

GERTRUDES F. CUAYCONG, ET AL., PLAINTIFFS-APPELLANTS, LUIS D. CUAYCONG, ET AL., DEFENDANTS-APPELLEES.*G.R. No. L-21616. December 11, 1967*

Ponente: BENGZON, J.P., J.

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Eduardo Cuaycong, married to Clotilde de Leon, died on June 21, 1936 without issue but with three brothers and a sister surviving him: Lino, Justo, Meliton and Basilisa. Upon his death, his properties were distributed to his heirs as he willed except two haciendas in Victorias, Negros Occidental, devoted to sugar and other crops - the Haciendas Sta. Cruz and Pusod both known as Hacienda Bacayan. Hacienda Bacayan is comprised of eight (8) lots - Nos. 28, covered by T.C.T. No. T-22130; Nos. 8, 17, 18 & 135, covered by T.C.T. No. T-22131; Nos. 21, 22, 23, covered by T.C.T. No. 22132 - all of which are titled in the name of Luis D. Cuaycong, son of Justo Cuaycong.

Lino Cuaycong died on May 4, 1937 and was survived by his children Paz, Carolina, Gertrudes, Carmen, Virgilio, Benjamin, Praxedes and Anastacio. Praxedes Cuaycong, married to Jose Betia, is already deceased and is survived by her children Jose Jr., Jesus, Mildred, Nenita and Nilo, all surnamed Betia. Anastacio Cuaycong, also deceased, is survived by his children Ester, Armando, Lourdes, Luis T., Eva and Aida, all surnamed Cuaycong.

Meliton and Basilisa died without any issue.

On October 3, 1961, the surviving children of Lino Cuaycong; Gertrudes, Carmen, Paz, Carolina, Virgilio; the surviving children of Anastacio: Ester, Armando, Lourdes, Luis T., Eva and Aida; as well as Jose, Jr., Jesus, Mildred, Nenita, Nilo, all surnamed Betia, children of deceased Praxedes Cuaycong Betia, filed as pauper litigants, a suit against Justo, Luis and Benjamin Cuaycong[1] for conveyance of inheritance and accounting, before the Court of First Instance of Negros Occidental (Civil Case No. 6314), alleging among others that:

1. Eduardo Cuaycong had on several occasions, made known to his brothers and sisters that he and his wife Clotilde de Leon (died in 1940) had an understanding and made arrangements with Luis Cuaycong and his father Justo Cuaycong, that it was their desire to divide Haciendas Sta. Cruz and Pusod among his brothers and sister and his wife Clotilde.
2. With the consent of his wife, Eduardo had asked his brothers and sister to pay his wife P75,000 (the haciendas were worth P150,000) and then divide equally the remaining one-half share of Eduardo.
3. The brothers and sister failed to pay the 1/2 share of Clotilde over the two haciendas which were later acquired by Luis Cuaycong thru clever strategy, fraud, misrepresentation and in disregard of Eduardo's wishes by causing the issuance in his name of certificates of title covering said properties.
4. As the two haciendas were the subject of transactions between the spouses and Justo and Luis Cuaycong, Eduardo told Justo and Luis, and the two agreed, to hold in trust what might belong to his brothers and sister as a

result of the arrangements and deliver to them their share when the proper time comes.

5. That as far back as 1936 Lino demanded from Justo and Luis his share and especially after Eduardo's and Clotilde's death, the plaintiffs demanded their shares.

6. That their demands had been refused and in 1960 during the estate proceedings of Praxedes Escalon, deceased wife of Luis D. Cuaycong, the latter fraudulently made it appear that the plaintiffs had nothing to do with the land; that Luis Cuaycong had possessed the lands since June 21, 1936 from which time he should be made to account for the plaintiffs' share; and that P1,500 attorney's fees should be paid in their favor.

Luis D. Cuaycong on October 20, 1961 moved to dismiss the complaint on the grounds of unenforceability of the claim under the statute of frauds, no cause of action (Rule 8, Sec. 1[f] of the Rules of Court), and bar of causes of action by the statute of limitations (Rule 8, Sec. 1[e]). Subsequently, opposition thereto, answer and reply were filed; the plaintiffs also sought to have Benjamin Cuaycong declared in default for his failure to answer.

On December 16, 1961, the Court of First Instance ruled that the trust alleged, particularly in paragraph 8 of the complaint, refers to an immovable which under Article 1443 of the Civil Code may not be proved by parole evidence. Plaintiffs were given 10 days to file an amended complaint mentioning or alleging therein the written evidence of the alleged trust, otherwise the case would be dismissed.

Later, on December 23, 1961, the court decreed that since there was no amended complaint filed, thus, no enforceable claim, it was useless to declare Benjamin Cuaycong in default.

Plaintiff thereafter manifested that the claim is based on an implied trust as shown by paragraph 8 of the complaint. They added that there being no written instrument of trust, they could not amend the complaint to include such instrument.

On January 13, 1962, the court dismissed the case for failure to amend the complaint; it further refused to reconsider its order denying the motion to declare Benjamin Cuaycong in default, stating that such a default declaration would be of no purpose.

Failing in their efforts to have the dismissal reconsidered, plaintiffs appealed to Us. The resolution of the appeal hinges on whether the trust is express or implied.

Paragraph 8 of the complaint states:

"That as the said two haciendas were then the subject of certain transactions between the spouses Eduardo Cuaycong and Clotilde de Leon on one hand, and Justo and Luis D. Cuaycong on the other, Eduardo Cuaycong told his brother Justo and his nephew, defendant Luis D. Cuaycong, to hold in trust what might belong to his brothers and sister as a result of the arrangements and to deliver to them their shares when the proper time comes, to which Justo and Luis D. Cuaycong agreed."

The plaintiffs claim that an implied trust is referred to in the complaint which, under Article 1457 of the Civil Code, may be proved by parole evidence.

Our Civil Code defines an express trust as one created by the intention of the trust or of the parties, and an implied trust as one that comes into being by operation of law.[2] Express trusts are those created by the direct and positive acts of the parties, by some writing or deed or will or by words evidencing an intention to create a trust. On the other hand, implied trusts are those which, without being expressed, are deducible from the nature of the transaction by operation of law as matters of equity, independently of the particular intention of the parties.[3] Thus, if the intention to establish a trust is clear, the trust is express; if the intent to establish a trust is to be taken from circumstances or other matters indicative of such intent, then the trust is implied. From these and from the

provisions of paragraph 8 of the complaint itself, We find it clear that the plaintiffs alleged an express trust over an immovable, especially since it is alleged that the trustor expressly told the defendants of his intention to establish the trust. Such a situation definitely falls under Article 1443 of the Civil Code.

Appellants point out that not only paragraph 8 should be considered but the whole complaint, in which case they argue that an implied trust should be construed to exist. Article 1453, one of the cases of implied trust, is also cited: "When property is conveyed to a person in reliance upon his declared intentions to hold it for or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated." Said arguments are untenable, even considering the whole complaint. The intention of the trustor to establish the alleged trust may be seen in paragraphs 5 and 6.[4] Article 1453 would apply if the person conveying the property did not expressly state that he was establishing the trust, unlike the case at bar where he was alleged to have expressed such intent. Consequently, the lower court did not err in dismissing the complaint.

Besides, even assuming the alleged trust to be an implied one, the right alleged by plaintiffs would have already prescribed since starting in 1936 when the trustor died, plaintiffs had already been allegedly refused by the aforesaid defendants in their demands over the land, and the complaint was filed only in 1961 - more than the 10-year period of prescription for the enforcement of such rights under the trust. It is settled that the right to enforce an implied trust in one's favor prescribes in ten (10) years.[5] And even under the Code of Civil Procedure, action to recover real property such as lands prescribe in ten years (Sec. 40, Act 190).

And for the above reasons, We agree that it was pointless to declare Benjamin Cuaycong in default, considering that without a written instrument as evidence of the alleged trust, the case for the plaintiffs must be dismissed.

WHEREFORE, the order of dismissal of the lower court appealed from is hereby affirmed, without costs.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Benjamin Cuayong was made a defendant because he refused to sue as a plaintiff.

[2] Article 1441.

[3] 89 C. J. S. 722, 724.

[4] "(5) The on several occasions during the later years of Eduardo and Lino Cuayong, the former made known to the latter and to their brothers and sisters, that he and his wife, Clotilde de Leon, who died in 1941, had an understanding and made arrangements with defendant Luis D. Cuayong and his father, Justo Cuayong, that it was their (Eduardo's and Clotilde's) wish desire, that Hdas. 'Sta. Cruz' and 'Pusod' above-referred to, should be divided between the brothers and sister of Eduardo Cuayong, namely, Justo, Meliton, Lino, and Basilisa, all surnamed Cuayong, and his wife, Clotilde de Leon;

"(6) - That pursuant to such wish and desire and arrangements, the said Eduardo Cuaycong, with the knowledge and consent of his wife, Clotilde de Leon, and as an agreement with the latter to effectuate their, wish and desire had directed his brothers and sister to pay his wife the sum of P75, 000.00, the value of the two haciendas above-mentioned being P150, 000.00, and the divide the same among themselves share and share alike; or at all events, should his brothers and sisters fail to do that, they should divide only the one-half (1/2) portions proindiviso thereof appertaining to him (Eduardo) in the said conjugal properties;"

[5] Gonzales v. Jimenez, L-19073, Jan. 30, 1965.

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