

EMILIA ESPIQUE AND SANTIAGO ESPIQUE, PLAINTIFFS AND APPELLANTS, VS. JACINTO ESPIQUE, DEFENDANT AND APPELLEE

G.R. No. L-8029. June 28, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an action for partition of three parcels of land situated in Tayug, Pangasinan based on the claim that they are owned in common and pro indiviso by plaintiffs and defendant. Plaintiffs also pray for damages representing unenjoyed profits from 1916 to 1949, or a period of 33 years.

The defense of defendant is that said lands were given to him and his wife by his parents Basilio Espique and Maria Diaz as well as his grandfather Julian Espique by way of a donation propter nuptias on May 8, 1906 and since then he and his wife have been in possession and enjoyment thereof for a period of 44 years adversely and without interruption. He pleaded prescription and lack of cause of action.

On the date set for hearing, the parties submitted a stipulation of facts wherein, among other things, they agreed (1) that plaintiffs and defendant are the legitimate children of Basilio Espique and Maria Diaz, the former being the legitimate son of Julian Espique, and (2) that the properties in question were donated propter nuptias by Julian Espique and the spouses Basilio Espique and Maria Diaz in favor of Jacinto Espique and Victorina Abenojar, but the donation was merely made in a private document executed on May 8, 1906.

In view of the above stipulation of facts, defendant submitted a motion to dismiss, to which plaintiffs filed a reply and, thereafter, the court rendered judgment finding that plaintiffs' complaint has no cause of action it appearing that the properties which are sought to be partitioned were donated to defendant since 1906 who has been in possession thereof adversely and continuously for more than forty years and, hence, has acquired title thereto by prescription. Consequently, the court dismissed the action without pronouncement as to costs. Plaintiffs appealed from this decision in due course but the Court of Appeals certified the case to this Court on the ground that it merely involves questions of law.

The question to be determined is whether the lower court erred in concluding that plaintiffs' complaint states no cause of action because, considering its allegations and the stipulation of facts submitted by the parties, the properties in question were donated to defendant by his predecessors-in-interest way back in 1906 and since then he has been in possession and enjoyment thereof adversely, openly and without interruption up to 1949, or for a period of more than forty years.

Plaintiffs sustain the affirmative on the plain plea that the deed of donation which defendant claims as the basis of his title being one in consideration of marriage is null and void and as such could not have conveyed or transferred any title, right or interest over the lands in question to defendant because it has not been executed in a public document. And even if said donation may be said to be the basis of acquisitive prescription, plaintiffs contend that there is no evidence whatever showing that the possession of defendant has been continuous, public open and adverse for more than 30 years as found by the trial court.

There is no question that the donation in question is invalid because it involves an immovable property and the donation was not made in a public document as required by Article 633 of the old Civil Code, in connection with Article 1328 of the same Code (concerning gifts propter nuptias), but it does not follow that said donation may not serve as basis of acquisitive prescription when on the strength thereof the donee has taken possession of the property adversely and in the concept of owner, for, as this Court well said: "While the verbal donation, under which the defendants, and his predecessors in interest have been in possession of the lands in question, is not effective as a transfer of title, yet it is a circumstance which may explain the adverse and exclusive character of the possession" (*Pensader vs. Pensader*, 47 Phil., 959; See also *Dimaliwat vs. Dimaliwat*, 55 Phil., 673-680). That is also an action for partition. It was shown that the donation of the property was made not even in a private document but only verbally, It was also shown that the defendants, through their predecessors-in-interest, were in adverse and continuous possession of the lands for a period of over 30 years. Yet, the court decided the case in favor of defendants on the ground of acquisitive prescription. There is also a close parallelism between the facts of this case and the present.

It is true that no evidence was presented showing the character of the possession held by the defendant of the lands in question, but such is unnecessary considering the admissions made by plaintiffs in the complaint and in the stipulation of facts. A careful analysis of the admissions made in both pleadings would at once reveal that defendant has been in open, adverse and continuous possession of said lands since at least 1916 up to 1949 or for a period of 33 years. Thus, it appears in paragraphs 4 and 5 of the first cause of action that defendant has been in possession of the lands in question and has "appropriated unto himself the whole produce of the aforementioned parcels of land, from 1916 up to the present" so much so that plaintiffs prayed that they be given their share of the produce during said period by way of damages in the total amount of P22,000.

We do not need to stretch our mind to see that Under such allegations plaintiffs intended to convey the idea that defendant has possessed the lands openly, adversely and without interruption from 1916 to 1949 for he is the one who has possessed them and reaped the whole benefit thereof. As to the character of the possession held by defendant during that period one cannot also deny that it is in the concept of owner considering that the lands were donated to him by his predecessors-in-interest on the occasion of his marriage even if the same was not embodied in a public instrument. The essential elements constituting acquisitive prescription are therefore present which negative the right of plaintiffs to ask for partition of said properties. On this point we find pertinent the following observation of the trial court. "Any person who claims right of ownership over immovable properties and does not invoke that right but instead tolerated others in possession for thirty years is guilty of laches and negligence and he must suffer the consequences of his acts."

With regard to the contention that the trial court dismissed the case without first receiving the evidence the plaintiffs may desire to present in support of their contention, it is true that this right was reserved by the parties in the stipulation of facts and plaintiffs asked in their motion for reconsideration that they be given a chance to prove some additional facts, but they failed to state clearly what those facts are and the nature of the evidence they would like to present, for which reason the court denied their request. Undoubtedly, the trial court did not deem necessary any additional evidence considering the admissions made by the plaintiffs as above adverted to.

Considering the conclusion we have reached, we hold that the trial court did not err in this respect.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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