

PEDRO TIAMSON ET AL., PLAINTIFFS AND APPELLANTS, VS. MAGNO TIAMSON ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 9692. October 21, 1915*

Ponente: ARELLANO, C.J.

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On May 3, 1895, there was inscribed in the property registry of Albay an urban estate consisting of a lot, on which stood at that time a canuirin or small store, situated on Calle Velarde of the pueblo of Legaspi; the said parcel contained an area of 35 ares and 1 centare, and was bounded on the north by the land occupied by the public market, on the east by the highway leading to Tabaco, on the south by the lots of Francisco Cepeda and Maxima Azana, and on the west by a public alley and public land. This inscription was made in the name of Juan Tiamson, by means of a possessory information title duly approved. (Exhibit 3.)

On January 27, 19p3, after the death of Juan Tiamson, eight people, some of them surnamed Narciso and others Padilla, filed a complaint in the Court of First Instance of Albay against Maria Tiamson, his mother who survived him and against Magno Tiamson, his eldest child. The object of the complaint was to recover said land (Exhibit 1). Maria Tiamson answered the complaint and alleged that the land referred to therein had been her exclusive property since the year 1848; that as such exclusive owner she disposed of it in behalf of her son Juan Tiamson, father of the defendant Magno Tiamson; that about 23 years previous, by reason of said conveyance, Juan Tiamson entered upon the possession of the land, quietly and peaceably continued therein, and performed acts of ownership as such proprietor; and that, on the death of Juan Tiamson, his children, the eldest of whom is Magno Tiamson, succeeded him in his ownership and possession. (Exhibit 2.)

On November 12, 1912, the present complaint was filed in the Court of First Instance of Albay. It prays that said land be divided into four parts—one for Pedro Tiamson, another for Pablo Tiamson, a third for the children of Victorina Tiamson, and, finally, another for the children of Juan Tiamson. The plaintiffs are Pedro Tiamson, Pablo Tiamson, and eight others all children and grandchildren of Victorina Tiamsonf. The defendants are the three children of Juan Tiamson. The complaint alleges that Maria Tiamson died in or about the year 1903, and that Pedro, Pablo, Victorina and' Juan Tiamson were or are natural, recognized children of the deceased Maria Tiamson.

The defendants, besides a general denial, set up as a special defense the fact of their quiet and peaceable possession as owners for more than ten years, their father Juan Tiamson's likewise quiet and peaceable possession as such for more than twenty years, and, consequently, prescription for a period of more than ten years, confirmed by acts of ownership performed on the land consisting of improvements, inasmuch as they had constructed thereon warehouses and two small houses of mixed material, all valued at more than P8,000; this amount, they claimed, should be reimbursed to them if the case were decided against them.

After an examination of plaintiffs' evidence, which was merely parol, and defendants' both parol and documentary evidence, the court, considering that the former had not proved any right whatever in the land in question, ordered

that the case should be dismissed and that plaintiffs should pay the costs. Plaintiffs appealed.

An action having been brought for the division of a parcel of land supposed to be pro indiviso property and to have remained such at the death of Maria Tiamson, plaintiffs have proceeded by begging the question. The first question, to be precise, is whether Maria Tiamson left the disputed land at her death, in order to suppose it to be pro indiviso property; and the second is whether plaintiffs have any right in the land concerned, in order to require its division.

With respect to the first point, it is obvious that prior to Maria Tiamson's death she herself, answering a complaint in 1903, stated that twenty-three years previous the land belonged to Juan Tiamson for the reason that she had conveyed it to him.

This is fully proven by the document Exhibit 3, one that was recorded in the property registry and that has not been controverted from 1895 to 1912.

But, inasmuch as the registrant Juan Tiamson stated in his petition for possessory information title that he had acquired the land under title of "a devise (herencia) made by his mother, Agueda Maria Tiamson, on the day she contracted marriage, about fifteen years before the date of the petition," appellants now allege that that title cannot be recognized as an ownership title in behalf of Juan Tiamson, (1) because there can be no title by devise (herencia) from a person who is living, and Maria Tiamson was still living when Juan Tiamson recorded in his said petition a title by devise from his mother, Maria Tiamson, to himself; (2) because, even though the title invoked by the registrant Juan Tiamson be considered as one of gift by reason of marriage, it is not shown that it was bestowed in a public instrument, as required by article 633 of the Civil Code, it being a gift of real property, and that even though this fact of the manner of bestowal had appeared, the gift would in all events be null and void, because a mother cannot bestow all her property upon a single child, and Maria Tiamson had no other property beside said land.

The true title recorded in the possessory information and in the registry is that of a gift by reason of marriage. The gift must have been made in 1880, fifteen years prior to the registration in 1895. In 1880 the Civil Code was not in force as it was promulgated only in December, 1889. The statute which, in 1880, governed gifts by reason of marriage, was law 9, title 4, of the fifth Partida, and that law did not require an instrument except where the amount of the gift exceeded 500 maravedises gold, and the value of the donated land mentioned in the registration, to wit, P200, nowhere near reaches that amount. (*Barretto vs. City of Manila*, 7 Phil. Rep., 596.)

With regard to the second point, plaintiffs aver in the their complaint that they are natural, recognized children of Maria Tiamson; but defendants deny it. Beyond the evidence produced by Pablo Tiamson, plaintiffs have adduced no proof whatever of such natural filiation, still less of their recognition as natural children, which is what would have entitled them to inherit from Maria Tiamson.

As the registered title which is positive and direct has been firmly sustained, it is unnecessary to consider that of prescription, which, for various reasons, had the first mentioned title not prospered, would have been given due weight in view of the thirty-two years' possession, duly proven.

The judgment appealed from is affirmed, with the cost against the appellants. So ordered.

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

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