

**ASUNCION CRUZ, ANGEL ANDAN, ALBERTO ANDAN, CESAR ANDAN, ROMAN ANDAN AND MARINA ANDAN, PETITIONERS, VS. HON. COURT OF APPEALS, CATALINA ARCEO AND ILDEFONSO SANTOS, RESPONDENTS.**

*G.R. No. L-40880. October 23, 1979*

Ponente: GUERRERO, J.

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**GUERRERO, J.:**

This is a petition to review on certiorari the judgment of the Court of Appeals[1] rendered in CA-G.R. No. 51264-R entitled "Catalina Arceo and Ildefonso Santos, plaintiffs-appellants vs. Asuncion Cruz, et al., defendants-appellees" which reversed the decision of the Court of First Instance of Bulacan in favor of the defendants therein, now the petitioners, and the resolution of the appellate court denying the motion for reconsideration.[2]

On April 22, 1964, the spouses Catalina Arceo and Ildefonso Santos filed a complaint against Asuncion Cruz, widow of the deceased Juan Andan and their children Alberto, Cesar, Angel, Roman, and Marina, all surnamed Andan, for the recovery of possession of a parcel of residential land with an area of 1,637 sq. meters, located in Poblacion, Pulilan, Bulacan originally covered by Tax Declaration No. 388 in the name of Eustaquio Arceo, assessed at P830.00, bounded on the north by Juan Maniego and Dominga Santos; south by provincial road; east by Emiliano Santos and west by Rufino Arceo.

The complaint averred that plaintiff Catalina Arceo inherited the property by virtue of inheritance from her parents, Eustaquio Arceo and Angelina Dizon, both deceased; "that sometime in the later part of 1952, plaintiff had agreed with Juan Andan that the latter could build a house on the above-described property and to pay the corresponding tax of said property and allow her to live with the family of Juan Andan in the house without any other obligation; they further agreed that Juan Andan could build, as he did, accessories on the property and for her to share in the rentals which rentals she had been sharing per their agreement at P50.00 per month since 1958 up to May 1961 (par. 5);"

The complaint further alleged that after the death of Juan Andan on June 19, 1961, Asuncion Cruz, surviving widow of Juan Andan, began refusing to share the rentals with the plaintiffs insisting that the land above-described belongs to them because it was sold by plaintiffs' father, Eustaquio Arceo to her husband, Juan Andan which is not true and that despite demands for said rentals and for the return of possession of the property, defendants refused. Plaintiffs pray for the payment of rent totalling P1,750.00 plus subsequent rentals that may accrue with legal interest, the return of the property and damages.[3]

Answering the complaint, defendants (now the petitioners) denied the material averments alleged, claiming as special defense that their predecessor-in-interest Juan Andan, deceased husband of Asuncion and father of the other defendants, acquired the land from his mother Julia Dizon and upon the death of Juan Andan, defendants acquired the same by operation of law; they further claimed that they have been in actual possession of the land

by themselves and thru their predecessors-in-interest publicly, openly, peacefully, continuously, under a claim of title and in the concept of owner exclusively and adversely against the whole world. They also set up a counterclaim by way of attorney's fees and litigation expenses. They prayed for the dismissal of the complaint; that they be declared owners of the land and awarded moral damages.[4]

At the pre-trial, the following were admitted by the parties: "that previously the land in question was declared for taxation purposes in the name of Eustaquio Arceo, father of plaintiff Catalina Arceo; that Eustaquio Arceo died on September 18, 1917; that the only heir of Eustaquio Arceo is plaintiff Catalina Arceo; that the said tax declaration in the name of Eustaquio Arceo was cancelled and transferred in the name of Juan Andan on May 29, 1953 and after his death in the names of his heirs, defendants herein; that defendants have been and are in possession of the property in question having buildings for residential purposes and for rent; that defendants have consistently paid the corresponding taxes."[5]

After trial, the trial court rendered judgment in favor of the defendants and against the plaintiffs:

- "1. Dismissing the complaint;
2. Declaring the defendants the real owners of the land described in the complaint;
3. Ordering the plaintiffs to pay to the defendants damages by way of attorney's fees in the amount of P1,000.00 and the costs."

On appeal to the Court of Appeals by the plaintiffs, the decision of the trial court was reversed and the respondent court ordered the return of the property to the possession of the Arceos, payment of back rentals due them covering the period from June, 1961 at the rate of P50.00 a month with legal interest until the premises are vacated and costs.

Upon a motion for reconsideration, the same was denied although the appellate court specifically made the finding that the possession of the petitioners "became adverse to plaintiffs' rights in 1953, after the Civil Code had taken effect." Hence, the present petition for certiorari.

Petitioners submit the following assignment of errors:

- I. The Court of Appeals, on the basis of the admitted, stipulated and established facts, committed gross misappreciation of facts in not affirming the decision of the lower court that the petitioners are the rightful owners of the property and therefore entitled to the possession thereof.
- II. The Court of Appeals, on the basis of the proven facts, had grossly misappreciated the same in not finding that petitioners have acquired the property also by acquisitive prescription and/or that it should have found that private respondents had no right of action and even if they have the same had been extinguished by prescription.
- III. The Court of Appeals likewise committed gross misapprehension of facts and departed from the established jurisprudence when it decided this case solely on the fact that the house was "erected on the solar of Eustaquio Arceo."
- IV. That the Court of Appeals also erred and radically departed in disregarding the statute of frauds, parol evidence rule and dead man's statute, disregarding the timely objection raised therein during the trial.
- V. That the Court of Appeals gravely erred in not dismissing the private respondents' appeal considering that the brief was sub-mitted six months after the death of the real party in interest.
- VI. That the Court of Appeals similarly committed a palpable error when it found that petitioners should pay a monthly rental of P50.00 a month from 1961 until they vacate the premises with legal rate of interest, thereby

radically departing from the established jurisprudence that a possessor in good faith is not liable for any damage.

VII. That by and large, the decision of the Court of Appeals reversing that of the lower court was manifestly in error.

The main thrust of petitioners' brief is the grave error of the respondent court in the gross misappreciation and misapprehension of facts that have been admitted and stipulated by the parties, and established on record.

We agree with the petitioners.

1. The principal bone of contention between the parties is the nature and concept of petitioners' possession of the premises, which the private respondents admit. According to the private respondents as alleged in their complaint, par. 5, sometime in the later part of 1952, Catalina Arceo had agreed with Juan Andan that the latter could build a house on the property and to pay the corresponding tax thereon and allow her to live with the family of Juan Andan in the house without any other obligation and they further agreed that Juan Andan could build, as he did accessories on the property and for her to share in the rentals at P50.00 per month since 1958 up to May, 1961. It is admitted by Catalina Arceo that the alleged lease agreement was entered into orally, there being no document executed between them. (t.s.n., Oct. 8, 1968, pp. 4-5). Hence, private respondents contend that petitioners' possession was pursuant to such oral lease agreement.

Petitioners vigorously deny the existence of the alleged oral lease agreement and they maintain that their possession and occupancy was in concept of owner under a claim of ownership from their predecessor-in-interest Juan Andan by operation of law, the latter in turn inheriting the same from his deceased mother, Julia Dizon. Thus, the vital issue emerges as to whether such oral lease was really entered into between the parties and upon which the nature and concept of petitioners' possession may be determined and resolved.

On this point, the trial court in disbelieving and rejecting the alleged oral lease said:

"It is amusing to note that Exhibits 1, 1-A to 1-C are tax receipts for the years 1947 to 1950 paid by the defendants' predecessors-in-interest on the land in question, while plaintiffs claim that the alleged agreement with Juan Andan started only in the earlier part of 1952 and he (Juan Andan) started paying the rental from 1958 up to 1961. These tax receipts belie the pretension that Juan Andan paid the taxes on the house and lot in question because of the said alleged agreement. Exhibit 2 is the receipt for the house erected therein in the name of Julia Dizon and is dated June 4, 1948." [6]

On appeal, the respondent court without squarely deciding the issue, impliedly upheld the oral lease agreement by ordering petitioners to pay back rentals and subsequent rentals at P50.00 a month with interest. Considering the facts established on record, We hold that the finding of the appellate court is not supported by substantial evidence.

We agree with the trial court that Exhibits 1, 1-A to 1-C which are tax receipts for the years 1947 to 1950 paid by petitioners' predecessors-in-interest on the property in dispute clearly overthrow the contention of the private respondents that Juan Andan agreed to pay the taxes by reason of the alleged oral lease agreement which was supposedly made in 1952. It is highly improbable, if not incredible that a lessee would pay taxes due for five years on the leased premises before he actually begins occupancy of the same.

The records also disclose proceedings during the pre-trial of the case wherein counsel of the private respondents admitted the possession of the land in question by the petitioners to have started in 1938 when Catalina Arceo married and she went out of the place. And immediately thereafter, the Court said: "In this connection, the plaintiff admits that it was only in 1938 that the defendant possessed the property, only in 1938 when said plaintiff

left the premises and married. The defendants however contend that they possessed the property even prior to 1927." [7] This admission by respondents' counsel further repudiates and conflicts with the claim of Catalina Arceo that petitioners' possession and occupancy of the premises was by virtue of the oral lease agreement made in the later part of 1952. Private respondents are bound by their counsel's admission. Since petitioners were admittedly already in possession of the property in 1938, it may be reasonably inferred that they possessed and occupied the property not by virtue of the alleged oral lease agreement executed in 1952.

We also find that the testimony of Catalina Arceo that in 1952 she delivered the lot in question to Juan Andan under a lease agreement of P50.00 a month is not corroborated nor supported by any document, writing, some note or memorandum thereof subscribed by Juan Andan, the alleged lessee, or by his agent. There is absolutely no showing or explanation whatsoever why no receipt, writing, note or memorandum of the lease agreement exists or is available notwithstanding the fact as she claims that the lease had been in force from 1952 to 1961 during which time Juan Andan is alleged to have religiously paid the monthly rentals. Where the lessor is unable to produce receipts of the rents paid during a period of ten years or even a single receipt for a month or some document, writing, note or memorandum of the lease and does not even explain his failure thereof, the claim of private respondents that there was such a lease of the property is rendered beyond belief, contrary to human experience and practice and the usual course of things.

The records further disclose that petitioners' counsel, at the trial of the case, objected to the introduction of parol evidence to prove the oral lease agreement which the trial court sustained. [8] Hence, there being no parol evidence to prove the oral lease agreement, the ruling of the appellate court upholding the lease agreement was without legal or factual basis. We hold that there is no competent proof of such oral lease.

2. The Court of Appeals, in reversing the judgment of the trial court, relied mainly on what the former called the "(s)ilent and eloquent proof of plaintiffs' ownership of the land in dispute (which) is the expressed recognition of Julia Dizon and Juan Andan of Catalina Arceo's property right. And this is best illustrated when Julia Dizon consented to the annotation in her tax declaration No. 5775 that her house was "Erected on the Solar of Eustaquio Arceo Tax No. 388" (Exhibit 1-C).

We do not agree with the respondent court for there is no scintilla of evidence that Julia Dizon consented to the aforesaid annotation. She had long died when the case was filed, so was Juan Andan, her only son. There is also no proof when such annotation was made and by whom. At the time Tax Declaration No. 5775 was constituted by Julia Dizon on February 13, 1948, the land itself bore Tax Declaration No. 388, hence, it was merely routinary on the part of the assessor to indicate the tax declaration number of the land on which the house was erected without Julia Dizon's participation much less consent thereto, otherwise her initial or signature to such annotation would have appeared below the annotation, which We find none in Exhibit C.

3. Considering that the claims of ownership of the contending parties have arisen after the death of Eustaquio Arceo and also after Julia Dizon and Juan Andan had already died, the resolution of this controversy may be sought on the basis of who had been paying the taxes on the land in dispute. There is no question that Juan Andan had been paying the taxes on the property as shown in Exhibit 1 (tax receipt for 1947), Exhibit 1-A (tax receipt for 1948), Exhibit 1-b (tax receipt for 1949), Exhibit 1-C (tax receipt for 1950); that petitioners paid the taxes for the years 1961 (Exhibit 1-d) and 1962 (Exhibit 1-E). Tax payments for 1944 and previous years were not available on account of the war and those from 1945 to 1947 were destroyed by white ants. (Exhibit I).

Private respondents, on the other hand, have not paid any tax on the property in litigation.

The respondent Court of Appeals, however, held that although Juan Andan paid the taxes, the tax receipts indicated that the name of the declared owner of the land was E. Arceo. Hence, Juan Andan was merely the payor.

We reject this conclusion of the appellate court not only because it is weak, flimsy and unrealistic, but also because it is not justified and warranted. Examining the tax receipt for the year 1947 (Exhibit 1), it appears thereon that the declared owners of the lot for which the taxes were paid were "J. Dizon," "do"(or "J. Dizon"), "do" (or "J. Dizon"), "do" (or "J. Dizon"), "E. Arceo," and "A. Andan." For the year 1948 (Exhibit 1-a), the declared owners of the lots paid for were "J. Dizon," "do" (or "J. Dizon"), "do" (or "J. Dizon"), "do" (or "J. Dizon") and "E. Arceo." For the year 1949 the declared owners of the lots paid for were the same as for the year 1948 and the same is true with respect to the tax receipt for the year 1950. It is significant that not one of these properties was in the name of Juan Andan, but considering that Juan Andan was the only son and heir of Julia Dizon and Angel Andan and, therefore, a claimant to these pro-perties of Julia Dizon and Angel Andan, there is strong and substantial reason to conclude that Juan Andan paid the taxes for all these properties including that under the name of E. Arceo under a claim of ownership. It is not fair to conclude that Juan Andan was merely a payor from the fact of payment of one lot without taking into consideration the other lots whose taxes were paid at the same time as well as similar payments for the lots for the succeeding years up to 1950, including other relevant circumstances of time, persons and relationship.

4. In denying the motion for reconsideration filed by the defendants-appellants and now the petitioners herein, the respondent Court of Appeals declared that the possession of the petitioners became adverse to that of the plaintiffs' rights in 1953 when Juan Andan caused the cancellation of Tax Declaration No. 388 covering the land in the name of Eustaquio Arceo to Tax Declaration No. 7574 in his (Juan Andan) name.

Disputing this ruling of the Court of Appeals, petitioners claim that they have acquired ownership over the land thru their possession which had been shown to be actual, peaceful, open, public, continuous and under a claim of title, adverse against the whole world since the complaint was filed only in 1964 or after eleven (11) years from 1953. Petitioners further contend that their possession and occupation of the premises date back to the year 1938, which the parties have stipulated and agreed at the pre-trial hearing of the case.

This contention of the petitioners is impressed with truth and merit as the same is borne out by the records and the transcript thereof which We have previously discussed. We, therefore, find that the ruling of the respondent court dating petitioners' adverse possession to the year 1953 is contrary to the admission of the private respondents thru counsel, and since petitioners' possession of the property in question commenced way back in 1938 which was at the time the old Civil Code was still in force, the prescriptive period is governed under Section 41 of the Code of Civil Procedure because Article 1116 of the New Civil Code provides that "Prescription already running before the effectivity of this Code (August 30, 1950) shall be governed by laws previously in force." Section 41 of the C. C. P. states:

"Sec. 41. Title to land by prescription.- Ten years of actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly, continuously for ten years by occupancy, descent, grants of otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual possessor of such land a full complete title, saving to the person under disabilities the rights, secured by the next section."

We find the evidence for petitioners clear, competent and substantial establishing that they have exercised acts of dominion in derogation of respondents' interest. They have constructed permanent buildings thereon and collected the rentals. Permission was sought and obtained from them when another building for a drug store and later when enlarged to include a bakery, were built by other persons. They collected the fruits of fruit bearing trees planted on the land. Questions of boundaries between adjoining properties were consulted with them. These acts of dominion were not rebutted by respondents. And most importantly petitioners have paid religiously the taxes on the property.

On the part of private respondents, their evidence appear inconsequential, inherently weak and unsatisfactory for it would appear unnatural for respondent Catalina Arceo to abandon the lot when in 1938 she married her co-respondent Ildefonso Santos and built their conjugal home some seven houses away and later transferred to a house and lot purchased and constructed by her in-laws. Her claim that in 1952 she entered into the lease agreement with Juan Andan on condition, among others, that she will be allowed to live free in the house built by Juan Andan appears to be doubtful and dubious, considering that, as may be gleaned from the testimony of Catalina Arceo, she never lived in said house and there is no showing that she attempted to live there or that she complained or protested to Juan Andan for not complying with this term of the lease agreement.

We believe that the trial court made the correct observation that:

"When Catalina Arceo was placed in the stand for the first time, she was positive on cross-examination that she nor anyone did not make any claim for war damage for the house erected on the land in question which was burned down during the Japanese occupation. However, after defendants had introduced Exhibits 4, 4-A, 4-B, 4-C and 4-D, documents relating to the war damage claim and award to Julia Dizon on said house she reversed and contradicted herself as a rebuttal witness and stated that she was given the sum of P300.00 by Julia Dizon, because she (Julia Dizon) was the one who had said house repaired. If the plaintiffs were the real owners of the land in question, why did they not file the war damage claim? If it is true that the land in question belongs to the plaintiffs, why did they not build their house on the said land when they separated from her in-laws and instead built their house on some other's property not theirs? Why did Catalina Arceo not make an assertion of her alleged rights until Julia Dizon and Juan Andan had died and death had sealed their lips?

Teodora Arceo, admittedly a relative of plaintiff Catalina Arceo, was presented to bolster the claim of the existence of the agreement between Juan Andan and said plaintiff over payment of rent on the land in question, by testifying that on several occasions Juan Andan had sent through him P50.00 to Catalina Arceo. On cross-examination, Teodoro Arceo admitted that the distance between his house and the house of Juan Andan and the distance of the house of said Juan Andan from that of Catalina Arceo were almost the same. If Juan Andan had to go almost the same distance from the house to Catalina's and from his house to Teodoro's, why would he have bothered to go to Teodoro's and not directly to Catalina's?"

It must be stated here that the house which burned down during the Japanese occupation was the house of Eustaquio Arceo according to Pascual Santos, witness for the private respondents (t.s.n., August 15, 1968, p. 15), but the fact established is that the war damage claim for said house was claimed by and paid to Julia Dizon, mother of Juan Andan, which fact militates against private respondents' claim that they owned the house and the lot.

Respondent Court laid stress on the affidavit of Juan Andan (Exhibit E), claiming purchase of the lot in question from Eustaquio Arceo, and the court declared it was utterly improbable for Juan Andan to have bought the land because he was only ten years old when Eustaquio Arceo died in 1917. Conceding that Juan Andan was then a minor, minority is only one of the limitations on the capacity to act and do not exempt the incapacitated person from certain obligations, as when the latter arise from his acts or from property relations. Under Article 161 of the old Civil Code, whatever the child may acquire with the capital or property of the parents belongs to the latter in ownership and in usufruct, which is also the same provision in Article 324 of the New Civil Code. In the case at bar, the circumstances of the sale under which Juan Andan as a minor acquired the property with the capital of his mother, Julia Dizon, are not improbable under the law aforementioned. These circumstances may not be sufficiently clear or explained since the affiant Juan Andan had long passed away in 1961 and can no longer be confronted therefor, whereas private respondents chose conveniently to file their complaint against the heirs of Juan Andan in 1964 or 3 years thereafter.

Jurisprudence, however, is overwhelming and well-established in support of petitioners' claim of title acquired

through acquisitive prescription. In *Ongsiaco vs. Dallo*, 27 SCRA 161, the Supreme Court said: "Under the Code of Civil Procedure formerly in force, good or bad faith was immaterial for purposes of acquisitive prescription. Adverse possession in either character ripened into ownership after the lapse of ten years. In the same manner, an action to recover title to or possession of immovable property prescribed in the same period." In *Narag vs. Cecilio*, 48 SCRA 11, the Supreme Court traced the pronouncements and rulings of the Supreme Court dating as far back as 1908 in the case of *Altman vs. Commanding Officer*, 11 Phil. 516, to the case of *Ongsiaco vs. Dallo*, supra, concerning the ten-year period required by Sec. 41 of the Code of Civil Procedure that it suffices that there be a claim as "owner for that time of a piece of land [to vest] in him the full and complete title thereto," the Court speaking thru Justice Willard.

The Court, in the *Narag vs. Cecilio* case, continued: "The same form of words was repeated by Justice Trent for the Court in *Corporacion de PP. Agustinos Recoletos v. Crisostomo*, 32 Phil. 427 (1915). Thus: 'With real property however, it is different. Section 40 bars the owner's remedy after ten years, and Section 41 vests in the adverse possessor after the same period of time "a full and complete title.'" Two years later, in 1917, came this reaffirmation of such a view from Justice Torres: "Taking into consideration that the applicant, Manuel Locsin Rama, is now and has been for twenty years, in possession of the same property, counting that of his predecessors, it may be said that beyond a shadow of a doubt that the ownership in the said strip of land has prescribed, pursuant to the provisions of section 41 of Act No. 190, since the possession of the applicant has been actual, open, public, and continuous, under a claim of title exclusive of any other right and adverse to all other claimants, \*\*\*\*' Nor is there any need for a just title. Justice Street made such a point-clear as early as 1921 in *Santos v. Heirs of Crisostomo*, 41 Phil. 342. Thus: 'Our opinion upon this point is that adverse possession must be taken to have begun with occupancy and supposing that occupancy of the usurped property began, as the trial court evidently believed, with the execution of the contract of sale \*\*\*, or soon thereafter, it results that the petitioners had acquired title by ten years' adverse possession, under section 41 of the Code of Civil Procedure, prior to the beginning of these proceedings. x x x' As a matter of fact, Justice Laurel, in *Labot v. Librada*, 72 Phil. 433 (1941), in sustaining a plea that a party was entitled to the benefits of this provision of law, stated: 'To constitute exclusive possession, it is not necessary to exclude every one from all entry on the land, and the fact that another person uses the property concurrently with the claimants by the permission of the latter or in subordination to their claim, does not, in a legal sense, militate against the exclusiveness of their possession.' Moreover, in a 1950 decision, *Arboso v. Andrade*, 87 Phil. 782, Justice Bautista Angelo, for this Court, reiterated the view that the presence of good faith, inferentially by just title, is immaterial. x x x As was so categorically announced by Justice J.B.L. Reyes: 'Prescription lies under the said section even in the absence of good faith and just title.' (*Alvero v. Reas*, L-28337, September 30, 1970, 35 SCRA 210, 214).

In other words, the good faith and just title of Juan Andan in the case at bar, is immaterial for prescription lies under Section 41, C.C.P.

5. Petitioners' contention that private respondents' cause of action had prescribed in likewise meritorious.

To recapitulate, We have ruled herein that petitioners' possession and occupancy of the property commenced in 1938 when Catalina Arceo got married and abandoned the lot. We have also rejected as inexistent and spurious the alleged oral lease agreement entered into in 1952 between Catalina Arceo and Juan Andan, petitioners' predecessor-in-interest. We also find as established the claim of petitioners that they have acquired ownership of the property thru adverse possession for more than ten years since 1938.

Whatever right private respondents had to the property had already prescribed by the mere lapse of time by reason of negligence, carelessness and abandon-ment and their cause of action is barred or can no longer prosper after more than twenty-six (26) years, that is, from 1938 when the cause of action accrued, to 1964 when the complaint

was filed. The laws aid the vigilant, not those who slumber on their rights. *Vigilantibus sed non dormientibus jura subveniunt*.

It is appropriate to stress here the essence of the statute of limitations. In *Conspecto vs. Fruto*, 31 Phil. 144, 151, the Supreme Court said:

"It is the essence of the statute of limitations that, whether the party had a right to the possession or not, if he entered under the claim of such right and remained in possession for the period (ten years) named in the statute of limitations, the right of action of the plaintiff who had the better title is barred by that adverse possession. The right given by the statute of limitations does not depend upon, and has no necessary connection with, the validity of the claim under which the possession is held. Otherwise there could be no use for the statute of limitations or adverse possession as a defense to an action, for if the decision is made to depend upon the validity of the respective titles set up by the plaintiff and the defendant, there can be no place for the consideration of the question of adverse possession. It is because the plaintiff has a better title that the defendant is permitted to rely upon such uninterrupted possession, adverse to the plaintiff's title, as the statute prescribes, it being well understood and an element in such cases, that the plaintiff does have the better title, but that he has lost it by delay in asserting it. (*Probst vs. Presbyterian Church*, 129 U.S., 182).

Neither is it necessary that the defendant should have a proper title, under which he claims possession. It is sufficient, if he asserts ownership of the land, and that this assertion is accompanied by an uninterrupted possession for the period named in the statute. It is this which constitutes adverse possession--claiming himself to be the owner of the land. If the one in possession asserts his right to own the land in dispute, asserts his right to the possession, and his possession has been adverse and uninterrupted, it constitutes a bar which the statute intended to give him. (*Ewing vs. Burnet*, 11 Peters [U.S.], 39, 52; *Harvey vs. Tyler*, 2 Wallace [U.S.], 328, 349; *Coke's Institutes*; First Part, 153).

x x x

Sections 40 of Act No. 190 is plain and unambiguous. It plainly says: "An action for the recovery of title to, or possession of, real property, or an interest therein, can only be brought within ten years after the cause of such action accrues." In the present case, the action for the recovery of the possession of the real property in question was not brought within ten years after the cause of action had accrued."

Since private respondents abandoned the property in question in 1938 and petitioners and their predecessors-in-interest took possession of the land from that time and have remained therein up to the present, the action to recover possession has clearly lapsed, firstly, in the light of Section 40, Act 190 quoted above which is applicable hereto since the possession of the predecessors-in-interest of the petitioners commenced before the New Civil Code took effect and thus, Article 1116 of the New Civil Code governs, as previously elucidated. (*Development Bank of the Philippines vs. Ozarraga*, 14 SCRA 653). Under the C.C.P., an action for recovery of title to, or possession of, real property, or an interest therein, can only be brought within ten years after the cause of action accrues. (*Vda. de Delima vs. Tio*, 32 SCRA 516).

And secondly, whether We consider the complaint of private respondents to recover possession of the property in question as an *accion publiciana* or *accion reivindicatoria*, the same has prescribed after the lapse of ten years. After private respondents had abandoned for 26 years the property which is unregistered land, the law as well as justice and equity will not allow them "to lie in wait and spring as in an ambush" to dislodge and dispossess petitioners who during said period have made and constructed residences, buildings and other valuable improvements thereon, and enjoying the fruits therefrom. (*Parcotilo vs. Parcotilo*, 12 SCRA 435; *Carillo vs. De Paz*, 18 SCRA 467; *Narag vs. Castillo*, 48 SCRA 11).

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment of the Court of Appeals is hereby set aside and

the decision of the lower court is reinstated, with costs against respondents.

Petition granted.

**SO ORDERED.**

Teehankee, (Chairman), Makasiar, Fernandez, De Castro, and Melencio-Herrera, JJ., concur.

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[1] Second Division, Concepcion, H. Jr., J., ponente; Gancayco, Serrano, JJ., concurring.

[2] Second Division, Plana, E.J., ponente; Gancayco, Serrano, JJ., concurring.

[3] Complaint, p. 3, Record on Appeal.

[4] Answer, pp. 3-4, Record on Appeal.

[5] Decision, pp. 23-24, Record on Appeal.

[6] Decision, pp. 30-31, Record on Appeal.

[7] t.s.n., March 31, 1966, pp. 4-5.

[8] t.s.n., May 6, 1969, p. 34.

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