

**PEDRO MABANA, ET AL., PLAINTIFFS. PEDRO MABANA, PLAINTIFF
AND APPELLANT, VS. MARCELINA MENDOZA, ET AL., DEFENDANTS
AND APPELLEES.**

G. R. L-12540, February 28, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

.This is an action for partition of a parcel of land situated in the municipality of Pozorrubio, province of Pangasinan.

Plaintiffs allege that Evaristo Mabana was formerly the occupant of the parcel of land above-mentioned; that Evaristo had five children, namely, Felix, Eulogio, Benita, Luis and Alberto, who have already died; that Felix Mabana left one daughter named Andrea who in turn left a daughter named Marcelina Mendoza; that Eulogio left a son named Pedro; Benita left one son named Donato; Alberto left one daughter named Filomena and Luis left one son named Jorge; that Luis Mabana applied in 1932 from the Bureau of Lands for a homestead patent for the land in question having obtained after complying with the requirements of the law a certificate of title therefor which was issued in the name of his heirs; that before applying for a patent for said land it was agreed between Luis Mabana and the other co-heirs that the application and the corresponding title would be placed in the name of Luis Mabana subject to the condition that the latter would recognize the right of the other heirs over the property; that plaintiffs came to know later that the property was placed in the name of Marcelina Mendoza, widow of Jorge Mabana, who was the only son of Luis Mabana, and that after obtaining a title in her name, she executed a deed of partition with Mariano Mabana who was actually in possession of the property in question; and that since said property is owned pro-indiviso by plaintiffs and defendants, plaintiffs brought the present action of partition.

Defendants filed a motion to dismiss on the ground (1) that the complaint states no cause of action and (2) that plaintiff's action, if any, has already prescribed. The court sustained the motion to dismiss holding that since it appears that the land in question has already been registered in the name of Luis Mabana under Section 122 of Act 496 and the title issued covering the same became indefeasible after the lapse of one year from issuance, plaintiffs' complaint fails to state a cause of action against defendants. It dismissed the complaint with costs. Plaintiffs took the case on appeal directly to this Court on the ground that only questions of law are involved.

There is merit in the appeal. While a certificate of title issued by the Register of Deeds covering land granted by the Bureau of Lands by virtue of a homestead patent under Section 122 of Act No. 496 becomes conclusive and indefeasible after the lapse of one year as provided for in Section 39 of same Act, the same is immaterial in determining the action of plaintiffs. It is admitted that the land in question was applied for by Luis Mabana, predecessor-in-interest of defendants, from the Bureau of Lands and that after complying with the requirements of the law a homestead patent and a certificate of title were issued in the name of his heirs, but it is averred in the complaint that that patent was applied for by Luis Mabana pursuant to an agreement entered into between him and

his co-heirs that he should put the title in his name subject to the condition that he was merely to act as a trustee of his co-heirs. In other words, it was their understanding that while the title was to be issued in the name of Luis Mabana, a partition of the property would later be effected between him and his co-heirs. This Luis Mabana failed to do, and when the property was appropriated by his heirs, the present action was instituted. There is therefore the relation of trust between Luis Mabana and his co-heirs which gives to the latter the right to recover their share in the property unimpaired by the defense of prescription.[1]

Wherefore, the order appealed from is set aside. The case is remanded to the lower court for further proceedings, with costs against appellees.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1] Manalang vs. Canlas, 94 Phil., 776; 50 Off. Gaz., [5] 1980; Sevilla vs. De Los Angeles, 97 Phil., 875; 51 Off. Gaz. [11] 5590; Bancairen vs. Diones, 98 Phil., 122, Masabiles vs. Quito, 100 Phil., 64; 52 Off. Gaz., [15] 6507; PAL vs. Heald Lumber Co., 101 Phil., 1031; Cordova vs. Cordova L-9936, January 14, 1958; Diaz vs. Gorricho, 103 Phil., 261; 54 Off. Gaz., [37] 8429.

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