

EDGAR P. PASCUA, PLAINTIFF-APPELLANT, VS. ASTROLOME B. MANINGO, SR. AND METROPOLITAN BANK AND TRUST CO. (AS MERGER OF SOLIDBANK CORPORATION), DEFENDANTS-APPELLEES.

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SANTOS, J [2].:

Assailed in this appeal is the Order[3] dated 28 February 2011 issued by the Regional Trial Court, 11[th] Judicial Region, Branch 11,[4] Davao City (trial court) in a case docketed as Civil Case No. 32,683-08 for quieting/reconveyance of title, damages and attorney's fees. In the assailed Order, the trial court dismissed plaintiff-appellant's Complaint on the ground of prescription. Plaintiff-appellant filed a Motion for Reconsideration but the same was denied by the trial court in an Order[5] dated 25 May 2011.

The Antecedents

The present case involves a parcel of land located in Guadalupe Village, Lanang, Davao City, containing an area of 110 square meters. The subject lot is a portion of the land covered under Transfer Certificate of Title No. T-380070,[6] now registered in the name of defendant Metrobank, with a total area of 359 square meters.

On 10 December 2008, Edgar P. Pascua (Pascua) filed the instant Complaint[7] for quieting/reconveyance of title, damages and attorney's fees against defendants-appellees Astrolome B. Maningo, Sr. (Maningo) and Metropolitan Bank and Trust Company (Metrobank).

The Complaint alleges as follows:

x x x x x x x x

3. That sometime in 1989, the defendant Astrolome B. Maningo, Sr. sold in favor of the plaintiff Edgar P. Pascua the portion of the 110 sq. m. lot, which is adjacent to the latter's residence, located at Guadalupe Village, Lanang, Davao City. Said subject lot (partly covered by TCT No. T-132832, x x x) was then actually occupied by the plaintiff Pascua x x x.

4. That in the notarized Deed of Sale x x x dated March 20, 1995, duly executed by the defendant Maningo Sr., as vendor, in favor of the plaintiff Pascua, as vendee, it was expressly stated:

"That the VENDOR hereby warrants valid title to and peaceful possession of the property herein sold and conveyed and further declares that the same is free from all liens and encumbrances of any kind whatsoever and against the lawful claims of all persons whomsoever."

4.1. No separate title to the purchased lot was however delivered by the defendant to the plaintiff, despite repeated demands by the latter.

5. That, without the plaintiff's knowledge and consent, the defendant Maningo, Sr. subsequently mortgaged on July 30, 1996, the TCT No. T-132832 x x x, including the subject lot, to Solidbank Corporation (later merged with defendant Metrobank) for the loan obtained by the defendant herein. Nor did the defendant-bank inform the plaintiff of the mortgage of said subject lot.

6. That the plaintiff Pascua learned of the foreclosure mortgage of the subject lot only sometime in October 2004

when he verified the title from the Registry of Deeds and when the defendant Metrobank tried to eject the former thus, compelling him (Pascua) to file the criminal case for estafa against the defendant Maningo Sr. before the Municipal Trial Court, Branch 2, Davao City, which convicted the latter in the Decision x x x dated October 6, 2006, in Criminal Case No. 120722-B-2005;

7. That the mortgage and foreclosure by the defendants of the subject lot legally owned by the plaintiff are null and void. The subsequent transfer of the titles involving said lot in their names TCT No. T-320825 x x x for Solidbank and later TCT No. T-380070 x x x for defendant Metrobank, are illegal and invalid;

x x x x x x x x[8]

Thereafter, defendant-appellee Maningo filed his Answer with Counterclaim[9] on 13 February 2009.

Meanwhile, on 16 February 2009, counsel for the plaintiff filed a Motion for Substitution[10] stating that Pascua died on 1 February 2009 and praying that the latter be substituted by his heirs. Consequently, the trial court issued an Order[11] dated 13 March 2009 allowing Pascua's heirs to be substituted as the parties-plaintiffs in the case below.

Subsequently, defendant-appellee Metrobank filed its Answer[12] on 1 April 2009.

Efforts to settle the case through mediation proceedings ultimately failed and the case was thereafter set for pre-trial.[13]

After the pre-trial was terminated, defendant-appellee Maningo filed a Motion to Set Affirmative Defense for Preliminary Hearing[14] which was granted by the trial court in an Order[15] dated 22 January 2010. Thus, on 22 February 2010, defendant-appellee Maningo was able to present evidence on his affirmative defenses, which were adopted by defendant-appellee Metrobank.[16]

On 28 February 2011, the trial court issued the assailed Order dismissing the complaint. The trial court ruled as follows:

Plaintiff's (sic) filed this case for reconveyance of his title over the subject property on the ground of fraud. In fact, defendant Maningo was convicted for the crime of estafa (Art. 316, par 1 of the Revised Penal Code) in relation to the fraudulent mortgage (which later on was foreclosed) in favor of defendant bank when the same real property was already sold to the plaintiff.

The period within which to file a reconveyance suit based on fraud is four (4) years from the discovery of the fraud, which discovery is deemed to have taken place upon the issuance of the certificate of title over the property. Registration of real property is considered a constructive notice to all persons, thus, the four-year period shall be counted therefrom x x x.

While Transfer Certificate of Title No. T-320825 in the name of Solidbank Corporation was registered on December 23, 1999, Plaintiff filed the instant case only on December 10, 2008 which is obviously beyond the four year prescriptive period.[17]

The subsequent Motion for Reconsideration filed by plaintiff-appellant was denied by trial court in the Order dated 25 May 2011.

Hence, this appeal.

Assignment of Errors

Plaintiff-appellant raises the following assignment of errors in this appeal:

I.

THE COURT A QUO ERRED IN CONDUCTING A PRELIMINARY HEARING ON THE DEFENDANT/APPELLEE MANINGO'S AFFIRMATIVE DEFENSES IN HIS ANSWER AFTER THE PRE-TRIAL OF THE CASE IN CONTRAVENTION [OF] THE RULES OF COURT

II.

THE COURT A QUO ERRED IN DISMISSING THE CASE FOR QUIETING OF TITLE AND RECONVEYANCE OF THE SUBJECT LOT FILED BY THE PLAINTIFF-APPELLANT PASCUA AGAINST THE DEFENDANTS/APPELLEES MANINGO SR. AND METROPOLITAN BANK ON THE GROUND OF PRESCRIPTION.[18]

This Court's Ruling

The appeal is meritorious.

As regards the first assignment of error, plaintiff-appellant argues that the trial court erred in conducting a preliminary hearing on the affirmative defenses after the pre-trial of the case had already been terminated.

This argument is bereft of merit.

Section 6 of the Rules of Court states:

Section 6. Pleading grounds as affirmative defenses.- If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed.

Under the afore-stated rule, in cases where no motion to dismiss has been filed, the trial court may, in its discretion, conduct a preliminary hearing on the affirmative defenses pleaded in the answer. Contrary to the assertion of plaintiff-appellant, there is nothing in the foregoing rule which requires that the preliminary hearing on the affirmative defenses be conducted before the pre-trial of case.

In the case of *PDI v. Hon. Elmo M. Alameda*,^[19] where the motion for a preliminary hearing on the affirmative defense was likewise filed after the pre-trial was already terminated, the Supreme Court ruled that the trial court erred in denying the said motion, to wit:

Thus Court finds that petitioners raised the threshold question of whether the complaint sufficiently alleges a cause of action.

Hence, the trial court should have granted petitioners' motion for a preliminary hearing on the affirmative defenses raised in the answer based on failure to state a cause of action. This procedure is designed to prevent a tedious, if not traumatic, trial in case the complaint falls short of sufficiently alleging a cause of action.^[20]

Therefore, the trial court committed no reversible error in conducting a preliminary hearing on the affirmative defenses raised by defendant-appellee Maningo in his Answer, notwithstanding that the same was done after the termination of the pre-trial proceedings.

Going now to the second assignment of error, this Court finds that the trial court erred in dismissing plaintiff-appellant's complaint on the ground of prescription.

In the assailed Order, the trial court ruled that the instant complaint was filed beyond the four-year prescriptive period for the filing of an action for reconveyance on the ground of fraud.

The trial court is mistaken.

The Supreme Court has long ruled the prescriptive period to recover property obtained by fraud or mistake, giving rise to an implied trust is ten (10) years.[21] As the Supreme Court elucidated in the case of *Crisostomo v. Garcia*:^[22]

The four-year prescriptive period relied upon by the petitioners apply only if the complaint seeks to annul a voidable contract under Article 1390 of the Civil Code. In such case, the four-year prescriptive period under Article 1391 begins to run from the time of discovery of the mistake, violence, intimidation, undue influence or fraud.

Generally, an action for reconveyance of real property based on fraud prescribes in four years from the discovery of fraud; such discovery is deemed to have taken place upon the issuance of the certificate of title over the property. Registration of real property is a constructive notice to all persons and, thus, the four-year period shall be counted therefrom.

In the case at bar, respondent's action which is for Reconveyance and Cancellation of Title is based on an implied trust under Art. 1456 of the Civil Code since he averred in his complaint that through fraud petitioners were able to obtain a Certificate of Title over the property. He does not seek the annulment of a voidable contract whereby Articles 1390 and 1391 of the Civil Code would find application such that the cause of action would prescribe in four years.

Art. 1456 of the Civil Code provides:

Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

Thus, it was held that when a party uses fraud or concealment to obtain a certificate of title of property, a constructive trust is created in favor of the defrauded party.

Constructive trusts are "created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold."

When property is registered in another's name, an implied or constructive trust is created by law in favor of the true owner. The action for reconveyance of the title to the rightful owner prescribes in 10 years from the issuance of the title.

An action for reconveyance based on implied or constructive trust prescribes in ten years from the alleged fraudulent registration or date of issuance of the certificate of title over the property.

It is now well-settled that the prescriptive period to recover property obtained by fraud or mistake, giving rise to an implied trust under Art. 1456 of the Civil Code, is 10 years pursuant to Art. 1144. This ten-year prescriptive period begins to run from the date the adverse party repudiates the implied trust, which repudiation takes place when the adverse party registers the land.^[23]

Based on the allegations in plaintiff-appellee's Complaint, there can be no doubt that the prescriptive period applicable in the instant case is ten (10) years and not four (4) years as ruled by the trial court.

Further, it must be noted that the ten-year prescriptive period applies only if there is an actual need to reconvey the property as when the plaintiff is not in possession thereof.^[24] The Supreme Court has held:

x x x [I]f the plaintiff is in possession of the property, prescription does not commence to run against him. Thus, when an action for reconveyance is nonetheless filed, it would be in the nature of a suit for quieting of title, an action that is imprescriptible. The reason for this is that one who is in actual possession of a piece of

land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the rationale for the rule being, that his undisturbed possession provides him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by the one who is in possession.[25]

In this case, plaintiff-appellee alleged in his Complaint that he is in possession of the subject lot. Thus, based on the allegations of the Complaint, it was error on the part of the trial court to dismiss the case on the ground of prescription.

WHEREFORE, in view of the foregoing, the instant appeal is hereby GRANTED. The assailed the Order dated 28 February 2011 dismissing the plaintiff-appellant's Complaint is hereby REVERSED and SET ASIDE. The instant case is hereby REMANDED to the Regional Trial Court, 11[th] Judicial Region, Branch 11,[26] Davao City for trial on the merits.

SO ORDERED.

[*] Contreras, J., Acting Ch., and [**]Perez, JJ., concur.

[1] Substituted by his surviving spouse, Manuela Jean B. Pascua and children, namely: Edgar Pascua II, Nancy Ann Pascua, Ma. Luz Pascua, Menchu Pascua, Girlie Pascua, Diane Pascua, Jennifer Pascua, and Edgar Pascua III per Order dated 13 March 2009 issued by the RTC.

[*] Most Senior, vice J. Lloren who inhibited the instant case, per raffle dated Feb. 4, 2015.

[**] New Member, vice J. Lloren, who inhibited the instant case per raffle dated Feb. 4, 2015.

[2] The case was unloaded to the undersigned ponente pursuant to Office Order No. 03-14-SMBP dated April 1, 2014 as part of his initial caseload.

[3] Rollo, pp. 21-22.

[4] Hon. Judge Virginia Hofileña Europa, presiding.

[5] Rollo, p. 23.

[6] Records, p. 18.

[7] Records, pp. 2-6.

[8] Records, pp. 2-4.

[9] Records, pp. 28-37;

[10] Records, pp. 39-40.

[11] Records, p. 46.

[12] Records, pp. 49-54.

[13] Records, p. 100.

[14] Records, pp. 163-167.

[15] Records, p. 169.

[16] Records, p. 175.

[17] Records, p. 180.

[18] Rollo, p. 15.

[19] G.R. No. 160604, 28 March 2008.

[20] Ibid.

[21] G.R. No. 164787, 31 January 2006.

[22] Ibid.

[23] Ibid.

[24] Brito v. Dianala, et al., G.R. No. 171717, 15 December 2010.

[25] Ibid.

[26] Hon. Judge Virginia Hofileña Europa, presiding.

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