

**FELIPE SEGURA, ANTONIA SEGURA, NICANORA SEGURA,
BERNANDINA SEGURA, ALIPIO SEGURA AND MONSERRAT SEGURA,
PLAINTIFFS-APPELLANTS, VS. NICOLAS SEGURA, SANTIAGO
SEGURA, GAUDENCIO SEGU...**

G.R. No. L-29320. September 19, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

This is another distasteful case where kin is pitted against kin in a bitter dispute over property inherited from a common ancestor who probably would have been distressed to see her progeny quarreling over it as if they were hostile strangers.

The land in question consists of 4,060 square meters and was originally registered under Original Certificate of Title No. 1994 in the Registry of Deeds of Iloilo in the name of Gertrudes Zamora.[1] She died intestate and without debts in 1936 and was survived by four children, who never got around to dividing the property among themselves. This controversy is not among the four brothers, who are now also deceased. It is Gertrudes's grandchildren by three of her sons (the fourth having died without issue) who are involved in this complaint for recovery of ownership and possession of the disputed inheritance, plus damages.

The conflict began when on April 6, 1941, three of these nine grandchildren, namely, Nicolas, Santiago and Gaudencio Segura, executed a deed of extrajudicial partition arrogating the entire property to themselves alone as equal pro indiviso owners[2] (thereby, curiously, excluding Nicolas and Santiago's own brother and two sisters, and Gaudencio's own sister, besides the other two co-heirs.) This partition was not registered immediately, but only in 1946, or five years later.

Before and after such registration, the following developments transpired:

- The land was sold for P50.00 to Emiliano Amojido, with right to repurchase on or before February 15, 1942. This right was not exercised.[3]
- On November 28, 1946, Amojido executed an affidavit of consolidation of ownership and obtained TCT No. 28336, with a reservation of the rights of the other heirs annotated therein.[4]
- On March 31, 1953, Amojido sold the land for P1,500.00 to Mirope Mascereñas vda. de Elisa, who obtained TCT No. T-19396 in her name, which did not retain the annotation.[5]
- On May 20, 1956, the plaintiffs filed Civil Case No. 3941, for recovery of possession and ownership of the

subject land from Nicolas, Santiago and Gaudencio Segura.[6]

- On February 14, 1957, Elison sold the land for P1,000.00 to Mildred Elison vda. de Javelosa, who obtained TCT No. 22074 in her name.[7]

- On January 15, 1958, Mildred sold the land for P1,500.00 to Ernesto and Igmedio Amojido, who obtained TCT No. 24342 in their names.[8]

- On January 16, 1958, Civil Case No. 3941 was dismissed on motion of the plaintiffs' counsel.

- On July 23, 1961, the land was mortgaged to the Rural Bank of Sta. Barbara, which is one of the appellees herein.

The complaint in the case at bar was filed on January 11, 1968, and docketed as Civil Case No. 7477 in the Court of First Instance of Iloilo. In it, the six excluded grandchildren alleged that the partition and all subsequent transfers of the subject land were null and void insofar as these transactions deprived them of their shares as co-owners of the said property. The defendants moved to dismiss, contending that the action was barred by prior judgment and that in any event whatever rights might have pertained to the plaintiffs had already prescribed under the Rules of Court and the Civil Code. The plaintiffs opposed the motion. Thereafter, issued having been joined, the trial court[9] issued its order of March 28, 1968, dismissing the complaint on the ground of prescription. The motion for reconsideration was denied in an order dated May 28, 1968, on the further ground, as if it were an afterthought, of *res judicata*. The plaintiffs then appealed to this Court and now ask that the said orders be reversed and the complaint reinstated.

We hold at the outset that the present action is not barred by prior judgment as the dismissal of the earlier complaint was without prejudice to its refileing at a future date. It appears that when Civil Case No. 3941 was called for hearing, the plaintiffs' counsel himself moved for its dismissal on the ground that his clients had gone to Mindanao and he did not know when they would be returning.[10] There is here no showing of failure to prosecute, such as an unreasonable delay on the part of the complainants, and the appellees have not so contended. It was clear that the plaintiffs' counsel had the intention of reviving the case, and that must have been the impression too of the trial judge because his order of dismissal did not state that it was with prejudice to the refileing of the case.[11] The applicable rule is Rule 17, Section 2, of the Rules of Court reading thus:

"Dismissal by order of the court. — Except as provided in the preceding section, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified by the order, a dismissal under this paragraph shall be without prejudice."

It follows that even, if, as noted by the trial court in its Order of May 28, 1968, "the same case Civil Case No. 3941 of this Court. Exh. 'A' with the same subject matter, with the same plaintiffs, almost with the same defendants, and the same theory, was dismissed by this Court on January 16, 1958," the present action is not barred by *res judicata*.

The second ground is not as simple.

The claim of prescription is based first on the contention that under the Rules of Court the deed of extrajudicial partition should have been impugned within two years from the date of its execution in 1941. As the challenge in the instant case was made only in 1956, when Civil Case No. 3941 was filed, that first case, and more so the case at bar which was commenced in 1968, should be and were properly dismissed for tardiness under Rule 74, Section 4, of the Rules of Court.

This section provides in gist that a person who has been deprived of his lawful participation in the estate of the decedent, whether as heir or as creditor, must assert his claim within two years after the extrajudicial or summary settlement of such estate under Sections 1 and 2 respectively of the same Rule 74. Thereafter, he will be precluded from doing so as the right will have prescribed.

It is clear that Section 1 of Rule 74 does not apply to the partition in question which was null and void as far as the plaintiffs were concerned. The rule covers only valid partitions. The partition in the present case was invalid because it excluded six of the nine heirs who were entitled to equal shares in the partitioned property. Under the rule, "no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof." As the partition was a total nullity and did not affect the excluded heirs, it was not correct for the trial court to hold that their right to challenge the partition had prescribed after two years from its execution in 1941.

The appellees invoke a second basis for their claim of prescription and argue that even under the Civil Code the complaint should also be deemed prescribed pursuant to the following provisions:

"Art. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years (1957a)."

"Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

- (1) Upon a written contract;
- (2) Upon an obligation created by law;
- (3) Upon a judgment."

It is recalled that following the execution of the deed of partition, the owners named therein sold the entire land to Emiliano Amojido who, after the vendors had failed to exercise their right of repurchase, executed an affidavit of consolidation in his favor on November 28, 1946. He subsequently obtained a transfer certificate of title in his name, but this contained the following annotation:

"This land is subject to any claim that may be presented by any heir or any other person deprived of his lawful participation in the estate of Gertrudes Zamora, within two years from date of the Extra-Judicial Settlement and distribution of the estate." [12]

As a person can sell only what he owns or is authorized to sell, the buyer can as a consequence acquire no more than what the seller can legally transfer. The deed of partition being invalid as to the other heirs, the vendors could dispose only of their respective shares in the land, or one-third only of the property and not the other two-thirds as well which did not belong to them.

Article 493 of the Civil Code reads as follows:

"Each co-owner shall have the full ownership of his part and the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when

personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership."

Applying this provision, we have held in previous cases:

"When a real property belongs pro indiviso to three persons, who acquired it by inheritance from a common ancestor, the action for recovery by the legal representative of one of the heirs can only concern one-third of the property; and if the other co-owners have, by sale to third person, disposed of one-third of the said pro indiviso property, the plaintiff who sues for recovery is not entitled to ask for the annulment of the sale, inasmuch as the latter merely exercised their rights; such alienation does not affect the rights of the heir who claims only one-third, which belongs to the other two co-owners whose rights must be respected by the plaintiff." [13]

"Every co-heir has the absolute ownership of his share in the community property and may alienate, assign or mortgage the same, except as to purely personal rights, but the effect of any such transfer is limited to the portion which may be awarded to him upon the partition of the property." [14]

"None of the other co-heirs who did not participate in the sale can demand the nullification of the same, inasmuch as every co-owner may alienate, transfer, or mortgage his share in the common thing, and even substitute another person in the enjoyment thereof, unless personal rights are in question; although the effect of the alienation or mortgage, in relation to the co-owners shall be limited to the portion that may be adjudicated to him when the community ceased." [15]

To repeat, the general rule is that no one can give what he does not have — *nemo dat quod non habet*. Hence, even if it be assumed that Amojido had brought the land in good faith from the parties to the extrajudicial partition, only so much of their share could be validly acquired by him, with the rest of the property remaining under the ownership of the six excluded co-heirs. In other words, Amojido became pro indiviso co-owner of the land with the other six heirs, who retained title to their respective shares although he had possession of the entire property. The portion pertaining to the herein appellants should be deemed held by Amojido under an implied trust for their benefit, conformably to the ruling in *Bargayo v. Camumot*, [16] thus:

"In law it is understood that the co-owners or co-heir who is in possession of an inheritance pro indiviso for himself and in representation of his co-owners or co-heirs, if, as such owner, he administers or takes care of the rest thereof with the obligation of delivering it to his co-owners or co-heirs, is under the same situation as a depository, a lessee, or a trustee."

There is no question that an action for reconveyance of property held in implied trust is imprescriptible. [17] However, this is true only as long as the trustee continues to acknowledge the title of the cestui que trust or, otherwise stated, provided he does not repudiate such title. [18] The moment he does so, the prescriptive period will begin to run and may eventually operate to divest the real owners of their right to the property after the lapse of the applicable statutory period. Under the provision above-quoted, that period is fixed at ten years, whether the claim be based upon an obligation created by law under Article 1144 or covered by Article 1134 on rights over immovable property.

When did such prescriptive period start in the case at bar?

It is noted that when Amojido secured the registration of the land in his name following the deed of sale executed in his favor by the parties to the extrajudicial partition, his certificate of title carried an express reservation of whatever rights might pertain to the other heirs. This annotation constituted an acknowledgement of the possibility that a portion of the land might not belong to him and the commitment that he would be holding such part as impliedly conveyed to him in trust by and for its true owners. However, when Amojido himself sold the

land to Mirope Mascareñas vda. de Elison on March 13, 1953, the transfer certificate of title issued in her name no longer carried the said encumbrance. By the deletion of this annotation, Mirope, as the new transferee, repudiated as of the date of registration the claim of the other heirs to their shares in the property. From then on her assertion of ownership over the whole land became adverse even as against the appellants herein. And as the certificate of title was notice to the whole world of her exclusive title to the land, such rejection was binding on the said heirs and started as against them the period of prescription.

The record does not show when TCT No. T-19396 in the name of Mirope Mascareñas vda. de Elison was issued, but it can be conjectured that this was done before February 14, 1957, when she sold the land to Mildred Elison vda. de Javelosa. On the assumption that the land was registered in the name of Mirope in 1953 following her purchase thereof without acknowledgement of the co-heirs' rights, the 10-year prescriptive period would have started from that year. Suspended on May 28, 1956, when the first complaint was filed, it began running again on February 16, 1958, 30 days after it was dismissed, and was completed after seven more years in 1965, two years before the second complaint was filed in 1968. Hence, that complaint was barred by prescription, as correctly held by the trial court, although the different starting point it used, erroneously, was 1941, date of the extrajudicial partition.

The unavoidable consequence of all this is that whatever claims the co-heirs could have validly asserted before can no longer be invoked by them at this time. They have let the time inexorably pass while they were slumbering on their rights, and now it is too late.

WHEREFORE, the appeal is DISMISSED, with costs against the appellants. It is so ordered.

Narvasa (Chairman), Gancayco, Griño-Aquino and Medialdea, JJ., concur.

[1] Rollo, p. 23.

[2] Ibid., p. 24.

[3] Id., pp. 24-25.

[4] Id., p. 25.

[5] Id.

[6] Id., p. 30.

[7] Id., pp. 25-26.

[8] Id., p. 26.

[9] Presided by Judge Valerio V. Rovera.

[10] Rollo, p. 33.

[11] Ibid.

[12] Ibid., p. 25.

[13] Cabuniag v. Magundayao, 26 Phil. 248.

[14] Ramirez v. Bautista, et al., 14 Phil. 528.

[15] Mainit v. Bandy, 14 Phil. 730.

[16] 40 Phil. 857.

[17] Juan v. Zuñiga, 4 SCRA 1221; Jacinto v. Jacinto, 5 SCRA 370; Sebial v. Sebial, 64 SCRA 385.

[18] Lopez v. Gonzaga, 10 SCRA 167; Gerona v. De Guzman, 11 SCRA 153; Fabian v. Fabian, 22 SCRA 231; Jaramil v. Court of Appeals, 78 SCRA 420.

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