

HEIRS OF LEONARDO PALERMO, NAMELY: ANASTACIO PALERMO, LEONCIA PALERMO MALALIS, MAXIMO PALERMO, ANATALIA PALERMO BOHOLST, FRANCISCA PALERMO, MARIANO PALERMO (DECEASED), REPRESENT...

Ponente: INTING, J.

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INTING, J.:

Before Us on appeal is the Decision[1] dated September 11, 2009 of the Regional Trial Court of Pagadian City, Branch 21, rendered in Civil Case No. 3790, which is a Complaint for Reformation of Instrument, Cancellation of Transfer of Certificate of Title No. T-23,854, Issuance of New Titles, Legal Redemption with Damages.

The facts[2] of the case are as follows:

On June 13, 1996, the plaintiffs-appellees Heirs of Leonardo Palermo, namely: Anastacio Palermo, Leoncia Palermo Malalis, Maximo Palermo, Anatalia Palermo Boholst, Francisca Palermo, Mariano Palermo (deceased) represented by wife, Valeriana vda. De Palermo and children, Mariano Palermo, Jr., Merlita Palermo Templa, Maribel Palermo Bonales, Marynoll Palermo, Marichell Palermo, John Michael Palermo and Melandro Palermo and Eleuteria Palermo-Palma (deceased), represented by husband, Gregorio Palma and son, Gregorio Palma, Jr. (Palermo heirs) filed a complaint for Reformation of Instrument, Cancellation of Transfer Certificate of Title No. T-23,854, Issuance of New Titles and Legal Redemption with Damages against defendants-appellants Juan Caybot and Mary Grace Caybot before the court a quo.

The action involves a parcel of land particularly bounded and described as follows:

"A parcel of land known as Lot No. 379, Ts-356 situated in the Poblacion, Municipality of Buug, Province of Zamboanga del Sur. x x x Containing an area of Two Hundred Ninety (290) Square Meters, more or less. x x x Bounded on the NW., along line 1-2 by National Highway, on the NE., along line 2-3 by Municipal Road; on the E., along line 3-4 by Municipal Road; on the SE., along line 4-5 by alley Road; on the W., along line 3-1 by Lot 378, Ts-356. x x x"

The crux of the controversy arose from the execution of two documents: 1) A Deed of Mortgage, and 2) Extrajudicial Partition with Sale. The Deed of Mortgage was executed on September 18, 1985 by Petronia Palermo, widow of the late Leonardo Palermo, in favor of Bernahilda Caybot, wife of Juan Caybot, over the subject property.

The subject property was mortgaged for P30,000.00. The conditions of the mortgage include the following:

a)

Improvements, if made an existing buildings, shall be with notice to the Mortgagor;

b)

That in case of the sale of the above urban lot with the building thereon, the Mortgagee shall be given a priority

to purchase the same;

c)

In case the Mortgagor fails to pay the amount of P30,000 after five years, a contract of sale shall be executed by the Mortgagor, the Mortgagee to give additional amount of P45,000.00;

d)

That it is the condition of this Mortgage that the same shall not be sub-mortgaged to third person without the knowledge of the herein Mortgagor;

e)

That this Mortgage shall include all the improvements if found on the above urban lot described including the building thereon;

f)

That the term of the mortgage shall be for five (5) years to begin on this date, September 18, 1985.

Thereafter, on November 10, 1988, the Palermo heirs, namely: Leoncia P. Malalis, Maximo Palermo, Anatalia P. Boholst, Estrella M. Palermo, Anastacio Palermo, Valeriana Palermo, Gregorio Palma and Bernagilda Caybot sold the subject property to Bernagilda J. Gaybot. The transaction was embodied in a document entitled, 'Deed of Extrajudicial Partition With Sale'.

The Palermo heirs claim that what was actually sold to Caybot was only the 153 square meter portion with the commercial building which was previously mortgaged to the latter. They allege in their complaint that when the Extrajudicial Partition with Sale was drawn and executed, the entire Lot 379, TS-356 as well as the area of 290 square meters, as appearing in the Certificate of Title No. P-30,480 of the late Leonardo Palermo was just blindly copied, thereby inadvertently including the other 137 square meter portion of the property. They insist that it was never their intention to include the adjacent 137 square meter portion with a building in the sale. Neither was it Juan Caybot's intention to include the portion in question in the transaction as indicated in his attitude. After the sale and the transfer of the title of the lot in his name, the latter did not claim nor assert his right over the portion in question for a period of over six (6) years. Neither did Caybot protest or object when the Palermo heirs continued to collect the payment of rentals from lessee, Nonoy Testa. They maintain that they remained in possession and full control of the portion in question and exercised acts of ownership over it.

They further claim that it was only after Caybot filed an Unlawful Detainer case against Testa over the 137 sq. m. portion of the property that they discovered the mistake in the instrument of the sale. Due to Caybot's refusal to accede to the reformation of the instrument, they were constrained to file this case before the court a quo.

For his part, Juan Caybot avers in his answer that the Palermo heirs have no cause of action against him. He maintains that he had purchased the entire Lot 379 and not only a portion thereof, as evidenced by the deed of conveyance. Moreover, the Palermo heirs are barred from impugning the propriety of the deed under the parole evidence rule. He insists that the action is likewise barred by estoppel and prescription.

After the pre-trial conference, trial ensued.

Version of the Plaintiffs-Appellees:

On October 23, 2002, Anastacio Palermo was called to the witness stand and testified before the court a quo that he is the son of the late Leonardo and Petronia Palermo. Leonardo and Petronia's union bore seven (7) children, namely: Mariano (deceased), Leoncia, Maximo, Eleuteria (deceased), Anatalia, Francisca and herein Anastacio.

Eleuteria died sometime in 1971. She had one child named Emeliano. Mariano died on April 20, 1985. He had seven (7) children, namely: Mariano, Jr., Merlita, Maribel, Marichel, John Michael, Melandro and Maryknoll. His mother, Petronia, died on June 21, 1986.

During their lifetime, Leonardo and Petronia owned two (2) parcels of land. The first one consists of one hundred fifty-three (153) square meters (hereafter Lot A), while the other consists of one hundred thirty-seven (137) square meters (hereafter Lot B). Lot A is adjacent to Lot B. In 1968, Leonardo leased Lot A to defendant-appellant Juan Caybot. Lot B was later on leased to Nonoy Testa. Both lessees religiously paid their rentals to Leonardo. Thereafter, a town site survey was conducted in Buug, Zamboanga, Sibugay which consolidated Lots A and B.

After Leonardo's demise, the heirs of Leonardo executed a mortgage contract with Juan Caybot over Lot A. The Deed of Mortgage was executed on September 20, 1985. The Deed of Mortgage stated that "in case the mortgagor fails to pay the amount of P30,000.00 after 5 years, the contract shall be executed by the mortgagor. The mortgagee will get an additional amount of P45,000.00." After the property was mortgaged, an Extrajudicial Partition with Sale was executed by the heirs of Leonardo in favor of Juan Caybot. The signatories include Leoncia Palermo Malalis, Maximo Palermo Bohol, Anastacio Palermo, Baleriana Dael Palermo, Estrella Macoy Palermo, Gregorio Palma and Virgilia J. Caybot. The document was executed on November 10, 1988.

Anastacio also testified that the heirs of Mariano Palermo, who were of legal age by then, were not signatories to the document since they were not notified regarding its execution. Neither was Emeliano Palermo Palma, the son and only child of the late Eleuteria Palermo, notified regarding the execution of the document. The heirs of Leonardo presented the Title and Tax Declaration No. 396 to Judge Anatalio Sagario, who prepared the document. According to Anastacio, the description of Lot No. 3976 was merely copied in the document. In actuality, only the 153 square meter lot was sold to Caybot.

Anastacio further testified that their previous tenant, Nonoy Testa, stopped renting Lot B when Juan Caybot filed an ejectment case against him. Nonoy occupied Lot B as tenant for seven years, more or less. Within that seven-year period, Testa religiously paid the rentals to Leonardo Palermo during the latter's lifetime, then to Petronia Palermo after Leonardo's demise. After her mother passed away, Anastacio and his siblings took the responsibility of collecting the rentals from Testa.

Anastacio furthermore testified that even before Juan Caybot mortgaged the subject property, his father had already built a house on the lot. Sometime in 1980, the latter made a few renovations on the house which costs around P75,000.00.

The mortgaged property was covered by Tax Declaration No. 396. On the other hand, the adjacent property was covered by Tax Declaration 4302. The Extrajudicial Partition with Sale covered only the property under Tax Declaration No. 396, not Tax Declaration No. 4302.

Anastacio and the other heirs received P30,000.00 as consideration for the sale of the subject property, instead of the previously agreed amount of P45,000.00 embodied in the Deed of Mortgage, since at the time of the sale, even though the five-year term has not elapsed, they already needed the money for payment of the burial expenses of their late father.

During cross-examination, Anastacio admitted that the lot subject matter of the Extrajudicial Partition with Sale is Lot No. 379, covered by OCT No. 30,480, with an area of 290 square meters. However, he qualified that in actuality, what was sold to Caybot was only 153 square meters. He hypothesized that perhaps the secretary of the judge committed an error in preparing the document. As a signatory, Anastacio assumed that the document was

based on the Deed of Mortgage although he admitted that the Extrajudicial Partition with Sale document did not mention the Deed of Mortgage by way of reference. The document was executed on November 10, 1988. Even after the execution of the sale document, Testa continued to pay the rentals to them. It was only in 1996, or eight years thereafter, when they filed the case at bar.

On August 12, 2004, Nenelio (a.k.a. Nonoy) Testa testified before the court a quo that sometime in 1978, he leased the property owned by Leonardo Palermo consisting of more than one hundred square meters. He paid a monthly rental of P350.00 to Leonardo Palermo. The rentals gradually increased to P450.00/month and eventually to P500.00/month.

In the years that followed, Testa continued to pay his rentals directly to the Palermos. From the time he leased the property in 1978 until his ejectment from the property in 1997, Caybot never made any attempt to collect rentals from him.

During cross-examination, Testa testified that Caybot had already demanded that he turnover the possession and payment of the property which he had been occupying, even prior to the ejectment case filed by the latter against him. Testa also testified that he won the ejectment case before the MTC but was reversed on appeal by the RTC.

On November 17, 2004, Merlita Palermo Tempa testified before the court a quo that she is the daughter of the late Mariano Palermo, married to Valeriana Dael, whose father is the late Leonardo Palermo. Leonardo had seven (7) children, namely: Mariano, Leoncia, Maximo, Eleuteria, Anatalia, Francisca and Anastacio. Mariano and Valeriana begot seven (7) children, namely: Mariano, Jr., Merlita, Maribel, Maryknoll, Marichel, Michael and Melandro. She resided in Buug, Zamboanga del Sur until she transferred to Bayog sometime in 1990. Her father died on April 20, 1985 in Pagadian City but was buried in Buug, Zamboanga del Sur. During his lifetime, Leonardo owned a parcel of residential lot (Lot 379). Her grandfather, however, passed away last January 29, 1984. Prior to his death, he introduced several improvements on Lot 379. Leonardo leased the building constructed on the subject lot to Juan Caybot. Thereafter, he leased the adjacent building to Nonoy Testa. She averred that she had no knowledge that the lot was mortgaged and later on sold to Caybot.

During cross-examination, Merlita testified that she has no knowledge as to whether or not the properties of her late grandfather were partitioned although she did admit that her late father received his share, as heir, of the late Leonardo Palermo. After her father passed away, she and her siblings took control of the properties left by her father, including the rice mill in Bayog.

She had no knowledge that the subject property had been sold to Caybot up until recently. As one of the complainants in the case at bar, her intention is to exercise her right of redemption over the subject property.

On January 27, 2005, Maximo Palermo testified before the court a quo that he is one of the children of the late Leonardo and Petronia Palermo. There were originally ten (10) members in the family. However, five (5) have already died. Leonardo died on January 29, 1984, while Petronia died on June 21, 1986. Mariano Palermo, the eldest among the seven (7) children, died on April 20, 1985. His parents owned a parcel of land situated at the poblacion of Buug, Zamboanga Sibugay (subject property). Sometime in 1968, Juan Caybot rented a building in the subject property with an area of one hundred fifty-three (153) square meters. Eventually, in 1985, the Palermos mortgaged the same area to Caybot because they needed money to pay the inheritance tax after Leonardo's death. A deed of mortgage dated September 18, 1985 was executed by the parties in which Maximo was one of the signatories. A certain Nenilio (a.k.a. Nonoy) Testa also rented the adjacent lot with an area of one hundred thirty-seven (137) square meters.

Sometime in 1988, after their mother had passed away, the heirs decided to sell the 153-square meter lot to

Caybot. The signatories to the Deed of Sale included: Anastacio Palermo, Valeriano Vda. Palermo, Estrella Palermo, Leoncia Palermo, Gregorio Palma, Anatalia Boholts and Maximo Palermo. Maximo testified that none of the children of the late Mariano Palermo nor of the late Gregorio Palma were able to affix their signatures since the deed of sale was executed in haste since they needed to pay the mounting debt and burial expenses. He further testified that, as one of the heirs of Leonardo Palermo, he is willing to pay to the vendee the amount of the lot upon redemption.

During cross-examination, Maximo testified that the 153-square meter lot was mortgaged to Caybot for P30,000.00. Thereafter, the aforementioned property was sold to Caybot for an additional amount of P45,000.00. The transaction was embodied in a document entitled Extrajudicial Partition with Sale dated November 10, 1988. The document was signed by the heirs. Valeriana Palermo, the wife of the late Mariano, signed the document in lieu of the latter; while Gregorio Palma, the husband of the late Eleuteria, signed in behalf of the latter.

Version of the Defendants-Appellants:

On November 30, 2005, the defendant-appellant Juan Caybot was called to the witness stand. Caybot testified that he and his late wife, Bernagilda Caybot, purchased Lot No. 379 situated in Buug, Zamboanga Sibugay with an area of two hundred ninety (290) square meters from the Palermos. The sale was embodied in a document entitled Extrajudicial Partition with Sale dated November 10, 1988. The signatories of the document were the Spouses Caybot and the heirs of the late Leonardo and Petronia Palermo, namely: Leoncia P. Malalis, Maximo Palermo, Anastacio Palermo, Anatalia P. Bolts, Valeriana B. Palermo (in lieu of the late Atty. Mariano Palermo), Gregoria Palma (in lieu of the late Eleuteria Palermo), and Francisca Palermo (represented by Estrella Palermo, the wife of Maximo Palermo). The witnesses to the execution of the document were Francisco Pagayona and Edwin Rapole.

He also testified that he has been a resident of the subject property since 1970 initially as a lessee. When he rented the property, there was already a commercial building constructed there by the Palermos which he used for his business. Sometime in 1985, after the death of Leonardo, Petronia mortgaged the entire two hundred ninety (290) square meter lot to him. It was only after the execution of the Deed of Mortgage when he and his wife noticed that there was an error in the document since the area description was only for one hundred fifty-three (153) square meters. When confronted regarding the matter, Petronia advised them to leave the document as it is and to wait for the time until she and the heirs, as mortgagors, are unable to redeem the property and then to execute the proper document accordingly.

One of the terms of the mortgage contract was that the Palermos could redeem the property within five (5) years or until 1990. However, after only three years, the Palermos sold the property to Caybot. Consequently, the title of the subject property was transferred in his wife's (Bernagilda) name.

He further testified that Nonoy Testa was also one of the lessees of the Palermos. He rented a portion of the two-storey building with an area of sixty (60) square meters, more or less. He used the property for his electronics shop. When Caybot bought the entire Lot 379, Testa approached him and asked if he could continue to rent the same portion of land. Caybot then informed Testa that he could stay there rent-free provided Testa vacates the premises if he decides to use the area.

Sometime in 1993, Caybot informed Testa that he will start using the property. Testa protested and asked that he would be given P100,000.00 if he is to vacate the property since he was already staying there for a long time. When Testa refused to vacate the premises, Caybot was constrained to file an ejectment case against him. The Court then ruled in favor of Caybot and ordered the Sheriff to eject Testa from the premises.

During cross-examination, Caybot testified that he has been a resident of Buug, Zamboanga del Sur since 1960. He leased the property of the Palermos sometime in 1970 for P200.00/month. The space was used for both

residential and commercial purposes. Eventually, the same area was mortgaged by the Palermos to Caybot for P30,000.00. The Deed of Mortgage was executed on September 18, 1985 before Judge Anatolio M. Sagario. After he had signed the document in the presence of Judge Sagario, he left immediately to attend to his business. He was no longer present when his wife and the heirs of Palermo signed the document. It was only upon his return home from work that he perused the document and read the contents. He then discovered that the area indicated in the deed was not the one agreed upon by the parties, since what was stated was the cancelled tax declaration. Upon discovering the oversight, Caybot went to Petronia to complain.

The subsequent Extrajudicial Partition with Sale was likewise prepared by the same notary public, Judge Sagario. Caybot clarified that the property sold to them was not just the area that he had leased but the whole area covered by the title.

He furthermore testified that after he had purchased the property, the Palermos still tried to collect rentals from Testa but the latter refused to pay to them since he was already informed that the property had been bought by Caybot.

On September 6, 2006, Anastacio Palermo was once again called to the witness stand for rebuttal. Anastacio emphasized that what was in fact sold to Caybot was only the one hundred fifty-three (153) square meter area. He also clarified that they did not receive P75,000.00 from the latter but only P60,000.00: P30,000.00 during the mortgage and later another P30,000.00 after the execution of the Deed of Sale. Although Anastacio admitted that they gave the original copy of the title to Caybot, it was on the condition that the latter will be responsible for the segregation of the 153 sq. m. area which he bought and to contact a surveyor for that purpose.

On May 27, 2007, Maximo Palermo was also called once again to the witness stand for rebuttal. His testimony merely reiterated that of Anastacio.

On September 11, 2009, the court a quo rendered the assailed Decision in favor of plaintiffs. The dispositive portion reads:

"WHEREFORE, decision is hereby rendered for the plaintiffs as against the defendants, to wit:

- The Extra-Judicial Partition with Sale executed by and between the parties on November 10, 1998, be reformed to exclude therefrom the 137 square meter-portion, which was formerly leased by Nonoy Testa, which portion is hereby declared to be owned by the plaintiffs;
- Defendants are hereby ordered to pay to the plaintiffs as actual damages the amount of P500.00 a month computed from the month January 1998 up to the present with interest thereon at 6% per annum (Easter Shipping Lines, Inc. vs. CA 234 S 79);
- Defendants are further ordered to pay the amount of P50,000.00 as exemplary damages and P20,000.00 as attorney's fees;
- Transfer Certificate of Title No. T-23,854 issued by the Registry of Deeds for the Province of Zamboanga del Sur is hereby CANCELLED and REVOKED. Accordingly, the Register of Deeds of the Province of Zamboanga del Sur is hereby directed to cause its cancellation and to issue another transfer certificate of title over the same property with Bernagilda Caybot as the owner of the 153 square meter-portion of the subject property and the remaining 137 square meter-portion in the name of the heirs of Leonardo Palermo, namely: Anastacio Palermo, Leoncia Palermo Malalis, Maximo Palermo, Francisca Palermo, Anatalia Palermo Bohoist, Mariano Palermo (deceased) represented by his wife, Valeriana vda. De Palermo, and his children, Mariano Palermo, Jr., Merlita Palermo Tempila, Maribel Palermo Bonales, Marynoll Palermo, Marichell Palermo, John Michael Palermo, & Melandro Palermo, and Eleuteria Palermo-Palma (deceased) represented by her husband, Gregorio Palma, and her son, Gregorio Palma, Jr."

Hence, this appeal with the following assigned errors:

I

The trial court erred in ruling that plaintiffs-appellees' cause of action for reformation of document is allowable;

II

The trial court erred in holding that plaintiffs-appellees' supposed cause of action has not prescribed; and

III

The trial court erred in deciding the case in favor of plaintiffs-appellees and against the defendants-appellants.

Our Ruling

The appeal is bereft of merit.

An action for reformation of instrument is rooted on Article 1359 of the Civil Code, which states, to wit:

"Art. 1359. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed."

Reformation is a remedy in equity, whereby a written instrument is made or construed so as to express or conform to the real intention of the parties, where some error or mistake has been committed. In granting reformation, the remedy in equity is not making a new contract for the parties, but establishing and perpetuating the real contract between the parties which, under the technical rules of law, could not be enforced but for such reformation.[3]

For an action for reformation of instrument to prosper, the following requisites must comply:

(1)

There must have been a meeting of the minds of the parties to the contract;

(2)

The instrument does not express the true intention of the parties; and

(3)

The failure of the instrument to express the true intention of the parties is due to mistake, fraud, inequitable conduct or accident.[4]

In the case at bar, it is established that there was a meeting of the minds of the parties to the contract. However, the Palermo heirs claim that the true intention of the parties was not expressed in the Deed of Extrajudicial Partition with Sale due to mistake.

For his part, Caybot relies heavily on the Best Evidence Rule and Parol Evidence Rule and claims that since the terms of the contract are clear, it does not validate any reason to put into question the true intention of the parties. He emphasizes that there is no justification to go beyond the terms of the contract, since it is clear and unambiguous in its face.

However, upon closer examination, the records reveal that the two assailed documents: the Deed of Mortgage and the Deed of Extrajudicial Partition with Sale, draw confusion as to which area is included in the agreement of the

parties. Is it only 153 square meters, or the entire portion, which is 290 square meters?

As a general rule, Section 9, Rule 130 of the Rules of Court, provides that when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of written agreement if he puts in issue in his pleading:

(a)

An intrinsic ambiguity, mistake or imperfection in the written agreement;

(b)

The failure of the written agreement to express the true intent and agreement of the parties thereto; x x x

Under this circumstance, parol evidence becomes admissible and competent evidence to prove the true nature of the instrument. [5]

According to the Palermo heirs, they discovered the mistake in the contract only when Caybot brought an action for ejectment against Testa.

With regard to the issue of prescription in relation to reformation of instrument, the Supreme Court in *Multi-Realty v. Makati Tuscany* has ruled, thus:

"To determine when all the facts which constitute a cause of action for reformation of an instrument may be brought and when the right of the petitioner to file such action accrues, the second paragraph of Section 1, Rule 63, must be considered because an action for the reformation of an instrument may be brought under said Rule:

SECTION 1. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule (emphasis supplied).

Such a petition is a special civil action determinative of the rights of the parties to the case. It is permitted on the theory that courts should be allowed to act, not only when harm is actually done and rights jeopardized by physical wrongs or physical attack upon existing legal relations, but also when challenge, refusal, dispute or denial thereof is made amounting to a live controversy. The uncertainty and insecurity which may thereby be avoided may hamper or disturb the freedom of the parties to transact business or to make improvements on their property rights. A situation is thus created when a judicial declaration may serve to prevent a dispute from ripening into violence or destruction.

The concept and meaning of the term cause of action in proceedings for declaratory relief, vis-à-vis an ordinary civil action, is broadened. It is not, as in ordinary civil action, the wrong or delict by which the plaintiff's rights are violated, but it is extended to a mere denial, refusal or challenge raising at least an uncertainty or insecurity which is injurious to plaintiff's rights.

For a petition for declaratory relief to prosper, the following conditions sine qua non must concur: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3)

the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination.

To controvert is to dispute; to deny, to oppose or contest; to take issue on. The controversy must be definite and concrete, touching on the legal relations of the parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

The fact that the plaintiff's desires are thwarted by its own doubts, or by the fears of others, does not confer a cause of action. No defendant has wronged the plaintiff or has threatened to do so. However, the doubt becomes a justiciable controversy when it is translated into a claim of right which is actually contested. As explained by this Court, a dispute between the parties is justiciable when there is an active antagonistic assertion of a legal right on one side and a denial thereof on the other, concerning a real, not merely a theoretical question or issue.

In sum, one has a right of action to file a complaint/petition for reformation of an instrument when his legal right is denied, challenged or refused by another; or when there is an antagonistic assertion of his legal right and the denial thereof by another concerning a real question or issue; when there is a real, definitive and substantive controversy between the parties touching on their legal relations having adverse legal interests. This may occur shortly after the execution of the instrument or much later.

A party to an instrument is under no obligation to seek a reformation of an instrument while he is unaware that any opposition will be made to carry out the actual agreement. The statute of limitations does not begin to run against an equitable cause of action for the reformation of an instrument because of mistake until the mistake has been discovered or ought to have been discovered. The mere recording of a deed does not charge the grantor with constructive notice of a mistake therein, but is to be considered with other facts and circumstances in determining whether the grantor be charged with notice actual or constructive."^[6]

In the case at bar, the legal controversy arose when Caybot filed an action for ejectment against Testa to oust the latter from the area which he (Testa) allegedly rented from the Palermo heirs. This act resulted in the adverse legal interests between Caybot and the Palermo heirs who both claim ownership over the same property. It was also allegedly only then that the Palermo heirs discovered that the portion rented by Testa was mistakenly included in the Deed of Extrajudicial Partition with Sale.

Under Article 1144 of the Civil Code, an action based upon a written contract must be brought within ten (10) years from the time the right of action accrues.

Thus, only two (2) years elapsed from the time the mistake was discovered to the time the complaint was filed by the Palermo heirs.

With regard to the third issue, We find no cogent reason to reverse the findings of the court a quo. True, the onus probandi is upon the party who insists that the contract should be reformed.^[7]

The onus probandi was lifted when the Palermo heirs were able to satisfy the requirements for an action for reformation of instrument. A closer inspection of the Deed of Extrajudicial Partition With Sale reveals that the technical description of the property was covered by Tax Declaration No. 396. Upon perusal of TD 396, it can be observed that the area covers only 153 sq. m. of the subject property and not the entire area.

Thus, it can be deduced that the instrument did not in fact reveal the true intention of the parties.

WHEREFORE, the appeal is DENIED. The Decision dated September 11, 2009 of the Regional Trial Court of Pagadian City, Branch 21, rendered in Civil Case No. 3790 is AFFIRMED.

SO ORDERED.

Camello, (Chairperson), and Perez, JJ., concur.

[1] Penned by Hon. Rolando L. Goan; Rollo, pp. 49-59; Records, pp. 331-341.

[2] As culled from the records.

[3] Multi-Ventures v. Stalwart Management; G.R. No. 157439; July 4, 2007.

[4] Ibid.

[5] Go v. Bacaron; G.R. No. 159048; October 11, 2005.

[6] G.R. No. 146726; June 16, 2006.

[7] Multi-Ventures Capital v. Stalwart Management Services Corporation, et al.; G.R. No. 157439; July 4, 2007.

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