

**GABRIEL JUSON AND HIS WIFE MAXIMA JAVIER, ET AL., PLAINTIFFS
AND APPELLANTS, VS. ANA PONCE IGNACIO AND HER HUSBAND
PRUDENCIO BINUYA, DEFENDANTS AND APPELLEES.***G.R. No. 8791. December 06, 1915*

Ponente: ARELLANO, C.J.

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On October 23, 1833, one Leoncia Javier died, leaving a will she had executed in November 27, 1882. In clause 5 thereof she declared that her nephew Alejo Javier, a son of her deceased brother Romualdo, had rendered her certain services, in compensation for which she bequeathed to his daughters, Esperanza, Maxima and Emilia, two parcels of land situated in Balanti, municipality of Baliuag, Bulacan, worth P1,150. She therefore left instructions that at her death the said property, together with the title deeds pertaining thereto, be delivered to the aforementioned Alejo Javier, in order that he might take the possession and benefit thereof.

The executor of the estate of the deceased Leoncia Javier, named Vicente Tiongson, in the partition of the property made by him on October 3, 1884, assigned to said legatees Esperanza, Maxima, and Emilia Javier, represented in the partition by their father, Alejo Javier, the said two parcels of land in Balanti, pueblo of Baliuag, Bulacan.

On October 6, 1884, Alejo Javier, father of the said three legatees, sold with right of repurchase the said two parcels of land in Balanti to Ana Ponce Ignacio and her husband Tomas Lim-Ungco for the sum of P600, as shown in a private document drawn up on stamped paper of the proper denomination and signed by the vendor and two witnesses. (Exhibit 1.)

On April 26, 1886, a new deed of sale under pacto de retro of the said two parcels of land was again executed in behalf of the same purchaser Ana Ponce Ignacio and her husband Lim-Ungco, for the sum of P1,150, the term of ten years being set for the repurchase. The vendors in this sale were the aforesaid legatees Esperanza, Maxima and Emilia Javier, whose names were signed to the document, respectively, at request of the first, by Mateo Talag, at the request of the second, by Alejo-Javier, her own father, and at the request of the third, by Primitivo Javier, her brother, in the presence of three witnesses, Jose Rustia Francisco, Mariano Ramos and Vicente Francisco, who also affixed their signatures. (Exhibit 2.)

Esperanza Javier died unmarried, without issue.

Emilia Javier also died, but left two minor sons, Jose O. Bias and Tirso O. Bias.

Maxima Javier, who is still living, and these two sons of her sister Emilia, Jose O. Bias and Tirso O. Bias, assisted by their curator ad Mem, Mariano Velayo, have brought the present proceedings against Ana Ponce Ignacio and her present husband Prudencio Binuya, the complaint having been filed on August 18, 1911.

In said complaint they ask that they be declared to be the owners of the two parcels of land claimed by them, and that defendants be ordered to restore the same and to pay them, as indemnity for loss and damage, the value of the

fruits obtained from the property, amounting to the sum of P27,000, with legal interest thereon from the date of the filing of the complaint, and also the costs of the suit.

Defendants, besides making a general denial, alleged that they had been in possession of the two parcels of land as owners for more than thirty years.

Plaintiffs, subsequently learning of the title by composition obtained from the Government by Ana Ponce Ignacio on April 18, 1894, moved that said composition title be declared null and void.

The plaintiff Maxima Javier was born on October 24, 1874, (Exhibit E), and Emilia Javier, from whom the other plaintiffs, Jose and Tirso O. Bias, derive their rights in this action, was born on January 4, 1877 (Exhibit F), so that when the document (Exhibit 2) was executed, on December 26, 1886, the former was twelve years old, and the latter, about ten.

The act by which the ownership of the two parcels of land sought to be recovered passed to a third person was the sale made by the father of Maxima and Emilia Javier on October 6, 1884, a sale that was certified to and corrected on December 26, 1886, for the purpose, it appears, of fixing the period of ten years for the repurchase and of increasing the sale price to P1,150. On December 26, 1896, the sale became final as to the third purchaser, Ana Ponce Ignacio, and from that date, the ownership of Maxima and Emilia Javier and, their right to repurchase the property lapsed by the consolidation of that ownership in Ana Ponce Ignacio.

The complaint does not ask for the annulment of the instruments of October 6, 1884, and December 26, 1886; it simply prays for the recovery of the two parcels of land from the possession of the third purchaser Ana Ponce Ignacio.

The Court of First Instance of Bulacan absolved the defendants from the complaint, with the costs against plaintiffs.

The latter appealed.

Facts that occurred prior to the time the Civil Code went into force must be judged and decided in accordance with the laws then in force. Pursuant thereto, the two parcels of land bequeathed to Maxima and Emilia Javier formed the adventitious private property of these girls who were living under the paternal authority of their father Alejo Javier. And, "This gain," says law 5, title 17, of the Fourth Partida, "is called in Latin *adventitia*, because it comes from without, and not from the father's property." In respect to the child's adventitious property, this law provides that the ownership thereof shall pertain to the son and its usufruct to the father, on account of his paternal authority.

The powers the father possessed by reason of his usufruct and administration are very exactly determined by law 24, title 13, of the Fifth Partida, summarized in jurisprudence which has given the support of its authority to the recognized scope of this law, as may be seen by the decisions of June 16, 1862, December 30, 1864, February 1, 1867, November 12, 1875, May 18, 1878, etc.

This jurisprudence says that: "Parents, though administrators of this private property while then children are under the paternal authority, are not authorized to alienate the same unless their own property be mortgaged as security for the things sold, and as guaranty for losses and damages. If the property be alienated, the children have a clear right of action against their parents' estate, through a personal action, or one to foreclose the mortgage, not that for recovery of ownership against a third party in possession, except they prove that their parents' estate is insufficient for the payment of the property sold, and even in this case they must expressly renounce their right to the inheritance. So that a judgment which, without these conditions, awards the recovery of ownership, infringes the

present law."

Plaintiffs have not proved that Alejo Javier died, and therefore the right of action to foreclose the mortgage and the right to the first mentioned action that lies in their behalf do not arise except as expressly provided by the laws above referred to, until "after the death" of the father. Neither have they proved that they have exercised their direct and principal action against the estates of their father and grandfather, respectively, as the law also provides that they shall do after previously renouncing their right to inheritance from the same, before bringing this subsidiary action for recovery of ownership against a third party in possession, that is, against "whomsoever is in possession of the property." Therefore, the action herein brought openly violates said law, and the courts can not sustain the plaintiff in his complaint without violating it also, when, as is evident in the present case, absolutely no account has been taken of the condition and requirements without which the exercise of the right of action to recover the ownership is a flagrant violation of the law.

Furthermore, on August 18, 1911, the date of the complaint, Maxima Javier had completed the 36th year of her age, and Emilia Javier, her 34th; consequently, more than sufficient time had elapsed since they became of age and also since the four years allowed by law for the correction of errors of the age of incapacity and inexperience: this, with reference to the principal action that should have been brought, but was not.

As regards the subsidiary action, improperly brought, the defendant Ana Ponce Ignacio has been in possession for 27 years and this possession was quiet, adverse, and peaceable, until it was disturbed by the complaint filed in this case. On the hypothesis that the sale made by the father of a family, in the exercise of his paternal authority, a sale which was not challenged either at the termination of such paternal authority or on the death of him who exercised it, did not convey a perfect title, it would always be a just title for the purpose of the prescription of ownership and real rights in the thing.

By reason of the preceding legal grounds, principally and even exclusively the first, the judgment appealed from should be, as it is hereby, affirmed, with the costs against the appellants. So ordered.

Torres, Johnson, Carson, Trent, and Araullo, JJ., concur.

Judgment affirmed.

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