

**ESPERANZA FABIAN, BENITA FABIAN AND DAMASO PAPA Y FABIAN,
PLAINTIFFS AND APPELLANTS, VS. SILBINA FABIAN, FELICIANO
LANDRITO, TEO-DORA FABIAN AND FRANCISCO DEL MONTE,
DEFENDANTS ...**

G.R. No. L-20449. January 29, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

Before us is the appeal taken by Esperanza Fabian, Benita I Fabian and Damaso Papa y Fabian from the decision of the Court of First Instance of Rizal which dismissed their complaint for reconveyance, in civil case 295-R, filed against the defendants spouses Silbina Fabian and Feliciano Landrito, and Teodora Fabian and Francisco del Monte, upon the ground that the latter had acquired a valid and complete title to the land in question by acquisitive prescription.

This case traces its origin way back to January 1, 1909 when Pablo Fabian bought from the Philippine Government lot 164 of the Friar Lands Estate in Muntinlupa, Rizal, of an area 1 hectare, 42 ares and 80 centares, for the sum of "PI 12 payable in installments. By virtue of this purchase, he was issued sale certificate 547. He died on August 2, 1928, survived by four children, namely Esperanza, Benita I, Benita II,[1] and Silbina.

On October 5, 1928 Silbina Fabian and Teodora Fabian, niece of the deceased, executed an affidavit, reciting among other things,

"Que el finado Pablo Fabian, no dejo ningun otro heredero sino los declarantes, con derecho a heredar el lote No. 164 de la hacienda Muntinlupa, relicto por dicho finado Pablo Fabian y para la aprobacion de traspaso a nosotros el referido lote No. 164, prestamos esta declaracion para todos los efectos que pueden convenir a la Oficina de Terenos a defender por nuestro mejor derecho de heredar dicho lote- contra las reclamaciones juntas de quien las presentare." On the strength of this affidavit, sale certificate 547 was assigned to them. On November 14, 1928 the acting Director of Lands, on behalf of the Government, sold lot 164, under deed 17272, to Silbina Fabian, married to Feliciano Landrito, and to Teodora Fabian, married to Francisco del Monte, for the sum of P 120. The vendees spouses forthwith in 1929 took physical possession thereof, cultivated it, and appropriated the produce therefrom (and concededly have up to the present been appropriating the fruits from the land exclusively for themselves). In that same year, they declared the lot in their names for taxation purposes under tax declaration 3374. This tax declaration was later cancelled, and in lieu thereof two tax declarations (2418 and 2419) were issued in favor of Teodora Fabian and Silbina Fabian, respectively. Since 1929 up to the present, they have been paying the real estate taxes thereon. In 1937 the Register of Deeds of Rizal issued TCT 33203 over lot 164 in their names. And on May 4, 1945, they subdivided the lot into two equal parts; TCT 33203 was then cancelled and TCT 38095 was issued over lot 164-A in the name of Silbina Fabian, married to Feliciano Landrito, and TCT 38096 was issued over lot 164-B in the name of Teodora Fabian, married to Francisco del Monte".

On July 18, 1960 the plaintiffs filed the present action for reconveyance against the defendants spouses, averring

that Silbina and Teodora, through fraud perpetrated in their affidavit aforesaid, made it appear that "el finado Pablo Fabian no dejo ningun otro heredero sino los declarantes con derecho a heredar el lote No. 164 de la hacienda de Muntinlupa," which is a false narration of facts because Silbina knew that she is not the only daughter and heir of the deceased Pablo Fabian, and Teodora likewise knew all along that, as a mere niece of the deceased, she was precluded from inheriting from him in the presence of his four surviving daughters; that by virtue of this affidavit, the said defendants succeeded in having sale certificate 547 assigned to them and thereafter in having lot 164 covered by said certificate transferred in their names; and that by virtue also of these assignment and transfer, the defendants succeeded fraudulently in having lot 164 registered in their names under TCT 33203. They further allege that the land has not been transferred to an innocent purchaser for value. A reconveyance thereof is prayed for, aside from P3,000 attorney's fees and costs.

In their answer of August 31, 1960,[2] the defendants spouses claim that Pablo Fabian was not the owner of lot 164 at the time of his death on August 2, 1928 because he had not paid in full the amortizations on the lot; that they are the absolute owners thereof, having purchased it from the Government for the sum of "PI20, and from that year having exercised all the attributes of ownership thereof up to the present; and that the present action for reconveyance has already prescribed. The dismissal of the complaint is prayed for.

On the basis of a partial stipulation of facts together with annexes, the lower court rendered judgment on June 28, 1962, declaring that the defendants spouses had acquired a valid and complete title to the property by acquisitive prescription, and accordingly dismissed the complaint, with costs against the plaintiffs. The latter's motion for reconsideration was thereafter denied.

Hence the present recourse.

The three resulting issues of law tendered for resolution in this appeal, by the formulation of the parties, are: (1) Was Pablo Fabian the owner of lot 164 at the time of his death, in the face of the fact, admitted by the defendants-appellees, that he had not then paid the entire purchase price thereof? (2) May laches constitute a bar to an action to enforce a constructive trust? (3) Has title to the land vested in the appellees through the mode of acquisitive prescription?

1. Lot 164 was a part of the Friar Lands Estate of Muntinlupa, Rizal; its sale to Pablo Fabian was therefore governed by Act 1120, otherwise known as the Friar Lands Act. While under section 15 of the said Act, title to the land sold is reserved to the Government until the purchaser makes full payment of all the required installments and the interest thereon, this legal reservation refers

"to the bare, naked title. The equitable and beneficial title really went to the purchaser the moment he paid the first installment and was given a certificate of sale. The reservation of the title in favor of the Government is made merely to protect the interest of the Government so as to preclude, or prevent the purchaser from encumbering or disposing of the lot purchased before the payment in full of the purchase price. Outside of this protection the Government retains no right as an owner. For instance, after issuance of the sales certificate and pending payment in full of the purchase price, the Government may not sell the lot to another. It may not even encumber it. It may not occupy the land to use or cultivate; neither may it lease it or even participate or share in its fruits. In other words, the Government does not and cannot exercise the rights and prerogatives of owner. And when said purchaser finally pays the final installment on the purchase price and is given a deed of conveyance and a certificate of title, the title, at least in equity, retroacts to the time he first occupied the land, paid the first installment and was issued the corresponding certificate of sale. In other words, pending the completion of the payment of the purchase price, the purchaser is entitled to all the benefits and advantages which may accrue to the land as well as suffer the losses that may befall it." [3]

That Pablo Fabian had paid five annual installments to the Government, and in fact been issued sale certificate

547 in his name, are conceded. He was therefore the owner of lot 164 at the time of his death. He left four daughters, namely, Esperanza, Benita I, Benita II and Silbina, to whom all his rights and interest over lot 164 passed upon his demise.

"In case a holder of a certificate dies before the giving of the deed and does not leave a widow, then the interest of the holder of the certificate shall descend and deed shall issue to the person who under the laws of the Philippine Islands would have taken had the title been perfected before the death of the holder of the certificate, upon proof of the holders thus entitled of compliance with all the requirements of the certificate." [4]

The assignment and sale of the lot to the defendants Silbina and Teodora were therefore null and void as to that portion sold to Teodora, and as well as to that portion which lawfully devolved in favor of the appellants. To the extent of the participation of the appellants, application must be made of the principle that if property is acquired through fraud, the person obtaining it is considered a trustee of an implied trust for the benefit of the person from whom the property comes (*Gayondato vs. Insular Treasurer*, 49 Phil. 244).

2. In *Diaz, et al. vs. Gorricho, et al*, 103 Phil. 264-265 (1958), this Court, speaking through Mr. Justice J.B.L. Reyes, declared in no uncertain terms that laches may bar an action brought to enforce a constructive trust such as the one in the case at bar. Illuminating are the following excerpts from the decision penned by Mr. Justice Reyes:

"Article 1456 of the new Civil Code, while not retroactive in character, merely expresses a rule already recognized by our courts prior to the Code's promulgation (see *Gayondato vs. Insular Treasurer*, 49 Phil. 244). Appellants are, however, in error in believing that like express trust, such constructive trusts may not be barred by lapse of time. The American law on trusts has always maintained a distinction between express trusts created by the intention of the parties, and the implied or constructive trusts that are exclusively created by law, the latter not being trusts in their technical sense (*Gayondato vs. Insular Treasurer*, supra). The express trusts disable the trustee from acquiring for his own benefit the property committed to his management or custody, at least while he does not openly repudiate the trust, and makes such repudiation known to the beneficiary or cestui que trust. For this reason, the old Code of Civil Procedure (Act 190) declared that the rules on adverse possession does not apply to 'continuing and subsisting' (i.e., unrepudiated) trusts.

"But in constructive trusts, ... the rule is that laches constitutes a bar to actions to enforce the trust, and repudiation .is not required, unless there is a concealment of the facts giving rise to the trust (54 Am. Jur., sees. 580, 581; 65 C.J., sees. 956, 957, 958; Amer. Law Institute, Restatement on Trusts, section 219; on Restitution, section 179; *Stianson vs. Stianson*, 6 ALR 287; *Claridad vs. Benares*, 97 Phil. 973")-

The assignment of sale certificate 547 was effected on October 5, 1928, and the actual transfer of lot 164 was made on the following November 14. It was only on July 8, 1960, 32 big years later, that the appellants for the first time came forward with their claim to the land. The record does not reveal, and it is not seriously asserted, that the appellees concealed the facts giving rise to the trust. Upon the contrary, paragraph 13 of the stipulation of facts of the parties states with striking clarity "that defendants herein have been in possession of the land in question since 1928 up to the present publicly and continuously under claim of ownership; they have cultivated it, harvested and appropriated the fruits for themselves. " (*italic supplied*)

3. Six years later, in *Gerona, et al. vs. De Guzman, et al.*, L-19060, May 29, 1964, the factual setting attending which is substantially similar to that obtaining in the case at bar, this Court, in an excellently-phrased decision penned by Chief Justice, then Associate Justice, Roberto Concepcion, unequivocally reaffirmed the rule, overruling previous decisions to the contrary, that "an action for reconveyance of real property based upon a constructive or implied trust, resulting from fraud, may be barred by the statute of limitations," and further that "the action therefore may be filed within four years from the discovery of the fraud," the discovery in that case being deemed to have taken place when new certificates of title were issued exclusively in the names of the

respondents therein. The following is what Justice Concepcion, speaking for the Court, said:

"[A]lthough, as a general rule, an action for partition among co-heirs does not prescribe, this is true only as long as the defendants do not hold the property in question under an adverse title (*Cordova vs. Cordova*, L-9936, January 14, 1948). The statute of limitations operates, as in other cases, from the moment such adverse title is asserted by the possessor of the property (*Ramos vs. Ramos*, 45 Phil., 362; *Bargayo vs. Camumot*, 40 Phil., 857; *Castro vs. Echarri*, 20 Phil, 23).

"When respondents executed the aforementioned deed of extra-judicial settlement stating therein that they are the sole heirs of the late Marcelo de Guzman, and secured new transfer certificates of title in their own name, they thereby excluded the petitioners from the estate of the deceased, and consequently, set up a title adverse to them. And this is why petitioners have brought this action for the annulment of said deed upon the ground that the same is tainted with fraud.

"Although, there are some decisions to the contrary (*Jacinto vs. Mendoza*, L-12540, February 28, 1959; *Guison vs. Fernandez*, L-11764, January 31, 1959; *Marabiles vs. Quito*, L-10408, October 18, 1956 and *Sevilla vs. De los Angeles*, L-7745, November 18, 1955), it is already settled in this jurisdiction that an action for reconveyance of real property based upon a constructive or implied trust, resulting from fraud, may be barred by the statute of limitations (*Candelaria vs. Romero*, L-12149, September 30, 1960; *Alzona vs. Capunita*, L-10220, February 28, 1962).

"Inasmuch as petitioners seek to annul the aforementioned deed of 'extra-judicial settlement' upon the ground of fraud in the execution thereof, the action therefor may be filed within four (4) years from the discovery of the fraud (*Mauricio vs. Villanueva*, L-11072, September 24, 1959). Such discovery is deemed to have taken place, in the case at bar, on June 25, 1948, when said instrument was filed with the Register of Deeds and new certificates of title were issued in the name of the respondents exclusively, for the registration of the deed of extra-judicial settlement constitutes constructive notice to the whole world (*Diaz vs. Gorricho*, L-11229, March 29, 1958; *Avecilla vs. Yatco*, L-11578, May 14, 1958; *J.M. Tuason & Co., Inc. vs. Magdangal*, L-15539, January 30, 1962; *Lopez vs. Gonzaga*, L-18788, January 31, 1964)." (emphasis supplied)

Upon the undisputed facts in the case at bar, not only had laches set in when the appellants instituted their action for reconveyance in 1960, but as well their right to enforce the constructive trust had already prescribed.[5]

It logically follows from the above disquisition that acquisitive prescription has likewise operated to vest absolute title in the appellees, pursuant to the provisions of section 41 of Act 190 that

"Ten years actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued,[6] shall vest in every actual occupant or possessor of such land a full and complete title . . ." (italics ours)

The stringent mandate of said section 41 that "the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other. right and adverse to all other claimants," was adjudged by the lower court as having been fulfilled in the case at hand. And we agree. Although paragraph 13 of the stipulation of facts hereinbefore adverted to does not explicitly employ the word "adverse" to characterize the possession of the defendants from 1928 up to the filing of the complaint in 1960, the words, "defendants have been in possession of the land since 1928 up to the present [1960] publicly and continuously under claim of ownership; they have cultivated it, harvested and appropriated the fruits for themselves," clearly delineate, and can have no other logical meaning than, the adverse character of the possession exercised by the appellees over the land. If the import of the abovequoted portion of the stipulation of facts is at all doubted, such doubt is dispelled completely by additional cumulative facts in the record which are uncontroverted. Thus, the appellees declared the lot for taxation purposes in their names, and the resulting tax

declaration was later cancelled and two tax declarations were issued in favor of Silbina Fabian and Teodora Fabian, respectively. They have been paying the real estate taxes thereon from 1929 to the present. And in 1945 they subdivided the lot into two equal parts, and two transfer certificates of title were issued separately in their names.

Upon the foregoing disquisition, we hold not only that the appellants' action to enforce the constructive trust created in their favor has prescribed, but as well that a valid, full and complete title has vested in the appellees by acquisitive prescription.

Accordingly, the judgment a quo, dismissing the complaint, is affirmed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Angeles and Fernando, JJ., concur.

Judgment affirmed.

[1] Benita II Fabian died on October 8, 1937. Her only surviving child, Damaso Papa y Fabian, is one of the three plaintiffs-appellants.

[2] On February 19, 1962 the defendants filed an amended answer impleading Florencio and Gavino Landrito in substitution of their mother Silbina Fabian who had died on the previous February 12.

[3] Director of Lands, et al. vs. Rizal, et al., 87 Phil. 810-811.

[4] Sec. 16, Act 1120.

[5] See *Bargayo vs. Camumot*, 40 Phil. 870, 872 (1920) which held that "under the Spanish law an heir can acquire by prescription the ownership of an inheritance to the prejudice of his coheirs and that article 1965 of the Civil Code is only applied to an action for the partition of an inheritance, Le., to an action wherein the rights of all parties to their respective shares of the inheritance is (sic) taken for granted but not to an action wherein the plaintiffs right to participate in the inheritance is denied," and the "acquisitive prescription of ownership (acquired by one of the co-owners, co-heirs, and administrator, depositary, or lessee by means of an adverse possession under claim of title and after the lapse of the time fixed by law) can completely extinguish the right of the other co-owners, co-heirs, or owners of the property in the possession of the one claiming pwnership by prescription."

[6] See *Garcia, et al. vs. de Guzman*, L-15988, August 30, 1962, cited in *Garcia, et al. vs. Bello, et al.*, L-24702 and L-26357, Sept. 23, 1966, 18 Supreme Court Reports Annotated 101.

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