

**HORACIO G. ADAZA AND FELICIDAD MARUNDAN, PETITIONERS, VS.
THE HONORABLE COURT OF APPEALS AND VIOLETA G. ADAZA,
ASSISTED BY HER HUSBAND LINO AMOR, RESPONDENTS.**

G.R. No. L-47354. March 21, 1989

Ponente: FELICIANO, J.

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FELICIANO, J.:

In the lawful wedlock of Victor Adaza and Rosario Gonzales were born six (6) children: petitioner Horacio, Homero, Demosthenes, respondent Violeta. Teresita and Victor, Jr.

The head of the family. Victor Adaza, Sr., died in 1956. while the wife died in 1971. During his lifetime. Victor Adaza, Sr. executed a Deed of Donation dated 10 June 1953, covering the parcel of land subject matter of this case, with an area of 13.361 8 hectares, located at Sinonok. Dapitan City. Zamboanga del Norte. in favor of respondent Violeta. then still single. The donation was accepted in the same instrument, which both donor and donee acknowledged before Notary Public ex-officio Milagros C. Galeposo. The land donated was then part of the public domain, being disposable public land, and had been held and cultivated by Victor Adaza. Sr. for many years. Violeta. with the aid of her brother Horacio, filed a homestead application covering the land involved. This application was in due course approved and a free patent issued to her on 3 October 1956. As a result thereof, on 26 January 1960, an Original Certificate of Title No. P-11111 was issued in her name. She declared the property in her name under Tax Declaration No. 9808.

The record does not show when Violeta Adaza got married. But in 1962, Violeta and her husband Lino Amor, obtained a loan from the Philippine National Bank which they secured with a mortgage on the land covered by OCT No. P-11111. The land was, and continued to be administered by Violeta's brother, Homero Adaza.

Petitioner Horacio Adaza was appointed Provincial Fiscal of Davao Oriental in 1967. He accordingly moved from Dapitan City to Davao Oriental.

Four (4) years later, petitioner Horacio came back to Dapitan City for the town fiesta. He invited respondent Violeta and the other brothers and sister for a family gathering in his house. There, Horacio asked Violeta to sign a Deed of Waiver which had been prepared in respect of the property in Sinonok donated by their father Victor Adaza, Sr. This Deed stated that the Sinonok property was owned in common by Violeta and her brother Horacio G. Adaza, even though the certificate of title had been issued in her name only. The Deed also provided for the waiver, transfer and conveyance by Violeta in favor of Horacio of one-half (½) of the Sinonok property, together with all improvements existing in that one-half (½) portion. Violeta signed this Deed of Waiver: the Deed was also signed by petitioner Horacio and Homero Adaza as witnesses. The full text of this Deed of Waiver follows:

"DEED OF WAIVER**KNOW ALL MEN BY THESE PRESENTS:**

I, VIOLETA G. ADAZA of legal age, married to Lino Amor, Filipino, with residence and postal address at Dapitan City, am the absolute owner in fee simple of a parcel of land situated in Dapitan City, known as Lot No. Psu-141743, with an area of 13.3618 hectares more or less, covered by TRANSFER CERTIFICATE OF TITLE NO. T-11111, (sic) of the Registry of Property of Zamboanga del Norte, and declared for taxation purposes under Tax Declaration No. 2926 (sic), with an assessed value of P4,340.00.

Whereas, aforesaid property is owned in common by me and my brother, HORACIO G. ADAZA, although the certificate of title was issued only in my sole name;

NOW, THEREFORE, for and in consideration of the premises aforestated, I do hereby WAIVE, TRANSFER, RELINQUISH AND CONVEY unto the said HORACIO G. ADAZA, of legal age, married to Felicidad Marundan, Filipino, and a resident of Dapitan City, all my rights, interest, participation and ownership over the ONE-HALF (½) PORTION of the aforesaid property, together with all the improvements, found and existing over the said one-half.

IN WITNESS WHEREOF, I have hereunto affixed my signature this 28[th] day of July, 1971, at Dapitan City, Philippines.

(SGD.) VIOLETA G. ADAZA

Signed in my presence:

(SGD.) ILLEGIBLE (SGD.) ILLEGIBLE

Republic of the Philippines) S.S.

City of Dapitan)

Before me, this 28[th] day of July, 1971, at Dapitan City, personally appeared VIOLETA G. ADAZA, with Res. Certificate No. A-2825141, issued at Dapitan City, Jan. 7, 1971, known to me and to me known to be the same person who executed the foregoing instrument and she acknowledged to me that the same is her free and voluntary act and deed.

WITNESS MY HAND AND SEAL, on the date and at the place first above stated.

GODARDOAD.JACINTO

(SGD.)

Notary Public

Until December 31, 1972

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Series of 1971, p. 6, Folder of Exhibits,

Exh.4."[1]

A few months later, or on 12 October 1971, respondent Violeta joined by her husband. Lino Amor, filed a complaint (docketed as Civil Case No. 2213) for annulment of the Deed of Waiver and for damages, against petitioner spouses Horacio and Felisa M. Adaza. In this Complaint,[2] Violeta and her husband alleged, among other things: (1) that she was absolute owner of the land in question by virtue of the unconditional donation executed by their father Victor Adaza, St.; (2) that she was registered owner of the same land; (3) that she had signed the Deed of Waiver because of petitioner Horacio's fraud, misrepresentation and undue influence; and (4) that because of the malicious acts and conduct of petitioner Horacio, she and her husband were entitled to P5,000.00 as moral damages, P2,000.00 as exemplary damages. P1 ,000.00 as attorney's fees and P500.00 as litigation expenses.

In their Answer,[3] petitioner Adaza spouses contended that petitioner Horacio and his sister respondent Violeta were co-owners of the disputed land although the same had been registered under Violeta's name alone, and that Violeta's ownership was subject to Horacio's rights as co-owner and to the obligation to keep or use the property for the benefit of their parents while either of them was still alive. Petitioners further contended that Violeta had executed the Deed of Waiver freely and voluntarily. They also interposed a counterclaim for accounting of the value of his interest and of his share in the income from the land and for reconveyance of half of the disputed land.

On 31 May 1974, the trial court rendered a Decision[4] declaring the Deed of Waiver as valid and binding upon respondent Violeta. The dispositive portion of this Decision read as follows:

"IN VIEW OF FOREGOING CONSIDERATIONS, the Court is of the opinion and so holds that the preponderance of evidence is in favor of the defendants and against that of plaintiffs, wherefore, judgment is hereby rendered as follows:

1)

Declaring the Deed of Waiver executed by the plaintiff (Violeta G. Adaza) in favor of defendant (Horacio G. Adaza), valid for all legal purposes.

2)

Declaring the defendant, Horacio G. Adaza, the owner of one-half (½) undivided portion of the parcel of land, including the improvements found thereon, covered by Original Certificate of Title No. P-1 1111 (Exhibit 'N'), containing an area of 13.3618 hectares, assessed under Tax Declaration No. 9708 (Exhibit 'E') at P3,000.00.

3)

Ordering the plaintiffs to pay to the defendants the sum of P10,500.00 corresponding to one-half (½) share of the proceeds of the land in question, from January 1972 up to the end of the year 1973, and the further sum of the price of copra every three (3) months, until the possession of the one-half (½) undivided portion of the land, object of this case, is delivered to the defendants.

Plaintiffs shall pay costs.

IT IS SO ORDERED."

Being unhappy with the trial court's decision, respondent Violeta and her husband appealed to the Court of Appeals where their appeal was docketed as C.A. — G.R. No. 55929-R. In a Decision[5] dated 15 July 1977, the Court of Appeals reversed the decision of the trial court. The Court of Appeals agreed with the finding of the trial court that the Deed of Waiver had been signed voluntarily, if reluctantly, by Violeta. The appellate court, however, held that such Deed was without cause or consideration, because the land had been, in the view of the appellate court, unconditionally donated to Violeta alone. The Court of Appeals further held that the Deed of Waiver could not be regarded as a gratuitous contract or a donation, said Deed being "congenially bad" inform because it was not drawn according to the requirements of Articles 749 and 1270 of the Civil Code. Petitioner's Motion for Reconsideration was denied.

In the instant Petition for Review, petitioners insist once more that respondent Violeta was not the sole owner of the disputed land but on the contrary held one-half (½) thereof in trust for petitioner Horacio and that this fact of co-ownership was sufficient consideration to sustain the validity of the Deed of Waiver.

The principal issue raised here thus relates to the ownership of the 13.3618 hectares of land covered by OCT No. P-11111.

Since Violeta traced her title to and based her claim of ownership upon the Deed of Donation executed by their father, it is necessary to examine this Deed of Donation. That Deed of Donation is noteworthy for its inclusion of a paragraph that was crossed-out. The crossed-out provision reads:

"That the donee shall share one-half (½) of the entire property with one of her brothers or sisters after the death of the donor."

The next succeeding paragraph reads thus:

"That the donee do [sic] hereby receive and accept this gift and donation made in her favor by the donor, not subject to any condition, and do hereby express her appreciation and gratefulness for the kindness and generosity of the donor." (Rollo, p. 50)

Petitioner Horacio testified before the trial court that it had been the intention of their father to donate the parcel of land covered by the Deed of Donation to him and to Violeta, as shown by the above provision which was ultimately crossed-out. Petitioner Horacio further testified that he himself had crossed-out the aforementioned provision, with the consent of his father, to make it appear that the land was being donated solely to Violeta, in order to facilitate the issuance of the title in her name. It seems worthwhile recalling that at the time of execution

of the donation by the father, the land was still public disposable land and that the final issuance of title was still about seven (7) years down the road. Clearly, in itself, the crossing out of the above-quoted paragraph was at least an ambiguous act. The Court of Appeals took what appears to us as a too literal view of the matter, that is, that the effect of the crossing-out of that paragraph was precisely to render the donation a simple and unconditional one, such that respondent Violeta was not obliged to share the property with her brother Horacio. If, indeed, in the view of the Court of Appeals, an informal agreement had been reached during the lifetime of the parties' father that the subject property would become the property of Horacio and Violeta in equal shares, such informal agreement, if reached

before the execution of the Deed of Donation, would have to be deemed superseded by the Deed of Donation itself. Upon the other hand, the Court of Appeals¹ decision reasoned, if such informal agreement had been reached after execution of the Deed of Donation on 10 June 1953, then that agreement, to be effective, must assume the form of another deed of donation to be executed by Violeta in favor of Horacio and covering a one-half (½) share in the property.

We take a different view. We believe that the critical question relates to the reality of the intent ascribed to the donor and father of Horacio and Violeta to make the two (2) co-owners of the property in question. Assuming such an intent is sufficiently shown, it must be respected and implemented through whatever medium is available under our civil law.

We turn to the question of the intent of the donor. Petitioner Horacio claimed that that intent was precisely to make both Violeta and himself co-owners of the land then being donated to Violeta. Put a little differently, according to petitioner Horacio, though respondent Violeta alone was to be the registered owner, she was to share the land donated by the father with Horacio on an equal sharing basis. We think this intent is evidenced, firstly, by the Deed of Waiver executed by Violeta and quoted in full earlier. The Deed of Waiver is important because there Violeta acknowledged that she owned the land in common with her brother Horacio although the certificate of title bore only her name. As noted earlier, respondent Violeta strove mightily to convince both the trial court and the Court of Appeals that she had signed the Deed of Waiver by reason of fraud, misrepresentation and undue influence exercised upon her by her brother Horacio. However, both the trial court and the Court of Appeals reached the conclusion that Violeta had in fact voluntarily signed the Deed of Waiver, even though she had done so with reluctance. The Deed of Waiver had been signed by Violeta in the presence of Horacio and of her other brothers Homero Adaza and Victor Adaza, Jr. and her sister Teresita Adaza.[6] An aunt, Pilar Adaza Soller, was also at that time

present in the same house if not in the same room at that precise moment.[7] The record is bereft of any indication of any evil intent or malice on the part of Homero, Victor, Jr. and Teresita that would suggest deliberate collusion against their sister Violeta. Equally important were the testimonies of Homero Adaza and Teresita Adaza, both of whom explicitly stated that their father had executed the Deed of Donation with the understanding that the same would be divided between Horacio and Violeta, that Violeta had signed the Deed of Waiver freely and voluntarily, and that their brother Horacio had not threatened and forced her to do so.[8] The evidence also showed that on the same occasion of the signing of the Deed of Waiver by respondent Violeta, another brother Victor Adaza, Jr. had also executed a similar Deed of Waiver covering one-half (½) share of another piece of property at Tiwalos, Dapitan City (also titled in Victor, Jr.'s name only) in favor of his sister Teresita Adaza.[9] The trial court pointed out that Victor Adaza, Sr. and Rosario Gonzales left four (4) parcels of land which were divided among their six (6) children, as follows:

"1. Parcel I —

located at Sinonok. Dapitan City Tax Declaration No. 9708 (Exhibit 'E') to be divided between Horacio G. Adaza and Violeta G. Adaza. with an area of 13.3618 hectares (land in dispute).

2. Parcel II—

located at Tiwalos, Dapitan City to be divided between Victor Adaza. Jr. and Teresita G. Adaza (Exhibit '5') with an area of 9.6379 hectares.

3. Parcel III — located at Apao, adjudicated to Demosthenes G. Adaza (already sold to Dionisio Tan), with an area of seven (7) hectares.

4. Parcel IV —

located at Sokon. Dapitan City, allocated to Homero G. Adaza (already sold to Tecson)."[10]

Evidently, the parties' parents made it a practice, for reasons of their own, to have lands acquired by them titled in the name of one or another of their children. Three (3) of the four (4) parcels acquired by the parents were each placed in the name of one of the children. The land in Tiwalos, Dapitan City, intended for Victor. Jr. and Teresita. was placed in the name of Victor, Jr. The parcel located in Sokon, Dapitan City, intended for Homero was placed in the name of petitioner Horacio,[11] while the parcel in Sinonok. Dapitan City, was titled in Violeta's name.

The trial court also pointed to respondent Violeta's

"[t]wo (2) letters to defendant [petitioner Horacio], written to the latter in Davao City (Exhibits "1" and "2") acknowledging that the defendant is the co-owner of one-half (1/2) share of said land, titled in her name. In said letters (Exhibits '1n and '2') plaintiff (respondent Violeta) is requesting the defendant [petitioner Horacio] not to be in a hurry to divide the lot in question (Exhibit L2-C) and get his one-half share in order [that she could] meet her obligations."[12]

Finally, it may be noted that this is not a case of an older brother exploiting or cheating his younger sister. On the contrary, the evidence showed that petitioner Horacio had taken care of his father and mother and of his sister Violeta. that petitioner Horacio had been quite relaxed and unworried about the title remaining in the name of his sister alone until Violeta had gotten married and her husband began to show what petitioner thought was undue and indelicate interest in the land in Sinonok.[13] Thus, the trial court found, among other things:

"12. That from 1946 to 1968. the property in Sinonok covered by Original Certificate of Title No. P-11111 (Exhibits 'D' 'D-1' to 'D-3-) had been administered by Homero Adaza. and the income from said land was spent for the expenses of their parents and the plaintiff [Violeta] who was studying at that time.

13. That defendant waived his share from the [income from the] land in litigation in favor of plaintiffs [Violeta and her husband] who were hard-up at that time for they had a child who was suffering from a brain ailment; that it was also agreed upon that the share of the defendant in said parcel will be used for the expenses of their mother (at that time bedridden).

14. That defendant voluntarily relinquished his one-half (1/2) share of the income of the land now in litigation in favor of plaintiff during the lifetime of their mother, Rosario Gonzales Adaza, subject to the condition that his (Horacio's) share of the proceeds shall be spent for the expenses of their mother who was at that time bedridden."[14]

All the above circumstances lead this Court to the conclusion which Violeta had admitted in the Deed of Waiver,

that is, that the "property [here involved] is owned in common by [her] and [her] brother, Horacio G. Adaza, although the certificate of title was issued only in [her] name." We believe and so hold that this statement is an admission that she held half of the land in trust for petitioner Horacio. The execution of the Deed of Donation of 10 June 1953 by respondent Violeta's father created an implied trust in favor of Violeta's brother, petitioner Horacio Adaza, in respect of half of the property donated."^[15] Article 1449 of the Civil Code is directly in point:

"Art. 1449. There is also an implied trust when a donation is made to a person but it appears that although the legal estate is transmitted to the donee, he nevertheless is either to have no beneficial interest or only a part thereof."

Respondent Violeta and her husband also contended that the long delay and inaction on the part of Horacio in taking any steps for reconveyance of the one-half (½) share claimed by him, indicates lack of any color of right over the said one-half (½) share. It was also argued by the two (2) that considering that twelve (12) years had passed since OCT No. P-11111 was issued and more than nineteen (19) years since the Deed of Donation was executed, the counterclaim for partition and reconveyance of Horacio's alleged one-half share was barred by laches, if not by prescription. Again, we rule for the petitioners. In determining whether delay in seeking to enforce a right constitutes laches, the existence of a confidential relationship based upon, for instance, consanguinity, is an important circumstance for consideration. Delay in a situation where such circumstance exists, should not be as strictly construed as where the parties are complete strangers vis-a-vis each other. The doctrine of laches is not to be applied mechanically as between near relatives;^[16] the fact that the parties in the instant case are brother and sister tends to explain and excuse what would otherwise appears as long delay. Moreover, continued recognition of the existence of the trust precludes the defense of laches.^[17] The two (2) letters noted above sent by respondent Violeta to petitioner Horacio, one in 1969 and the other in 1971, show that Violeta as late as 1971 had recognized the trust imposed on her by law. Conversely, Horacio's reliance upon his blood relationship with his sister and the trust and confidence normally connoted in our culture by that relationship, should not be taken against him. Petitioners' counterclaim in the trial court for partition and reconveyance cannot be regarded as barred whether by laches or by prescription.

WHEREFORE, the Petition for Review is hereby GRANTED. The Decision dated 15 July 1977 of the Court of Appeals in C.A.-G.R. No. 55929-R is SET ASIDE and the Decision dated 31 May 1974 of the then Court of First Instance, Branch 2, Dipolog City in Civil Case No. 2213 is REINSTATED. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 19; Italics supplied.

[2] Records on Appeal, pp. 1-8.

[3] Id., pp. 12-20.

[4] Rollo, pp. 20-42.

[5] Id., pp. 43-45.

[6] Rollo, p. 39.

[7] Id.

[8] TSN. August 16. 1973. pp. 6-13; TSN. November 9, 1973. pp. 94-98.

[9] Rollo. p. 39.

[10] Id., p. 37.

[11] TSN. August 16. 1973. p. 29.

[12] Rollo. p. 41.

[13] Id., p. 31.

[14] Id., pp. 37-38.

[15] See. e.g., *De Buencamino. et al. v. De Matias, et al.*, 16 SCRA 849 (1966).

[16] *Sotto v. Teves*, 86 SCRA 154 (1978).

[17] *Heirs of Candelaria v. Romero, et al*, 109 Phil. 500(1960); and *De Buencamino, et al. v. De Matias, el al.*, *supra*.

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