

DIONISIO CABUNIAG, ADMINISTRATOR OF THE ESTATE OF THE DECEASED NARCISA GAGARINO, PLAINTIFF AND APPELLANT, VS. MARCOS MAGUNDAYAO, DEFENDANT AND APPELLEE.*G.R. No. 7888. December 06, 1913*

Ponente: TORRES, J.

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This is an appeal filed by counsel for the plaintiff from the judgment of January 23, 1912, whereby the Honorable Higinio Benitez, judge, absolved the defendant Marcos Magundayao from the complaint and ordered Benita Safont to restore to the plaintiff Dionisio Cabuniag, as judicial administrator of the estate of the deceased Narcisa Gagarino, the ownership and possession of the lot or parcel of land described in the complaint, upon the plaintiff's returning to the defendant Benita Safont whatever sum she may have paid to Roberto Jonas for the mortgage of the said lot; without special finding as to costs, since the plaintiff was allowed to sue as a pauper.

By a written petition of April 19, 1911, Dionisio Cabuniag, the administrator of the estate of the deceased Narcisa Gagarino, requested that judgment be rendered by holding to be null and void and of no effect the contracts of the sale executed by Roberto Jonas in favor of Marcos Magundayao and Benita Safont and by ordering these latter to restore to the plaintiff the lands unlawfully sold to them, likewise all the products of the same that they might have obtained therefrom, with the costs against the defendants. In support of his petition he alleged that Narcisa Gagarino was, at the time of her death, the owner of a lot and a piece of coconut land situated in the barrio of Cabay of the pueblo of Tiaong, Province of Tayabas, the respective boundaries, area, and plantings of which were specified in the complaint, and had held them peaceably and quietly, in the quality of owner, for more than thirty years prior to the date of her death, which occurred in February, 1903; that, one month after her death, Roberto Jonas, under the pretense of being her heir, took possession of the aforementioned piece of coconut land and lot and sold the former to Marcos Magundayao and the latter to Benita Safont, when in fact Jonas did not have, either at the time of the sale or of the complaint, any right whatever in the estate of the deceased Narcisa Gagarino, because the latter died intestate and left three legitimate grandchildren, who were her heirs by force of law; and that the purchasers, Magundayao and Safont, immediately after unlawfully taking possession of the property which they had acquired, commenced unduly to derive gain from the products thereof, for the coconut land yielded annually a revenue of P150, the value of the fruit from the trees planted thereon, and the lot rented for P40 per annum.

The demurrer interposed by the defendant Magundayao having been overruled, the latter in his answer made a general and specific denial of each and all of the facts alleged in the complaint, except such of them as were in agreement with the following allegations, and set forth that he acquired the said coconut land by purchase from Roberto Jonas, Urbana Jonas, and Paula Gagarino and had lawfully and in good faith held it since then; and that the plaintiff had no right to ask for the annulment of the contract of sale, for the reason that the deceased Gagarino, or her estate, was a third person who had taken no part whatever in the said contract which could not affect the right of ownership alleged by the administrator in the land concerned in the case at bar. In counterclaim

he alleged that, as owner and possessor in good faith, he had planted on this land 183 coconut trees, which were growing and were worth P457.50, and gogo plants which were worth P25. He therefore prayed that he be absolved from the complaint, with the costs upon the plaintiff, and further that, should judgment be rendered in behalf of the plaintiff, the latter be ordered to pay him P60, the amount expended by the defendant for the purchase of the land, and, in addition thereto, P482.50 for the improvements made thereon in good faith.

The other defendants, Benita Safont and Roberto Jonas, though summoned did not appear at the trial; and Benita Safont was declared to be in default, but not so Jonas, who, nevertheless, testified in the case as a witness for the plaintiff.

In order to decide the claim made by the administrator of the estate of the deceased Narcisa Gagarino, it must be determined whether the land of about "three cavaness and a half of seed," the property sought to be recovered, was of the exclusive ownership of the deceased, and whether any share whatever was held therein by Paula Gagarino, a sister of the deceased Narcisa, and by the brother and sister Roberto Jonas and Urbana Jonas, the nephew and niece, respectively, of the said Narcisa, who appear as the vendors in the document (Exhibit 1), presented by the defendant and expressive of the sale of the said parcel of land, made by the said aunt, nephew, and niece, in favor of the defendant Marcos Magundayao.

From the pleadings and proof found in the record, it appears that upon the death, many years ago, of one named Justa, the mother of the sisters Narcisa, Paula, and another whose name is not given in the record and who was the mother of the children Roberto and Urbana, she left among other property a piece of land 12 hectares in area. This land remained undivided among the three heirs of the original owner and after Narcisa Gagarino's death, her sister Paula and her nephew and niece Roberto and Urbana, the children of another sister who it appears also died, sold one-third of the undivided land of joint ownership to the defendant Marcos Magundayao.

Upon these premises, the action for recovery of possession brought by the administrator of the estate of the deceased Narcisa Gagarino has for its sole object the recovery of one-third of the said 12 hectares of land; and, on account of this being pro indiviso property and the respective part thereof that pertains to each one of its three coowners, the heirs of the original owner, their predecessor in interest, not being individually and separately determined, the fact of the conveyance having been made by Paula Gagarino and the brother and sister Roberto and Urbana Jonas, in representation of their mother, another coheir and coowner of the said pro indiviso land, in no way affects nor prejudices the rights of the heirs of the deceased Narcisa Gagarino, inasmuch as two-thirds of the undivided land of common ownership still remain, one of which corresponds to the testate or intestate succession represented by the plaintiff, and the other third, by an unquestionable right, to the said Paula Gagarino and to the brother and sister Roberto and Urbana Jonas, the children of another sister of Narcisa and Paula Gagarino.

Paula Gagarino has by herself an undeniable right to one-third of the said 12 hectares of land of common ownership, and the brother and sister Roberto and Urbana Jonas have likewise an indisputable right to another one-third of the same; and therefore, the said Paula Gagarino, Roberto and Urbana Jonas, in selling only one-third of the said land to the defendant Marcos Magundayao, merely exercised their unquestionable right to dispose of their property, whereby apparently no detriment ensued to the heirs of Narcisa Gagarino, inasmuch as the latter was the owner of only one-third of the pro indiviso land concerned. Therefore there could be no sanction either in justice or in law for the annulment of the contract of sale whereby the defendant Magundayao lawfully acquired the land referred to in the document Exhibit 1 and which belonged exclusively to those who sold it to him.

It is true that Narcisa Gagarino was during her lifetime a coowner and that this right now pertains to her heirs, yet such right of hers did not extend to all the land, but only to one-third of it, and if her coheirs Paula Gagarino and

the children of her other sister must respect the rights that belonged to the heirs of Narcisa Gagarino, these heirs are likewise obliged to take notice of those pertaining to Paula Gagarino and to the brother and sister Roberto and Urbana Jonas.

Furthermore, it was not proved at trial that any apportionment was made among the interested parties of the property that belonged to the common mother named Justa, included in which was the land in question of 12 hectares in area, nor that all this land would have fallen solely to Narcisa Gagarino, to the exclusion of Paula, her sister, and of her nephew and niece, Roberto and Urbana, the children of her other sister; therefore, notwithstanding that the said land was undivided, these three parties last named could very well have sold one-third of the same to the defendant Magundayao, so long as they did not abuse their right by selling the whole of the property and by disposing even of the part that pertained to the heirs of Narcisa Gagarino.

As regards the ownership of the lot mortgaged to Benita Safont, we accept the findings of the trial court contained in the judgment appealed from, to wit, that the said lot, on which the deceased Narcisa had built a house and planted an orchard, had belonged to the latter and had been held by her for more than thirty years, and that, if Benita Safont acted in good faith in furnishing money to Roberto Jonas to defray the expenses of the funeral and burial of the said Narcisa Gagarino, under security of the lot aforementioned, it would not be just to oblige such creditress to return to the heirs of the deceased the products or revenues of the lot, as neither did they pay any interest on the amount loaned.

The creditress Safont must return to the heirs of the deceased Narcisa the said lot, without its products or revenues, whenever she shall have collected the amount loaned by her without interest for the burial of the said deceased. It is unnecessary to declare null and void the contract or the act of the delivery of the said lot in security for the said loan, for the purpose of the redemption of the property upon payment of the amount loaned.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, we hereby hold that there are no grounds for the annulment of the contracts of sale and mortgage aforementioned, and the defendant Marcos Magundayao is absolved from the complaint. Upon payment of the sum loaned by Benita Safont, the latter shall return the said lot to the heirs of the deceased whose estate is represented by the administrator-plaintiff, without special finding as to costs, and to this extent the judgment appealed from is affirmed.

Arellano, C. J., Carson and Trent, JJ., concur.

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