Supreme Court E-Library

this bond or any renewal or substitution is in effect." Since the appellees opted not to renew the contract they cannot be obliged to pay the premiums. More specifically, where a contract of surety is terminated under its terms, the liability of the principal for premiums after such termination ceases notwithstanding the pendency of a lawsuit to enforce a liability that accrued during its stipulated lifetime.

WHEREFORE, the appeal is dismissed for lack of merit. The decision of the court *a quo* is affirmed.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana and *Relova, JJ.*, concur.

Vasquez, J., on leave.

SECOND DIVISION

[G.R. No. L-36789. July 25, 1983]

FELIPA CORDERO (Deceased) MAURO OCAMPO, CASIMIRO OCAMPO and ELISEA OCAMPO, petitioners, *vs.* VICTORIA P. CABRAL, ALEJANDRO BERBOSO, DALMACIO MONTAOS and HONORABLE COURT OF APPEALS, respondents.

SYLLABUS

1. REMEDIAL LAW; APPEAL; SCOPE; ONLY QUESTIONS RAISED WITHIN THE ISSUES MADE BY THE PARTIES IN THE PLEADINGS IN THE COURT BELOW; ENTERTAINED ON APPEAL.— It is a well-settled rule that, except questions on jurisdiction, no question will be entertained on appeal unless it has been raised in the court below and it is within the issues made by the parties in their pleadings.

2. ID.; ID.; JUDGMENT OF APPELLATE COURT BASED ON A GROUND NOT LITIGATED IN THE TRIAL COURT; CASE AT BAR.— In this case, the Court of Appeals erred when it rendered

Supreme Court E-Library

a decision based on a ground which was not litigated in the trial court and which could not have been raised on appeal. The ground to be sure, is the supposed oral contract of sale made to the predecessors of the defendants covering the disputed piece of land. The supposed oral contract of sale was never an issue.

3. CIVIL LAW; PROPERTY; POSSESSION; GOOD FAITH CEASES AND BAD FAITH BEGINS UPON SERVICE OF SUMMONS.— The defendants, by their own admission, are in possession of the disputed land. There is no evidence that they were possessors in bad faith. However, their good faith ceased when they were served with summons to answer the complaint. (Art. 528, Civil Code; Tacas *vs.* Tobon, 53 Phil. 356 [1929]). As possessors in bad faith from the service of the summons they "shall reimburse the fruits received and those which the legitimate possessor could have received, ..." (Art. 549, Civil Code)

APPEARANCES OF COUNSEL

San Juan, Africa & Assoc. for petitioner.
Bengzon & Assoc. for private respondents.

DECISION

ABAD SANTOS, *J.*:

Petition to review a decision of the defunct Court of Appeals.

In Civil Case No. 2323 of the defunct Court of First Instance of Bulacan, Felipa Cordero and her children Mauro, Casimiro and Elisea all surnamed Ocampo sued Victoria Cabral, Alejandro Berboso and Dalmacio Montaos in a *Complaint* which reads as follows:

"1. That the plaintiffs are all of legal age, all residing and with postal address at Meycauayan, Bulacan; Felipa Cordero is a widow while Elisea Ocampo is single; and the defendants are all of legal age, Victoria P. Cabral is married but she is living apart and separate from her husband so the latter is not included herein as party defendant, and all of them are residing and with postal address at Meycauayan, Bulacan, where they may be served with summons;

2. That Mr. Gregorio Z. Ocampo of Meycauayan, Bulacan, husband of the plaintiff Felipa Cordero and father of the other plaintiffs surnamed Ocampo, died on May 17, 1958, and that said deceased left several properties, which were inherited by the plaintiffs, one of which is a parcel of land described as follows:

Supreme Court E-Library

A parcel of land (Lot No. 5, plan Psu. 43302), with the improvements thereon, situated in the barrio of Saluysoy, Municipality of Meycauayan. Bounded on the N. by Sapa and properties of Pedro Dazo and Catalino Exaltacion; on the NE. by property of Trinidad Rodriguez & Mateo Mistica; on the SE. by properties of Vicente Mistica, Antonio Rodriguez, Hermogenes Blanco, Lucio Sulbera and Pablo Francia; on the SW. by properties of Concepcion Rodriguez and Alejandro de la Cruz; and on the NW. by a Sapa. . . .; containing an area of Seventy-eight thousand one hundred and eighty-one square meters (78,181), more or less. With TRANSFER CERTIFICATE OF TITLE NO. 14513 in the name of Gregorio Z. Ocampo and has Tax Declaration No. 2819 and is assessed at ₱4,290.00.

which parcel of land was originally registered in accordance with the Land Registration Act on December 14, 1933, and was registered and/or transferred in the name of Mr. Gregorio Z. Ocampo on July 31, 1934;

3. That after the death of the said Mr. Gregorio Z. Ocampo the plaintiffs herein took possession of the properties left by him, among others is the afore-described parcel of land which is a riceland, but they found out that the southern portion of the same with an area 4,303 square meters, more or less, upon verification, was possessed by the defendants herein, Victoria P. Cabral, Alejandro Berboso and Dalmacio Montaos; and that the defendant Victoria P. Cabral claimed to be the owner of said portion while her co-defendants co-possessed the same as her tenants;

4. That the plaintiffs demanded of the defendants to surrender to the former possession of the afore-mentioned portion of land and/or vacate it but they refused and failed to do so, and the defendant Victoria P. Cabral continued claiming to be the owner of the same while her co-defendants continued recognizing her as the owner thereof instead of the plaintiffs; that the plaintiffs had the afore-described parcel of land (with T.C.T. No. 14513) relocated in the presence of the defendants' representatives and it was found and/or determined that the aforesaid portion of land with the area of 4,303 square meters, more or less, was a part of the plaintiffs' land with T.C.T. No. 14513; that even after the said relocation the defendant Victoria P. Cabral persisted and still persist in her claim of ownership over the said portion and her co-defendants persisted and still persist in recognizing her as the owner thereof instead of the plaintiffs; that the defendants continue in possession of the same; and that the defendants still refuse and fail to surrender and/or vacate said portion of land in spite of demands made on them by the plaintiffs;

Supreme Court E-Library

5. That because of the defendants' occupancy of the aforementioned plaintiffs' portion of land with the area of 4,303 square meters, more or less, to the exclusion of the latter, the said plaintiffs failed to realize a yearly harvest of at least ten (10) cavanes of palay at the rate of ₱10.00 per cavan, from the harvest-time of 1958 up to the present;

6. That because of the defendants' refusal to recognize plaintiffs' ownership over the afore-mentioned portion of land and also because of their refusal and failure to surrender and/or vacate the same the plaintiffs were forced to employ the services of the undersigned counsel to institute this action at an agreed fees of ₱500.00.

WHEREFORE, premises considered, the plaintiffs herein respectfully pray of this Hon. Court to render judgment in favor of the plaintiffs and against the defendants thus ordering them:

a) To recognize the ownership of the plaintiffs over the afore-mentioned portion of land with an area of 4,303 square meters, more or less, and to surrender it to the plaintiffs or vacate the same;

b) To deliver, jointly and severally, to the plaintiffs palay in the amount of ten (10) cavanes or pay their market price at the rate of ₱10.00 per cavan per harvest-time beginning the year 1958 up to the time of their delivery or payment.

c) To pay, jointly and severally, the plaintiffs' lawyer's fees in the amount of ₱500.00; and

d) To pay the costs of this suit.

And to grant any remedy and relief just and equitable in the premises." (Record on Appeal, pp. 2-6.)

The *Answer* of the defendants contains the following allegations:

"I. That defendants have no knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the complaint;

II. That defendants admit being in possession of the portion of land alleged in paragraph 3 of the complaint, as said portion of land belongs to defendant Victoria P. Cabral;

III. That defendants deny the allegation in paragraph 4 of the complaint to the effect that the said portion of 4,303 square meters, more or less, is a part of the plaintiffs' land;

IV. That defendants have no knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the complaint;

Supreme Court E-Library

V. That defendants likewise have no knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the complaint;

And by way of SPECIAL DEFENSE, defendants allege:

VI. That defendant Victoria P. Cabral and her predecessors in interes before her are the real owners, and have been in actual, adverse, peaceful and continuous possession, of that portion of land claimed by the plaintiffs in their complaint, which portion is more particularly described as Lot 5-B of plan Psd-11496, duly approved by the Director of Lands on December 21, 1935;

VII. That the deceased Gregorio Z. Ocampo and/or his heirs, the herein plaintiffs, have admitted, acknowledged and recognized the defendant Cabral and her predecessors in said portion of land, as the real owners thereof;

VIII. That the deceased Gregorio Z. Ocampo and his predecessors in interest, as well as the defendant Cabral and her predecesso , in interest, have always recognized as the boundary between their respective properties, a barrio road which has existed since the Spanish regime and has continued to exist up to the present time; and all the residents of the rural areas using said barrio road know for a fact that, with respect to the respective properties of the parties hereto, said road is the boundary between said properties;

IX. That the inclusion of that portion claimed by the plaintiffs in their complaint in the original registration of their property was obtained thru error or fraud by the original applicant, but was never possessed by him nor by his successors in interest, as they have always openly recognized the ownership of said portion as belonging to defendant Cabral and her predecessors in interest before her;

And by way of COUNTERCLAIM, defendants allege:

X. That all the foregoing paragraphs are pleaded herein and made parts hereof;

XI. That the defendant Victoria P. Cabral is the real owner of Lot No. 5-B, plan Psd-11496, with an area of 4,303 square meters, more or less, erroneously or fraudulently included in the property described in Transfer Certificate of Title No. 14513 of the Register of Deeds of the Province of Bulacan, registered in the name of the deceased Gregorio Z. Ocampo and now claimed by the herein plaintiffs;

XII. That defendant Cabral and her predecessors in interest have been in possession of said portion of land for more than fifty years, their possession being actual, adverse, peaceful and continuous, as owners thereof;

Supreme Court E-Library

XIII. That said deceased Gregorio Z. Ocampo and/or his heirs, and their predecessors in interest have openly admitted, acknowledged and recognized the defendant Victoria P. Cabral and her predecessors in interest as the real owners of said portion of land, Lot 5-B plan Psd-11496, and said Gregorio Z. Ocampo and/or his heirs and their predecessors in interest have never been in possession of said portion of land;

XIV. That the plaintiffs, claiming to be the heirs of the deceased Gregorio Z. Ocampo, are therefore under obligation to execute a deed of transfer of said portion of land in favor of the true owner thereof, the herein defendant Victoria P. Cabral, in accordance with law;

XV. That because of the present action filed by the plaintiffs, the defendants have suffered damages in the amount of ₱1,000.00;

WHEREFORE, defendants pray that judgment be rendered:

(a) dismissing the complaint, with costs against the plaintiffs;

(b) declaring the defendant Victoria P. Cabral as the owner of Lot 5-B, plan Psd-11496, which has been erroneously included in the property of the deceased Gregorio Z. Ocampo covered by Transfer Certificate of Title No. 14513, Bulacan, and ordering the herein plaintiffs to execute a deed of transfer of said Lot No. 5-B, plan Psd-11496 in favor of the defendant Victoria P. Cabral; and

(c) ordering the plaintiffs to pay to the defendants the sum of ₱1,000.00.

Defendants further pray for such other reliefs and remedies which may be proper and just under the premises." (R.A., pp. 8-13.)

The plaintiffs filed a *Reply and Answer to Counterclaim* as follows:

"1. That the plaintiffs deny the allegation in paragraph II of the Answer that the portion of land now under litigation belongs to the defendant Victoria P. Cabral, and likewise deny the allegations in paragraphs VI and XI of the same that the defendant Victoria P. Cabral and her predecessors in interest are the real owners of this portion (under litigation) with an area of 4,303 square meters, Lot 5-B of plan Psd-11496 with Transfer Certificate of Title No. 14513 in the name of Mr. Gregorio Z. Ocampo, because the truth is that the said Mr. Ocampo and his successors in interest, the plaintiffs herein, are the real owners thereof; and that said portion is a part and is included in the plaintiffs' big parcel of land known as Lot 5, Psu-43302, and covered by the afore-mentioned Certificate;

That the defendant Victoria P. Cabral and her predecesors in interest were never the owners of the said portion of land and in fact none of them, much less Victoria P. Cabral, has been in possession or in possesssion of

Supreme Court E-Library

any title or any document, either public or private, showing his or her ownership, and not even a Tax Declaration for taxation purposes; the truth is that when the late Mr. Antonio Rodriguez, original owner of the land with plan Psu-100536, adjacent to that of the plaintiffs, sold said land to his successor Segunda Prodon he did not include in the said sale this portion, under litigation, Lot 5-B, or plan Psd-11496 with an area of 4,303 square meters, more or less, knowing that it did not belong to him; and because Segunda Prodon has not acquired this portion of land with an area of 4,303 square meters, more or less, it is clear, therefore, that she could not have transmitted it to her successors including the herein defendant, Victoria P. Cabral;

2. That the plaintiffs deny the defendants' allegations in paragraphs VI and XII of their Answer that the defendant Victoria P. Cabral and her predecessors in interest have been in actual, adverse, peaceful and continuous possession of this portion of land for a period of more than 50 years because the truth is that, if they were ever in possession of the same, their possession was 'not adverse' and 'not continuous.' When Mr. Gregorio Z. Ocampo bought the parcel of land known as Lot 5, Psu-43302 with an area of 78, 181 square meters, more or less, in 1934, (wherein this portion under litigation is included) the said Mr. Ocampo took possession of this whole land. In the year 1935 the adjoining owner of the said property, the late Mr. Antonio Rodriguez and predecessor of the defendant Victoria P. Cabral, requested Mr. Ocampo to sell to him a portion of said land with an area of 4,303 square meters, more or less, to which Mr. Ocampo agreed. As there was already a meeting of the mind Mr. Rodriguez requested Mr. Ocampo that he be allowed to possess the said portion as they were going to make the formal deed of sale, to which proposition Mr. Ocampo likewise agreed. This proposed sale never materialized so if Mr. Rodriguez ever possessed the said portion of land, now under litigation, he did not possess it as owner but only as a 'prospective owner.' His possession cannot, therefore, be termed 'adverse.' Such possession cannot also be termed 'continuous' for 50 years because Mr. Ocampo was in possession of the same in 1934 before Mr. Rodriguez came in possessioon of the same, first, with the consent and later by toleration of Mr. Ocampo.

Granting but without admitting, that the defendant Cabral and her predecessors in interest have been in possession of this portion of land with an area of 4,303 square meters, more or less for more than 50 years, does she mean to imply now that she acquires ownership over the same by virtue of 'prescription'? She must remember that this property is titled under Act 496 and, therefore, 'imprescriptible';

Supreme Court E-Library

3. That the plaintiffs deny the defendants' allegations in paragraphs VI and IX of their Answer that the plaintiffs have admitted, acknowledged and recognized the defendant Cabral and her predecessors in said land as the real owners thereof, because the truth is that the plaintiffs are the real owners of the same, and that they have never admitted, acknowledged nor recognized the defendant Cabral nor any of her predecessors in interest as the owners of said portion of land;

4. That the plaintiffs admit the allegation in paragraph VIII of the Answer that the defendant Victoria P. Cabral owns an adjoining property which is described in her plan Psu-100536 but they deny there is a 'barrio road' between her land and that of the plaintiffs which serves as the boundary and that there has never been any road much less a barrio road between their properties.

That, if the defendants are referring to Lot 5-B, plan Psd-11496, and the rest of the land of the plaintiffs Lot No. 5, Psu-43302, which said Lot 5-B is a part, the plaintiffs deny the existence of such road much less a barrio road, and that there has never been a road therein. With the permission of the Hon. Court the existence or non-existence of a road can be verified by an ocular inspection and if need be with the aid of a licensed surveyor;

5. That the plaintiffs deny the allegations in paragraphs IX and XIII of the Answer that Mr. Gregorio Z. Ocampo and his successors in interest have never been in possession of this portion of land now under litigation. Mr. Gregorio Z. Ocampo took possession of said property after he bought it in 1934 and if the predecessors in interest of the defendant Cabral happened to be in its possession it was, first, with the consent of Mr. Ocampo and later by his toleration as we have already explained in paragraph 2 of this Reply;

6. That the plaintiffs deny the allegation in paragraph IX of the Answer that the inclusion of this portion of property under litigation was 'obtained thru error or fraud' by the original applicant, and they likewise deny the allegation in paragraph XI of the Answer that this portion with an area of 4,303 square meters, more or less, was erroneously and fraudulently included in the property described in Transfer Certificate of Title No. 14513 of the Register of Deeds of the Province of Bulacan, because in truth and in fact there was no such error or fraud. The title to this property was granted and obtained in a regular proceeding. If there was any error or fraud the predecessor in interest of the defendant Victoria P. Cabral would have filed a petition for review or would have sued for damages. Or the said defendant or any of her predecessors in interest would have resorted to some legal remedy.

Supreme Court E-Library

The fact is that the defendant Victoria P. Cabral or any of her predecessors in interest did not sincerely and honestly believe that they were the owners of this portion of property. In fact they did not have and do not have any kind of title or any kind of document, either public or private, over this property and they did not even have this property declared in their names for taxation purposes.

Granting, but without admitting, that the title to this property was obtained either by error or fraud yet the defendant Victoria P. Cabral can have no valid claim against the plaintiffs because she has never been the owner of said property and also because the plaintiffs' predecessor, Mr. Gregorio Z. Ocampo, acquired this property as 'an innocent purchaser, in good faith and for value.'

7. That the plaintiffs deny the allegation in paragraph XIV of the Answer that the plaintiffs are under obligation to execute a deed of transfer of the portion of land in favor of the defendant Victoria P. Cabral because, first, the title to this land was obtained in a regular proceeding where there was neither error nor fraud; second, said defendant or her predecessors in interest are not the owners of said land much less said defendant Cabral who has nothing at all in her possession to show any kind of right over said portion of land, and third, Mr. Gregorio Z. Ocampo, the predecessor in interest of the plaintiffs, acquire this property as an 'innocent purchaser, in good faith and for value'; and

8. That the plaintiffs have no knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph XV of the defendants' Answer (Counterclaim).

WHEREFORE, it is respectfully prayed of this Hon. Court to grant the plaintiffs' Petition in their Complaint." (R.A., pp. 14-21.)

It can be seen that the thrust of the Complaint is that a piece of land covered by T.C.T. No. 14513 in the name of Gregorio Z. Ocampo was illegally possessed by the defendants. Upon the other hand, the thrust of the Answer is that "the defendant Victoria P. Cabral is the real owner of Lot No. 5-B, plan Psd-11496, with an area of 4,303 square meters, more or less, erroneously or fraudulently included in the property described in Transfer Certificate of Title No. 14513 of the Register of Deeds of the Province of Bulacan, registered in the name of the deceased Gregorio Z. Ocampo and now claimed by the herein plaintiffs." (Answer, par. XI.)

Supreme Court E-Library

The decision of the trial court is not clear as to whether or not the disputed lot is included in T.C.T. No. 14513. However, the decision contains the following statement: "if it is included in their title, such title is void insofar as the portion of the Pandayan road is concerned." (R.A., p. 30.)

The trial court gave the following judgment:

"WHEREFORE, plaintiffs' complaint is hereby DISMISSED, without costs. For lack of proof that plaintiffs were in bad faith in the filing of the present action, defendants' counter-claim is likewise dismissed." (R.A., p. 30.)

The plaintiffs appealed to the Court of Appeals and made the following assignment of errors:

"I. THE LOWER COURT ERRED IN HOLDING THAT THE PANDAYAN ROAD IS LOCATED INSIDE THE PROPERTY DESCRIBED IN T.C.T. NO. 14513 AND IN CONSEQUENTLY HOLDING THAT THE SAME CONSTITUTES THE BOUNDARY LINE BETWEEN THE PROPERTIES OF PLAINTIFFS-APPELLANTS AND DEFENDANT-APPELLEE VICTORIA CABRAL.

II. THE LOWER COURT ERRED IN HOLDING THAT T.C.T. NO. 14513 IS 'VOID INSOFAR AS THE PORTION FROM THE PANDAYAN ROAD IS CONCERNED,' AND IN NOT HOLDING THAT SAID T.C.T. IS INCONTROVERTIBLE.

III. THE LOWER COURT ERRED IN GIVING IMPORTANCE TO DEFENDANTS-APPELLEES' ALLEGED 'OPEN, CONTINUOUS AND ADVERSE POSSESSION' AND IN DISMISSING PLAINTIFFS-APPELLANTS' COMPLAINT." (Brief, pp. a-b.)

The Court of Appeals found as a fact: "*That disputed portion Lot 5-a is admittedly part of the land originally registered in the name of plaintiff's predecessor in interest, there should be no question that that title had become imprescriptible and original registrant as well as his successors had the right to vindicate their ownership against any body else.*" (Rollo, p. 54.)

But the Court of Appeals went further. Seizing a statement in the Reply and Answer to Counterclaim filed by the plaintiffs, it held that Gregorio Z. Ocampo had by an oral contract sold the disputed land to Antonio Rodriguez, the defendant's

Supreme Court E-Library

predecessor in interest. The Court of Appeals further said "*that agreement oral albeit, became binding upon Ocampo, it was even executed in part by the actual delivery of possession, it amounted to a supervening fact, posterior to the title, and the fact that Ocampo's title was not afterwards cancelled can not at all mean that the title could be used as a weapon to annul that posterior agreement by Ocampo voluntarily entered into and by reason of which he had delivered possession unto defendant's predecessor; of course, no deed of sale was formalized for a reason not clear in the evidence; but whether or not formalized, it was a binding personal agreement upon Ocampo.*" (Rollo, pp. 56-57.)

The statement upon which the Court of Appeals built its decision is as follows:

"When Mr. Gregorio Z. Ocampo bought the parcel of land known as Lot 5, Psu-43302 with an area of 78,181 square meters, more or less, in 1934, (wherein this portion under litigation is included), the said Mr. Ocampo took possession of this whole land. In the year 1935 the adjoining owner of the said property, the late Mr. Antonio Rodriguez and predecessor of the defendant Victoria P. Cabral, requested Mr. Ocampo to sell to him a portion of said land with an area of 4,303 square meters, more or less, to which Mr. Ocampo agreed. As there was already a meeting of the mind Mr. Rodriguez requested Mr. Ocampo that he be allowed to possess the said portion as they were going to make the formal deed of sale, to which proposition Mr. Ocampo likewise agreed. This proposed sale never materialized so if Mr. Rodgriguez ever possessed the said portion of land, now under litigation, he did not possess it as owner but only as a 'prospective owner.' His possession cannot, therefore, be termed 'adverse.' Such possession cannot also be termed 'continuous' for 50 years because Mr. Ocampo was in possession of the same in 1934 before Mr. Rodgriguez came to possession of the same, first, with the consent and later by toleration of Mr. Ocampo." (R.A., pp. 15-16.)

It passes understanding why the plaintiffs mentioned a non-consummated transaction between Gregorio Z. Ocampo and Antonio Rodriguez when the defendants made no claim of such transaction nor was the name of Antonio Rodriguez even mentioned in their Answer.

Even as the Court of Appeals found that the disputed piece of land is registered in the name of the plaintiffs but because of

Supreme Court E-Library

the supposed oral sale of the same to the predecessors of the defendants, it affirmed the judgment of the trial court dismissing the complaint for the recovery of the land.

The instant petition assails the Court of Appeals for rendering a decision based on a ground which was never raised nor discussed whether in the trial court or before it by any of the parties. The ground to be sure, is the supposed oral contract of sale made to the predecessors of the defendants covering the disputed piece of land.

The petition is highly impressed with merit.

It is a well-settled rule that, except questions on jurisdiction, no question will be entertained on appeal unless it has been raised in the court below and it is within the issues made by the parties in their pleadings. (See cases cited in II Moran, Rules of Court, pp. 504-505 [1970].)

In this case, the Court of Appeals erred when it rendered a decision based on a ground which was not litigated in the trial court and which could not have been raised on appeal. That the supposed oral contract of sale was never an issue is demonstrated by the following:

1. The pleadings of the parties have been purposely reproduced in full above. It can be seen therefrom that no issue in respect of the supposed oral sale actually emerged.

2. The decision of the trial court is absolutely silent on the supposed oral contract of sale.

3. The plaintiffs who appealed the decision of the trial court to the Court of Appeals did not make an assignment of error in respect of the supposed oral sale.

The Court of Appeals found as a fact that the disputed piece of land is registered in the name of the plaintiffs' predecessor.

The defendants claimed in their answer that they and their predecessors are the owners of the land in dispute but that the plaintiffs' predecessor was able to register the same in his name through error or fraud.

Supreme Court E-Library

However, the trial court made no categorical finding on this claim of the defendants otherwise it would have granted the affirmative relief which they asked, namely: "(b) declaring the defendant Victoria P. Cabral as the owner of Lot 5-B, plan Psd-11496, which has been erroneously included in the property of the deceased Gregorio Z. Ocampo covered by Transfer Certificate of Title No. 14513, Bulacan, and ordering the herein plaintiffs to execute a deed of transfer of said Lot No. 5-B, plan Psd-11496 in favor of the defendant Victoria P. Cabral." The Court of Appeals did not deal with this issue because there was no appeal made by the defendants.

The following conclusions have to be made:

1. The disputed land is included in T.C.T. No. 14513 issued to Gregorio Z. Ocampo , the predecessor of the plaintiffs.

2. The original registration which includes the disputed land was not vitiated by error or fraud.

3. The Court of Appeals erred when it held that Gregorio Z. Ocampo had orally sold the disputed land to the predecessors of the defendants.

4. The defendants, by their own admission, are in possession of the disputed land. There is no evidence that they were possessors in bad faith. However, their good faith ceased when they were served with summons to answer the complaint. (Art. 528, Civil Code; Tacas *vs.* Tobon, 53 Phil. 356 [1929].) As possessors in bad faith from the service of the summons they "shall reimburse the fruits received and those which the legitimate possessor could have received, ..." (Art. 549, Civil Code.)

WHEREFORE, the judgment of the Court of Appeals is hereby reversed and another one rendered in that the defendants shall vacate and surrender the land in question to the plaintiffs; and the defendants shall also account for the fruits thereof pursuant to Article 549 of the Civil Code from the service of the summons. Costs against the defendants.

Supreme Court E-Library

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero and *Escolin, JJ.*, concur.

De Castro, J., is on sick leave.

EN BANC

[G.R. No. L-38495. July 25, 1983]

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee, *vs.* WILFREDO TOLEDO, defendant-appellant.

SYLLABUS

1. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCE; RECIDIVISM; NOT CONSIDERED AGGRAVATING WHERE TWO FELONIES ARE NOT EMBRACED IN THE SAME TITLE OF THE REVISED PENAL CODE; CASE AT BAR.— The aggravating circumstance of recidivism was erroneously considered against accused-appellant. In the case at bar, at the time Wilfredo Toledo committed the crime charged, he was already convicted by final judgment of robbery. The two felonies are not embraced in the same title of the Revised Penal Code. Murder is a crime against person under Title VIII, Chapter I of the Revised Penal Code; while robbery is a crime against property, under Title X, Chapter I of the same Code.

2. ID.; ID.; QUASI-RECIDIVISM; PRESENCE IN THE CASE AT BAR.— Appellant's liability is aggravated by the special aggravating circumstance of quasi-recidivism where a person, after having been convicted by a final judgment, shall commit a new felony, before beginning to serve such sentence, or while serving the same. He shall be punished by the maximum period of the penalty prescribed by law for the new felony (Art. 160, Revised Penal Code). Thus, the mitigating circumstance of voluntary surrender cannot be considered in appellant's favor.

3. ID.; MURDER; PENALTY; COMMUTED TO *RECLUSION PERPETUA*.— The Supreme Court sustains the finding of the trial court that the crime committed is murder considering that the stabbing was sudden and unexpected and the victim was not in a position to