

## FIRST DIVISION

[ G.R. No. 112443, January 25, 2002 ]

**TERESITA P. BORDALBA, PETITIONER, VS. COURT OF APPEALS,  
HEIRS OF NICANOR JAYME, NAMELY, CANDIDA FLORES,  
EMANNUEL JAYME, DINA JAYME DEJORAS, EVELIA JAYME, AND  
GESILA JAYME; AND HEIRS OF ASUNCION JAYME-BACLAY,  
NAMELY, ANGELO JAYME-BACLAY, CARMEN JAYME-DACLAN AND  
ELNORA JAYME BACLAY, RESPONDENTS.**

### **DECISION**

**YNARES-SANTIAGO, J.:**

This is a petition for review under Rule 45 of the Rules of Court seeking to set aside the October 20, 1992 Decision of the Court of Appeals<sup>[1]</sup> in CA-G.R. CV No. 27419, which affirmed with modification the Decision<sup>[2]</sup> of the Regional Trial Court of Mandaue, Branch 28, in Civil Case No. MAN-386.

The instant controversy stemmed from Lot No. 1242 (Lot No. 799-C) with an area of 1,853 square meters and located at Barrio Looc, Mandaue City. The subject lot is part of a parcel of land situated on the corner of Mabini and Plaridel Streets in Mandaue City, and originally owned by the late spouses Carmeno Jayme and Margarita Espina de Jayme. In 1947, an extra-judicial partition,<sup>[3]</sup> written in the Spanish language was executed, describing said parcel of land as –

2. otra parcela de terreno urbano en el barrio de Look, Mandawe, Cebu, que linda al N. con la Calle Mabini y propiiedades de F. Jayme; al E. linda con propiiedades de Fernando Antigua; al S. linda con propiiedades de Lucas y Victoriano Jayme, y al O. linda con la Calle Plaridel. La propiedad descrita esta avaluada, con todas sus mejoras, en la cantidad de MIL Y CINCUENTA PESOS -----  
P1,050.00.<sup>[4]</sup>

and disposing, *inter alia*, the same parcel of land as follows:

- 1) 1/3 in favor of - (a) their grandchild Nicanor Jayme, the deceased spouse of private respondent Candida Flores and the father of private respondents Emmanuel, Dina, Evelia and Gesila, all surnamed Jayme; and (b) their grandchild Asuncion Jayme-Baclay, whose heirs are private respondents Angelo Baclay, Elnora Baclay and Carmen Jayme-Daclan;
- 2) 1/3 to their daughter Elena Jayme Vda. de Perez, mother of petitioner Teresita P. Bordalba; and
- 3) 1/3 to an unidentified party.

Built on the land adjudicated to the heirs of the spouses is Nicanor Jayme's house, which his family occupied since 1945.

Sometime in July 1964, Elena Jayme Vda. de Perez, petitioner's mother, filed with the Regional Trial Court of Cebu, Branch IV, an amended application for the registration<sup>[5]</sup> of the lot described with the following boundaries:

N - Fruelana Jayme & Road  
S - Felicitas de Latonio  
E - Agustin de Jayme  
W - Porfirio Jayme, Lot No. 1 and Vivencio Abellana

Elena Jayme Vda. de Perez alleged that the lot sought to be registered was originally a part of a land owned by her late parents, the spouses Carmeno Jayme and Margarita Espina de Jayme; and that 1/3 of said land was adjudicated to her in an extra-judicial partition. She further stated that a portion of the lot for which title is applied for is occupied by Nicanor Jayme with her permission.

Consequently, Nicanor Jayme and Asuncion Jayme-Baclay filed their opposition<sup>[6]</sup> contending that said application included the 1/3 portion inherited by them in the 1947 extra-judicial partition. The case was, however, dismissed for lack of interest of the parties.

Subsequently, petitioner filed with the Bureau of Lands of Cebu City an application<sup>[7]</sup> dated January 10, 1979, seeking the issuance of a Free Patent over the same lot subject of the aborted application of her mother, Elena Jayme, now known as Lot No. 1242 (799-C), described as follows:

North: Froilan Jayme and Road  
East: Agustin Jayme  
South: Alfredo Alivio and Spouses Hilario Gandecila  
West: Hilario Gandecila Porferio Jayme and Heirs of Vevencio Abellanosa<sup>[8]</sup>

On April 16, 1980, petitioner was successfully granted Free Patent No. (VII-I) 11421 and Original Certificate of Title No. 0-571 (FP) over said lot.<sup>[9]</sup> Thereafter, petitioner caused the subdivision and titling of Lot No. 1242 (799-C), into 6 lots,<sup>[10]</sup> as well as the disposition of two parcels thereof, thus:

- 1) Lot No. 1242-A with an area of 581 square meters covered by Transfer Certificate of Title No. 22771 (FP) in the name of spouses Genaro U. Cabahug and Rita Capala, to whom petitioner sold said lot;
- 2) Lot No. 1242-B with an area of 420 square meters covered by TCT No. 22772 in the name of Teresita P. Bordialba, and which the latter mortgaged with the Rural Bank of Mandaue;
- 3) Lot No. 1242-C with an area of 210 square meters covered by TCT 22773 in the name of Teresita P. Bordialba;
- 4) Lot No. 1242-D with an area of 210 square meters covered by TCT 22774 in the name of Teresita Bordialba;

5) Lot No. 1242-E with an area of 216 square meters covered by TCT 22775 in the name of Teresita P. Bordialba;

6) Lot No. 1242-F with an area of 216 square meters and covered by TCT No. 22776 in the name of Teresita P. Bordialba.

Upon learning of the issuance in favor of petitioner of the aforesaid Free Patent and Original Certificate of Title over Lot No. 1242, as well as the conveyances made by petitioner involving the lot subject of the controversy, private respondents filed with the Regional Trial Court of Mandaue City, Branch 28, the instant complaint against petitioner Teresita Bordialba, spouses Genaro U. Cabahug, and Rita Capala, Rural Bank of Mandaue and the Director of the Bureau of Lands.

In the said complaint, private respondents prayed that Free Patent No. (VII-I) 11421 and OCT No. 0-571 (FP), as well as TCT Nos. 22771-22776 be declared void and ordered cancelled. Private respondents also prayed that they be adjudged owners of Lot No. 1242 (799-C), and that spouses Genaro V. Cabahug and Rita Capala as well as the Rural Bank of Mandaue be declared buyers and mortgagee in bad faith, respectively. In addition, they asked the court to award them actual, compensatory, and moral damages plus attorney's fees in the amount of P20,000.00.

Petitioner, on the other hand, averred that Lot No. 1242 (799-C) was acquired by her through purchase from her mother,<sup>[11]</sup> who was in possession of the lot in the concept of an owner since 1947. In her answer, petitioner traced her mother's ownership of the lot partly from the 1947 deed of extra-judicial partition presented by private respondents,<sup>[12]</sup> and claimed that Nicanor Jayme, and Candida Flores occupied a portion of Lot No. 1242 (799-C) by mere tolerance of her mother. On cross-examination, petitioner admitted that the properties of the late Carmeno Jayme and Margarita Espina de Jayme were partitioned by their heirs in 1947, but claimed that she was not aware of the existence of said Deed of Extra-judicial Partition. She, however, identified one of the signatures in the said Deed to be the signature of her mother.<sup>[13]</sup>

On May 28, 1990, the trial court, finding that fraud was employed by petitioner in obtaining Free Patent No. (VII-I) 11421 and OCT No. 0-571 (FP), declared said patent and title void and ordered its cancellation. However, it declared that spouses Genaro U. Cabahug and Rita Capala as well as the Rural Bank of Mandaue are purchasers and mortgagee in good faith, respectively; and consequently upheld as valid the sale of Lot No. 1242-A covered by Transfer Certificate of Title No. 22771 (FP) to spouses Genaro U. Cabahug and Rita Capala, and the mortgage of Lot No. 1242-B covered by TCT No. 22772 in favor of the Rural Bank of Mandaue. The dispositive portion of the decision reads:

WHEREFORE, foregoing premises considered, Decision is hereby rendered in favor of the plaintiffs by:

1) declaring Free Patent No. (VII-I) 11421 as well as the Original Certificate of Title No. 0-57 (FP) and all subsequent certificates of title as a result of the subdivision of Lot No. 1242 except TCT NO. 22771 (FP) as null and void and ordering the Register of Deeds of Mandaue City to

cancel them;

2) declaring spouses defendants Genaro U. Cabahug and Rita Capala as buyers in good faith and are the legal and rightful owners of Lot No. 1242-A as described in TCT No. 22771 (FP);

3) declaring the Rural Bank of Mandaue, Inc. as mortgagee in good faith and the mortgage lien in its favor be carried over to and be annotated in the new certificate of title to be issued under the names of the plaintiffs;

4) declaring the plaintiffs as the legal and rightful owners of Lot 1242 and ordering the issuance of the certificate of title in their names;

5) dismissing the claims of the defendant spouses Cabahug and Capala and the defendant Rural Bank of Mandaue, Inc. for lack of merit;

6) ordering the defendant Teresita Bordialba to pay plaintiffs the following amounts:

- (a) P5,000.00 as actual and litigation expenses;
- (b) P20,000.00 as attorney's fees, and,

7) ordering defendant Bordialba to pay the costs.

SO ORDERED.<sup>[14]</sup>

Both petitioner Teresita Bordialba and private respondents appealed to the Court of Appeals, which affirmed with modification the decision of the trial court. It ruled that since private respondents are entitled only to 1/3 portion of Lot No. 1242 (799-C), petitioner should be ordered to reconvey 1/3 of Lot No. 1242 (799-C) to private respondents. The decretal portion of the respondent court's decision states:

WHEREFORE, the challenged decision is MODIFIED to order the reconveyance of one-third of the subject land in favor of the plaintiff-appellees in lieu of the cancellation of the Certificates of Title issued and their declaration as the owners of Lot No. 1242 in its entirety. The rest is AFFIRMED in toto.

SO ORDERED.<sup>[15]</sup>

Thus, petitioner filed the instant petition, assailing the decision of the Court of Appeals. Petitioner contends that the testimonies given by the witnesses for private respondents which touched on matters occurring prior to the death of her mother should not have been admitted by the trial court, as the same violated the dead man's statute. Likewise, petitioner questions the right of private respondents to inherit from the late Nicanor Jayme and Asuncion Jayme-Baclay, as well as the identity between the disputed lot and the parcel of land adjudicated in the Deed of Extra-judicial Partition.

The contentions are without merit. It is doctrinal that findings of facts of the Court of Appeals upholding those of the trial court are binding upon this Court. While there