

**TOMASA BANCAIREN, ET AL., PLAINTIFFS AND APPELLANTS, VS.
FRANCISCO DIONES, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. L-8013. December 20, 1955*

Ponente: BAUTISTA ANGELO, J.

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On September 1, 1950, Tomasa Bancairen, et al., instituted an action in the Court of First Instance of Negros Oriental against Francisca Diones, et al. for the reconveyance of Lot No. 1983 of the cadastre of Sibulan of said province. The complaint was amended on March 19, 1951 by including as party-defendant one Angel Campoy who allegedly bought said lot with knowledge of the circumstances vitiating the title of the transferors over said lot.

On April 10, 1951, defendants, through counsel, filed a motion to dismiss on the grounds (1) that the action was already barred by a prior judgment, and (2) that the cause of action was also barred by the statute of limitations. On May 5, 1951, the court issued an order sustaining the motion to dismiss, and, their motion for reconsideration having been denied, plaintiffs brought the case to the Court of Appeals, who later certified it to this Court on the ground that the appeal involves purely legal questions.

Joaquina Bancairen was originally the owner of a tract of land situated in Sibulan, Negros Oriental. Victoriano Diones was her overseer. When the cadastral survey reached the municipality of Sibulan, Diones was entrusted by Joaquina as overseer to indicate to the survey party the boundaries of the land for purposes of its registration in her name. But instead of following her instructions, Diones caused the surveyor to divide the land into two lots—Lots Nos. 1983 and 1984. Joaquina Bancairen and her successors-in-interest had always thought that the land only consisted of Lot No. 1984 because such was the information given them by Diones and so Joaquina applied for the registration only of said lot in the corresponding cadastral proceedings, while Victoriano Diones applied for the registration in his name of Lot No. 1983. By virtue of this misrepresentation, Diones succeeded in registering this lot in his name for which Original Certificate of Title No. 16353 was issued to him in 1940.

In spite thereof, however, it was Joaquina Bancairen and her successors-in-interest who had been in the material and actual possession, of the land, had paid taxes thereon, and enjoyed' all its produce, and when in March, 1949 Tomasa Bancairen and Maria Bancairen discovered such fraudulent registration, on March 19, 1949 they filed an action for reconveyance against the successors-in-interest of Victoriano Diones who inherited the property upon the latter's death. That case was dismissed on May 7, 1949 for lack of a cause of action and on the ground of prescription. No further action was taken in the case because, according to plaintiffs, their counsel was not properly notified of the order of dismissal.

On September 1, 1950, Tomasa Bancairen, Maria Bancairen and the other co-owners of the land instituted the present action also for reconveyance against the same defendants wherein they alleged practically the same facts averred in the previous complaint. As previously stated, defendants also filed a motion to dismiss and the same was sustained on the grounds already stated in the early part of this decision.

The issue to be determined is whether the trial court acted properly in dismissing the action on the grounds (1) that the action was barred by a prior judgment, and (2) that the cause of action was further barred by the statute of limitations and by Section 38 of the Land Registration Act.

The first ground refers to the first case for reconveyance instituted by Tomasa Bancairen and Maria Baneairen against the defendants as heirs of Victoriano Diones. The case refers to the same property herein involved. But it should be noted that that property was originally owned by Joaquina Bancairen who upon her death was inherited by Tomasa Bancairen and Maria Bancairen, and by other nine heirs who were the children of the late Agustin Bancairen and Tito Bancairen. Tomasa and Maria were the first ones to know of the fraudulent registration and so they brought the first action for reconveyance. The other heirs came to know of the fraud only in June, 1950 and so on September 1 of the same year they brought a similar action for reconveyance even if Tomasa and Maria were joined as party-plaintiffs. It may thus be seen that while the dismissal of the first case may have the effect of estoppel with regard to Tomasa and Maria under the theory of prior judgment, the same cannot have that effect with regard to the other heirs who were not made parties in the first case. The order of the court dismissing the case-as to them is therefore erroneous and the same should be set aside in so far as it deprived them of their right to continue with the case.

With regard to the second ground for dismissal, it is true that Victoriano Diones, the predecessors-in-interest of defendants, was able to register the lot in question in 1940 for which he obtained Original Certificate of Title No. 16353, whereas the second action for reconveyance was filed by the plaintiffs only 10 years thereafter and apparently the action is already barred by the statute of limitations, but such a defense cannot be availed of when the purpose of the action is to compel a trustee to convey the property registered in his name in trust for the benefit of the cestui que trust. In other words, the defense of prescription cannot be set up in an action whose purpose is to recover property held by a person in trust for the benefit of another.

"The action brought by the plaintiffs is clearly an action for the specific conveyance of the property registered in the name of defendants' predecessor in interest. The deceased vendor was issued the certificate of title for and in behalf, and in trust for the benefit, of the plaintiffs. The action is one to compel a trustee to convey the property registered in his name in trust for the benefit of the cestui que trust, and the same does not prescribe." (Feliciano Manalang, et al. vs. Garcia Canlas, et al., 94 Phil., 776, April 20, 1964.)

"As against the beneficiary, prescription is not effective in favor of a person who is acting as trustee of a continuing and subsisting trust." (Cristobal vs. Gomez, 50 Phil., 810.)

"Prescription does not run in favor of one who holds in trust for others; and a denial of the trust made by the trustee to one of the beneficiaries who, at the time of such repudiation of the trust is a minor, does not have the effect of abrogating the trust relation." (Castro vs. Castro, 57 Phil., 675.)

A similar situation obtains in the present case. The complaint alleges that Victoriano Diones was the overseer of Joaquina Bancairen who was entrusted by the latter to attend to the survey of the land and indicate to the official surveyors its boundaries for purposes of registration but that, through fraudulent representation, he had the land divided into two lots and succeeded in registering one of them in his name in utter breach of the trust reposed in him by the owner. This way of acquiring title creates what is called "constructive trust" in favor of the defrauded party and grants to the latter a right to vindicate the property regardless of the lapse of time. Thus, it has been held that "if a person obtains legal title to property by fraud or concealment, courts of equity will impress upon the title a so-called constructive trust in favor of the defrauded party. The use of the word 'trust' is not technically accurate: * * * but as courts are agreed in administering the same remedy in a certain class of frauds as are administered in fraudulent breaches of trusts, and as courts and the profession have concurred in calling such frauds constructive trusts, there can be no misapprehension in continuing the same phraseology, while a change might lead to

confusion and misunderstanding." (Gayondato vs. Treasurer of the Philippine Islands, 49 Phil., 244, 249.)

As regards the claim that the land in question has already been sold to one Angel Campoy who as purchaser for value cannot be deprived thereof under Section 38 of the Land Registration Act,, suffice it to say that the record shows that he bought the land in bad faith knowing the existence of a notice of lis pendens in connection with the first case of reconveyance.

Considering that the present case was dismissed merely on a motion to dismiss filed foy defendants, it is our considered opinion that the same should be remanded to the lower court in order that the case may be tried on the merits and the equities of the parties determined as alleged in the pleadings. To this effect, defendants should be given a reasonable time within which to file their answer to the complaint.

Wherefore, the order appealed from is hereby set aside. The case shall be remanded to the lower court for further proceedings, without pronouncement as to costs.

Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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