

**ATANACIA PERALTA, FRANCISCO PAGADUAN, DIONISIA PAGADUAN,
ASSISTED BY HER HUSBAND, MARIANO MIGUEL, MATILDE
PAGADUAN, ASSISTED BY HER HUSBAND ADELINO JACINTO,
PLAINTIFFS AND APPEL...**

G.R. No. L-8273. October 24, 1955

Ponente: LABRADOR, J.

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LABRADOR, J.:

The above entitled case was submitted for decision upon an agreed statement of facts, from which the following appear:

Plaintiff Atanacia Peralta is the widow of Juan Pagaduan, who was the registered owner of a cadastral lot No. 3782 of Gattaran, Cagayan. This property was acquired by Pagaduan under a Homestead Patent No. 49801, dated September 8, 1938, and Certificate of Title No. 2533, which was later cancelled and substituted by Transfer Certificate of Title No. 1110 of Cagayan issued in his favor. On August 1, 1947, Juan Pagaduan sold the land for P4,200. On September 17, 1951, the widow and her children by Juan Pagaduan, who had already died, brought an action (Civil Case No. 467-A, Cagayan), to compel the defendant to reconvey the land, but this action was dismissed without prejudice by the court on March 11, 1952. The present case was brought on November 1, 1952.

The defendant claims that the five-year period for the repurchase of the land had already expired, because more than five years elapsed from the date of the sale on August 1, 1947 to the filing of the present action on November 1, 1952, while the plaintiffs contend that the running of the period for filing the present action was interrupted by the presentation of the previous case filed in court in accordance with Article 1155 of the New Civil Code. The trial court overruled the objection of the defendant but held that the dismissal of the action without prejudice amounts to a judicial permission to the plaintiffs to renew the action within a reasonable period of time. The defendant also claims that, before the filing of the action, the plaintiffs made a demand for reconveyance and that they offered payment of the repurchase price, and that neither did they consign the said price. The trial court also overruled this defense, holding that the provisions regarding pacto de retro contained in the New Civil Code are not applicable. The court, therefore, ordered the defendant to reconvey the land to the plaintiffs upon payment by the latter to the former of the amount of the purchase price.

The appeal was certified to this Court by the Court of Appeals for the reason that only questions of law are involved. It is contended on this appeal that under Article 1946 of the Old Civil Code judicial summons shall not give rise to interruption, if the plaintiffs should desist from the complaint as in this case. In answer to this contention, the appellees invoke Article 1155 of the New Civil Code, providing that the prescription of actions is interrupted when they are filed before the court. Neither contention is correct. As the sale of the land took place before the New Civil Code came into effect, the statute of limitations applicable is that contained in the Code of Civil Procedure (Act 190) (Article 2258, New Civil Code).

The statute of limitations contained in the old Code of Civil Procedure (Act No. 190) contains no specific or

express provision on the suspension or interruption of the running of the period of prescription by the institution of an action. There is a firmly established rule in many American states that the commencement of the suit prior to the expiration of the applicable limitation period interrupts the running of the statute as to all parties to the action (34 Am. Jur., Sec. 247, pp. 202-203). This rule is similar to that contained in Article 1155 of the New Civil Code. This principle, however, does not appear in Act No. 190, our old statute of limitations, which is taken from Ohio. On the contrary, the provisions of section 49 (Act 190) disclose otherwise. This section reads as follows :

"Sec. 49. Saving in Other Cases.—If, in an action commenced, in due time, a judgment for the plaintiff be reversed, or if the plaintiff fail otherwise than upon the merits, and the time limited for the commencement of such action has, at the date of such reversal or failure, expired, the plaintiff, or, if he die and the cause of action survive, his representatives may commence a new action within one year after such date, and this provision shall apply to any claim asserted in any pleading by a defendant."

The above-quoted provision indicates that the principle of interruption of the period of limitations was not adopted in our statute. There would be no need of an express provision authorizing the filing of the action after the termination of the original period, if the principle of interruption had been adopted, because under the principle of interruption or suspension, the period used up in the determination of an action, which is dismissed, will have to be deducted from the entire period of limitations. This court has held in two leading cases that the filing of an action within the prescription period, if the plaintiff desists in its prosecution, does not suspend the running of the statute.

"An action which was clearly for recovery of personality or damages for taking or removal of such property had nonetheless prescribed where the fourth complaint, on which it was founded, was not filed until more than 4 years after the cause of action accrued, because of three prior attempts to maintain such actions instituted within the limitation period and with respect to which stays of proceedings were obtained or plaintiff failed to prosecute. Although an action is started within the prescription period, if the plaintiff desists in its prosecution or judgment is unconditionally stayed for one reason or another, running of limitations is not suspended. [Code of Civil Procedure, Sec. 43, par. 3]." (*Oriental Commercial Co. vs. Jureidini, Inc.*, 1940, 71 Phil., 25.)

"The commencement of a civil action stops the running of the statute of prescription or limitations. Its dismissal, however, or voluntary abandonment by the plaintiff leaves the parties in exactly the same position as though no action had been commenced at all. The commencement of the action, by reason of its dismissal, or abandonment, takes no time out of the period of prescription. When an action is commenced within the period of limitation (prescription) and is abandoned or dismissed by reason of the death of the plaintiff, the operation of the statute is prevented if the suit is commenced within a reasonable time by the representatives of the deceased. Failure to carry the suit on, by the personal representatives, when the same has been dismissed or abandoned by the deceased, will amount to an abandonment.'" (*Conspecto vs. Fruto*, 31 Phil., 144.)

Following the above quoted cases and applying them to the case at bar, we hold that the filing of the first suit did not operate to suspend the period of limitations or interrupt the running thereof, and the period used up in the determination of the previous action (brought on September 17, 1951 and dismissed without prejudice on March 11, 1952) is not to be discounted from the total period of the statute. To this effect is our ruling in the case of *Santos vs. Vera*, 69 Phil., 712, where we held:

"Dados los hechos que se acaban de relatar, resulta claro que la decision de 31 de diciembre de 1938 no ha aplicado con acierto las disposiciones del articulo citado. Desde que se sobreseyo la primera demanda de la recurrente por falta de pago de derechos hasta la expiracion del periodo de prescripcion de diez años, le quedaban aun a dicha recurrente cinco meses y diez dias, tiempo mas que suficiente sin esperar que transcurriese dicho periodo de diez años. Por manera que el caso de la recurrente no estaba comprendido dentro de la salvedad a que el artículo 49 se refiere. Esto es así, porque tratandose como se trataba de una excepcion, la misma no debia ni debe ser interpretada con liberalidad sino con estrictez. Es unicamente en los

casos en que el periodo de prescripcion haya transcurrido antes de dictarse un auto de sobreseimiento o una sentencia, independientemente de los meritos de la causa, cuando procede dar aplicacion a la mencionada excepcion de la ley. (Tolentino contra Vitug, 39 Jur. Fil. 134.) Asi interpretada la ley, tenemos que cuando la recurrente presento su segunda demanda, hacia tiempo que su accion habia prescrito. En este mismo sentido resolvió el Juzgado de origen la cuestion, mediante su Resolution, objeto de certiorari."

It appears, therefore, that when the second action was brought on November 1, 1952 the period of limitations had already fully expired. The ruling of the court that the dismissal of the previous suit without prejudice amounted to a judicial permission to file the second suit has no foundation or support in law. The period for the repurchase of the homestead is fixed by law, and the same may not be extended by judicial action. The ruling of the court that the action could still be brought is, therefore, incorrect.

The other assignments of error need but a passing mention. The claim that as the Public Land Law (C. A. 141) contains no provision regarding the manner of repurchase of homesteads or free patents, the provisions on conventional redemption should be made to apply as supplementary law is absolutely without merit. The Public Land Law does not fix the form and manner in which reconveyance may be enforced, nor prescribe the method and manner in which demand therefor should be made; any act which should amount to a demand for reconveyance should, therefore, be sufficient.

As to the claim for damages for attorney's fees on defendant's counterclaim, the mere fact that plaintiffs have not made a denial of the said claim is no reason why the defendant is entitled thereto. The circumstance mentioned in paragraph (4) of Article 2208 of the New Civil Code has not been proved; the filing of this second action is not entirely unfounded as the trial judge himself had thought that the action was still available because the dismissal of the first case was without prejudice.

The judgment appealed from is hereby reversed, and the defendant absolved from the complaint. With costs, in both instances, against the plaintiffs-appellees.

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

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