

**MINDANAO DEVELOPMENT AUTHORITY, NOW THE SOUTHERN
PHILIPPINES DEVELOPMENT ADMINISTRATION, PETITIONER, VS.
THE COURT OF APPEALS AND FRANCISCO ANG BANSING,
RESPONDENTS.**

G.R. No. L-49087. April 05, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Petition for review on certiorari of the decision of the Court of Appeals in CA-G.R. No. 48488-R, entitled: "Mindanao Development Authority, etc., plaintiff-appellee, versus Francisco Ang Bansing, defendant-appellant", which reversed the decision of the Court of First Instance of Davao and dismissed the complaint filed in Civil Case No. 6480 of the said court.

It is not disputed that the respondent Francisco Ang Bansing was the owner of a big tract of land with an area of about 300,000 sq.m., situated in Barrio Panacan, Davao City. On February 25, 1939, Ang Bansing sold a portion thereof, with an area of about 5 hectares to Juan Cruz Yap Chuy. The contract provided, among others, the following:

"That I hereby agree to work for the titling of the entire area of my land under my own expenses and the expenses for the titling of the portion sold to me shall be under the expenses of the said Juan Cruz Yap Chuy".[1]

After the sale, the land of Ang Bansing was surveyed and designated as Lot 664-B, Psd-1638. Lot 664-B was further subdivided into five (5) lots and the portion sold to Juan Cruz Yap Chuy, shortened to Juan Cruz, was designated as Lot 664-B-3, with an area of 61.107 square meters, more or less.[2] On June 15-17 and December 15, 1939, a cadastral survey was made and Lot 664-B-3 was designated as Lot 1846-C of the Davao Cadastre.

On December 23, 1939, Juan Cruz sold Lot 1846-C to the Commonwealth of the Philippines for the amount of P6,347.50.[3] On that same day, Juan Cruz, as vendor, and C.B. Cam and Miguel N. Lanson, as sureties, executed a surety bond in favor of the vendee to guarantee the vendor's absolute title over the land sold.[4]

The cadastral survey plan was approved by the Director of Lands on July 10, 1940,[5] and on March 7, 1941, Original Certificate of Title No. 26 was issued in the names of Victoriana Ang Bansing, Orfelina Ang Bansing, and Francisco Ang Bansing, as claimants of the land, pursuant to Decree No. 745358 issued on July 29, 1940. On March 31, 1941, OCT No. 26 was cancelled pursuant to a Deed of Adjudication and Transfer Certificate of Title No. 1783 was issued in the name of Francisco Ang Bansing.[6]

On that day, March 31, 1941, Ang Bansing sold Lot 1846-A to Juan Cruz and TCT No. 1783 was cancelled. TCT No. 1784 was issued in the name of Juan Cruz, for Lot 1846-A and TCT No. 1785 was issued in the name of Ang Bansing for the remaining Lots 1846-B, 1846-C, 1846-D, and 1846-E. Later, Ang Bansing sold two subdivision lots of Lot 1846-B, namely: Lot 1846-B-2-C and Lot 1846-B-1 to Vedasto Corcuera for which TCT No. 2551 and

TCT No. 2552, respectively, were issued in the name of the said Vedasto Corcuera on August 10, 1946. Thereafter, Lot 1848-A, with an area of 9.6508 hectares, and Lots 1846-B-A and 1848-B-2-D, all subdivided portions of Lot 1846-B, were similarly conveyed to Juan Cruz for which TCT No. 2599 and TCT No. 2600, respectively, were issued in the name of Juan Cruz on September 26, 1946. TCT No. 2601 was issued in the name of Ang Bansing for the remainder of the property, including the lot in question. Then, another portion of 1846-B, designated in the subdivision plan as Lot 1848-B-2-B was sold to Juan Cruz for which TCT No. 184 was issued in the latter's name. On November 28, 1946, after these conveyances, there remained in the possession of Ang Bansing under TCT No. 2601, Lot 1846-C, the lot in question; Lot 1846-D; and Lot 1846-E. However, TCT No. 2601 was again partially cancelled when Ang Bansing sold Lot 1846-D to Vedasto Corcuera.[7]

On February 25, 1965, the President of the Philippines issued Proclamation No. 459, transferring ownership of certain parcels of land situated in Sasa, Davao City, to the Mindanao Development Authority, now the Southern Philippines Development Administration, subject to private rights, if any. Lot 1846-C, the disputed parcel of land, was among the parcels of land transferred to the Mindanao Development Authority in said proclamation.[8]

On March 31, 1969, Atty. Hector L. Bisnar, counsel for the Mindanao Development Authority, wrote Ang Bansing requesting the latter to surrender the Owner's duplicate copy of TCT No. 2601 so that Lot 1846-C could be formally transferred to his client, but Ang Bansing refused.[9] Consequently, on April 11, 1969, the Mindanao Development Authority filed a complaint against Francisco Ang Bansing before the Court of First Instance of Davao City, docketed therein as Civil Case No. 6480, for the reconveyance of the title over Lot 1846-C, alleging, among others, the following:

x x x x x x x x

"9. That the deed of sale, marked as Annex 'A', it was stipulated by the parties that the defendant would work to secure title of his entire tract of land of about 30 hectares defraying the expenses for the same and the expenses for the title of the portion sold by the defendant to Juan Cruz Yap Chuy shall be borned by the latter;

"10. That the defendant as vendor and the one who worked to secure the title of his entire tract of land which included the portion sold by him to Juan Cruz Yap Chuy acted in the capacity of and/or served as trustee for any and all parties who become successor-in-interest to Juan Cruz Yap Chuy and the defendant was bound and obligated to give, deliver and reconvey to Juan Cruz Yap Chuy and/or his successor-in-interest the title pertaining to the portion of land sold and conveyed by him to Juan Cruz Yap Chuy by virtue of the deed of sale marked as Annex 'A' and his affidavit marked as Annex 'C'." [10]

In answer, Ang Bansing replied:

x x x x x x x x

"9. That defendant admits that in Annex 'A' of the complaint, it was agreed and stipulated in paragraph 6 thereof that:

"That I hereby agree to work for the titling of the entire area of my land under my own expense and the expenses for the titling of the portion sold to me shall be under the expenses of the said Juan Cruz Yap Chuy."

and defendant in fact secured at his expense his OCT No. 26 for his entire land; that in the process of defendant's securing his title neither Juan Cruz Yap Chuy nor the Commonwealth of the Philippines asserted any right to ownership of the subject property and that was almost 30 years ago until plaintiff filed its complaint, thus plaintiff is forever barred from claiming any right over the subject property. There was no real sale made but only the intention to sell a portion of the land as stated by defendant in Annex 'C' of the complaint.

"10. That defendant denies allegations contained in paragraph 10 of the complaint that he acted as the trustee

of Juan Cruz Yap Chuy. Defendant was never such; matter of fact Juan Cruz Yap Chuy for the last 26 years, that is until he died in October, 1965, never made any demand to have the title of the subject property transferred in his name because he knew all the time that the alleged sale in his favor was per se null and void he also knew that no sale was ever consummated."[11]

After trial, the Court of First Instance of Davao City found that an express trust had been established and ordered the reconveyance of the title to Lot 1846-C of the Davao Cadastre to the plaintiff Mindanao Development Authority.[12]

Ang Bansing appealed to the Court of Appeals and the said appellate court ruled that no express trust has been created and, accordingly, reversed the judgment and dismissed the complaint.[13]

Hence, the present recourse.

The petition is without merit. As found by the respondent Court of Appeals, no express trust had been created between Ang Bansing and Juan Cruz over Lot 1846-C of the Davao Cadastre. "Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties. Implied trusts come into being by operation of law." [14] It is fundamental in the law of trusts that certain requirements must exist before an express trust will be recognized. Basically, these elements include a competent trustor and trustee, an ascertainable trust res, and sufficiently certain beneficiaries. Stilted formalities are unnecessary, but nevertheless each of the above elements is required to be established, and, if any one of them is missing, it is fatal to the trusts. Furthermore, there must be a present and complete disposition of the trust property, notwithstanding that the enjoyment in the beneficiary will take place in the future. It is essential, too, that the purpose be an active one to prevent trust from being executed into a legal estate or interest, and one that is not in contravention of some prohibition of statute or rule of public policy. There must also be some power of administration other than a mere duty to perform a contract although the contract is for a third-party beneficiary. A declaration of terms is essential, and these must be stated with reasonable certainty in order that the trustee may administer, and that the court, if called upon so to do, may enforce, the trust.[15]

In this case, the herein petitioner relies mainly upon the following stipulation in the deed of sale executed by Ang Bansing in favor of Juan Cruz to prove that an express trust had been established with Ang Bansing as the settlor and trustee and Juan Cruz as the cestui que trust or beneficiary:

"That I hereby agree to work for the titling of the entire area of my land under my own expenses and the expenses for the titling of the portion sold to me shall be under the expenses of said Juan Cruz Yap Chuy".

The above-quoted stipulation, however, is nothing but a condition that Ang Bansing shall pay the expenses for the registration of his land and for Juan Cruz to shoulder the expenses for the registration of the land sold to him. The stipulation does not categorically create an obligation on the part of Ang Bansing to hold the property in trust for Juan Cruz. Hence, there is no express trust. It is essential to the creation of an express trust that the settlor presently and unequivocally make a disposition of property and make himself the trustee of the property for the benefit of another.[16]

"In case of a declaration of trust, the declaration must be clear and unequivocal that the owner holds property in trust for the purposes named." [17]

While Ang Bansing had agreed in the deed of sale that he will work for the titling of "the entire area of my land under my own expenses," it is not clear therefrom whether said statement refers to the 30-hectare parcel of land or to that portion left to him after the sale. A failure on the part of the settlor definitely to describe the subject-matter of the supposed trust or the beneficiaries or object thereof is strong evidence that he intended no trust.[18]

The intent to create a trust must be definite and particular. It must show a desire to pass benefits through the medium of a trust, and not through some related or similar device.[19]

Clear and unequivocal language is necessary to create a trust and mere precatory language and statements of ambiguous nature, are not sufficient to establish a trust. As the Court stated in the case of *De Leon vs. Packson*,[20] a trust must be proven by clear, satisfactory and convincing evidence; it cannot rest on vague and uncertain evidence or on loose, equivocal or indefinite declarations. Considering that the trust intent has not been expressed with such clarity and definiteness, no express trust can be deduced from the stipulation aforementioned.

Nor will the affidavit executed by Ang Bansing on April 23, 1941,[21] be construed as having established an express trust. As counsel for the herein petitioner has stated, "the only purpose of the Affidavit was to clarify that the area of the land sold by Ang Bansing to Juan Cruz Yap Chuy is not only 5 hectares but 61,107 square meters or a little over six (6) hectares." [22]

That no express trust had been agreed upon by Ang Bansing and Juan Cruz is evident from the fact that Juan Cruz, the supposed beneficiary of the trust, never made any attempt to enforce the alleged trust and require the trustee to transfer the title over Lot 1846-C in his name. Thus, the records show that the deed of sale, covering Lot 1846-C, was executed by Ang Bansing in favor of Juan Cruz on February 25, 1939. Two years later, or on March 31, 1941, Ang Bansing sold Lot 1846-A to the said Juan Cruz for which TCT No. 1784 was issued in the name of Juan Cruz. Subsequently thereafter, Lot 1848-A, with an area of 9.6508 hectares, and Lots 1846-A and 1848-B-2-D, all subdivided portions of Lot 1846-B, were similarly conveyed to the said Juan Cruz for which TCT No. 2599 and TCT No. 2600, respectively, were issued in the name of Juan Cruz on September 26, 1946. Then, another portion of Lot 1846-B, designated in the subdivision plan as Lot 1848-B-2-B, was sold to Juan Cruz for which TCT No. 184 was issued in his name on November 28, 1948. Despite these numerous transfers of portions of the original 30-hectare parcel of land of Ang Bansing to Juan Cruz and the issuance of certificates of title in the name of Juan Cruz, the latter never sought the transfer of the title to Lot 1846-C in his name. For sure, if the parties had agreed that Ang Bansing shall hold the property in trust for Juan Cruz until after the former shall have obtained a certificate of title to the land, the latter would have asked for the reconveyance of the title to him in view of the surety bond executed by him in favor of the Commonwealth Government wherein he warrants his title over the property. The conduct of Juan Cruz is inconsistent with a trust and may well have probative effect against a trust.

But, even granting, arguendo, that an express trust had been established, as claimed by the herein petitioner, it would appear that the trustee had repudiated the trust and the petitioner herein, the alleged beneficiary to the trust, did not take any action therein until after the lapse of 23 years. Thus, in its Reply to the Defendant's Answer, filed on June 29, 1969, the herein petitioner admitted that "after the last war the City Engineer's Office of Davao City made repeated demands on the defendants for the delivery and conveyance to the Commonwealth Government, now the Republic of the Philippines, of the title of land in question, Lot 1846-C, but the defendant ignored and evaded the same." [23] Considering that the demand was made in behalf of the Commonwealth Government, it is obvious that the said demand was made before July 4, 1946, when the Commonwealth Government was dismantled and the Republic of the Philippines came into being. From 1946 to 1969, when the action for reconveyance was filed with the court, 23 years had passed. For sure, the period for enforcing the rights of the alleged beneficiary over the land in question after the repudiation of the trust by the trustee, had already prescribed.

Needless to say, only an implied trust may have been impressed upon the title of Ang Bansing over Lot 1846-C of the Davao Cadastre since the land in question was registered in his name although the land belonged to another. In implied trusts, there is neither promise nor fiduciary relations, the so-called trustee does not recognize any trust

and has no intent to hold the property for the beneficiary.[24] It does not arise by agreement or intention, but by operation of law. Thus, if property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.[25]

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.[26]

There is also a constructive trust if a person sells a parcel of land and thereafter obtains title to it through fraudulent misrepresentation.[27]

Such a constructive trust is not a trust in the technical sense and is prescriptible; it prescribes in 10 years.[28]

Here, the 10-year prescriptive period began on March 31, 1941, upon the issuance of Original Certificate of Title No. 26 in the names of Victoriana Ang Bansing, Orfelina Ang Bansing, and Francisco Ang Bansing. From that date up to April 11, 1969, when the complaint for reconveyance was filed, more than 28 years had passed. Clearly, the action for reconveyance had prescribed.

Besides, the enforcement of the constructive trust that may have been impressed upon the title of Ang Bansing over Lot 1846-C of the Davao Cadastre is barred by laches.[29] It appears that the deed of sale in favor of the Commonwealth Government was executed by Juan Cruz on December 23, 1939, during the cadastral proceedings, and even before the cadastral survey plan was approved by the Director of Lands on July 10, 1940. But, the vendee therein did not file an answer, much less an opposition to the answer of Ang Bansing, in the said cadastral proceedings. The judgment rendered in the said cadastral proceeding, awarding the lot in question to Ang Bansing, is already final. After an inexcusable delay of more than 28 years and acquiescence to existing conditions, it is now too late for the petitioner to complain.

WHEREFORE, the petition should be, as it is hereby, DENIED. No costs.

SO ORDERED.

De Castro, Ericta, and Escolin, JJ., concur.

Barredo, J., (Chairman), reserves his vote.

Aquino, J., dissents in a separate opinion.

Abad Santos, J., in the result.

[1] Record on Appeal, pp. 12-16, 85.

[2] *Id.*, pp. 90-91.

[3] *Id.*, pp. 17-23, 86.

[4] *Id.*, pp. 54-57, 86.

[5] *Id.*, p. 33.

[6] *Id.*, p. 90.

[7] *Id.*, pp. 91-92.

[8] *Id.*, pp. 26-36, 88.

[9] *Id.*, pp. 89-90.

- [10] Id., pp. 2-12.
- [11] Id., pp. 37-54.
- [12] Id., pp. 185-198.
- [13] Rollo, pp. 44-54.
- [14] Art. 1441, Civil Code.
- [15] Sec. 31, Trusts, 76 Am Jr 2d, pp. 278-279.
- [16] Sec. 35, Trusts, 76 Am Jur 2d. 281.
- [17] Warner vs. Burlington Fed. Sav. & L. Asso., 168 ALR 1265, 49 A2d 93.
- [18] Bogert on Trusts and Trustees, Sec. 48.
- [19] Id., Sec. 46.
- [20] 11 Phil. 1267.
- [21] Record on Appeal, p. 189.
- [22] Rollo, p. 35.
- [23] Record on Appeal, pp. 59-60.
- [24] Diaz vs. Gorricho, 103 Phil. 261.
- [25] Art. 1456, Civil Code.
- [26] Gayondato vs. Treasurer of the P.I., 49 Phil. 244.
- [27] Gonzales vs. Jimenez, 121 Phil. 84.
- [28] Escay vs. Court of Appeals, L-37504, Dec. 18, 1974, 61 SCRA 369, and other cases cited therein.
- [29] Buenaventura vs. David, 37 Phil. 435; Ramos vs. Ramos, L-19872, Dec. 3, 1974, 61 SCRA 284.

DISSENTING OPINION

AQUINO, J.:

I dissent. The disputed land should be adjudicated to the government agency known as the Southern Philippines Development Administration, the successor of the Commonwealth of the Philippines.

To adjudge Francisco Ang Banging as the owner of the land is to sanction a brazen breach of trust or a form of landgrabbing and to perpetrate a gross injustice. The facts are as follows:

1. Before the war, Francisco Ang Banging was the owner of a tract of unregistered land with an area of about twenty-nine hectares located at Barrio Panacan (Sasa), Davao City.
2. On February 25, 1939, he sold to Juan Cruz Yap Chuy for six thousand pesos a portion of the said land with an area of around five hectares, bounded on the north by the land of Vedasto Corcuera, on the east by the Davao Gulf, on the south by the land of Ang Ping and on the west by the remaining portion but separated by the provincial road. Ang Banging's wife, Anatalia Cepeda, was one of the two witnesses in the deed of sale.

The sale was registered on March 1, 1939 in the registry of deeds of Davao City.

3. In the deed of sale, Ang Barsing made the following commitment: "That I hereby agree to work for the titling of the entire area of my land under my own expenses and the expenses for the titling of the portion sold to (by) me shall be under the expenses of the said Juan Cruz Yap Chuy". It was also stipulated that the buyer could take possession of the land and its improvements (p. 14, Record on Appeal).

4. After the survey of Ang Barsing's land, the portion sold to Juan Cruz Yap Chuy came to be known as Lot No. 664-B-3, described as follows: "Bounded on the North by Lot No. 664-B-4; on the East by the Davao Gulf; on the South by Lot No. 564 and on the West by Lot No. 664-B-5; containing an area of sixty-one thousand one hundred seven (61,107) square meters more or less." By reason of the 1939 cadastral survey, Lot No. 664-B-3 came to be known as Lot No. 1846-C of the Davao cadastre. The survey was made on June 15-17 and December 15, 1939, and was approved on July 10, 1940.

5. About ten months later, or on December 23, 1939, Juan Cruz Yap Chuy sold to the Commonwealth of the Philippines the same portion, identified as Lot No. 664-B-3, with an area of 61,107 square meters, together with the improvements thereon, for the sum of P6,347.50 allocated as follows:

6.1107 hectares at P140 a hectare -----	P 855.00
756 coconut trees, all fruit-bearing,	
at P7 per tree -----	5,292.00
200 coconut trees, not productive,	
at one peso a tree -----	200.00

The sale included a parcel of land identified as Lot No. 664-B-5, with an area of 8,023 square meters, which was a part of the national road and which Cruz donated to the Commonwealth Government. The sale was registered in the registry of deeds of Davao City on December 27, 1939, meaning that Ang Barsing had constructive notice thereof.

6. Simultaneously with that deed of sale, Juan Cruz Yap Chuy, as principal, and G. B. Cam and Miguel N. Lanzona, as sureties, executed a bond in the sum of P6,347.50 (the price of the sale) in favor of the Commonwealth of the Philippines. The bond would become void if the Commonwealth obtained absolute title to the land.

7. On April 23, 1941, Ang Barsing executed an affidavit wherein he confirmed the previous sale to Juan Cruz Yap Chuy of the said Lot No. 1846-C. His wife, Anatalia Cepeda, was a witness in the said affidavit. Ang Barsing clarified that the exact area of the lot sold is 61,107 square meters and not five hectares only which latter area was merely his calculation. Ang Barsing further said in that affidavit:

"That I hereby certify that I have no objection that the said portion after the survey be transferred and ceded, as I intended to transfer and cede the same, to the said Juan Cruz Yap Chuy by virtue of the said Deed of Sale above-mentioned" (referring to the 1939 Deed of Sale).

That affidavit was registered on May 8, 1941.

8. Lot No. 664-B-3 or No. 1846-C was covered by Tax Declarations Nos. 80454, R-3612, R-5232 and A-12-123 in the name of the Republic of the Philippines (pp. 88-89, Record on Appeal). On the other hand, Ang Barsing never declared Lot No. 1846-C for tax purposes and never paid any realty taxes therefor.

9. Ang Barsing obtained Decree No. 745358 for the registration of the 29-hectare land (including Lot No. 664-B-3 or No. 1846-C). By virtue of that decree, Original Certificate of Title No. 26 was issued on March 7, 1941 in the names of Victoriana Ang Barsing, Orfelina Ang Barsing and Francisco Ang Barsing.

10. The issuance of that title implies that the government official (may be the provincial district engineer at Davao City), who was aware of the purchase of Lot No. 664-B-3 from Ang Bansing, was negligent in not intervening in the land registration proceeding so as to have that lot registered in the name of the Commonwealth of the Philippines. Another implication is that Ang Bansing had already acted fraudulently or in bad faith in not asking his lawyer to segregate Lot No. 664-B-3 or Lot No. 1846-C from his land and to see to it that a separate title for that lot was issued in the name of the Commonwealth of the Philippines.

11. On March 31, 1941, or 24 days after the issuance of OCT No. 26, it was cancelled because of a "deed of adjudication". Transfer Certificate of Title No. 1783 was issued for the 29-hectare land in the name of Francisco Ang Bansing alone.

12. Ang Bansing's land, known as Lot No. 1846, was subdivided into five lots, namely: Lots Nos. 1846-A, 1846-B, 1846-C, 1846-D and 1846-E. On that same date of March 31, 1941, when Ang Bansing obtained TCT No. 1783, he sold Lot No. 1846-A to Juan Cruz Yap Chuy. Because of that sale, TCT No. 1783 was cancelled and TCT No. 1784 was issued to Juan Cruz Yap Chuy, while TCT No. 1785 was issued to Ang Bansing for the other four lots which (it should be repeated) included Lot No. 1846-C, the disputed lot sold in 1939 by Ang Bansing to Juan Cruz Yap Chuy and in turn sold by the latter to the Commonwealth of the Philippines. (The name Juan Cruz Yap Chuy was shortened to Juan Cruz as shown in Entry No. 8052 dated August 4, 1953, appearing in TCT No. 1784. Cruz died in 1965.)

13. Ang Bansing sold to Vedasto Corcuera Lots Nos. 1846-B-1 and 1846-B-2-C, which are subdivision lots of Lot No. 1846-B. As a result TCT No. 1785 was cancelled and TCT Nos. 2551 and 2552 were issued to Corcuera on August 10, 1946. Lot No. 1846-D was also sold by Ang Bansing to Corcuera.

14. Other portions of Lot No. 1846-B were sold by Ang Bansing to Juan Cruz. Lots Nos. 1846-C and 1846-E, the remaining lots, registered in the name of Ang Bansing, as shown in TCT No. T-2601 (Exh. L), were not alienated by him.

15. On September 25, 1965, President Diosdado Macapagal issued Proclamation No. 459, transferring to the Mindanao Development Authority (a corporate body created by Republic Act No. 3034), "subject to private rights, if any", eight parcels of land forming part of the Government's private domain. Among those parcels was Parcel 6, Lot No. 1846-C, Psd-16952, the herein disputed lot, with an area of 61,107 square meters, bounded on the west by the national highway, on the north by Lot No. 1846-D, on the east by the Gulf of Davao and on the south by Lot No. 564-A. Thus, Lot No. 1846-C became a part of the Port Area Reservation from Sasa to Panacan, Davao City.

16. In a letter dated March 31, 1969, counsel for the Mindanao Development Authority requested Ang Bansing to surrender the owner's duplicate of TCT No. T-2601 so that Lot No. 1846-C could be transferred to the said government agency (Exh. K). Ang Bansing did not heed the demand.

17. On April 11, 1969, the Mindanao Development Authority sued Ang Bansing for the reconveyance of Lot No. 1846-C. After trial (during which Ang Bansing did not testify), the trial court held that Ang Bansing held Lot No. 1846-C in trust for the State and that the prescriptive period for recovering the lot from Ang Bansing started only in 1968 when Ang Bansing allegedly repudiated the trust.

18. The trial court cancelled Ang Bansing's title and directed the register of deeds to issue a new title to the Mindanao Development Authority for Lot No. 1846-C. Ang Bansing appealed to the Court of Appeals.

19. That Court in its decision dated December 27, 1977, reversing the trial court's decision, held that Ang Bansing was the owner of the disputed lot. It ruled that even if Ang Bansing held Lot No. 1846-C in express trust, the trust

was "novated" by subsequent circumstances and that the sale of Lot No. 1846-C to the Commonwealth of the Philippines was not consummated because Ang Bansing sold Lot No. 1846-A and portions of Lot No. 1846-B to Juan Cruz in lieu of Lot No. 1846-C.

20. The Appellate Court also held that the Mindanao Development Authority had no cause of action for reconveyance because it had no privity with Ang Bansing and that the trust, if any, was an implied or constructive trust and the action based on that kind of trust was barred by prescription.

21. Presidential Decree No. 690, which took effect on April 22, 1975, established the Southern Philippines Development Administration and abolished the Mindanao Development Authority. The latter's assets were transferred to the Administration.

I am of the opinion that Ang Bansing is a trustee in an express trust covering Lot No. 1846-C. The trust is evidenced by his aforementioned affidavit of April 23, 1941 which he executed twenty-three days after TCT No. 1783 was issued to him for that lot.

As already noted, Ang Bansing in that affidavit swore that he intended to cede and transfer that lot to Juan Cruz after the survey (Exh. C). That sworn statement should be considered in conjunction with the stipulation in the 1939 deed of sale that Ang Bansing would undertake the titling of the whole Lot No. 1846 and that the registration expenses corresponding to Lot No. 1846-C would be borne by Juan Cruz, the vendee of that subdivision lot (Exh. A).

The said statements create an express trust for Lot No. 1846-C in favor of Juan Cruz and his successors-in-interest or assignees. "No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended" (Art. 1444, Civil Code).

It is significant that, while Ang Bansing sold Lots Nos. 1846-A, 1846-B and 1846-D to Cruz and Corcuera, he did not touch at all Lot No. 1846-C. He did not alienate that lot because he knew that it was not his property and that it belonged to the State.

Equally significant and credible is the trial court's finding that it was only in 1968 that Ang Bansing laid claim to Lot No. 1846-C through Rufino Boncayao, a surveyor who worked in the Davao City engineer's office and who discovered that the title to the lot had not yet been placed in the name of the Commonwealth of the Philippines.

The trial court found that Boncayao, as the agent of Ang Bansing and with the advice and backing of Vicente C. Garcia, Ang Bansing's lawyer, claimed that Ang Bansing was the true owner of Lot No. 1846-C.

There being an express trust in this case, the equitable action to compel the trustee to reconvey the land registered in his name in trust for the benefit of the cestui que trust does not prescribe (*Manalang vs. Canlas*, 94 Phil. 776; *Ramos vs. Ramos*, L-19872, December 3, 1974, 61 SCRA 284, 299).

The defense of prescription cannot be set up in an action to recover property held in trust for the benefit of another (*Sevilla vs. De los Angeles*, 97 Phil. 875).

Property held in trust can be recovered by the beneficiary regardless of the lapse of time (*Marabilles vs. Quito*, 100 Phil. 64; *Bancairen vs. Diones*, 98 Phil. 122, 126; *Juan vs. Zuñiga*, 114 Phil. 1163; *Vda. de Jacinto vs. Vda. de Jacinto*, 115 Phil. 363, 370).

Prescription in the case of express trusts can be invoked only from the time the trust is repudiated (*Tamayo vs. Callejo*, 68 O.G. 8661, 46 SCRA 27, 32).

And a trustee who takes a Torrens title in his name for the land held in trust cannot repudiate the trust by relying

on the registration. That is one of the limitations upon the finality of a decree of title (*Sotto vs. Teves*, L-38018, October 31, 1978, 86 SCRA 154, 178; *Alvarez vs. Espiritu*, 122 Phil. 229, 235).

The rule, that an action for reconveyance prescribes in ten years, applies to an implied trust, not to an express trust (*Carantes vs. Court of Appeals*, L-33360, April 25, 1977, 76 SCRA 514).

So, as a general rule a trust estate (in an express trust) is exempt from the operation of the statute of limitations. The exception is when the trustee repudiates the trust in which case the trustee may acquire the trust estate by prescription. The repudiation must be known to the cestui que trust and must be direct, clear, open and equivocal. (*Callejon Salinas vs. Roman Tuason and Moreno Roman*, 55 Phil. 729; *Palma vs. Cristobal*, 77 Phil. 712; *Valdez vs. Ologa*, L-22571, May 25, 1973, 51 SCRA 71.)

"One who acquires a Torrens title in his own name to property which he is administering for himself and his brothers and sisters as heirs in common by descent from a common ancestor may be compelled to surrender to each of his co-heirs his appropriate share". A partition proceeding is an appropriate remedy to enforce this right. (*Castro vs. Castro*, 57 Phil. 675). An equitable action for reconveyance is also a proper remedy (*Laguna vs. Levantino*, 71 Phil. 566; *Sumira vs. Vistan*, 74 Phil. 138).

In any event, the real plaintiff in this case is the Republic of the Philippines and prescription does not run against the State (*De la Viña vs. Government of the P. I.*, 65 Phil. 262, 265; *Republic vs. Ruiz*, L-23712, April 29, 1968, 23 SCRA 348).

The maxim is *nullum tempus occurrit regi* or *nullum tempus occurrit reipublicae* (lapse of time does not bar the right of the crown or lapse of time does not bar the commonwealth). The rule is now embodied in article 1108(4) of the Civil Code.

It is a maxim of great antiquity in English law. The best reason for its existence is the great public policy of preserving public rights and property from damage and loss through the negligence of public officers. (34 Am Jur 301; *Ballentine's Law Dictionary*, p. 891; *U. S. vs. Nashville, Chattanooga & St. Louis Railway Co.*, 118 U. S. 120, 125).

Thus, the right of reversion or reconveyance to the State of lands fraudulently registered or not susceptible of private appropriation or acquisition does not prescribe (*Martinez vs. Court of Appeals*, L-31271, April 29, 1974, 56 SCRA 647, 655; *Republic vs. Ramos*, 117 Phil. 45, 49).

The government officials concerned were negligent in not intervening in the land registration proceeding or in not promptly asking Ang Bansing to reconvey the disputed lot to the Commonwealth or to the Republic of the Philippines.

Such negligence does not prejudice the State. The negligence or omissions of public officers as to their public duties will not work an estoppel against the State (10 R. C. L. 705, cited in *Bachrach Motor Co. vs. Unson*, 50 Phil. 981, 990; *Central Azucarera de Tarlac vs. Collector of Internal Revenue*, 104 Phil. 653, 656; *People vs. Ventura*, 114 Phil. 162, 169).

I vote to reverse and set aside the decision of the Court of Appeals and to affirm the trial court's decision with the modification that the title should be issued to the Southern Philippines Development Administration.

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