Simon Eusebio was built on the land only in 1927, and it was built with the permission of Melencio Jarcia granted to said Simon Eusebio; that the witness assented to Simon Eusebio to build a house on the land because Simon Eusebio assumed the obligation of paying the rent.

Eufemia Antonio de Guia , 76 years of age, testified that she new Juan Jarcia and she knows the land in litigation, because even before the revolution she was allowed by Juan Jarcia to build on the land a storehouse (camarin); that during the revolution against Spain in 1896, she had it repaired; that the said storehouse remained on the land for about 10 years or more, and that she had to take it out because she ordered the building of another of stronger materials; that Juan Jarcia had been in the possession of the land and later substituted by his son Melencio; that they occupied the land as owners thereof.

Before the plaintiffs rested their case, the parties agreed that a complaint for partition, dated October 4, 1937, was instituted in the Court of First Instance of Cavite; but it was dismissed without prejudice to the filing of another complaint. A copy of the complaint was marked as Exhibit I, but the same was not reconstituted and no copy thereof appears in the record.

Defendant Paulina Ugalde, 42 years of age, testified that she is living with her children had with her deceased husband, Melencio Jarcia, in their house located in the land in question; that the land in question, belongs to Macario Eusebio: that Gaudencio Eusebio is the brother of Macario; that after the death of Macario Eusebio, his son Ciriaco and his brother Gaudencio have been getting the products of the land; that she thumb-marked the document Exhibit 1, which has been signed by Juan Jarcia and Macario Jarcia; that she saw Macario Eusebio on the land in 1924; that although Macario was getting the products of the land, the land taxes were paid by her father-in-law, Juan Jarcia; that after Macario's death, Gaudencio Eusebio was the one who received the products, but the one who was paying the land taxes was her husband Melencio Garcia, who continued paying said taxes until his death and even after Exhibit I was signed in 1922; that Melencio Jarcia died in 1930; that the tax receipts, after the death of her husband, were taken from her house by her sister-in-law, Irene Jarcia; that Irene Jarcia was not living in the house but just went up the house and took those receipts; that witness did not resent this action of her sister-in-law; that after the death of her husband in 1930 she had not paid for the land taxes; that it was only in 1936 that she told Gaudencio Eusebio to pay the land taxes, "porque era encargado de mi esposo"; my husband told me that if I could not pay the tax of the land, I should deliver it to Gaudencio and because of the fact that I have been looking for the livelihood of my sons immediately went to see Gaudencio to inform him that the land

would be embargoed".

Gaudencio Eusebio, 66 years of age, testified that he is the brother of the deceased Macario Eusebio; that he has other brothers - Jacob, Emeterio, Isidoro, Apolonio and Tony — Emeterio being the only one surviving; that Macario had left four children — Ciriaco, Catalino, Rosa and Faustino; that when their father Tomas Eusebio died, they inherited from him the land in question; that the land was recorded in the name of Juan Jarcia because the assessor found out that the house erected thereon belonged to Juan Jarcia; that Macario requested Juan Jarcia to pay for the land taxes, in view of the fact that he had his house on the land. The Meralco cut canes in the land and it paid the price to the witness. Asked why the Meralco paid to the witness and not to Juan Jarcia, the witness answered: "because Juan Jarcia had died then, the one still living was his son Melencio Jarcia. The Meralco was offering payment to Melencio Jarcia, but the same refused to receive the payment telling that the land was not his." The witness was paid P18.00 for which he issued a receipt, which was not presented as evidence. Simon Eusebio built his house on the land upon permission of Macario Eusebio and on condition that he would pay P2.00 per year. When witness began to pay the land taxes for the property in question in 1937, there was already a pending case between witness and the plaintiffs in this case. Simon Eusebio is a nephew of witness.

Hilarion O. de Guzman, 48 years of age, Municipal Treasurer of Bacoar, testified that in 1935 or 1936, he went to see Paulina Ugalde to ask her for the payment of the land tax of the land in question, and "she told me that she would pay and that her sister-in-law was the one going to pay. She told me to see the Jarcias, particularly her sister-in-law." The witness had been in touch with Gaudencio Eusebio in connection with a message from the assessor requiring him to make an investigation before the tax declaration of the land in question be transferred to Gaudencio Eusebio who, on being asked if there was any paper, answered: "Yes, there is, and it is in court. We shall prove in court that that piece of land is ours."

Juan Alalay, 50 years of age, Municipal Secretary of Bacoar, declared that it is not true that Paulina Ugalde and Gaudencio Eusebio, as the first testified, signed before him an affidavit of transfer on September 3, 1937. The fact is that it was ex-Pres. Ocampo who brought the paper to the witness already finished. The affidavit of transfer was in a form. "It was a sale." Eduardo Ocampo came alone. The witness requested Ocampo to bring in Gaudencio Eusebio and Paulina Ugalde so that he could propound questions to them, but Ocampo said that Gaudencio was sick and Paulina could not walk. Through Exhibit H, he is the one requested to have the tax declaration in the name of Gaudencio Eusebio declared null and void.

Arcadio Jarcia testified that he knows Paulina because she is the second wife of his father. After his father's death, the witness, 25 years old, remained living in the same house which he knew since his childhood with Paulina Ugalde and his brothers, who are children of Paulina Ugalde. The witness left the house only in 1937 when he was called as a trainee in the Philippine Army. The witness testified that he knows Exhibit 1, because the document was brought to their house in January, 1939, at about 8:00 p.m., and someone made a call at the house about the same, who happened to be Eduardo Ocampo. The latter said to Paulina to sign the document, adding that he would take care of all the remaining signatures. After Paulina had signed the document, Eduardo Ocampo folded it and brought it with him. When he asked his stepmother about the document, she answered, "It is nothing." Paulina Ugalde signed it by thumbmark for which purpose Ocampo brought with him an ink pad.

The preponderance of evidence supports the theory that the land in question belongs to the Jarcia family. By the testimonies of Eufemia Antonio de Guia and Generoso Jarcia, plaintiffs have shown that Juan Jarcia had been in the possession, as owner, of the land in question even before the revolution against Spain in 1896, and that he remained in the possession thereof until his death. The evidence to said effect has neither been disputed nor contradicted. After Juan Jarcia's death, the possession was transferred to his heirs represented by his son Melencio Jarcia and, on the latter's death, by his children. Juan Jarcia's house on the land, which is occupied by the children

of Melencio Jarcia, was built even before the advent of the American sovereignty. Since 1903, the land has been declared for taxation purposes in the name of Juan Jarcia, and it was Juan Jarcia who had been paying since then the land taxes. The possession and ownership of Juan Jarcia and his heirs were never disputed until 1937 when the first complaint for partition was filed with the Court of First Instance of Cavite, to be substituted later by the complaint in this case.

Defendants failed to disprove or to rebut or refute the more than half century possession of the Jarcia family of the land in question. Defendant Gaudencio Eusebio declared that he and his brothers inherited the land from their father Tomas Eusebio when the latter died, but there is not a scintilla of evidence as to Tomas Eusebio's title thereof or as to his possession of the land as owner. Defendants' evidence failed to show when Tomas Eusebio died. Defendants' explanation as to how the land was declared for taxation purposes in the name of Juan Jarcia is unconvincing. Gaudencio Eusebio declared that his brother Macario Eusebio requested Juan Jarcia to pay for the land taxes, in view of the fact that he had his house on the land; but no reason was given why Juan Jarcia, if he was not the owner of the land, should have his house erected thereon. Gaudencio Eusebio testified that he was the one who received the payment for the canes cut by the Meralco on the land, and his reason was "because Juan Jarcia had died then". Both parties agree that Simon Eusebio built his house on the land in 1927, according to Gaudencio Eusebio, upon permission of his brother Macario Eusebio; and according to Generosa Jarcia, upon permission of Melencio Jarcia. These conflicting testimonies do not add an iota of force to defendants' theory.

There are three evidences which apparently militate in favor of defendants' theory, namely: (a) the tax declaration in the name of Gaudencio Eusebio; (b) Paulina Ugalde's testimony; and (c) Exhibit 1. They are, nevertheless, worthless if tested by analysis.

The tax declaration in the name of Gaudencio Eusebio had been recorded irregularly. It belongs to the class of self-serving evidence, having been prepared when there was already a pending litigation in which said evidence was needed to serve the interests of one of the parties and that it was a short-lived tax declaration, because it was recorded on September 3, 1937, and seventeen days thereafter, that is, on the 20th of the same month, after it was found to be irregular, it was cancelled and substituted by another in the name of the heirs of Juan Jarcia. Lastly, it was never explained why the declaration was made in the name of Gaudencio alone, and not in the name of the heirs of Tomas Eusebio who, according to defendants, are the owners and not Gaudencio alone.

Being the widow of Melencio Jarcia and the mother of some of his children, who would be benefited if the land is declared as property of the Jarcia family, Paulina Ugalde's testimony in support of defendants' theory would seem to carry much weight. But there are circumstances that make her testimony suspicious and unbelievable. She testified that the land in question belongs to Macario Eusebio; but in 1936 she told Gaudencio Eusebio to pay the land taxes "porque era encargado de mi esposo." She declared that she saw Macario Eusebio on the land only in 1924, and that after his death, although Gaudencio Eusebio was the one who received the products, the land taxes were paid by her husband Melencio Jarcia, who continued paying said taxes until his death and even after Exhibit 1 was signed in 1922. She testified also that after the death of her husband, her sister-in-law, Irene Jarcia who was residing in another house, just went up to the house of Paulina Ugalde and took the tax receipts. Lastly, she declared that she was unable to pay the land taxes and had to look for the livelihood of her children. She said: "My husband told me that if I could not pay the tax of the land, I should deliver it to Gaudencio Eusebio." But her husband died in 1930. She was unable then to pay the land taxes, and it was only in 1936 that she requested Gaudencio Eusebio to pay the land taxes, "porque era encargado de mi esposo". Although she denies having resented the action of her sister-in-law, Irene Jarcia, in taking the tax receipts, we are not, under the circumstances, in a position to accept her denial at face value, as it is contrary to the normal course of human conduct. The action of Irene Jarcia in going up the house and, without Paulina Ugalde's permission, in taking the

tax receipts cannot be taken otherwise than being offensive to sensibilities of Paulina Ugalde. Her resentment was strong enough to drive her to become a tool in the hands of Gaudencio Eusebio, as can be shown by the fact that, without the permission or the knowledge of her sister-in-law, Irene Jarcia, and other heirs of Juan Jarcia, she helped Gaudencio Eusebio secure the cancellation of the tax declaration in the name of Juan Jarcia to be substituted by one in the name of said Gaudencio Eusebio.

With respect to Exhibit 1, supposed to have been signed in 1922, it was, according to Arcadio Jarcia, prepared only in January, 1939, and thumbmarked by Paulina Ugalde at about 8:00 p.m. at the behest of Eduardo Ocampo. This testimony of Arcadio Jarcia, was not rebutted. Besides, there are circumstances which militate against the authenticity of said document. It appears that, with the exception of Paulina Ugalde, all the other signers of the document have died; the alleged signatures of Juan Jarcia, and Melencio Jarcia on document were not satisfactorily identified; although there were notaries in Bacoar, besides the justice of the peace, the document was not notarized notwithstanding its importance; when in 1937 Gaudencio Eusebio secured the recording in his name of the tax declaration, he failed to exhibit to the proper authorities said document or to deliver, at least, a copy thereof, said failure corroborating the testimony of Arcadio Jarcia to the effect that the document was prepared only in January, 1939, when Juan Jarcia and Melencio Jarcia, who appear as the ones who executed the document, were already dead. Lastly, if it is true, as alleged by Gaudencio Eusebio, that the land in question is a common property of the heirs of Tomas Eusebio, no explanation has been given as to why Exhibit 1 should be executed only for the sole benefit of Macario Eusebio as exclusive owner thereof; and that, if the deed was executed in 1922, no explanation has ever been given as to why no action has been taken since then to make said document effective by the transfer of the tax declaration from Juan Jarcia to Macario Eusebio.

For all the foregoing, the lower court's decision is affirmed, with costs against appellants.

Ozaeta, De Joya, and Bengzon, JJ., concur.

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