

GIL ATUN, ET AL., PLAINTIFFS AND APPELLANTS, VS. EUSEBIO NUÑEZ, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-8018. October 26, 1955*

Ponente: REYES, J.B.L., J.

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Appeal from an order of the Court of First Instance of Albay dismissing the complaint for recovery of a parcel of registered land upon a motion to dismiss filed by defendants after plaintiffs had closed their evidence. The land in question is located in Legaspi City and registered in the name of Estefania Atun, deceased aunt of plaintiffs, under Original Certificate of Title No. 11696 of the Registry of Property of Albay. The complaint was filed on August 7, 1950.

The evidence for the plaintiffs-appellants shows that they inherited the land in question from their widowed aunt Estefania Atun (sister of their deceased father Nicolas Atun), who died without any issue; that they had possessed the land from 1927 to 1930, when plaintiff Gil Atun delivered the same to Silvestra Nuñez (sister of defendant-appellee Eusebio Nuñez) for cultivation, for which Silvestra paid the Atuns a part of the harvest as rental; that in 1940, Silvestra turned over the land to defendant Eusebio Nuñez, who thereafter refused to recognize plaintiffs' ownership or to deliver their share of the produce; and that defendant Eusebio Nuñez in turn sold the land to his co-defendant Diego Belga, who took the property with the knowledge that it belonged, not to Nuñez, but to plaintiffs.

Upon a demurrer to the evidence, filed by defendants after plaintiffs had rested their case, the lower Court dismissed the complaint on the ground that the period of ten years within which plaintiffs could have filed action for recovery thereof under section 40 of Act 190 (computed from the time plaintiffs lost possession of the land in 1940), had already elapsed, hence their action had prescribed; and that furthermore, plaintiffs failed to prove their alleged ownership of the land in question, so that the presumption that defendants, being possessors, are the lawful owners thereof, had not been overcome. Plaintiffs' motion for reconsideration of the order of dismissal of the complaint having been denied, they appealed to the Court of Appeals, which forwarded the case to us because the appeal raises question of law.

The sole issue herein is whether the trial court erred in dismissing plaintiffs-appellants' complaint on the ground of prescription of action.

The dismissal is erroneous. The land in question is admittedly covered by a Torrens title in the name of Estefania Atun, deceased aunt of plaintiffs. Section 40 of Act 496 expressly provides that no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession. And this Court has repeatedly held that the right of the registered owner to recover possession of the registered property is equally imprescriptible, since possession is a mere consequence of ownership. (*Manlapas vs. Llorente*, 48 Phil., 298, 308; *Eugenio vs. Perdido*, *supra*, p. 41; *J. M. Tuason & Co., Inc. vs. Bolaños*, 95 Phil., 106.)

"We are aware, of course, that title by adverse possession (acquisitive prescription) is distinct from the statute

of limitations (extinctive prescription) and the operation and effects of such distinction has been explored during the discussions of this petition for review.

But we have finally agreed that, as to lands registered under the Torrens system, ten years' adverse possession may not be permitted to defeat the owners' right to possession—which is the necessary incident of ownership. Otherwise loss of the land by prescription would be indirectly approved, in violation of sec. 46 of the Land Registration Act. This statute, being a later enactment, may be said to have partially amended the Statute of Limitations established in Act No. 190 in so far as the registered lands are concerned." (Juan Eugenio, et al. vs. Silvina Perdido, et al., L-7083, May 19, 1955.)

And if prescription is unavailing against the registered owner, it must be equally unavailing against the latter's hereditary successors, because they merely step into the shoes of the decedent by operation of law (new Civil Code, Art. 777; Art. 657, old), the title or right undergoing no change by its transmission mortis causa.

The lower Court also erred in ruling that plaintiffs-appellants have failed to show a better title than that of defendants who are presumed to possess with just title. As the land in question still stands registered in the name of Estefania Atun, now deceased, the present owners there of would be her legal heirs. It is of record that Estefania Atun died without any issue or ascendants and left as her only surviving heirs the children of her brother Nicolas, plaintiffs herein; and the rule is settled that the legal heirs of a deceased may file an action arising out of a right belonging to their ancestor, without a separate judicial declaration of their status as such, provided there is no pending special proceeding for the settlement of the decedent's estate (Mendoza Vda. de Bonnevie vs. Cecilia Vda. de Pardo, 59 Phil., 486; Govt. of P. I. vs. Serafica, 61 Phil., 93; Uy Coque vs. Sioca, 45 Phil., 430).

Pursuant to the rule that reversal on appeal of a ruling upholding a defendant's demurrer to the evidence imports in civil cases loss of his right to submit evidence in his behalf, in order to discourage prolonged litigations (Arroyo vs. Azur, 76 Phil., 493, and cases therein cited), judgment must be rendered according to plaintiffs' evidence, which supports their claim of ownership of the land in question, and for damages in the amount of P500 (t. s. n., p. 21).

Wherefore, the order appealed from is reversed; plaintiffs-appellants Gil Atun, Camila Atun, and Dorotea Atun are declared the lawful owners in common of the lot in question; and defendants-appellees Eusebio Nuñez and Diego Delga are ordered to surrender possession thereof to the plaintiffs, and to indemnify the latter in the amount of P500 by way of damages. Costs against defendants-appellees in both instances. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugot Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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