

RESTITUTO CENIZA AND JESUS CENIZA, PETITIONERS, VS. THE HON. COURT OF APPEALS, MAGNO DABON, VICENTA DABON, TERESITA DABON, EUGENIA DABON, AND TOMAS DABON, RESPONDENTS.

G.R. No. L-46345. January 30, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is a petition for review of the order dated October 29, 1976, of the Court of Appeals in CA-G.R. No. 48546 entitled, "Restituto Ceniza, et al. vs. Magno Dabon, et al.," dismissing the petitioners' complaint for reconveyance of their shares in co-ownership property and reversing the decision of the trial court in their favor.

On June 14, 1967, the petitioners filed against private respondents, an action in the Court of First Instance of Cebu for recovery of their title to Lots Nos. 627-B and 627-C (being portions of Lot No. 627 with an area of approximately 5,306 square meters) situated in Casuntingan, Mandaue, Cebu (now Mandaue City), which originally formed part of "Hacienda de Mandaue" of the Seminario de San Carlos de Cebu. The property is covered by reconstituted Original Certificate of Title No. RO-10996 issued on February 8, 1939 (formerly Decree No. 694438 issued on February 27, 1934) in the name of "Vicente Dabon married to Marcela [or Marcelina] Ceniza." (pp. 7 and 19, Record on Appeal.)

Petitioners are the descendants of Manuel Ceniza while the private respondents are the descendants of his sister, Sofia Ceniza. Sofia Ceniza was childless but she had an adopted daughter named Flaviana Ceniza, who begot a daughter named Marced Ceniza and who in turn had a daughter named Marcelina (or Marcela) Ceniza who married Vicente Dabon. Private respondents are the children of this marriage and they are the great-great-grandchildren of Sofia Ceniza.

On the other hand, Manuel Ceniza had an only son, Pablo, who had two sons, Santiago and Jose Ceniza. Petitioners Restituto and Jesus Ceniza and a certain Nemesia Ceniza-Albina are their children and the great-grandchildren of Manuel Ceniza.

The records disclose that when Hacienda de Mandaue was subdivided for resale to the occupants in 1929. Jose Ceniza and Vicente Dabon, who were residing in the hacienda, jointly purchased Lot 627 on installment basis and they agreed, for convenience, to have the land registered in the name of Dabon. Since then, Jose Ceniza, Vicente Dabon, and their heirs have possessed their respective portions of the land, declared the same for taxation, paid real estate taxes on their respective shares, and made their respective installment payments to the Seminario de San Carlos de Cebu.

After Dabon died in 1954, his seven (7) children, named Magno, Jacinta, Tomas, Flaviana, Soledad, Teresita and Eugenia, succeeded to his possession of a portion of the land.

On November 4, 1961, a private land surveyor, Espiritu Bunagan, on the request of Jacinta Dabon and Restituto Ceniza who jointly defrayed the cost, divided Lot 627 into three parts, namely:

- (1) Lot No. 627-A with 3,538 square meters for Marcela Ceniza;
- (2) Lot No. 627-B with 884 square meters for Restituto Ceniza; and
- (3) Lot No. 627-C with 834 square meters for Nemesia Ceniza-Albina, who later bequeathed her share to her brother, Jesus Ceniza. (p. 19, Record on Appeal.)

The present controversy arose because the private respondents refused to convey Lots Nos. 627-B and 627-C to the petitioners. They claimed that their predecessor-in-interest, Vicente Dabon, was the sole and exclusive owner of Lot 627, by purchase from the Seminario de San Carlos de Cebu. In their answer to the petitioners' complaint for reconveyance in June 1967, they alleged that the petitioners' right of action had already prescribed.

Petitioners replied that Vicente Dabon held the land in trust for them, as co-owners, hence, their action for reconveyance was imprescriptible.

On August 31, 1970, the trial court rendered judgment for the petitioners. Finding that there existed a co-ownership among the parties, it ordered the private respondents to execute deeds of conveyance of Lots Nos. 627-B and 627-C in favor of the plaintiffs, Restituto and Jesus Ceniza, respectively (p. 35, Record on Appeal).

On appeal by the defendants (now private respondents) the Court of Appeals on October 29, 1976, reversed that decision of the trial court. It ruled that the petitioners' right of action had prescribed after the lapse of 20 years from the date of registration of the land on February 8, 1939 in Vicente Dabon's name (p. 32, Rollo).

The petitioners have appealed to this Court by a petition for review under Rule 45 of the Rules of Court.

The legal issue presented by the petition is whether the registration of the title of the land in the name of one of the co-owners constituted a repudiation of the co-ownership for purposes of acquisitive prescription.

We find merit in the petition for review.

The trial court correctly ruled that since a trust relation and co-ownership were proven to exist between the predecessors-in-interest of both petitioners and private respondents, prescription did not run in favor of Dabon's heirs except from the time that they repudiated the co-ownership and made the repudiation known to the other co-owners, Restituto and Jesus Ceniza (*Cortes vs. Oliva*, 33 Phil. 480).

Paragraph 5 of Article 494 of the Civil Code provides —

"No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership."

The registration of Lot No. 627 in the name of Vicente Dabon created a trust in favor of his co-owner Jose Ceniza, and the latter's heirs. Article 1452 of the Civil Code states:

"If two or more persons agree to purchase property and by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each."

This Court has ruled in numerous cases involving fiduciary relations that, as a general rule, the trustee's possession is not adverse and therefore cannot ripen into a title by prescription. Adverse possession requires the concurrence of the following circumstances:

- a) that the trustee has performed unequivocal acts of repudiation amounting to the ouster of the cestui que trust;
- b) that such positive acts of repudiation have been made known to the cestui que trust; and

c) that the evidence thereon should be clear and conclusive.

The above elements are not present here for the petitioners/co-owners have not been ousted from the land. They continue to possess their respective shares of Lot 627 and they have been paying the realty taxes thereon. Restituto's house stands on his portion of the land. Assuming that the private respondents' rejection of the subdivision plan for the partition of the land was an act of repudiation of the co-ownership, prescription had not yet set in when the petitioners instituted the present action for reconveyance. These circumstances were overlooked by the Court of Appeals.

In *Custodio v. Casiano*, 9 SCRA 841, we ruled that:

"Where title to land was issued in the name of a co-heir merely with the understanding that he would act as a trustee of his sisters, and there is no evidence that this trust relation had ever been repudiated by said trustee, it is held that a relation of co-ownership existed between such trustee and his sisters and the right of the successors-in-interest of said sisters to bring the present action for recovery of their shares therein against the successors-in-interest of said trustee cannot be barred by prescription, despite the lapse of 25 years from the date of registration of the land in the trustee's name." (underscoring supplied.)

In *Escobar v. Locsin*, 74 Phil. 86, we affirmed the duty of the courts to shield fiduciary relations "against every manner of chicanery or detestable design cloaked by legal technicalities" and to guard against misuse of the Torrens system "to foment betrayal in the performance of a trust."

In this case, since the statutory period of limitation within which to file an action for reconveyance, after the defendants had repudiated the co-ownership in 1961, had not yet run its course when the petitioners filed said action in 1967, the action was not barred by prescription.

WHEREFORE, the decision of the Court of Appeals is hereby REVERSED AND SET ASIDE and the decision dated August 31, 1970 of the then Court of First Instance of Cebu, Branch VI, in Civil Case No. R-10030 is reinstated. Costs against the private respondents.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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