

**ROSARIO CELO VDA. DE PAMA, FOR HERSELF AND IN BEHALF OF  
HER MINOR CHILDREN, NAMELY: JESSIE, AURORA, ROMEO, LILIA  
AND ARNOLD, ALL SURNAMED PAMA; AND VICTORIA JORDA,  
PETITIONERS, ...**

*G.R. No. L-33259. August 31, 1983*

Ponente: ESCOLIN, J.

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**ESCOLIN, J.:**

Acting on this petition for review on certiorari of the decision of the defunct Court of First Instance of Cotabato in Civil Case No. 170, dismissing the petitioners' complaint for reconveyance on ground of prescription; considering the settled doctrine that an action for reconveyance of real property based upon constructive or implied trust prescribes in ten [10] years counted from the date adverse title is asserted by the possessor of the property [Diaz vs. Gorricho, 103 Phil. 261; Candelaria vs. Romero, 109 Phil. 500; J.M. Tuazon vs. Magdangal, 114 Phil. 42]; that when respondent Guillermo Pama caused the registration on June 18, 1956 of the affidavit of adjudication declaring himself to be the sole heir of the late Matea Pama and obtained Transfer Certificate of Title No. T-4006 in his own name, he thereby excluded petitioners from the estate of the deceased Matea Pama and, consequently, set up a title adverse to them; that such registration constitutes constructive notice to petitioners of the respondent's adverse claim to the property [Carantes vs. Court of Appeals, 76 SCRA 514, 523; Gerona vs. de Guzman, 11 SCRA 153, 157]; and it appearing that petitioners filed their complaint for reconveyance only on April 28, 1969, or twelve (12) years, ten (10) months and ten (10) days after their cause of action had accrued on June 18, 1956; this Court resolved to dismiss this petition and to affirm the questioned order dismissing petitioners' complaint in Civil Case No. 170. No costs.

**SO ORDERED.**

Makasiar, (Chairman), Concepcion, Jr., Guerrero, and Abad Santos, JJ., concur.

Aquino, J., see concurring opinion.

De Castro, J., on sick leave.

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Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:\*{behavior:url(#ieooui) } /\* Style Definitions \*/  
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## CONCURRING OPINION

### AQUINO, J.:

This is a controversy over the proceeds of the sale of a homestead. From the answer of Guillermo Pama, it appears that in 1939, Matea Panes, a widow, and her children named, Godofredo, Julieta and Guillermo, all surnamed Pama, left Passi, Iloilo and went to Barrio Tacurong, Buluan, Cotabato in search of greener pastures.

At Tacurong, they applied for three adjoining homesteads with an area of around five hectares each, identified as Lot No. 441, assigned to Godofredo Pama and his wife Rosarie Celo (petitioner); Lot. No. 462, assigned to Julieta Pama and her husband Ireneo Cancero, and Lot No. 463 assigned to Guillermo Pama and his wife Lourdes Pagayon (respondents).

Actually, Lot No. 463, the homestead of Guillermo, was applied for by his mother, Matea Panes. His theory is that Matea Panes acted as trustee with himself as the beneficiary. Matea resided with Guillermo, her youngest child, who was then around twenty-one years old.

Julieta sold in 1946 her homestead rights, left Tacurong, and resided at Barrio Banga, Koronadal with her common-law husband, Severo Jorda, the father of petitioner Victoria Jorda, and her two legitimate daughters, Lolita and Evangeline Cancero. Julieta died in 1947.

Godofredo sold his homestead in 1949 for P7,000. Eventually, said homestead was bought by Roberto A. Tulio. Godofredo died in 1954.

In view of the destruction of the records during the war, Guillermo renewed his homestead application by paying the initial fee of five pesos. Matea Panes died in 1949. In 1952, Guillermo submitted final proof of with the statutory requirements for his homestead, Lot No. 463.

But as the Original application was in his mother's name, the patent and title, OCT No. V-8900, were issued on August 11, 1954 to the "Heirs of Matea Panes".

Guillermo Pama executed on June 16, 1956, or less than two years after the issuance of the title, an affidavit adjudicating to himself the said homestead, there being "no ascendant nor descendant left by the said deceased (Matea Panes), except the herein affiant who is of legal age" (Guillermo Pama). (p. 27, Rollo).

As a consequence, OCT No. V-8900 in the name of "Heirs of Matea Panes" was cancelled and TCT No. T-4006 was issued to Guillermo Pama on June 18, 1956, "subject to the provisions of Section 4, Rule 74 of the Rules of Court, re claim of other claimants, heirs, and creditors for a period of two (2) years".

On March 10, 1969, more than twelve years after he became the registered owner of the homestead, Guillermo Pama sold it to Roberto A. Tulio for P70,000.

The sale to Tulio of the homestead, which was effected after five years and before twenty-five years after the issuance of the patent in 1954, was made without the approval of the Secretary of Agriculture and Natural Resources. The Public Land Law provides:

"SEC. 118. x x x x x x x x

"No alienation, transfer, or conveyance of any homestead after five years and before twenty-five years after issuance of title shall be valid without the approval of the Secretary of Agriculture and Commerce, which approval shall not be denied except on constitutional and legal grounds." (As amended by Commonwealth Act No. 456.)

This point has never been raised by the parties in their pleadings and briefs.

On May 5, 1969, the heirs of Guillermo's brother, Godofredo Pama, and Victoria Jorda, the illegitimate daughter of his deceased sister, Julieta Pama, filed an action in the Court of First Instance of Cotabato, Branch 4, against Guillermo Pama and his wife to recover their share of the price of the homestead and the harvests thereof from 1949 to 1969.

I am of the opinion that Lot No. 463 was owned exclusively by Guillermo Pama. He is entitled to the entire proceeds of the sale. Rosario Celo and her children and Victoria Jorda have no right to share in the proceeds. This might explain why Lolita Cancero and Evangeline Cancero, the legitimate children of Julieta, did not join this action.

Guillermo committed an error in executing the affidavit of extrajudicial settlement but this may well be equivalent to the *dolus bonus* (as distinguished from *dolus malus*) of the Roman Law. He had always occupied Lot No. 46 as his own homestead since 1979 when he arrived at Tacurong.

I concur in the dismissal of the complaint.

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