

DOLORES NARAG, PLAINTIFF AND APPELLANT, VS. SALVADOR CECILIO AND ANTONIO CECILIO, DEFENDANTS AND APPELLEES.*G.R. No. L-23408. November 24, 1972*

Ponente: FERNANDO, J.

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The rather crowded docket of this Tribunal in all probability would have been minus this appeal if there were no misapprehension by the lower court as to the requisites that must be satisfied for the acquisition of land through adverse possession. It acted under the erroneous notion that under the applicable law, there is need for a showing of a just title. The controlling statutory provision is anything but that.[1] Moreover, our decisions have uniformly adhered to its literal language. It does follow then that this appeal from an order of dismissal predicated on the absence of a just title in the claim to the land in question is meritorious. We reverse.

In the amended complaint filed on July 20, 1963, plaintiff-appellant Dolores Narag alleged: "That before the death of her father, the latter gave her in 1924 two parcels of land together with its improvements: One agricultural land and the other residential lot by virtue of a deed of donation *Mortis Causa* * * *; That after the execution of the deed of donation, the plaintiff declared the two parcels of land in her name, and had been in possession of the same in concept of owner, continuously, publicly, and adversely against the whole world; That upon the death of her natural father Jose Cecilio in 1950, who is also the legitimate father of the defendants, the latter, thru force, stealth and strategy, took possession of the two parcels of land described and claimed adverse title over the same against the plaintiff inspite of verbal and written demands for amicable settlement of the case exerted by the plaintiff to the defendants continuously from 1950 yearly up to the filing of the complaint." [2] It was prayed for that defendants [3] be ordered to deliver to her the parcels to which she was entitled. [4] In the answer to the amended complaint, one of the affirmative defenses set up was the lack of allegation as to plaintiff's possession being "in good faith and with just title." It was on the basis of such defense that the lower court, in its order now on appeal, in reliance to what it considered to be applicable Civil Code provision as to just title, [5] ruled that such a requirement was not satisfied, the donation having been declared void. It therefore dismissed the complaint with costs against the plaintiff. As stated in the appealed order: "It is clear, however, that the donation was not valid. It was definitely declared invalid by the Supreme Court when on page 3 of the decision it said: 'And as the donation *mortis causa* in the present case appears not to have the formal requisites of a will such as the attestation clause, the signatures of three instrumental witnesses and that of the donor, which must appear on every page of the document, the donation is invalid.' The complaint, therefore, does not satisfy the element that the title for prescription must be true and valid." [6]

What vitiates such an order of the lower court is painfully apparent. The judge thereof was misled into believing that the Civil Code and not the former Code of Civil Procedure supplied the controlling norm. What is even more evident is that he was not mindful of what is provided in its Section 41 as authoritatively and consistently interpreted by this Court. It is not easy to discern how he could be so far off the right track. There was no dispute as to the time when the relevant facts took place. Under the circumstances, an appeal on a question of law was

indicated. What is more, its outcome was not difficult to predict. The appealed order, as noted at the outset, cannot be sustained if the law is to be upheld.

1. It has been settled since 1908, as announced in *Altman vs. Commanding Officer*,^[7] this Court speaking through Justice Willard, concerning the ten-year period required by Section 41, that it suffices that there be a claim as "owner for that time of a piece of land [to vest] in him the full and complete title thereto."^[8] The same form of words was repeated by Justice Trent for the Court in *Corporacion de PP. Agustinos Recoletos vs. Crisostomo*.^[9] Thus: "With real property, however, it is different. Section 40 bars the owner's remedy after ten years, and Section 41 vests in the adverse possessor after the same period of time 'a full and complete title.'"^[10] Two years later, in 1917, came this reaffirmation of such a view from Justice Torres: "Taking into consideration that the applicant, Manuel Locsin Rama, is now and has been for twenty years, in possession of the said property, counting that of his predecessors, it may be said that beyond a shadow of a doubt that the ownership in the said strip of land has prescribed, pursuant to the provisions of section 41 of Act No. 190, since the possession of the applicant has been actual, open, public, and continuous, under a claim of title exclusive of any other right and adverse to all other claimants, * * *."^[11] Nor is there any need for a just title. Justice Street made such a point clear as early as 1921 in *Santos vs. Heirs of Crisostomo*.^[12] Thus: "Our opinion upon this point is that adverse possession must be taken to have begun with occupancy; and supposing that occupancy of the usurped property began, as the trial court evidently believed, with the execution of the contract of sale * * *, or soon thereafter, it results that the petitioners had acquired title by ten years' adverse possession, under section 41 of the Code of Civil Procedure, prior to the beginning of these proceedings. The situation must, we think, be governed by the rule generally applied in case of deliberate encroachment beyond legitimate boundaries, which is, that the intruder gets a good title, if his occupation is hostile to the true owner and is continued for the period required by the law of prescription."^[13] As a matter of fact, Justice Laurel, in *Lobot vs. Librada*,^[14] in sustaining a plea that a party was entitled to the benefits of this provision of law, stated: "To constitute exclusive possession, it is not necessary to exclude every one from all entry on the land, and the fact that another person uses the property concurrently with the claimants by the permission of the latter or in subordination to their claim, does not, in a legal sense, militate against the exclusiveness of their possession."^[15] Moreover, in a 1950 decision, *Arboso vs. Andrade*,^[16] Justice Bautista Angelo, for this Court, reiterated the view that the presence of good faith, inferentially by just title, is immaterial. Thus: "It is true that Doroteo Andrade may be considered as having acted in bad faith because he bought the property with knowledge of the lack of authority of Roman Budak to sell it or of the fact that he was not the owner thereof, but this guilty knowledge is of no moment, for under the law title by prescription may be acquired in whatever way possession may have been commenced or continued (section 41, Code of Civil Procedure). It appearing that Andrade had possessed the land openly, publicly, continuously and under a claim of title for a period of over ten years, it is evident that he acquired title thereto by prescription (section 41, *Idem.*)."^[17] The latest expression of such a doctrine comes from Justice Makalintal in these words: "It is thus admitted that since 1924 or for a period of forty-two years before the basic complaint was filed in 1966, petitioners had been in possession of the land claimed by plaintiffs below, now respondents, and that such possession was adverse, or in concept of owner, although allegedly in bad faith. Under the Code of Civil Procedure formerly in force, good or bad faith was immaterial for purposes of acquisitive prescription. Adverse possession in either character ripened into ownership after the lapse of ten years. In the same manner, an action to recover title to or possession of immovable property prescribed in the same period."^[18] As was so categorically announced by Justice J.B.L. Reyes: "Prescription lies under the said section even in the absence of good faith and just title."^[19] No doubt can therefore be entertained as to the plain and palpable error committed by the lower court.

2. The only remaining question is whether defendants should be required to restore possession to plaintiff, who by

reason of her death is now substituted by her children as appellants.[20] Ordinarily, the remedy should be limited to setting aside the appealed order and remanding the matter to the lower court so that the case could be tried on the merits. Considering, however, the length of time that had elapsed and the virtual admission of defendants as to the deprivation of possession inflicted by them on plaintiff, the cause of justice could be served by decreeing immediate recovery. The long travail suffered by her, and now her heirs, should be terminated. There is this further consideration that likewise argues for such an approach. The desire of a father, no doubt partly motivated by paternal affection for a child suffering from the stigma of having been born out of wedlock and likewise prompted by ties of affection, that at times are even stronger under such circumstances, would thus be gratified. Such a solution, moreover, has in its favor its kinship with what the demands of conscience and right require. It would be a sad day for the law then if after all the antecedents disclosed, the restoration of possession is not decreed. Fortunately, our decision in *Francisco vs. The City of Davao*,^[21] the opinion being rendered by the present Chief Justice where, notwithstanding the cogency of the jurisdictional question raised, this Court brushed it aside to yield to the dictates of what is just and equitable, recently followed in *Filipro Inc. vs. Court of Industrial Relations*,^[22] the opinion being penned by Justice Makasiar, constitutes an assurance that no such reproach can be hurled against the legal system. Appellants are thus entitled to recover possession — and as speedily as possible.

WHEREFORE, the appealed order of April 15, 1964 is set aside; the appellees ordered to deliver immediately to appellants Parcel No. 1 and one-half of Parcel No. 2 of the disputed property by virtue of their being the legitimate owners; and the case remanded to the lower court to determine the damages to which appellants are entitled, arising from the unlawful possession of the original defendants and their successors-in-interest, the present appellees. With costs.

Concepcion, CJ., Zaldivar, Castro, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

Makalintal, J., is on official leave.

[1] According to Section 41 of Act 190 (1901): "Sec. 41. Title to Land by Prescription. — Ten years actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the persons under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants. But failure to occupy or cultivate land solely by reason of war shall not be deemed to constitute an interruption of possession of the claimant, and his title by prescription shall be complete, if in other respects perfect, notwithstanding such failure to occupy or cultivate the land during the continuance of war."

[2] Amended Complaint, pars. 4, 5 & 6, Record on Appeal, 62-63.

[3] The two defendants in the complaint are Salvador Cecilio and Antonio Cecilio. On July 24, 1972, a Notice of the Death of Salvador Cecilio was filed with this Court with a motion for the substitution of the surviving heirs. The prayer of the said motion states: "[Wherefore], it is respectfully prayed that the aforesaid heirs of the defendant-appellee Salvador Cecilio be allowed to be substituted for the said deceased without requiring the appointment of an executor or administrator and that Josefina B. Vda. de Cecilio be appointed as guardian ad litem for the minors Maria Josefina Cecilio and Elizabeth B. Cecilio." After a comment on the part of appellant that she was not opposed to the substitution, this Court by resolution of September 18, 1972, granted such motion.

[4] Prayer, *ibid*, 65.

[5] The lower court cited Articles 1129-1130 of the Civil Code. According to Art. 1129: "For the purposes of prescription, there is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right." Art. 1130 provides: "The title for prescription must be true and valid."

[6] Order, Record on Appeal, 93. Here the lower court quoted from the original opinion in *Narag vs. Cecilio*, 109 Phil. 299, dated August 31, 1960, where the same plaintiff-appellant tried but failed to reverse the first order of dismissal. That was another manifestation of the lower court's carelessness for on October 12, 1960, the resolution on a motion for reconsideration contained the following dispositive portion: "Accordingly, the decision promulgated by this Court in this case on 31 August 1960 and the order appealed from are set aside and the case is remanded to the Court from whence it came for further proceedings in accordance with this resolution, without pronouncement as to costs." At p. 305. In this resolution there was no categorical pronouncement on the validity of the donation mortis causa.

[7] 11 Phil. 516.

[8] *Ibid*, 517. Cf. *De Jesus vs. Manzano*, 29 Phil. 367 (1915).

[9] 32 Phil. 427 (1915).

[10] *Ibid*, 431.

[11] *Locsin Rama vs. Montelibano Ramos*, 36 Phil. 136, 145-146.

[12] 41 Phil. 342.

[13] *Ibid*, 351. Cf. Justice Street's opinions in *Corporation PP. de Dominicos vs. Lazaro*, 42 Phil. 119 (1921); *Ramos vs. Ramos*, 45 Phil. 362 (1923); *Maghirang and Gutierrez vs. Balcita*, 46 Phil. 551 (1924); and *Government of the Philippine Islands vs. Franco*, 57 Phil. 780 (1933). Also: *Dimanlig vs. Cusi*, 48 Phil. 394 (1925); *Razote vs. Razote*, 49 Phil. 181 (1926); *Quijano and Heirs of Francia vs. Gomez Cabale*, 49 Phil. 263 (1926); *Solla vs. Ascueta*, 49 Phil. 333 (1926); *Valmonte vs. Villaroman*, 52 Phil. 221 (1928) and *Palencia vs. Jaucian de Del Rosario*, 53 Phil. 983 (1929).

[14] 72 Phil. 433 (1941).

[15] *Ibid*, 436.

[16] 87 Phil. 782.

[17] *Ibid*, 787.

[18] *Ongsiaco vs. Dallo*, L-27451, February 28, 1969, 27 SCRA 161, 165. Cf. *Joaquin vs. Cujuangco*, L-18060, July 25, 1967, 20 SCRA 769; *Vda. de Delima vs. Tio*, L-27181, April 30, 1970, 32 SCRA 516; *Agolto vs. Court of Appeals*, L-23025, June 30, 1970, 33 SCRA 765.

[19] *Alvero vs. Reas*, L-28337, September 30, 1970, 35 SCRA 210, 214.

[20] According to the motion of her counsel dated September 8, 1972, she died on March 21, 1971, leaving as her heirs the following legitimate children: Andres Bassig, Patricia Bassig, Emilia Bassig, Roberto Bassig, Angeles Bassig, Violeta Bassig Vda. de Leon and Severino Bassig.

[21] L-20654, December 24, 1964, 12 SCRA 628.

[22] L-30827, August 18, 1972.

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