

**MANUEL DIAZ, CONSTANCIA DIAZ AND SOR PETRA DIAZ,
PLAINTIFFS AND APPELLANTS, VS. CARMEN GORRICO AND HER
HUSBAND FRANCISCO AGUADO, DEFENDANTS AND APPELLEES.**

G. R. No. L-11229. March 29, 1958

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

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

Appeal originally brought to the Court of Appeals but certified to us by said court because only questions of law are raised therein.

The facts of the case are as follows:

Lots Nos. 1941 and 3073 of the Cadastral Survey of Cabanatuan originally belonged to the conjugal partnership of the spouses Francisco Diaz and Maria Sevilla, having been registered in their name under Original Certificates of Title Nos. 3114 and 3396. Francisco Diaz died in 1919, survived by his widow Maria Sevilla and their Diaz, et al. vs. Gorricho and Aguado three children—Manuel Diaz born in 1911, Lolita Diaz born in 1913, and Constanica Diaz born in 1918.

Sometime in 1935, appellee Carmen J. Gorricho filed an action against Maria Sevilla in the Court of First Instance of Manila (C. C. No. 43474) and in connection therewith, a writ of attachment was issued upon the shares of Maria Sevilla in said lots numbers 1941 and 3073 (Exhibit C). Thereafter, said parcels were sold at public auction and purchased by the plaintiff herself, Carmen J. Gorricho (Exhibit G). Maria Sevilla failed to redeem within one year, whereupon the acting provincial sheriff executed a final deed of sale in favor of Carmen J. Gorricho. In said final deed (Exhibit E), however, the sheriff conveyed to Gorricho the whole of parcels numbers 1941 and 3073 instead of only the half-interest of Maria Sevilla therein. Pursuant to said deed, Carmen J. Gorricho obtained Transfer Certificate of Title Nos. 1354 and 1355 in her name on April 13, 1937, and has been possessing said lands as owner ever since.

In November, 1951, Maria Sevilla died. The following year, on March 31, 1952, her children Manuel Diaz, Constanica Diaz, and Sor Petra Diaz (Lolita Diaz) filed the present action (C. C. No. 926 of the Court of First Instance of Nueva Ecija) against Carmen Gorricho and her husband Francisco Aguado to compel defendants to execute in their favor a deed of reconveyance over an undivided one-half interest over the lots in question (the share therein of their deceased father Francisco Diaz illegally conveyed by the provincial sheriff to Gorricho), which defendants were allegedly holding in trust for them. Defendants answered denying the allegations of the complaint and alleging, as a special defense, that plaintiffs' action, has long prescribed. After trial, the court below rendered judgment, holding that while a constructive trust in plaintiffs' favor arose when defendant Gorricho took advantage of the error of the provincial sheriff in conveying to her the whole of the parcels in question and obtained title in herself, the action of plaintiffs was, however, barred by laches and prescription. From this judgment, plaintiffs appealed.

The principal contention of appellants is that their father's half of the disputed property was acquired by Carmen J.

Gorricho through an error of the provincial sheriff; that having been acquired through error, it was subject to an implied trust, as provided by Article 1456 of the new Civil Code; and therefore, since the trust is continuing and subsisting, the appellants may compel reconveyance of the property despite the lapse of time, specially because prescription does not run against titles registered under Act 496.

Article 1456 of the new Civil Code, while not retroactive in character, merely expresses a rule already recognized by our courts prior to the Code's promulgation (see *Gayondato vs. Insular Treasurer*, 49 Phil., 244). Appellants are, however, in error in believing that like express trusts, such constructive trusts may not be barred by lapse of time. The American law on trusts has always maintained a distinction between express trusts created by intention of the parties, and the implied or constructive trusts that are exclusively created by law, the latter not being trusts in their technical sense (*Gayondato vs. Insular Treasurer*, *supra*). The express trusts disable the trustee from acquiring for his own benefit the property committed to his management or custody, at least while he does not openly repudiate the trust, and makes such repudiation known to the beneficiary or cestui que trust. For this reason, the old Code of Civil Procedure (Act 190) declared that the rules on adverse possession do not apply to "continuing and subsisting" (i.e., unrepudiated) trusts.

But in constructive trusts, as pointed out by the court below, the rule is that laches constitutes a bar to actions to enforce the trust, and repudiation is not required, unless there is concealment of the facts giving rise to the trust (54 Am. Jur., secs. 580, 581; 65 C. J., secs. 956, 957, 958; Amer. Law Institute, Restatement on Trusts, section 219; on Restitution, section 179; *Stianson vs. Stianson*, 6 ALR 287; *Claridad vs. Benares*, 97 Phil., 973).

"Sec. 580. In Case of Express Trust.—In the case of an express trust, a cestui que trust is entitled to rely upon the fidelity of the trustee. Laches does not apply until the lapse of time is great, or until the active duties of the trustee are terminated except for turning over the trust property or funds to the beneficiaries, the claim of the trustee in respect of the trust estate is held adversely to the beneficiary, the trustee openly denies or repudiates the trust or commits acts in breach thereof, or in hostility to, or fraud of, the beneficiaries, and the beneficiary is notified, or is chargeable with constructive notice, thereof, or is otherwise plainly put on guard against the trustee. No laches exists until a reasonable time after a beneficiary is notified of a breach or other cause of suit against the trustee. Laches does exist, however, where suit is not commenced within such reasonable time. Long delay is not excused where the trustee put the beneficiary off from time to time with a promise to settle the trusteeship, or where the trustee was a lawyer and related by affinity to the beneficiaries, who were all women."

"Sec. 581. In Case of Constructive or Resulting Trust.—Laches constitutes a defense to a suit to declare and enforce a constructive trust, and for the purpose of the rule, repudiation of the constructive trust is not required, and time runs from the moment that the law creates the trust, which is the time when the cause of action arises. But laches does not exist while the trustee fraudulently and successfully conceals the facts giving rise to the trust, although the concealment must be adequately pleaded by the plaintiff in a suit to declare a trust where the delay is apparent on the face of his pleading.

Laches may constitute a bar to an action to declare and enforce a resulting trust, but lapse of time is only one of the many circumstances from which the conclusion of laches in the enforcement of such a trust must be drawn, and each case must be determined in the light of the particular facts shown. No laches exists in respect of failure to assert a resulting trust of which a beneficiary has no knowledge or of which he is not chargeable with knowledge. Continuous recognition of a resulting trust precludes any defense of laches in a suit to declare and enforce the trust. It has been held that the beneficiary of a resulting trust may, without prejudice to his right to enforce the trust, prefer the trust to persist and demand no conveyance from the trustee. On the other hand, it has been held that the one who permits a claim to establish a resulting trust to lie dormant for an unreasonable length of time, and until the alleged trustee has died, will not be aided by a court of equity to establish his trust." (54 Am. Jur., pp. 448-450.)

The reason for the difference in treatment is obvious. In express trusts, the delay of the beneficiary is directly attributable to the trustee who undertakes to hold the property for the former, or who is linked to the beneficiary by confidential or fiduciary relations. The trustee's possession is, therefore, not adverse to the beneficiary, until and unless the latter is made aware that the trust has been repudiated. But in constructive trusts (that are imposed by law), there is neither promise nor fiduciary relation; the so-called trustee does not recognize any trust and has no intent to hold for the beneficiary; therefore, the latter is not justified in delaying action to recover his property. It is his fault if he delays; hence, he may be estopped by his own laches.

Of course, the equitable doctrine of estoppel by laches requires that the one invoking it must show, not only the unjustified inaction, but that some unfair injury would result to him unless the action is held barred (*Go Chi Gun vs. Co Cho*, 96 Phil., 622; *Mejia vs. Gamponia*,* 53 Off. Gaz., 677). This requirement the appellees have not met, and they are thereby bereft of the protection of this rule.

Nevertheless, we are of the opinion that the judgment of dismissal should be upheld, because the appellants' cause of action to attack the sheriff's deed and cancel the transfer certificates of title issued to the appellees accrued from the year of issuance and recording, 1937, and appellants have allowed fifteen (15) years to elapse before taking remedial action in 1952. Even considering that the youngest among them (Constancia), born in 1918, only became of age in 1939, more than sufficient time (thirteen years) has been allowed to elapse, notwithstanding the appellees' public assertion of title during this entire period, to extinguish appellants' action. Under the old Code of Civil Procedure (Ch. III), in force at the time, the longest period of extinctive prescription was only-ten years.

Wherefore, the judgment appealed from is affirmed, with costs against appellants.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Concepcion, Endencia, and Felix, JJ., concur.

Bautista Angelo, J., concurs in the result.

* 100 Phil., 227.

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