

JOSE FEANCISCO AND ABELARDO FEANCISCO (LEGAL HEIRS OF CARLOS N. FRANCISCO, DECEASED) AND CEFERINO FRANCISCO, PLAINTIFFS AND APPELLANTS VS. JOSE DE BORJA DEFENDANT AND APPELLEE.

G.R. No. L-7953. February 27, 1956

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal from a decision of the Court of First Instance of Rizal in Case No. 2126 (Re: G.L.R.O. Record No. 917) which not only 'dismissed the plaintiff's complaint to revive the decision of the Supreme Court dated May 14, 1942 in G. R. No. 48390 but also declared defendant- appellee Jose de Borja owner of lots 2 and 4, Plan PSU-99657.

In and prior to. the year 1933, Carlos N. Francisco and Ceferino Francisco claimed to be the owners of the above mentioned lots by virtue of Transfer Certificates of Title Nos. 938, 1430 and 6982 covering them and issued under G. L. R. O. Record No. 917. . On November 3, 1933, the two Franciscos filed a motion in said registration.case alleging that the technical descriptions appearing in said Transfer Certificates of Title were based on plans which were never approved by the Bureau of Lands or the General Land Registration Office because they were prepared on the basis of the old system of surveys, which was not accurate; so they had a new survey made which resulted in Plan PSU-96841 duly approved by the Bureau of Lands, which new plan they prayed be approved by the court; and that their old transfer certificates of title be ordered cancelled and new ones issued in lieu thereof covering the same lots or parcels but with the correct technical description shown on the new plan.

The motion was opposed by Jose de Borja, an adjoining owner, on his own behalf and on behalf of his father Francisco de Borja, another adjoining owner, claiming that a part of lot 6 of the new plan, designated as lot No. 2 of the Plan PSU-99657 belonged to Jose de Borja, the other portion of said lot 6 being the property of Francisco de Borja designated as lot 5 in Plan PSU-99657; and that lot No. 3 Plan PSU-96841 designated as lot 4 in Plan PSU-99657 belonged to Francisco de Borja. Subsequently, however, Francisco de Borja entered a constancia saying that he had no opposition to present the case "nunca ha tenido ni tiene oposicion que presentar en este expediente." In view of that disclaimer of his father, Jose de Borja filed an amended opposition substituting his claim to lot No. 4 for the previous claim he had made for his father, and reiterating his claim to lot No. 2, thereby leaving movants' claim to lot 5 undisputed.

Jose de Borja filed a petition to quash the motion of November 3, 1933 on the ground that the court had no jurisdiction for the reason that section 112 Act No. 496 prohibits the reopening of original registration proceedings. After hearing, the trial court promulgated a resolution finding that the lots claimed by Jose de Borja were not included in his certificate of title No. 12377 and that the court had no jurisdiction to rule on the claims of both petitioners and oppositor. Petitioners appealed the resolution to the Supreme Court and on May 14, 1942, this Tribunal thru Associate Justice Paras, now Chief Justice, rendered judgment in (G. R. No. 48890) the very same

'decision sought to be revived.' Because of the decisive effect on and intimate relation of said decision to the present proceedings, as well as the facts and the issues contained therein, we are quoting it in toto for purposes of reference:

"In G.L.R.O. Record No. 917, a petition was filed by Carlos N. Francisco and Ceferino, Francisco praying that a new plan covering certain parcels of land) title to which had been decreed before by the court, be approved and- that new Certificates be issued in favor of the said petitioners.

"Jose de Borja objected to the petition on the ground that some of the lot mentioned therein, form an integral part of his land covered by Transfer Certificate of Title No. 12877, but according' to the evidence and the findings of, the lower court his claims is utterly unfounded because the said lots are outside of the limits , covered by the title in his name. The said court, however, denied "the petition on. two grounds—First, (that it has no jurisdiction to sit thereon as the title; to the land had been decreed long before by the Court and- second, that Exhibit "A", the deed of Transfer from the former owner to the petitioners is not competent evidence to. show any title in favor of the latter.

"It appears that the old title was based on a plan which was never approved by the Bureau of Lands, the survey not having been made .under the modern system which is more scientific. When the land covered by the old title was resurveyed and subdivided into lots, the total area in the now plan did not tally with that contained in the old one. However, the boundaries remained the same, as regards Lots 4-a and 6 of Plan Exhibit F .it appears that either through omission or error they were not included in the subdivisions, although as a matter of fact they were within the boundaries of .the whole land covered by the old certificate of title, The correction of this omission is now sought in the petition.

"There is absolutely no valid reason why the court should deny the approval of the new' plan and consequent issuance of a new certificate of title corresponding: thereto as recommended by the Chief of the General Land Registration Office., No right of a third party is affected. There is no change in the identity of the land. When surveys under the old system are not correct and differ from the result obtained by the modern and more scientific way of surveying, corrections of errors contained in the. old plan should be permitted by the court so long as the boundaries laid down in the description as enclosing the land and indicating its limits are not changed; If they are not allowed in the expediente of the case, no other remedy may be resorted to by which errors or imperfections in the old plan call be cured and to permit a decree base on such erroneous survey to stand would be absurd. The decree is not re-opened and thereby modified. It is the new plan that is made to conform to the decree, which procedure should be allowed arid even encouraged in these islands where, as the court record show many certificates of title are still based, on the old and highly defective surveys. Such correction is authorized by Section 112 of act 496. "In regard to Exhibit A, suffice it to state that it a public document whereby the conveyance of the property (Lot No. 6) is duly confirmed by the legal representative of the former owner, the Compania Apfricola de Ultramar. As stated above, the oppositor, has not shown any right or interest in the lots covered by the new plan. His objection to the admission of document as evidence should therefore be overruled.

"Wherefore, the decision appealed from is reversed and the remedy prayed for in the petition is hereby granted, with costs against appellee."

A motion for the reconsideration of the above-quoted decision was denied by this Tribunal on August 7, 1942, and thereafter it became final and executory.

In the year 1944 Carlos Francisco died. On June 4, 1946, Ceferino Francisco filed in the Court of First Instance of Rizal a motion for the execution of the final decision of the Supreme Court of May 14, 1942, but he was informed that the records of said case had been burned or destroyed during the battle for liberation. So on August 22, 1946, he filed a motion for reconstitution of said records. Eventually, the trial court thru Judge Ambrosio Santos by order of February 3, 1947 declared the records reconstituted, and on February 20, 1947 the motion for execution

was renewed. On March 7, 1947 an urgent the same time asking for postponement of the hearing of 1947, was filed on behalf of oppositor Jose de Borja, at motion for reconsideration of the order of February 3, the motion for execution. On March 21, 1947 an order Was issued setting aside the order of February 3, 1947 so as to give the oppositor an opportunity to present and prove his objection to the reconstitution. On June 6, 1947, after hearing, the trial court, Judge Juan P. Enriquez presiding, granted the petition for' reconstitution and set for hearing the motion for admission of the depositions presented on behalf of the oppositor. After the hearing an order was issued on June 23, 1947 by Judge Enriquez, denying admission of those depositions which tended to prove that counsel for oppositor had filed a second motion for reconsideration of the decision of the Supreme Court of May 14, 1942.

On July 14, 1947 a motion for execution of said Supreme Court decision was again filed by petitioners and on July 22nd of the same year, said motion was granted by Judge Ambrosio Santos. The oppositor perfected his appeal from the orders of June 23rd and July 22nd, both of 1947. On September 15, 1947 the trial court issued an order approving the record on appeal but modifying its order of July 22, 1947 in the sense that the order of execution was to be enforced only as to the lots not disputed by' the oppositor. The appeal was.. docketed here as G. K. No. L-1854 * and was decided by this Court on January 18, 1951, affirming the order of June 23, 1947. Jose de Borja's motion for reconsideration of the decision was denied in a resolution dated March 29, 1951.

Thereafter plaintiff filed in the trial court four motions for execution dated May 17, .1951, June 28, 1952, July 25, 1952 and February 26, 1953, all ex-parte, but all said motions were denied on March 7, 1953 by Judge Tan for lack of notification and service on the adverse party. A motion for reconsideration of the order of denial was filed, which motion was later granted by Judge Area on April 11, 1953, after copies of all those pleadings were furnished the oppositors in open court. On April 13, 1953 another motion for execution of the decision of this Court of May 14, 1942 was filed. .After hearing, Judge Area granted the motion on April 18, 1953. On May 9, 1953, oppositor Borja filed a motion for reconsideration which was granted by Judge Tan in an order dated May 15, 1953 setting aside the order of April 18, 1953, thereby denying the motion for execution, on the ground that under the Rules of Court a writ of execution can only be issued within five years from the date of the final entry of the judgment. A motion for reconsideration of the order dated May 15, 1953 was denied by Judge Tan on June 8, 1953.

So, on June 17, 1953 the present action was filed by Ceferino Francisco and the heirs of Carlos N. Francisco for the re-enforcement or revival of the decision of this Court on May 14, 1942 (G. R. No. 48390). Defendant Jose de Borja moved to dismiss the complaint on the ground that the motion was barred ' by.. the statute of limitations. Plaintiffs opposed the motion to dismiss on the ground that the running of the statute of limitations was suspended by the destruction of the records of this case and their reconstitution, On the basis of this opposition Judge Demetrio Encarnacion denied the motion to dismiss. Then on October 12, 1953 defendant filed a motion for a bill of particulars. Plaintiffs opposed this .motion for a bill of particulars and claimed that since the cause of action was only for revival of the decision of the Supreme Court, defendant had no defense to said cause of action for the reason, that his previous motion to dismiss based on prescription had already been denied by the court so that the motion for a bill, of particulars was merely dilatory and should be treated as pro forma and did not even stop the period within which to answer which period had already expired so that defendant should be declared in default. Despite said opposition of plaintiff Judge Tan . declared the motion for a bill of particulars well-founded, granted it and ordered plaintiffs to amend the complaint and include therein specified items of all their claims, at the same time denying the motion for default.

To plaintiffs' amended complaint defendant again interposed a motion for a bill of particulars and despite plaintiffs' opposition to the effect that the purpose of the action was not to re-examine or retry the issues already

decided but merely to revive the judgment, Judge Tan ordered that the amended complaint be further re-amended specifying the object of the decision upon which the present action is based. On January 11, 1954, plaintiffs filed a re-amended complaint, stating the facts about the decision of this Court on May 14, 1942, the expiration of five years after its promulgation but not of the ten years prescriptive period, and reiterating the prayer contained in their original motion of November 3, 1933. To said reamended complaint defendant Borja filed an answer with the special defense that the property in question was his, further claiming prescription in his favor, and asking for attorney's fees. At the trial, plaintiffs presented as evidence the bill of exceptions in G. L. E. O. Record No. 917, the decision of the Supreme Court of May 14, 1942, and the resolution of the same court of August 7, 1942 denying the motion for reconsideration of the defendant; and the defendant presented his own testimony concerning his mode of acquisition of the land in dispute, the resolution of the Supreme Court of March 29, 1951 denying his motion for reconsideration in G. R. No. L-1854, the sketch of the land in dispute made by the defendant himself, the deed of sale of February 11, 1919 between Carlos N. Francisco as vendor and Jose de Borja as vendee, and evidence of additional payment made by Jose de Borja to Ceferino Francisco on October 14, 1922. On May 17, 1954 Judge Tan rendered the decision now on appeal wherein he dismissed plaintiffs' re-amended complaint, with costs, declared the defendant owner of lots 2 and 4, Plan PSU- 99657 as included in the deed of sale (Exhibit 3) above referred to but dismissing defendant's claim for attorney's fees in the sum of P2,000. Failing to secure a reconsideration of said decision, plaintiffs have appealed directly to this Tribunal alleging the following errors:

I

The lower court erred in admitting the evidence presented by defendant-appellee regarding ownership of the lots in question,

II

The lower court erred in dismissing the instant action; and, not rendering a decision reviving or reenforcing the judgment of the Supreme Court dated May 14, 1942.

III

The lower court erred in declaring defendant-appellee owner of the lots in question.

In arriving at the conclusion that lots 2 and 4 belonged to defendant, Judge Tan went into the merits of the original case and admitted evidence presented by said defendant about his ownership of said two lots based on the supposed deed of sale made to him in 1919 by Carlos N. Francisco. This is really re-opening of the original case and re-examining the facts. Judge Tan based his action in doing so on the theory advanced by the defendant that in a resolution of this Court on his motion for reconsideration, his right to bring a separate action against plaintiffs on the ownership of the land in question was reserved to him; that instead of filing a separate action, he embodied said right in a counterclaim in the present action, which counterclaim was neither answered or rebutted by the plaintiff, that it is true that defendant did not present evidence in support of his ownership of the land in question in the original case but it was thru no fault of his, because the trial court there dismissed the case and declared itself without jurisdiction to entertain the same and that not to allow his claim to the said land now, would be tantamount to depriving him of his property without due process of law.

The question presented is whether or not in an action to revive a judgment the facts in the case wherein said judgment was rendered may be re-examined and a decision different from the judgment sought to be revived may be entered. We hold that a judgment sought to be revived after the lapse of five years from its rendition must necessarily be final and executory. Consequently, it cannot be re-opened, much less, the facts found therein modified or changed. The only question presented in a revival of a judgment is whether the party asking for it is

still entitled to it. The only defenses to said revival would be that more than ten years had passed since the entry of judgment and so the action has prescribed; and facts occurring after the judgment such as satisfaction thereof by the losing party or counterclaims arising out of trans- actions not connected with the former controversy (Compañia Gral. de Tabacos vs. Martinez, 29 Phil., 521.)

As regards defendant's claim that in a resolution of this Court his right to bring a separate action against plaintiffs to vindicate his claim to the land in dispute was reserved, no copy of said, resolution could be shown by said defendant. Moreover, said alleged reservation of his right to file a separate action had been passed upon by this Tribunal in its resolution of March 29, 1951, which we quote below:

"Besides, in view of the above quoted decision and resolution of this Court, the reservation in question, whether made or not, in the alleged resolution of the second motion for reconsideration, is of no legal consequence. If under the decision and the law the oppositor-appellant has no right to litigate in a separate action the ownership of lots Nos. 4-A and 6, such reservation could not grant the oppositor-appellant such right. Otherwise, if the oppositor-appellant has, said right, he could litigate in a separate motion the ownership of said lots even though there was no such reservation. The courts cannot change the legal effects of its decision by such reservation unless they are expressly granted by law the power to do so, as in the cases provided for in Rule 30 of the Rules of Court, and others. Such reservation or a statement on a court's order or decision that this is without prejudice to the right of a party to institute another action or litigate again the same question, is a mere surplusage."

So that whether or not said reservation was made by this Court becomes immaterial.

As to the contention that defendant would be deprived of his property without due process of law, should the evidence of ownership presented by him in the present case, be not considered, this, point was squarely' discussed and decided by this Tribunal in its resolution of August 10, 1942, a portion of which we quote below:

". . . it appearing that the appellee Jose de Borja failed to produce , the evidence he had previously', offered to present on the day set by the court below, at his own request, for the reception of such evidence; motion denied."

Moreover, the merit of defendant claim as owner of the land disputed had already been passed upon. For instance, in the resolution of this Court of March 29, 1951, a portion of the same reads as follows:

"In view of the above quoted decision and resolution of this Supreme Court [referring to the decision of May 14, 1942 and the resolution of August 7, 1942], it is evident that the appealed resolution of June 28, 1947, which held that the finding in the order dated January 25, 1940, to, the effect that the lots Nos. 4-A and 6 claimed by the oppositor are not included in his Certificate of Title ' No. 12377, has become final is correct not because the oppositor had' not appealed therefrom but because it was affirmed by this Court."

Again, in the resolution of this Court dated January 18, 1951, in the same case G. R. No. L-1854, the following observation or statement was made:

". . . After the lapse of fifteen days,'the hearing was continued on December 1, 1939, and the oppositor-appellant then renounced to present- evidence, and without making any reservation, asked for the dismissal of the case; and the court decided the holding in its order of January 25, 1940, the pertinent part of which 'was quoted in the order appealed from, that the lots claimed by the oppositor-appellant are not included in the Certificate of Title No. 12377 of the oppositor, and dismissed the petitioners' motion or . petition." (p. 192,, Record.)

With regard to the question of prescription, in maintaining that the present action had prescribed for the reason that the decision of this Court sought to be revived was entered on May 14, 1942, while the present action for revival was filed on June 17, 1953, the trial court and the defendant evidently overlooked the provisions of Act

3110, section 41 thereof regarding the interruption of the running of the period of prescription because of the destruction of the records and their reconstitution. Section 41 of Act No. 3110 provides:

"SEC. 41. All terms fixed by law or regulations shall cease to run from the date of destruction of the records and shall only begin to run again on the date when the parties or counsel shall have received from the Clerk of Court notice to the effect that the records have been reconstituted."

Even taking as a basis the date of promulgation of the decision of this Court which is May 14, 1942, although as a matter of fact, it did not become final until August 7, 1942, when the motion for reconsideration was denied, the records of this case were destroyed around february 21, 1945, during the battle for liberation. So that up to the time of said destruction, only 2 years, 9 months and 17 days had passed from the promulgation of the judgment. The period of prescription again began to run on March 31, 1951 when plaintiffs received notice from the Clerk of the Supreme Court regarding the final decision of the petition for reconstitution. From March 31, 1951 up to the filing of the present action on June 17, 1953, a period of 2 years, 2 months, and 16 days have elapsed which, added to the 2 years, 9 months and 17 days will give a total of only 5 years and 3 days of the prescriptive period which is far from the ten years within which the decision may be revived; and, if we consider the decision appealed from as having become final on August 7, 1942 when the motion for reconsideration was denied by this Court, then the present action may be regarded as having been filed even less than five years after the Supreme Court decision become final; discounting the period of interruption.

But counsel for defendant-appellee contends that the interruption of the running of prescription mentioned, in Act No. 3110 is not contained in Article 1155 of the new Civil Code which reads as follows:

"Art. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any "written acknowledgment of the debt by the debtor,"

However, Article 1155 is only the general law on interruption of prescription of action while section 41, of Act 3110 is a special law on the same subject matter. Consequently, the special: law prevails over the general law. Furthermore, we have Article 1116 of the new Civil Code which reads thus:

"ART. 1116. Prescription already running before the effectivity of this Code shall be governed by laws previously in force; but if since' the time this Code took effect the entire period herein required for prescription should elapse, the present Code shall be applicable even though by the former laws a longer period might be required."

According to the first part of the above-quoted article, Since the period of prescription in the present case began to run in 1942, long before the new Code became effective in 1950, said prescription should be governed by the old law, including Act No. 3110, section 41, governing interruption of prescription.

In view of the foregoing, the decision appealed from is hereby reversed, and the prayer in the action for revival of judgment is hereby granted, with costs.

Parás, C. J., Padilla, Reyes, A., Jugo, Bautista, Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

* 88 Phil., 83.

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