

JOSEFINA POTESAS CABRERA AND CRESENCIA POTESAS OMULON, PLAINTIFFS AND APPELLEES, VS. MARIANO T. TIANO, DEFENDANT AND APPELLANT.

G.R. No. L-17299. July 31, 1963

Ponente: PAREDES, J.

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PAREDES, J.:

Ciriaco Potestas and Gregoria Blanco, were parents of five children, Isabelo, Lourdes, Clemente, Josefina and Cresencia. Gregoria died before the second world war, together with Claraente, single. During their lifetime, the spouses acquired properties, among which was a parcel of agricultural land, of about seven (7) hectares, located at barrio Manga, municipality of Tangoib, Misamis Occidental, planted to coconuts and fruit-bearing trees. On July 2, 1947, Ciriaco, the surviving husband and three (3) children (Isabelo, Lourdes and Cresencia), purportedly sold the above mentioned parcel to herein defendant Mariano T. Tiano, for P3,500.00. At the time of the sale, Cresencia was a minor, and the other child, Josefina, did not sign the deed of sale, and did not know about the transaction.

Under date of June 20, 1957, an action for "Partition and Recovery of Real Estate, with Damages" was filed by Josefina and Cresencia against Tiano. In the complaint, it was alleged that they were entitled to a portion of the land, since Josefina did not sign the sale and Cresencia was a minor; that defendant Tiano had usurped the portions belonging to them, to their damage and prejudice in the amount of P7,000.00, which consisted of their share in the produce of the property, during the period of defendant's possession.

In Answer, defendant claimed that the plaintiffs herein knew of the sale and that he was not aware of any defect in the title of his vendors. As a Special Defense, defendant alleged that he was the absolute owner of the land by acquisitive prescription of ten (10) years, from the date of purchase. Before the trial, the parties agreed to a stipulation of facts, parts of which recite—

"3. That at the time of the sale, appearing in Doc. No. 54, Page 81, Book No. 7, S. 1947, in the book of Notary Public Basilio Binaoro of Tangub, Mis. Occ., Cresencia was a minor being only 16 years old, while Josefina who was long married and of legal age did not give her consent to the same;

4. That the plaintiffs commenced this case against the Defendant on June 20, 1957, and the judicial summons was issued by the Clerk of Court on June 21, 1957, but defendant received the same on July 2, 1957."

After hearing, the court a quo rendered the following judgment—

"Wherefore, premises considered, the court hereby renders judgment declaring that the plaintiffs are entitled each to 1/8 of the property in question and therefore, judgment is hereby ordered declaring them entitled to partition the property in question in proportion of 1/8 each of them, plus damages for both of them in the amount of P1,000.00 and attorney's fees in the amount of P200.00."

The trial court in the same decision, commissioned the Deputy Provincial Sheriff, to partition the property in

question and render a report within 30 days. Defendant moved for a reconsideration of the decision, contending that prescription had already set in, and his (defendant's, title, had become irrevocable, and that the award of damages had no factual and legal basis. The motion for reconsideration was denied on March 5, 1960. The Commissioner's report, partitioning the property was submitted on April 11, 1960. Defendant perfected his appeal on May 9, 1960, and on May 14, 1960, the same was given due course and elevated to this Court.

In claiming that prescription had taken place, appellant insists that the period should be counted from the date the summons was served on him, which was on July 2, 1957. It was agreed, however, that the complaint for the recovery of the land in question was presented on June 20, 1957, and the summons was sent out the following day. The Civil Code, provides that—

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

Since the sale of the property took place on July 2, 1947, the ten (10) year period within which to file the action had not yet elapsed on June 20, 1957, when the complaint was presented. While it is true that the sale in question had taken place before the effectivity of the new Civil Code and the law then on matter of prescription was Act No. 190, said law, however, contained no specific provision on the interruption of the prescriptive period; and the established rule then, as it is the rule now, is that the commencement of the suit prior to the expiration of the applicable limitation period, interrupts the running of the statute, as to all parties to the action (34 Am. Jur., Sec. 247, pp. 202-203; Peralta, et al. vs. Alipio, 97 Phil. 719). The fact that summons was only served on defendant on July 2, 1957, which incidentally and/or coincidentally was the end of the ten (10) year period, is of no moment, since civil actions are deemed commenced from date of the filing and docketing of the complaint with the Clerk of Court, without taking into account the issuance and service of summons (Sotelo vs. Dizon, et al., 67 Phil. 573). The contention that the period was not interrupted until after defendant received the summons is, therefore, without legal basis.

Defendant-appellant claims that he had already acquired full ownership of the property in question because the judicial summons, which could civilly interrupt his possession (Art. 1123 N.C.C.), was received by him only on July 2, 1957. Conceding, for the purposes of argument, that the article cited is applicable, still appellant cannot avail himself of acquisitive prescription, for the simple reason that no finding was made by the trial court that his possession from the time of the sale (July 2, 1947), was with just title, in good faith, in the concept of an owner, public, peaceful, adverse and uninterrupted (Arts. 1117 and 1118 N.C.C.). Good faith is a question of fact which must be proved (Art. 1127 N.C.C.). For the purposes of acquisitive prescription, just title must also be proved, it is never presumed (Art. 1131 N.C.C.). The factual requisite of adverse possession do not appear in the stipulation of facts and the trial court did not make findings to this effect. These circumstances could and/or should have been ventilated, had the appeal been taken to the Court of Appeals. Defendant, however, having chosen to appeal the decision directly to this Court, he is deemed to have waived questions of fact and raised only questions of law. There being no factual finding by the lower court of the presence of the requisites of acquisitive prescription, this Court has to reject, as did the trial court, said defense. Moreover, on July 2, 1957, when the summons was received, the ten (10) years necessary for acquisitive prescription had not yet elapsed. In fact, said period terminated on that very day.

As to the award of damages, We find Ourselves devoid of ample authority to review the same, since it involves appreciation of facts. It cannot be denied, as found by the lower court, that plaintiffs herein are entitled to a share in the land. Verily, they should also share in the produce, which, admittedly, was enjoyed by the defendant-appellant herein.

Wherefore, the decision appealed from should be, as it is hereby affirmed. Costs against appellant in both instances.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion Barrera, Dizon, Regala and Makalintal, JJ., concur.

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