

DOROTEO BANAWA, JULIANA MENDOZA, CASIANO AMPONIN AND GLICERIA ABRENICA, PETITIONERS, VS. PRIMITIVA MIRANO, GREGORIA MIRANO, JUANA MIRANO AND MARCIANO MIRANO, RESPONDENTS.

G.R. No. L-24750. May 16, 1980

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is a petition for review by certiorari of the decision of the Court of Appeals promulgated on April 12, 1965[1] in CA-G.R No. 23597-R, entitled "Primitiva Mirano, et al., Plaintiffs-Appellees, versus, Doroteo Banawa, et al., Defendants-Appellants", the dispositive part of which is:

"In view of the foregoing, the appealed judgment is hereby affirmed, with costs against defendants-appellants."

The judgment of the lower court which was affirmed reads as follows:

"WHEREFORE, judgment is hereby rendered:

"(a) Declaring the plaintiffs to be the owners of the two parcels of land described in paragraph 3 of the complaint;

"(b) Ordering the defendants to deliver the possession of the said parcels of land to the plaintiffs;

"(c) Declaring the deed of sale executed by Roman Biscocho, Paula Biscocho and Maria Carmen Mendoza in favor of Doroteo Banawa and Juliana Mendoza, dated April 4, 1940, as evidenced by Exhibit 'E' and its registration in the registry of deeds of Batangas, to be null and void;

"(d) Declaring null and void the deed of donation, dated August 7, 1956, evidenced by Exhibit 'D' executed by the spouses Doroteo Banawa and Juliana Mendoza in favor of the spouses Casiano Amponin and Glicerica Abrenica, as well as Tax Declarations No. 26818 in the names of the spouses Doroteo Banawa and Juliana Mendoza, and No. 26845 in the names of the spouses Casiano Amponin and Glicerica Abrenica, and the registration of the said deed of donation in the registry of deeds of Batangas; and

"(e) Ordering the defendants to pay to the plaintiffs actual damages in the amount of P4,500 and attorney's fees in the amount of P500.00, and the costs of this action.

SO ORDERED."[2]

The spouses Doroteo Banawa and Juliana Mendoza both died during the pendency of this case in the Court of Appeals. They have been substituted by the petitioners Casiano Amponin and his wife Glicerica Abrenica, legally adopted daughter of one of the deceased petitioners and donee of the Carsuche property.[3]

The petitioners filed on May 20, 1965, a motion for reconsideration of the decision of the Court of Appeals. Said

motion was denied on June 28, 1965.[4]

As found by the Court of Appeals, the facts are:

"It appears that sometime in 1911, Maria Mirano, a niece of appellant Ju-liana Mendoza, and who was then about nine years old, was taken in by the appellants-spouses, Doroteo Banawa and Juliana Mendoza, in the latter's house in Mahabang Lodlod, Taal, Batangas. Appellants spouses being childless, treated and reared her up like their own child. They hired a private tutor to teach her the rudiments of reading, writing and arithmetic. They supported her, gave her money, clothes and even jewelry. Maria reciprocated their care and affection by helping with the household chores.

"A few years later, the spouses opened up a store for general mer-chandise in barrio Lutucan, Sariaya, Quezon, from which they derived considerable income and which enabled them to acquire several parcels of land.

"On July 31, 1949, after a linger-ing illness, Maria Mirano died in Taal, Batangas while still living with the spouses. At the time of her death she left as her only nearest relatives the herein plaintiffs, namely Primitiva Mirano, who is a surviving sister, and Gregoria, Juana and Marciano, all sur-named Mirano, who are the children of a deceased brother, Martin Mirano.

"The parties do not dispute the identity of the two parcels of land in controversy, which are described in paragraph 3 of the complaint as follows:

'1. A parcel of sugar land situated in the Barrio of Iba, Taal, Batangas, with an area of 44,200 square meters, more or less. Bounded on the North, by Ravine; on the East, by the property of Leodovico Garcia; on the South, by the property of Gregorio Amponin -and on the West, by the pro-erty of Gregorio Maria Ani-versario (now Doroteo Banawa). Under Tax Declaration No. 25994 in the name of Maria Mirano and assessed at P2,210.00.

'2. A parcel of sugar land situated in the barrio of Carsuche, Taal, Batangas, with an area of 54,093 square meters, more or less. Bounded on the North, by the property of Agapito Aro and Alley; on the East, by an Alley; on the South, by the pro-perties of Filomeno Dio-mampo, Gregorio de la Rosa and Andres Moratilla; and on the West, by the property of Agapito Aro. Under Tax Declaration No. 19786 in the name of Maria Mirano and assessed at P2,760.00.'

"For purposes of clearness and con-venience, and since the respective as-ertions and evidences adduced by the par-ties regarding the two parcels of land are in sharp divergence, we shall refer to the first parcel as the Iba property and to the second parcel as the Carsuche property and, moreover, we shall treat and discuss the two separately.

"Parcel 1, or the Iba Property.

"The parties agree that the Iba Pro-property was originally owned by Placido Pun-zalan from whom it was acquired on May 5, 1921. Plaintiffs' evidence upon this point tends to show that the acquisition of the said parcel of land was pursuant to a deed of sale contained in a public instrument acknowledged before Notary Public Ramon A. Cabrera on the date aforesaid, a photostatic copy of which was introduced in evidence as Exhibit 'A', the same having been secured from an original copy on file with the Division of Archives, Bureau of Libraries. The deed of sale in question states that the Iba property consisted formerly of two parcels of land and that they were sold for the amount of P2,000.00 in favor of Maria Mirano. Defendant Doroteo Banawa impliedly admitted the execu-tion of this notarial document when he declared that in the execution of the document concerning the purchase of the Iba property from Punzalan the notary public charged him P20.00 and another P5.00 for stamps in the name of Maria Mirano since 1923 (Exhs. 'A-1' to 'A-7').

"By contrast, defendants' claim of ownership over the Iba property is pre-dicated upon their assertion that the

money used in buying said land pertained to the spouses Doroteo Banawa and Ju-liana Mendoza. Defendants contend that since 1919 Placido Punzalan borrowed money from defendant spouses on three different occasions for the sums of P1,200.00, P1,800.00 and P1,080.00, respectively, each of which was evidenced by Exhs. '1', '2' and '3', respectively. Upon the failure of Placido Punzalan to discharge said obligations in 1921, he agreed to sell the land aforementioned to the spouses for P3,700.00, but as the total value of the three loans was P4,080.00, Punzalan had to reimburse to said spouses the difference of P380.00. The document of sale stated the price to be only P2,000.00 in view of the fact that Doroteo Banawa had only P25.00 with him when the deed was prepared by the notary public, and the latter was charging P10.00 for every one thousand pesos mentioned as the consideration of the contract. Defendants likewise maintain that the sale was made to appear in favor of Maria Mirano because said spouses being already old, they wanted to leave something to Maria Mirano for her to lean upon when they would have been gone. They, however, made Maria understand that although the property was placed under her name, they would continue to be the owners thereof, to administer and enjoy the fruits of the same as long as they live, and that she would become the owner of the land only after their death. Maria supposedly expressed her conformity to and appreciation for the said arrangement. Maria Mirano was 19 years old when the deed of sale was executed.

"Parcel 2, or the Carsuche Property.

"There is no dispute between the parties that the Carsuche property was acquired by way of purchase from its original owners, to wit: Roman Biscocho, his sister Paula Biscocho, and sister-in-law Carmen Mendoza. The sale took place sometime in December, 1935. There is, however, a sharp conflict of evidence between the parties concerning the form of the document evidencing the sale and in whose favor the sale was made at that time. The plaintiffs claim that the sale was evidenced by a public instrument executed before and ratified by Notary Public Vicente Ilagan of Taal, Batangas, and that the vendee mentioned in the said document was Maria Mirano. The defendants, on the other hand, assert that the sale was evidenced by a private writing prepared in the handwriting of Roman Biscocho and that it was in favor of the spouses Doroteo Banawa and Juliana Mendoza. Neither the public instrument allegedly ratified by Atty. Ilagan nor the private writing supposedly prepared by Roman Biscocho was presented before the lower court.

"After laying the proper predicate for the presentation of secondary evidence, the plaintiffs presented Atty. Vicente Ilagan and Roman Biscocho to testify upon the execution of the afore-said public instrument in December, 1935. These two declared that sometime in December, 1935, the spouses Doroteo Banawa and Juliana Mendoza, Maria Mirano, Roman Biscocho, Paula Biscocho and Carmen Mendoza, accompanied by Atty. Regino Aro, went to the office of Atty. Ilagan in Taal, Batangas; that Atty. Aro, who was a classmate of Atty. Ilagan in the law school, asked the latter's permission to use his typewriter on which he prepared a document in English and which he asked Atty. Ilagan to ratify; that Atty. Ilagan translated into Tagalog the contents of the said document to the parties and, the witnesses, after which they all signed the same; that the document involved the sale of the Carsuche property in favor of Maria Mirano; that after paying him P20.00 for his services which Atty. Ilagan would not accept at first, Doroteo Banawa asked Atty. Ilagan in Tagalog whether the document that he ratified was 'strong enough' (Matibay) to safeguard the rights of Maria Mirano, to which Atty. Ilagan answered in the affirmative.

"Doroteo Banawa, on the other hand, stated that on being offered the Carsuche property by the owners thereof, they agreed on the purchase price of P3,700.00 of which a down payment of P1,200.00 was made and, later, an additional sum of P100.00 was given to Roman Biscocho, both payments being evidenced by a receipt dated December 15, 1936 (Exh. '9'). A few days later, Roman Biscocho prepared in his own handwriting a private document selling the Carsuche property in favor of the spouses Doroteo Banawa and Juliana Mendoza for the

sum of P4,000.00, the vendors having asked for a P300.00 increase in price. Doroteo Banawa, there-after brought said private document to the municipal treasurer of Taal, Batangas, to whom he expressed the desire to have the land dec-lared in the name of Maria Mirano so that the latter might attend to the payment of taxes over the land whenever he was away. This wish of Doroteo Banawa was done by his thumb-marking an affidavit, thus accounting for the fact that said land appears in the name of Maria Mirano in the tax declarations covering the same from 1934 to 1956."[5]

The petitioners assign the following errors:

"I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN LAW IN RULING THAT THE PLACING OF IBA PROPERTY IN THE NAME OF THE LATE MARIA MIRANO WAS IN THE NATURE OF A DONATION INTER-VIVOS.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN LAW IN RULING THAT PE-TITIONERS' INTERPRETATION OF ARTICLE 632 OF THE OLD CIVIL CODE IS TOO LITERAL AND IGNORES THE RATIONALE OF THE LEGAL PROVISION.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN LAW IN RULING THAT THE 'EXCEPTIVE CLAUSE' OF ARTICLE 1448 OF THE CIVIL CODE IS APPLICABLE IN THE PRESENT CASE.

IV

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN LAW IN RULING THAT SECTION 5, RULE 100 OF THE OLD RULES OF COURT DOES NOT APPLY IN THE INSTANT CASE BECAUSE MARIA MIRANO WAS NOT LE-GALLY ADOPTED.

V

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN LAW IN RULING WITH RESPECT TO THE CARSUCHE PROPERTY (LOT NO. 2) THAT THE DEED OF SALE EXECUTED IN 1940 IN FAVOR OF THE PETITIONERS DOROTEO BANAWA AND HIS WIFE JULIANA MENDOZA AND WHICH WAS DULY REGISTERED DID NOT IMPAIR THE PRETENDED SALE TO MARIA MIRANO."[6]

The first, second, third and fourth errors assigned refer to the Iba property, parcel 1, while the fifth error assigned refers to the Carsuche property, Lot 2.[7]

As may be discerned from the assignment of errors, the basic issue is the ownership of the two parcels of land in question. The plaintiffs appellees, respondents herein, assert title to the lands as heirs of Maria Mirano. Defendants-appellants, petitioners herein, claim ownership over them by virtue of purchase from the original owners.

Considering that in the case at bar the findings of fact of the Court of Appeals are not contrary to those of the trial court, a minute scrutiny by this Court of said findings is not necessary. In Tolentino vs. de Jesus, et al.,[8] this Court held:

"The findings of facts of the res-pondent Court of Appeals are conclusive on the parties and on this Court (Tamayo vs. Callejo, L-25563, July 28, 1972, 46 SCRA 27; Nery, et al. vs. Lorenzo, et al., L-23096 &

L-23376, April 27, 1972, 44 SCRA 431; Viacrucis vs. CA, L-29831, March 29, 1972, 44 SCRA 176; Dela Cruz, et al. vs. CA, L-24000, Nov. 29, 1971, 42 SCRA 68; Naga Dev. Corp. vs. CA, L-28175, Sept. 30, 1971, 41 SCRA 105, 115; Lacson & Basilio vs. Pineda, et al., L-28523, July 16, 1971, 40 SCRA 35; Quiñano, et al. vs. CA, et al., L--23024, May 31, 1971, 39 SCRA 227; Reyes, et al. vs. CA, et al., L-28466, March 27, 1971, 38 SCRA 138, 142; Gotamco Hermanas vs. Shotwell, et al., L-22519, March 27, 1971, 38 SCRA 112-117; Limjoco vs. CA, L-20656, Feb. 27, 1971, 37 SCRA 663-669; De Garcia, et al. vs. CA, L-20264, Jan. 30, 1971, 37 SCRA 130, 136-137; Simeon vs. Peña, L--29049, Dec. 29, 1970, 36 SCRA 611), unless (1) the conclusion is a finding grounded entirely on speculation, sur-mise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admission of both appellant and appellees [Roque vs. Buan, L-22459, Oct. 31, 1967, 21 SCRA 648]; (6) the findings of facts of the Court of Appeals are contrary to those of the trial court; (7) said findings of facts are conclusions without citation of specific evidence on which they are based; (8) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents [Garcia vs. CA, L-26490, June 30, 1970, 33 SCRA 622]; and (9) when the finding of fact of the Court of Appeals is premised on the absence of evidence and is contra-dicted by evidence on record [Salazar vs. Gutierrez, L-21727, May 29, 1970, 33 SCRA 243]."

The instant case does not fall under any of the exceptions.

However, all the issues raised by the petitioners shall be passed upon individually.

The first error assigned reads:

"The Honorable Court of Appeals gravely erred in law in ruling that the placing of the Iba Property in the name of the late Maria Mirano was in the nature of a donation intervivos."

The respondents[9] correctly pointed out that neither the Court of Appeals nor the Court of First Instance of Batangas categorically stated that the placing of the properties in the name of Maria Mirano was in the nature of a donation inter-vivos. In rejecting the petitioners' contention that a donation mortis causa was executed, the Court of Appeals said that, under the facts and cir-cumstances narrated by the petitioners, the placing of the Iba property in the name of Maria Mirano - if it was to be called a donation at all - was not in the nature of a donation mortis causa, but rather it would be in the nature of a donation inter-vivos, giving its reasons and citing the applicable law and decisions of this Court on the matter. The Court of First Instance made the same hypothetical conclusion.[10]

The finding of the Court of First Instance of Batangas which was sustained by the Court of Appeals is that what was donated by the spouses Doroteo Banawa and Juliana Mendoza to Maria Mirano was the money used in the purchase of the lands in question. This conclusion of the Court of First Instance of Batangas was supported by the testimony of Macario B. Aro, a nephew of the deceased Doroteo Banawa, that the money used by Maria Mirano in the purchase of the Iba and Carsuche properties was given to her by Doroteo Banawa.[11]

If the money used by Maria Mirano in purchasing the properties was given to her by the spouses Doroteo Banawa and Juliana Mendoza, or by either of them, then the money had belonged to her. Maria Mirano purchased and paid for the said properties with her money. As a matter of fact, the deed of sale, Exhibit "A", [12] re-cites as follows:

"Que en consideracion a la suma de Dos Mil Pesos moneda filipina (P2,000.00) que me ha pagado Maria Mirano x x x ".

It is also contended by the petitioners that the deeds of sale executed by the owners of the land in favor of Maria Mirano were simulated contracts intended to short-cut two different transactions: (1) a sale in favor of the spouses Doroteo Banawa and Juliana Mendoza; and (2) a donation of lands by the spouses in favor of Maria Mirano.[13]

There are two kinds of simulated contracts, namely: the absolutely simulated contract and the relatively simulated one. In both instances, however, their nullity is based on the want of true consent of the parties. There is no intent to be bound or the true intent is hidden or concealed. Such contracts are even generally re-garded as fraudulent with intent of injuring third persons. The purpose, therefore, of a simulated contract which may be annulled is to conceal the parties' true intent, or to deceive or defraud third persons.

From the record, there is no showing of deception or fraud, nor of concealment of intent of the parties as to the sale of the Iba property by the vendors in favor of Maria Mirano. The transactions which transpired were purely: (1) donations of money or things representing or equivalent to money by the spouses in favor of Maria Mirano which could be made and accepted verbally; and (2) purchase of lands by Maria Mirano with the use of that money or credits (pre-existing indebtedness in favor of the spouses) as consideration thereof.

The petitioners' contention that "the contract of sale had been intended to be a contract of sale between the vendors and the spouses Doroteo Banawa and Juliana Mendoza" has no merit. The petitioners were present when the sales were made to Maria Mirano. They were the ones who caused the titles to the properties to be placed in the name of Maria Mirano because they wished "that after our death Maria Mirano could have something for her maintenance".^[14] Moreover, the testimony of Vicente Ilagan, the notary public before whom the deed of sale was executed, to the effect that he was asked by Doroteo Banawa in Tagalog: "Kung matibay ang documentong ito para kay Maria"^[15] and to which query he answered, "Yes, sir",^[16] supports this conclusion. The conduct of the spouses the time of the execution of the contracts are inconsistent with those which the petitioners, the late spouses and their successors-in interest, now assert. Their intention to make Maria Mirano the owner of the said parcels of land was clearly shown by their conduct at the time of the execution of the deeds of sale which influenced the vendors to believe that Maria Mirano was indeed the vendee in their agreement. The petitioners had full knowledge of the facts surrounding the execution of the document of sale. They are equitably estopped^[17] to deny that the transfer of the lands in question in favor of Maria Mirano was the actual and true intent of the parties as embodied in the documents of sale of the Iba and Carsuche properties. The documents are what they purport to be contracts of sale from the vendors to the vendee, Maria Mirano.

The petitioners submit that since there was transfer of title to the land in litigation to Maria Mirano when the purchase price was in fact actually paid by the petitioners-spouses, an implied trust was created. The pre-sent law on implied trust is Article 1448 of the New Civil Code which provides:

"Art. 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child."

The transactions in question took place before the Civil Code of the Philippines became effective on August 30, 1950. Hence Article 1448 of said Code is not applicable.^[18]

Moreover, there is no showing that Maria Mirano bought the lands in question in trust for the petitioners.

The petitioners also claim that they have become owners of the properties by acquisitive prescription under Article 1957 of the Old Civil Code which provides:

"Ownership and other real rights in immovable property shall prescribe by possession in good faith and under a just title for ten years as between persons present and for twenty years as between absentees."

The above-cited provision speaks of two essential requirements: (1) possession for ten (10) years as between

persons present and twenty (20) years, for absentees; and (2) a just title.

As regards the Iba property (Lot No. 1), petitioners have not presented any title, just or otherwise, to support their claim. And Article 1954 of the Old Civil Code provides, further, that a "just title must be proven; it never can be presumed."

Not having a just title, as required by Article 1957 of the Old Civil Code, the petitioners cannot invoke prescription with respect to the Iba property.

The petitioners also assert ownership by acquisitive prescription over the Iba property under Section 41 of the Code of Civil Procedure. The pertinent portion of Section 41 of the Code of Civil Procedure reads:

"Ten years actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the persons under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants x x x"

It is a fact that while Maria Mirano was alive she possessed the property in question as the owner thereof. Hence, it is error for the petitioners to claim ownership over the Iba property by acquisitive prescription under Article 41 of the Code of Civil Procedure for their possession of the said property became adverse and exclusive only in July 1949 after Maria Mirano's death. From 1949 to the date of the filing in 1957 of the present action by the respondents only eight years had elapsed.

The second error assigned is:

"The Honorable Court of Appeals gravely erred in law in ruling that petitioners' interpretation of Article 632 of the Old Civil Code is too literal and ignores the rationale of the legal provision."

Article 632 of the Old Civil Code provides: "Donations of personal property may be made verbally or in writing. Verbal donation requires the simultaneous delivery of the gift. In the absence of this requisite the donation shall produce no effect, unless made in writing and accepted in the same form."

It is contended by the petitioners that oral donation of personal property requires simultaneous delivery of the gift. As regards the Iba property, the consideration given by Maria Mirano for the purchase of the said property from Placido Punzalan was the pre-existing debts of the latter to the spouses Doroteo Banawa and Juliana Mendoza.

The contention of the petitioners that there was no simultaneous delivery of the credits to Maria Mirano is not meritorious. Delivery may be actual or constructive.

Actual delivery consists in the giving of actual possession to the vendee or his agent, as for example, in manually transferring the possession of a thing from the vendor to the vendee

Constructive delivery is a general term comprehending all those acts which, although not conferring physical possession of the thing, have been held by construction of law equivalent to acts of real delivery, as for example, the giving of the key to the house, as constructive delivery of the house from the vendor to the vendee.

In the instant case, the oral donation of the gift consisting of pre-existing obligations of the vendor, Placido Punzalan, was simultaneous or concurrent with the constructive delivery thereof to Maria Mirano when the spouses consented to the execution of the deed of sale of the Iba property in favor of Maria Mirano. The execution of the said deed of sale constituted payment by the vendor, Placido Punzalan, of his outstanding

obligations due to the spouses, Doroteo Banawa and Juliana Mendoza. Consequently, there was constructive transfer of possession of the incorporeal rights of the spouses over the property in question to Maria Mirano.

It is no longer necessary to discuss the third error assigned because of the holding that Article 1448 of the New Civil Code has no retroactive application to the instant case.

Anent the fourth error assigned, the petitioners urge that the donor-spouses are entitled to the land in question by virtue of Section 5, Rule 100 of the Old Rules of Court, the pertinent portion of which reads:

"x x x In case of the death of the child, his parents and relatives by nature, and not by adoption, shall be his legal heirs, except as to property received or inherited by the adopted child from either of his parents by adoption, which shall become the property of the latter or their legitimate relatives who shall participate in the order established by the Civil Code for intestate estates".

The submission of the petitioners is that extrajudicial adoption is within the contemplation and spirit of this rule of reversion adoptiva. However, the rule involved specifically provides for the case of the judicially adopted children. It is an elementary rule of construction that when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says.

The fifth error assigned is:

"The Honorable Court of Appeals gravely erred in law in ruling with respect to the Carsuche property (Lot No. 2) that the deed of sale executed in 1940 in favor of the petitioner Doroteo Banawa and his wife Juliana Mendoza did not impair the pretended sale to Maria Mirano."

The Court of Appeals found that there was a sale of the Carsuche property in 1935 in favor of Maria Mirano and that such sale was embodied in a public instrument. However, in 1940 the same land was sold to the petitioners. The sale was duly registered. The petitioners immediately entered into the possession of the land as owners.

The claim of the petitioners that they have acquired by acquisitive prescription the Carsuche property (Lot No. 2) is meritorious.

Section 40 of the Code of Civil Procedure provides: "Period of prescription as to real estate - An action for recovery of title to, or possession of, real property, or an interest therein, can only be brought within ten years after the cause of action accrues."

That the aforesaid Section 40 governs the instant case is clear from Article 1116 of the New Civil Code which provides that "prescriptions already running before the effectivity of the New Civil Code, shall be governed by the laws previously in force." The prescriptive period commenced to run since 1940, the date the sale in favor of the Banawas was registered with the Register of Deeds of Batangas. Hence the Code of Civil Procedure governs.

The instant case, not having been filed within ten (10) years from the time the cause of action accrued in 1940, prescribed under Section 40 of the Code of Civil Procedure in 1950 because the same was filed only in 1957, seventeen (17) years later.

The possession of the Banawas over the Carsuche property ripened into full ownership in 1950, ten (10) years after 1940, when the possession of the petitioner-spouses which was actual, open, public and continuous, under a claim of title exclusive of any other right and adverse to all other claims, commenced. (Sec. 41, Code of Civil Procedure). The sale in favor of the Banawas was registered in 1940 with the Register of Deeds of Batangas. The actual and adverse possession of the petitioner-spouses was continued by their present successors.

The alleged bad faith of the petitioners in that they knew that the land was previously sold to Maria Mirano is of no consequence because Section 41 of the Code of Civil Procedure provides that there is prescription "in

whatever way such occupancy may have commenced." As held in one case "x x x guilty knowledge is of moment for under the law title by prescription may be acquired in whatever way possession may have been commenced or continued and so long as the possessor had possessed the land openly, publicly, continuously and under a claim of title for a period of over ten years." [19]

The trial court found that the two parcels of land in question with a combined area of a little less than ten (10) hectares had an average annual net yield of P500.00. A total amount of P4,500.00 as actual damages was awarded in as much as Maria Mirano had been dead for nine (9) years when the decision of the trial court was rendered. An adjustment should be made in view of the finding of this Court that the Carsuche property, Lot 2, belongs to the petitioners.

The Iba property, Lot 1, is about 45% of the combined area of the two lands in question. Forty-five per-cent (45%) of the annual net income of P500.00 is equivalent to P225.00. Maria Mirano has been dead for about thirty-one (31) years now. During all this period, the petitioners have been in possession of the Iba property and receiving the products thereof. They should pay as actual damages the total amount of P6,975.00 representing the net income for the period of thirty-one (31) years on the basis of P225.00 a year.

The respondents are also entitled to attorney's fees in the amount of P1,000.00.

WHEREFORE, the decision of the Court of Appeals is hereby affirmed as to the Iba property (Lot No. 1) but reversed as to the Carsuche property (Lot No. 2) which was acquired by the spouses Doroteo Banawa and Juliana Mendoza who could validly donate the said property to Casiano Amponin and Gliceria Abrenica. The petitioners are ordered to pay the private respondents the total amount of Six Thousand Nine Hundred Seventy-Five Pesos (P6,975.00) as actual damages and the amount of One Thousand Pesos (P1,000.00) as attorney's fees, without pronouncement as to costs.

SO ORDERED.

Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Teehankee, J., (Chairman), concurs in the result.

Makasiar, J., concurs and dissents in a separate opinion.

[1] Annex "A", Brief for the Petitioners, p. 4, Rollo, p. 208. Decision of Court of Appeals written by Justice Fernando Hernandez and concurred in by Justice Jose S. Rodriguez and Justice Antonio Cañizares.

[2] Record on Appeal, pp. 57-58, Rollo, p. 148.

[3] Brief for the Petitioners, p. 3, Rollo, p. 208.

[4] Ibid., p. 5.

[6] Brief for Petitioners, pp. 1-2 Rollo, p. 208.

[7] Ibid., p. 3.

[8] March 27, 1974, 56 SCRA 167, 171-172.

[9] Brief for Respondents, pp. 15-16, Rollo, p. 224.

[10] Decision of Court of Appeals, pp. 13-15; Annex "A" of Petition for Certiorari, Rollo, pp. 45-82, and Record on Appeal, pp. 37-39, Rollo, p. 148.

[11] Tsn., pp. 74-75, August 21, 1957; Decision of CA, pp. 28-29; Annex "A", Petition for Certiorari, Rollo, p. 6.

[12] Folder of Original Exhibits, pp. 1-2.

[13] Brief for the Petitioners, pp. 17-18, Rollo, p. 208.

[14] Tsn., p. 55, September 25, 1957.

[15] Tsn., pp. 46-47, December 17, 1957.

[16] Ibid.

[17] Article 1433, New Civil Code.

[18] Rone et al. vs. Claro and Baquiring, 91 Phil. 250.

[19] Arboso vs. Andrade, 87 Phil. 782.

SEPARATE OPINION MAKASIAR, J.:

I dissent, re the Iba parcel; because there was no valid donation of the land or of the purchase money.

In addition to the views expressed by the learned counsel for the petitioners, to which I subscribe, I wish to stress the following:

1. The money with which to buy the property was not donated to Maria by the spouses Juliana Mendoza and Doroteo Banawa. Said spouses would not donate the large amount of P4,080.00 (although the deed states the amount as P2,000.00) to Maria Mirano who was merely tutored to learn the 3 R's - reading, writing and arithmetic - at the expense of said spouses. While it is true that they supported her, gave her money, clothes and even jewelry, they did not send her to school, much less give her a college education. It is unthinkable that the said spouses would give her P4,080.00 when they could not even give her a primary education which would cost very much less (from 1911 to 1915). The jewelry they could have given to her could not be better than trinkets, the cost of which was negligible but could be a fond possession of a poor, impressionable child in the rural area like Maria;
2. No cash actually passed to Maria from the spouses - The amount of P4,080.00 allegedly donated by the spouses to Maria represented the various loans in the amounts of P1,200.00, P1,800.00 and P1,080.00 previously extended to Placido Punzalan who, as vendor, sold the Iba parcel in payment of his debt. While the selling price was P3,700.00, the purchase price was made to appear in the document as P2,000.00 to save on notarial fees;
3. Up to the time of her death on July 31, 1949 at the age of 48, Maria was still living with the spouses who reared her. This fact shows that Maria was still being supported by the spouses Doroteo Banawa and Juliana Mendoza;
4. If there was a valid donation of the money to pay for the Iba sugar land in Taal in 1921, which consists of 4.42 hectares, it would seem that Maria would have sufficient funds derived from the produce of such a big parcel with which to purchase for herself the Carsuche parcel for the amount of P3,700.00 or P4,000.00. But the fact of the matter is that it was still the spouses Juliana Mendoza and Doroteo Banawa who paid for the Carsuche property, only that the sale was allegedly made in favor of Maria, whom they did not legally adopt, to insure the survival of Maria long after they would have been dead as they were then already old. Again, this goes against the grain of human nature; because no such deep concern was exhibited by the spouses in favor of their legally adopted daughter Gliceria Abrenica; and

5. The spouses legally adopted petitioner Gliceria Abrenica, wife of co-petitioner Casiano Ampunin, but never legally adopted Maria, niece of petitioner Juliana Mendoza. If the said spouses wanted to favor their niece Maria for helping in their business, they could have easily adopted her legally and thereby make her their legal heir, like petitioner Gliceria Abrenica.

I concur re the Carsuche parcel.

There was no valid sale in favor of Maria Mirano of said lot because:

1. While a photostat copy of the earlier deed of sale of 1921 was secured from the Division of Archives of the Bureau of Libraries and submitted in evidence as Exhibit A; no copy of the later alleged deed of sale in 1935 was presented in evidence concerning the Carsuche parcel. If there was such a 1935 deed of sale (14 years after the 1921 deed), a certified true copy thereof could be more easily secured from the Division of Archives of the Bureau of Libraries, as it was a later document (1935) than the 1921 deed of sale, which is available. The alleged sale in December, 1935 was allegedly notarized by Atty. Vicente Ilagan. It is strange that Atty. Aro who allegedly prepared the deed of sale, was not the one who notarized the same;
2. In 1935, Maria was already 23 years old. Being a very important document purportedly evidencing her title to the Carsuche sugar land also in Taal, of 5.4093 hectares, she should have retained the original or a copy of the alleged deed of sale, specially considering that the sum of P4,000.00 was allegedly paid for the same;
3. The cancelled tax declaration of the previous owner - the vendor - or the new tax declaration in the name of the buyer, usually states the reason for such cancellation, like a deed of sale with its date and may include the name of the notary public and place of execution of the document. There is no intimation of such a statement or entry in the cancelled tax declaration of the vendor or in the new tax declaration in the name of Maria Mirano; and
4. There is no discussion of any exhaustive examination of the other four possible sources of the copies of the alleged 1935 deed of sale - from the vendor, the notary public, the office of the clerk of court, and as above-stated, the alleged vendee herself.

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