

102 Phil. 1182

[ G.R. No. L-9936. January 14, 1958 ]

**JOSE C. CORDOVA, ET AL., PLAINTIFFS AND APPELLANTS VS. JOSE M. CORDOVA, ET AL., DEFENDANTS AND APPELLES.**

**BAUTISTA ANGELO, J.:**

Appeal from an order granting the motion to dismiss on the ground of prescription. The rule regarding prescription among co heirs is that generally prescription cannot be pleaded between them except when one heir openly and adversely occupies the property for a period sufficiently long to entitle him to ownership under the law. As long as the other heirs acknowledge their co-ownership or do not set up any adverse title to the property, prescription is unavailable. Tested under the above principle, the pleadings in this case do not allege enough facts indicative of adverse possession on the part of defendants, which may serve as basis for the claim of prescription. In any event, the ground on which prescription is based does not appear to be indubitable, and under the rules the court may do well to defer action on the motion to dismiss until after trial on the merits.

Appealed order is set aside, and case is remanded to the lower court for further proceedings, with costs. Bautista Angelo, *J.*, ponente.

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