

DIOSCORO ESPADERA AND LICERIA ESPADERA, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, CIRIACA GEPAYO, AND AMBROCIO GEPAYO, RESPONDENTS.

G.R. No. 77090. September 16, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a petition for review of the decision of the respondent court dated November 18, 1986 reversing and setting aside the decision of the Regional Trial Court of Iloilo City.

On February 6, 1954, Anulina Vda. de Bogacki purchased in her name a certain property from Pedro Ledesma for P1,100.00,[1] P800.00 of which belonged to her daughter Emma who was still a minor while the remaining portion of the purchase price belonged to her. At that time, Anulina was still the appointed guardian of Emma. The amount of P800.00 belonging to Emma was the proceeds of a loan Anulina secured as guardian when she mortgaged her daughter's two parcels of land to the Philippine National Bank with the authority of the court.

Soon after buying the land, she instituted her sister, private respondent Ciriaca Gepayo, as tenant on the land. When Anulina mortgaged the same property on May 17, 1973 to Fidel Llamado to secure a loan of P1,300.00,[2] the latter also executed a leasehold contract with the said private respondent and her husband respondent Ambrocio Gepayo.

Meanwhile when the PNB became the legal guardian of Emma, Anulina was required to reconvey the said property to Emma. She executed a deed of reconveyance on April 26, 1962.[3]

Emma, who was by then married to Antonio Chu, sold the property to petitioners on July 14, 1978.[4] Thereafter, petitioners fenced the property thereby shutting out private respondents. Thus, private respondents filed an action for reinstatement and damages against petitioners in the Regional Trial Court of Iloilo City claiming to be the agricultural tenants since 1954 of Lot No. 3524-A which is a portion of Lot No. 3524, Tigbauan Cadastre, situated at Barangay Parara-Sur, Tigbauan, Iloilo. After trial on the merits, a decision was rendered on January 23, 1986 dismissing the complaint for lack of cause of action. On appeal to the respondent appellate court, a decision was rendered on November 18, 1986, the dispositive part of which reads as follows:

"WHEREFORE, the Decision under appeal is hereby REVERSED and SET ASIDE and another one entered declaring appellants Ambrosio Gepayo and Ciriaca Gepayo as the tenants/lessees of the land in question, entitled to reinstatement thereon, and ordering appellees to pay, jointly and severally, the appellants the sum of P300.00 as moral damages, P500.00 as exemplary damages and P500.00 as litigation expenses, or a total of P1,300.00, with legal interest from the filing of the complaint on October 23, 1979 until the amount is fully paid, and to pay the costs." (Rollo, page 15)

Hence, the instant petition.

The findings of facts made by the respondent court to the effect that the private respondent are tenants of

petitioners are conclusive and binding on petitioners. Factual issues cannot be raised in this proceeding.[5]

Thus, the only issue that should be resolved in the instant petition is the identity of the property, petitioners claiming that the property over which the private respondents assert tenancy relationship is different from the said property of petitioners. Petitioners allege that while the area of the property sold to Emma is 3,887 square meters only, the land area bought by Anulina from Pedro Ledesma has a total area of 7,643 square meters.

The reason is obvious. What was sold by Anulina was only one-half of the property which Anulina purchased from Pedro Ledesma as shown in the deed of sale[6] which reads as follows:

"That I am on one hand and the heirs of Vicente Ledesma on the other hand are the true joint owners in equal undivided shares of one half (1/2) each over two parcels of land more particularly described as follows:

- A parcel of coconut land, situated in Barrio Parara, Tigbauan, Iloilo, containing an area of 6,959 square meters, more or less, bounded on the North by the properties of Rosalia Trofeo and Anastacia Torremoro; on the East by the property of Clara Tuvilla; on the South, by the National Road to Guimbal, and on the West, by the Tina-an Creek. Declared Tax Declaration No. 15657 and assessed at P370.00.

- A parcel of coconut land, situated in Parara, Tigbauan, Iloilo, containing an area of 674 square meters, more or less, bounded on the North and South by the property of Nicolas Tuvilla and Tina-an creek; on the East by the Tina-an Creek, and on the West, by the property of Nicolas Tuvilla. Declared for tax purpose for the current year under Tax Declaration No. 15658 and assessed at P50.00.

That for and in consideration of the sum of ELEVEN HUNDRED (P1,100.00) PESOS ONLY, Philippine Currency, receipt of which in full and to my complete satisfaction is hereby acknowledged and confessed from Anulina Ledesma, likewise of legal age, widow, Filipina and a resident with postal address at Rizal Estansuela St., Iloilo City, I do hereby SELL, CEDE, TRANSFER and CONVEY by way of DEFINITE AND ABSOLUTE SALE unto the aforesaid Anulina Ledesma, her heirs, legal representatives and assigns, my one half (1/2) undivided share in the properties herein before described, free from all liens and encumbrances whatever." (Emphasis supplied.)

There can be no question, therefore, as to the identity of the land in question, the tenancy over which is not disputed in this proceeding.

Indeed, the question of identity of the property has never been raised in the lower court and in the respondent court. It is being raised for the first time in this petition. The too well-known rule is that it is too late to raise this issue on appeal when it has not been raised either in the lower court or in the appellate court.[7]

WHEREFORE, the petition is DENIED for lack of merit with costs against petitioners.

SO ORDERED.

Narvasa, Cruz, Grino-Aquino, and Medialdea, JJ., concur.

[1] Exhibit "E".

[2] Exhibit "F".

[3] Exhibit "15".

[4] Exhibit "11".

[5] Hernandez v. Court of Appeals, 149 SCRA 67.

[6] Exhibit D.

[7] *Petilla v. Court of Appeals*, 151 SCRA 1; *Congressional Commercial Corporation v. Court of Appeals*, 146 SCRA 90; and *Santos v. Intermediate Appellate Court*, 145 SCRA 592; Section 18, Rule 47, Rules of Court.

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