

TEODORO OSORIO, PLAINTIFF AND APPELLANT, VS. TRANQUILINO TAN JONGKO AND PE BON UY, DEFENDANTS AND APPELLEES.

G.R. No. L-8262. November 29, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

Appeal from the Court of First Instance of Antique, Judge Enrique Maglanoc, whose order of December 19, 1952, dismissed the plaintiff's complaint upon two grounds: no cause of action, and prescription. The order was issued upon motion of defendants, filed after they had been served with summons.

Such complaint, dated November 15, 1952, alleged in short, that defendant Tan Jongko, on May 2, 1941, had sold to Mm the four parcels of land described therein; that two parcels had been delivered; that the other two had not, and continued in possession of the defendants; that plaintiff had paid part of the purchase price, and was willing to pay the balance of P800, but the said seller and the other defendant refused compliance with the contract, notwithstanding several written demands, specially one made on December 5, 1950. Complainant further averred that "according to the stipulations of the contract, defendant Tranquilino G. Tan Jongko wai given the period of one year within which" to deliver the two parcels with the "further stipulation that m case said vendor should fall to comply "with his obligation, "plaintiff would have the right either to rescind the contract or to ask for its specific performance." Offering to pay the balance of P800, plaintiff demanded delivery of the parcels, plus damages.

This appeal may adequately be decided on the basis of prescription. The trial judge as stated, held that plaintiff's right of action, if any, had prescribed,, We are of the, same opinion, and it becomes unnecessary to consider the other ground of dismissal.

According to appellant's brief, the following are the pertinent dates and incidents:

"May 2, 1941.—Date of execution of contract Annex' "A."

May 2, 1942—Date cause of action accrued..

August 30, 1950—Date New Civil Code took effect. (Po vs. Bonje, CA, 49 Off. Gaz., 1875.)

December 5, 1950.—Date written extra-judicial demand was made plaintiff-appellant upon defendant-appellee Tan Jongko for the delivery of the two parcels of land. (6th par., Complaint, R. A. p. 5.

November 21, 1952—Date this complaint was filed."

We agree with appellant that his cause of action to demand performance accrued on May 2, 1942, i.e., one year after the execution of the contract. But we cannot agree that such cause of action had not yet prescribed on November 15, 1952—more than ten years after May 2, 1942. Under Act 190 actions to enforce written contracts or to recover real property prescribe after ten years. (Sections 40 and 43.)

Appellant however contends that his extra-judicial demand for compliance on December 5, 1959,—before the expiration of ten years—interrupted the prescription, in accordance with provisions of the New Civil Code:

Art. 1155, The prescription of actions interrupted when they are filed before the court, when there is a written extra-judicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor."

Inasmuch as such interruption was not recognized before the New Civil Code [1] the question arises: as to prescriptions already running when the New Civil Code took effect, does a written extra-judicial demand made, in December, 1950 interrupt the period of prescription? The answer is no, because article 1116 of the same New Civil Code provides, "prescriptions already running before the effectivity of this Code shall be governed by the laws previously in force," i.e., by Act No. 190 and the rulings applicable; and as already stated, extra-judicial demands did not interrupt.

Appellant however, arguing for interruption, cites article 2258 New Civil Code providing that:

"Actions and rights which came into being but were not exercised before the effectivity of this Code, shall remain in full force in conformity with the old legislation; but their exercise, duration and the procedure to enforce them shall be regulated by this Code and by the Rules of Court. If the exercise, of the right or of the action was commenced under the old laws, but is pending on the date this Code takes effect, and the procedure was different from that established in this new body of laws, the parties concerned may choose which method or course to pursue."

Obviously, he has failed to notice that Article 2258 is found in the title on Transitional Provisions, the first article of which says, "For the determination of the applicable law in cases which are not specified elsewhere in this Code, the following articles (2253 down to 2258 and other subsequent articles) shall be observed." Since the law applicable is "specified elsewhere" in the, New Civil Code, in article 1116—therefore, article 2258 does not govern the situation.

The same comment on inapplicability affects Article 2253, new Civil Code, which is likewise invoked by appellant. Besides, said article refers to acts or events occurring before the New Civil Code. Here is the article,

"Art. 2263. The Civil Code of 1889 and other previous laws shall govern rights originating, under said laws, from acts done or events which took place under their regime, even though this Code may regulate them in a different manner, or may not recognize them. But if a right should be declared for the first time in this Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the prior legislation, provided said new right does not prejudice or impair any vested or acquired right, of the same origin."

The act on which appellant's argument rests—the extra-judicial demand in December, 1950—took place after the New Civil Code.

For all the foregoing, His Honor's view on prescription being proper, the appealed order of dismissal is affirmed. with costs against the appellant. So ordered.

Paras, C.J., Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

[1] Pelaez vs. Abreu, 26 Phil. 415. In fact, even the presentation of a judicial action did not interrupt. (Peralta vs. Alipio, 97 Phil., 719).

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