

**J. M. TUASON &#038; CO., INC., REPRESENTED BY ITS MANAGING PARTNER, GREGORIO ARANETA, INC., PLAINTIFF AND APPELLEE, VS. TEODOSIO MACALINDONG, DEFENDANT AND APPELLANT.**

*G.R. No. L-15398. December 29, 1962*

Ponente: PAREDES, J.

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**PAREDES, J.:**

On September 9, 1958, plaintiff instituted Civil Case No. Q-3303 in the Court of First Instance of Rizal, against Teodosio Macalindong, alleging therein that it is the registered owner of a parcel of land, commonly known as the Sta. Mesa Heights Subdivision, located at Quezon City and covered by Transfer Certificate of Title No. 1267 (37686—Rizal) of the Registry of Deeds of Quezon City; that on or about December 5, 1955, the defendant, thru force, strategy and stealth, unlawfully entered into the possession of some 200 square meters, within said parcel of land, situated at Barrio North Tatalon, Quezon City, and constructed his house thereon; and that because of this act it suffered and will continue to suffer damages at the rate of P60.00 monthly, representing the fair rental value of the portion occupied. Defendant Answering, stated among others, that—

"\* \* \* prior to 1955 and since time immemorial, he and his predecessors-in-interest have been in open, adverse, public, continuous and actual possession of the lot in question in the concept of owner and, by reason of such possession, he had made improvement thereon valued at P9,000.00."

As a counterclaim, he asked an award of P25,000.00 for moral and exemplary damages and P600.00 as attorney's fees.

Defendant presented documents tending to show that the portion in question was acquired by him on June 28, 1954, thru purchase from Graciano M. Flores (Exh. 1), who in turn acquired the same from Lucia T. Teotico on April 27, 1954 (Exh. 2). The latter bought the same from Agustin de Torres on April 1, 1950 (Exh. 3), who allegedly derived his title from Telesforo Deudor, a party in the Compromise Agreement, which formed the basis of the joint decisions in Civil Cases Nos. Q-135, 139, 174, 177 and 186, of the same court.

The court a quo rendered judgment, the pertinent portions of which read—

"\* \* \*. In the first place, the Court takes judicial notice of the fact that this property has been registered under the Torrens System, in the name of plaintiff since 1914, hence, the claim of possession of defendant cannot defeat the efficacy of the title of the plaintiff in the second place, as testified to by the defendant himself when he was trying to declare the property in question in the Office of the City Assessor he could not do so because he was told that there was a question to that. In fine, the documents presented by the defendant cannot be considered by the Court as to vest in him any rights over the property in question as against the title of the plaintiff which has been issued since 1914. \* \* \*."

WHEREFORE, the Court renders judgment in favor of the plaintiff and against the defendant by declaring the defendant to have no valid right of possession and title whatever in plaintiff's premises; ordering him and all persons claiming under him to vacate the premises in question and to remove his house and other construction

therefrom; ordering him to pay the plaintiff the sum of P30.00, a month from the date of usurpation in 1955 until the plaintiff is restored to the possession of the same; and for him to pay the costs."

Defendant presented a Motion to Reconsider and/or to Set Aside Decision, alleging that the said decision is contrary to the evidence and law. It was contended that while the plaintiff secured title over the land, the portion in question, however, had been in the adverse, open, public and continuous possession of the defendant's predecessor-in-interest, since 1893. Defendant reproduced portions of the Compromise Agreement used in the Civil Cases earlier enumerated, to show the possession of his predecessors-in-interest, to wit:—

"Second.—That within the perimeter of said land is an area measuring fifty (50) quiñones, over which the DEUDORS have claimed possessory rights by virtue of what purports to be an abstract of an 'informacion posesoria' covering the latter property, which recites that at the time of issuance thereof in 1893, the Records of the Registry of Deeds of Manila (South District) showed that said property was registered in the name of the old Telesforo Deudor, predecessor-in-interest of the present Deudors who are parties hereto. \* \* \*."

"Third.—That said DEUDORS have been in possession of the land in question and claim to be the owners thereof and during the period of possession have sold their possessory rights to various third persons;

"Fourth.—That in the middle of 1950, DEUDORS, under a mistaken impression of the nature of their rights in said property, began the following suits against the OWNERS in the Court of First Instance of Quezon City: \*

The motion for reconsideration having been denied on February 21, 1959, defendant appealed directly to this Court, claiming that the court a quo erred—

- (1) In not holding that plaintiff-appellee's Torrens Certificate of Title is Null and Void insofar as the property in controversy is concerned;
- (2) In not holding that plaintiff-appellee's action has already prescribed or is already barred by laches;
- (3) In not holding that defendant-appellant is a possessor in good faith and is entitled to retention until reimbursed of the value of his improvements;
- (4) In ordering defendant-appellant to pay rentals to the sum of P30 per month from 1955 until plaintiff-appellee is restored to the possession of the land in controversy; and
- (5) In not dismissing the complaint.

The appellee's cause of action is based on its ownership of the subject land, evidenced by TCT No. 1267 of the Register of Deeds of Quezon City (Exhibit A), which was issued in appellee's name on May 29, 1939 (Decree No. 17431 G.L.R.O. No. 7681), and was traceable to O.C.T. No. 735 (Rizal, issued on July 8, 1914.) Appellant's defense is that he is the owner of the subject premises. His only counter-claim is for attorney's fees and moral and exemplary damages, for appellee's supposedly malicious and frivolous presentation of the complaint. Nullity of appellee's title and reconveyance were never set up, either as defenses or as counter-claims. Neither prescription of appellee's claim or bar of the action for recovery due to laches was averred in appellant's defenses. Appellant cannot raise them now for the first time on appeal. Verily, the failure to raise the issue of prescription and laches, amounts to a waiver of such defenses (Sec. 10, Rule 9; Maxilom vs. Tabotabo, 9 Phil., 390; Domingo vs. Osorio, 7 Phil., 405). Moreover, the right of the appellee to file an action to recover possession based on its Torrens Title is imprescriptible and not barred under the doctrine of laches (Art. 348, Civil Code; Francisco, et al., vs. Cruz, et al., [CA] 43 Off. Gaz. 5105). On the contrary, the laws on prescription of actions and on estoppel and laches presently operate against appellant. After many years of inaction—forty-four (44) years, from July 8, 1914 (issuance of O.C.T. No. 735, Rizal), or nineteen (19) years from May 29, 1939 (issuance of T.C.T. No. 1267),

appellant should be completely barred from assailing the decree of registration of the subject property (*Tiburcio vs. PHHC*, 106 Phil., 477; *Off. Gaz.* [4] 638; See also *J. M. Tuason & Co., Inc. vs. Bolaños*, 95 Phil., 106; and *J. M. Tuason & Co., Inc. vs. Santiago*, 99 Phil., 615; 50 *Off. Gaz.* [11] 5727; involving the same Decree).

We are in accord with appellant's contention that Act No. 496 is not intended to shield fraud and that registration thereunder merely confirms title but does not vest any, when there is none, because registration under the Torrens system is not a mode of acquiring ownership. We are not, however, justified to apply these principles to the facts of the case and partially annul appellee's Torrens Title, which, as stated above, is traceable to an original certificate of title issued way back in 1914, or over 44 years ago, and which is now incontrovertible and conclusive against the whole world (sec. 38, Act 496). To sustain an action for annulment of a Torrens Title, for being void ab initio, it must be shown that the land Court which had issued the pertinent decree of registration, did not acquire jurisdiction over the case; and to succeed in an action for reconveyance after the lapse of one year from the decree of registration, actual fraud in securing the title must be proved (*Bernardo vs. Siojo*, 58 Phil. 89, 102). The pleadings filed by appellant before the trial court, alleged no such lack of jurisdiction and no evidence whatsoever was adduced or attempted to be adduced on the question of jurisdiction of the said land court; and the record also fails to show fraudulent acts or any knowledge of others' adverse rights by the original Tuason registrants in *G. L. R. O. Rec. No. 7681*, or that the latter knew of Telesforo Deudor's or Agustin de Torres' supposed right of ownership.

Appellant mentions an *informacion posesoria*, subject of Compromise Agreement dated March 16, 1953, between Deudor and Tuason & Co., Inc., allegedly issued in 1893 to Telesforo Deudor, who sold a portion of his land to Agustin de Torres, who possessed it until it passed to Lucia T. Teotico, to show that he had a previous title to the land, before the appellee had obtained a Torrens Title in 1914. In the first place, the compromise agreement had already been rescinded (*Deudor, et al. vs. J. M. Tuason & Co., Inc.* 112 Phil., 53; *Off. Gaz.* [2] 217. In the second place, the records do not indicate that either Telesforo Deudor or Agustin de Torres was in possession of the subject lot, at the time appellee's predecessor-in-interest had obtained a Torrens Title thereto in 1914, or at any time before World War II. And there is no finding of the trial court to this effect. On the contrary, it is a fact that in December 1955, appellant entered a portion of 200 square meters of appellee's land, without the consent and knowledge of appellee, and on September 9, 1958, appellee commenced the present action for recovery of possession. To this finding of fact, the parties are bound, because the appeal, according to appellant, would only raise questions of law. Moreover, if We were to give due weight to the compromise agreement which, by the way, was not presented in evidence in the case at bar, the appellant will have to concede that "The Deudors had a wrong impression of the nature of their rights" in the subject property, and perforce admit that Telesforo Deudor and Agustin de Torres had no dominical title to the property in question.

Appellant claims that he should have been declared a builder in good faith, that he should not have been ordered to pay rentals, and that the complaint should have been dismissed. Again this question is being raised for the first time on appeal. It was not alleged as a defense or counter-claim and the trial court did not make any finding on this factual issue. From the documents submitted, however, it appears that appellant was not a builder in good faith. From the initial certificate of title of appellee's predecessors-in-interest issued on July 8, 1914, there is a presumptive knowledge by appellant of appellee's Torrens Title (which is a notice to the whole world) over the subject premises and consequently appellant can not, in good conscience, say now that he believed his vendor (Flores), his vendor's vendor (Teotico) and the latter's seller (De Torres) had rights of ownership over said lot (*Francisco, et al., vs. Cruz*, *supra*). Appellant, had likewise, a sufficient warning from the fact that the lot, subject of his purchase, is described in his Exhibits 1, 2 and 3, to be a portion of an unnumbered and, therefore, unapproved subdivision plan. Had he investigated before buying and before building his house on the questioned lot, he would have been informed that the land is registered under the Torrens system in the name of J. M. Tuason

& Co., Inc. If he failed to make the necessary inquiry, appellant is now bound conclusively to appellee's Torrens Title (Sec. 51, Act 496; *Emas vs. Zuzuarregui*, 35 Phil., 144). Moreover, when appellant was trying to declare the property, the Office of the City Assessor told him he could not do so, because there was "a question to that". Lastly, appellant's remedy in this regard, should have been directed against his predecessors-in-interest.

The decision appealed from, is therefore, affirmed, with costs against the defendant-appellant.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Makalintal, JJ., concur.

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