

VICENTE DIRA, PLAINTIFF-APPELLANT, VS. PABLO D. TAÑEGA, DEFENDANT-APPELLEE.

G.R. No. L-23232. June 17, 1970

Ponente: BARREDO, J.

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BARREDO, J.:

Direct appeal by plaintiff-appellant Vicente Dira from a decision of the Court of First Instance of Leyte, dated February 13, 1964, dismissing, on the grounds of prescription and laches, the complaint in its Civil Case No. 2886, an act-ion for accounting of a share in an alleged partnership, payment of salaries and other money claims, without pronouncement as to costs.

The material facts as found by the trial judge are as follows:

"That sometime in March 1946, plain-tiff and defendant together with Fran-cisco Pagulayan entered into a partner-ship for the purpose of engaging in the printing business in the City of Tacloban and that the terms of the said partnership was for a period of five (5) years from the organization thereof; that this fact was admitted by the defendant in his ans-wer; that, in the articles of co-partnership, the plaintiff was designated as President and his salary as such was P150.00 a month, that, during his incum-bency as President until the expiration of the period, the defendant who was the manager-treasurer of the partnership never paid him his salary; that at the time the plaintiff was also the editor of the Leyte-Samar Tribune and in accord-ance with their Articles of Partnership established the said periodicals , the plaintiff as editor was to receive a sa-lary of P100.00 a month; that this salary and the accrued amount therein was not also paid by the defendant, who was the business manager of the enterprise; that the capital of the said partnership was P5,000.00 equally divided among the part-ners; that this amount was used by the partnership to purchase printing equip-ments from the 64th Naval Construction Battalion, U.S.N. and which printing equipments are in the possession of the defendant up to now; that, before the purchase by the three of them of the printing equipments, the plaintiff ob-tained a personal loan from Francisco Pagulayan in the amount of P1,100.00 and he pledged his share in the said equip-ments to pay the same; that, upon the re-quest of the plaintiff, the defendant paid the said amount to Francisco Pagu-layan and this time plaintiff used his share in the partnership as guarantee for the defendant's payment; that on June 3, 1946, Francisco Pagulayan sold his share of the partnership to the def-endant and who by virtue thereof became 2/3 owner of the business; that the defendant presented Exhibit '5' which purports to be a letter of demand to plaintiff asking him to settle his ac-count, but due to his failure to do so, he (defendant) assumed full ownership of the business, he changed the name from the Leyte-Samar Press to Tañega Press; that from the time the partner-ship was organized and went into busi-ness, the defendant as Manager-Treasurer never rendered any accounting of the business operations, or paid the share of the plaintiff in the profits; and that the present action of partnership accounting and sum of money was only filed in Court by the plaintiff against the defendant on February 10, 1961, that is after a lapse of 9 years, 10 months and 11 days after the expiration of the con-tract of partnership, Exhibit 'A' on February 28, 1951." (Pp.49-51, R. on A.)

" x x x x x

"It is undisputed that the defendant had been in the exclusive possession of all the printing equipments since

1946. Plaintiff himself admitted that the defendant conducted himself as absolute owner of the printing equipments. He testified that defendant changed location of the printing press which place he (Dira) did not know. According to defendant himself, he believed in good faith and acted accordingly since 1947 that he was the sole owner of the printing press, after the refusal of the plaintiff to pay his indebtedness of P1,100.00 to him. From the above facts, it can be deduced that defendant had acquired ownership of the printing equipments and accessories in question as Article 1132 of the Civil Code provides that the ownership of movables prescribes through uninterrupted possession of eight years, without need of any condition. Surely 1946 or 1947 to 1961, more than four and/or eight years had elapsed.

"Plaintiff stated that defendant ignored him and did not give him any participation, since 1947, in the business, yet he did not demand an immediate accounting of the business. For his failure to demand accounting five years before February 10, 1961, from the defendant, he had forfeited his right by prescription. In support, Article 1153 of the Civil Code, among other things, provides that the period for prescription of actions to demand accounting runs from the day the persons who should render same cease in their functions, and Article 1149 of the Civil Code provides that 'all other actions whose periods are not fixed in this Code or in other laws within five years from the time the right of action accrues.'

"It is an incontrovertible fact that the plaintiff had filed this action against the defendant on February 10, 1961, nearly ten years after the expiration of the contract of partnership between them on March, 1951. x x x" (Pp. 56-57, R. on A.)

In his complaint, plaintiff-appellant prayed for payment of his salaries not only as President of the partnership but also as editor of the Leyte-Samar Tribune which admittedly he had not been paid from the start, for accounting of the partnership affairs, for payment of his alleged share in the rental value of the printing equipment and accessories used by the partnership, of which he also claimed part-ownership proportionally to his share in the partnership, and for damages, attorney's fees and costs. The defendant-appellee admitted practically all the material allegations of the complaint about the organization of the partnership and the terms thereof as well as the non-payment of the salaries claimed by appellant, but, in defense, he alleged that the whole business of the partnership became his alone in 1947 after he had acquired by purchase the share of Francisco Pagulayan and had taken over the share of appellant, since the latter failed to pay the P1,100 he had requested appellee to pay to Pagulayan, as security for the payment of which, he had pledged his said share to appellee; that since 1947, the place of the business was transferred by him, he had its name changed to Tañega Press and he had always been operating openly and publicly the said printing business from 1947 without any intervention or participation of appellant and without said appellant making any claim of any kind in connection therewith until the filing of the complaint on February 10, 1961, hence, all the claims and causes of action of the appellant had already prescribed.

Upon the facts found by His Honor quoted above, We agree with His Honor in upholding appellee's defense of prescription. From any angle that this case may be viewed, it is obvious that appellant's causes of action are barred by the statute of limitations.

Appellee took exclusive control of the partnership affairs since 1947, publicly and openly and after having notified appellant that he would do so should the latter fail to comply with his letter of demand, Exhibit "5", dated April 19, 1947. Nowhere in the facts found by the trial judge does it appear that appellant did anything about said demand or that he ever contested the action of the appellee of transferring the place of business and changing its name to Tañega Press. There is nothing to show that he had taken any move for the payment to him of his unpaid salaries both as President of the business and as editor of the Leyte-Samar Tribune.

Under these circumstances, it would be giving premium to inaction and indifference to still hold that appellant could sue appellee, almost fourteen years after the latter, with prior notice to the former, had openly and publicly

taken over exclusive control of the partnership business as if it were his own and only a little short of ten years after the expiration of the stipulated term of partnership. His claims for salaries accrued after each month they were unpaid. Whether we assume that these claims lost basis in 1947 when appellee took over the businesses of the printing press and the newspaper or in 1951, upon the expiration of the term of the agreements, by all standards, these claims had already prescribed when the present suit was filed. On the other hand, under Article 1153 of the Civil Code, a demand for "accounting runs from the day the persons who should render the same ceases in their functions", which in this case was in 1947, when the appellee began to operate the businesses as exclusively his own. Again, inasmuch as the longest period in the chapter on prescription of the Civil Code is ten years, it is evident that appellant's action for accounting is already barred. The same is true with the claim for rentals and recovery of proportional ownership of the printing equipment and accessories, as to which, appellant's period to bring his actions accrued also in 1947, fourteen years before this suit was filed.

As a matter of fact, appellant impliedly admits the correctness of this position, since in this appeal his only contention is that both as his partner and as pledgee of his share, the appellee became his trustee, in legal contemplation, or that, in the eyes of the law, a relationship of trusteeship arose between him and appellee, hence his actions against him are imprescriptible. Appellant's pose is without merit. In bad faith or in good faith, after eight years of actual adverse possession, appellee acquired clear ownership of appellant's share by acquisitive prescription. According to Art. 1132 of the Civil Code, "the ownership of personal property also prescribes through uninterrupted possession for eight years, without need of any other condition." So, appellee became undisputed owner of appellant's share since 1955 or six years before this action was filed and since said year the allegation of trusteeship had already lost any basis whatsoever. Under Article 1140 of same Code, "Actions to recover movables shall prescribe eight years from the time the possession thereof is lost, unless the possessor has acquired the ownership by prescription for a less period" or for an equal period, in which latter case, the right to sue prescribes together with the title.

Equally untenable is appellant's reliance on the theory that as a member of the partnership, appellee continued as a trustee even after 1947, when said appellee took the business for himself and even after 1951, the expiry date of the agreements. The provisions of Article 1785 to the effect that:

"When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

"A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership."

and Article 1829 thus:

"On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed."

are clearly inapplicable here, for the simple reason that those articles are premised on a continuation of the partnership as such, which is not our case, because here appellee repudiated the partnership as early as 1947 with either actual or presumed knowledge of the appellant. By analogy, at least, with the rule as to a co-ownership, which a partnership essentially is, prescription does not run in favor of any of the co-owners only as long as the co-owner claiming against the others "expressly or impliedly recognizes the co-ownership", a circumstance irreconcilably inconsistent with appellee's conduct of transferring the place of business, changing its name and not paying appellant any of the salaries agreed upon in the articles of partnership.

What is more, this case may well be decided on the basis of laches as was done by the trial judge. In other words, even if prescription were not properly applicable, We could still hold that under the facts proven in the record and found by the lower court, appellant has been guilty of laches and his stale demands may not gain the ears of the court. We note, however, that in his answer, the appellee limited his defense specifically to prescription which is a separate defense from laches. Not that such particularity of appellee's defense is fatal, because, after all, it does not appear that the evidence proving laches were objected to by appellant, (Section 5, Rule 10, Rules of Court) but We do not feel that in this case We need to go beyond the specific defense expressly invoked by the appellant. This is mentioned only, lest appellant may still entertain any hope regarding this case.

WHEREFORE, the judgment of the lower court is affirmed, with costs against appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Villamor, JJ., concur.

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