

THE HEIRS OF PEDRO MEDINA, REPRESENTED BY MARGARITA MEDINA, PETITIONERS, VS. THE HON. COURT OF APPEALS, RESTITUTA ZURBITO VDA. DE MEDINA AND ANDRES NAVARRO, JR., RESPONDENTS.

G.R. No. L-26107. November 27, 1981

Ponente: TEEHANKEE, Acting C.J.

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TEEHANKEE, Acting C.J.:

The Court upholds the decision of the Court of Appeals which dismissed petitioners' complaint to recover from private respondents a parcel of land situated in Oac, Milagros, Masbate, together with the Spanish title (Titulo Real No. 349581) covering it. The Court of Appeals correctly found that petitioners failed to prove their claim that respondents were holding the property on the basis of an express trust, the existence of which, according to law and to established jurisprudence, cannot be proven by mere oral evidence and cannot rest on vague and uncertain evidence or on loose, equivocal or indefinite declarations. Thus, assuming that there existed a constructive trust in petitioners' favor, petitioners' action to recover the property had been lost by both extinctive and acquisitive prescription by virtue of respondents' continuous, uninter-rupted and unchallenged possession and occupancy of the premises adversely and in the concept of owner-buyer for thirty-three years, counted from the execution in 1924 of the deed of sale in respondents' favor to the filing of the action in 1957.

The late Francisco Medina had eight children, namely, Gregorio, Sotero, Narciso, Victorina, Simona, Carmen, Pedro and Hospicia, all of whom are deceased. Petitioner Margarita Medina, who filed the complaint on behalf of the heirs of Pedro Medina in the Court of First Instance of Masbate, is the daughter of Pedro Medina^[1] who predeceased his father Francisco Medina. Restituta Zurbito Vda. de Medina, herein private respondent, and defendant in the trial court, is the widow of Sotero Medina (brother of Pedro Medina); and Andres Navarro, Jr., her herein co-respondent and co-defendant in the trial court, is her grandson.

On March 6, 1957, herein petitioners filed the complaint in the trial court seeking to recover from herein respondents a parcel of land situated in the sitio of Oac, municipality of Milagros, province of Masbate, containing an area of 321.1156 hectares and praying that respondents be ordered to deliver to them possession and ownership thereof with accounting, damages and costs and litigation expenses.

Among others, the complaint alleged that petitioner Margarita Medina as plaintiff inherited with her sister Ana Medina the said parcel of land from their father Pedro Medina; that upon their father's death, she and her sister Ana Medina being then minors were placed under the care and custody of the spouses Sotero Medina and Restituta Zurbito, as guardians of their persons and property; that the land in dispute was placed under the management of Sotero Medina as administrator thereof, and upon Sotero's death, under the management of his widow, Restituta Zurbito; that she later discovered that the land in question was surreptitiously declared for taxation purposes in the name of Andres Navarro, Jr., grandson of Restituta Zurbito; that said respondents as defendants had without color of title denied petitioners' ownership and instead had claimed ownership thereof

since the year 1948 and exercised acts of possession and ownership thereon to the exclusion of petitioners; that petitioners had demanded that respondents vacate the premises and deliver possession and ownership thereof, but the latter failed and refused to do so; that respondent Andres Navarro, Jr. had excavated soil from the land in question and sold the same to the Provincial Government of Masbate without the knowledge and consent of petitioners and appropriated the proceeds thereof to his personal benefit to the damage and prejudice of the plaintiff; and that respondent Restituta Zurbito Vda. de Medina never rendered an accounting of the income of the property in question in spite of their repeated demands and instead appropriated all the income therefrom to her personal use and benefit.

Respondents as defendants alleged on the other hand that petitioner Margarita and her deceased sister Ana were but illegitimate children of Pedro Medina and for that reason did not enjoy the status of recognized natural children, such that when Pedro died intestate, Francisco Medina, Pedro's father who was still living, succeeded to his properties; that upon the death of Francisco, his children succeeded to his properties and the land in dispute was adjudicated to Gregorio, Sotero, and Narciso Medina; that in a deed of extrajudicial partition the land was later adjudicated solely to Narciso Medina; that Narciso Medina having become sole and exclusive owner of the land in question by virtue of said partition sold the same to Restituta and her husband Sotero Medina on June 29, 1924, as evidenced by a deed of sale; that from that day, respondents had actually possessed the land in question in the concept of owners, publicly, openly and continuously and adversely against the whole world so that whatever right, interest, title or participation petitioners had or might have had in the property had been lost by extinctive prescription and by virtue of the 33 years of exclusive actual possession in the concept of owner of the spouses Sotero and Restituta Medina who had thereby acquired title thereto by acquisitive prescription, even granting arguendo that petitioners had some title, right or interest over the land.

After trial, judgment was rendered declaring petitioner Margarita Medina with her coheirs as the lawful owners of the land in question; ordering respondents to deliver unto them the "titulo real No. 349581" and to restore to them the actual possession thereof; and ordering respondents to pay them certain amounts representing the produce of the land and attorneys' fees and costs of litigation.

Upon appeal, respondent Court of Appeals reversed the trial court's decision and sustaining respondents' defenses of prescription of action and acquisitive prescription, ordered the dismissal of the complaint.

Petitioners twice moved in vain to reconsider the appellate court's adverse decision. Hence, this petition for review, which we find to be without merit.

At the outset, it should be mentioned that the avowed status of petitioner Margarita Medina and her deceased sister Ana Medina as "legitimate daughters" of Pedro Medina, which assertion had been vigorously objected to both in the trial and appellate courts by respondents (who challenged the trial court's admission of petitioners' amended reply asserting their status as "legitimate children," changing and amending the statement in their original reply that they were "acknowledged natural daughters" of their father Pedro Medina and recognized by their "deceased natural grandparents"[2]), was determined positively in favor of petitioners by the Court of Appeals which ruled that there was sufficient evidence upholding the trial court's finding on their legitimate filiation based on the testimonies of witnesses who testified on the fact of the marriage of their parents Pedro Medina and Rosario Ramirez. Said findings of fact may no longer be disturbed in these proceedings, and at any rate do not affect the disposition of the case.

The decisive issue at bar, bearing in mind the legitimate filiation of petitioners, and thus the would-be validity of their claim to the land, is simply whether or not petitioners' action for recovery thereof has been barred by prescription.

The validity of respondents' defense of prescription in turn rests upon whether or not an express trust over the property in litigation has been constituted by petitioners' father Pedro Medina (who predeceased his father Francisco Medina) upon his brother Sotero and Sotero's wife Restituta Zurbito for the benefit of his children, petitioner Margarita Medina and her deceased sister Ana Medina and the latter's heirs.

As provided by our Civil Code, "Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties. Implied trusts come into being by operation of law." (Art. 1441) "No express trusts concerning an immovable or any interest therein may be proven by parol evidence." (Art. 1443) "An implied trust may be proven by oral evidence." (Art. 1457)[3]

Applied to the case at bar, if an express trust had been constituted upon the occupancy of the property by respondents in favor of the petitioners, prescription of action would not lie, the basis of the rule being that the possession of the trustee is not adverse to the beneficiary. But if there were merely a constructive or implied trust, the action to recover may be barred by prescription of action or by acquisitive prescription by virtue of respondents' continuous and adverse possession of the property in the concept of owner-buyer for thirty-three years.

The appellate court correctly held that the facts and evidence of record do not support petitioners' claim of the creation of an express trust and imprescriptibility of their claim, ruling squarely that "the facts do not warrant the conclusion that an express trust was created over the land in dispute. Although no particular words are required for the creation of an express trust, a clear intention to create a trust must be shown (Article 1444, Civil Code of the Philippines); and the proof of fiduciary relationship must be clear and convincing (*Quioque vs. Arambulo*, 45 O.G. 305; *Es-pinosa vs. Tumalak*, CA-G.R. No. 30075-R, June 26, 1964). Express trusts are those intentionally created by the direct and positive act of the trustor, by some writing, deed or will, or oral declaration (54 Am. Jur. 33-34). The creation of an express trust must be manifested with reasonable certainty and cannot be inferred from loose and vague declarations or from ambiguous circumstances susceptible of other interpretations (54 Am. Jur. 48-49). Nowhere in the record is there any evidence, and the plaintiffs do not even raise the pretension, that the original owner of the property Pedro Medina, father of plaintiff Margarita Medina, appointed, designated or constituted Sotero Medina (the husband of defendant Restituta Zurbito Medina) as the trustee of the land in dispute. Plaintiffs' contention that there was an express trust must, therefore, fail." [4]

Concretely, petitioners anchor their claim of an express trust on the following circumstances: (1) respondents' possession of the titulo real covering the land; (2) the deed of partition of the estate of the common predecessor Francisco Medina dated February 3, 1924, adjudicating the land solely to his son Narciso Medina; (3) the deed of sale of the land dated June 29, 1924, executed by Narciso Medina in favor of his brother Sotero Medina; and (4) the testimony of respondent Restituta Zurbito Vda. de Medina (Sotero's wife) to the effect that her husband used to "administer" and then later on, she herself "administered" the land.

These circumstances do not make out the creation of an express trust. Respondents' possession of the Spanish title issued in the late Pedro Medina's name may just be the consequence of the sale of the land by Narciso (to whom it had been adjudicated in the partition) to the spouses Sotero Medina and Restituta Zurbito on June 29, 1924 and is by no means an evidence of an express trust created for the benefit of petitioners. Spanish titles are defeasible, and "although evidences of ownership . . . may be lost through prescription." [5] Neither is the deed of partition (which apparently excluded Pedro Medina) entered into earlier any indication of an express creation of a trust. In fact, these documents are adverse to petitioners' cause, and are evidences of transfer of ownership of the land from one owner/owners to another or others and they in fact negate the creation or existence of an express trust.

Neither does the testimony of Sotero's widow, Restituta Zurbito, to the effect that her husband and then later she

herself "ad-ministered" the land support petitioners' claim of an express trust. There is no showing that the term "administration" as used by said respondent in her testimony is by reason of an appointment as such on behalf of another owner or beneficiary, such as to support the existence of an express trust. On the contrary, it appears clear from the context of her testimony that her use of the term "administer" was in the concept of an owner-buyer "administering" and managing his/her property.

Thus, petitioners cite her following testimony:

"Q. In what manner did you possess this property from the time you bought it from Narciso Medina? - A. First my husband was the one who administered the property and then later on, I ad-ministered there." (T.s.n., Dec. 4, 1963, p. 119.)

But continuing her testimony, she clearly declared, as follows:

"Q. How did you hold the property? In what manner?

"A. Because I bought it, I was the one pos-sessing it.

"Q. From the date of this document which is June 1924, (Exhibit 2) has there been anybody who disturbed you in your pos-session of your property?

"A. No sir, we were not disturbed there."[6]

The appellate court thus likewise correctly held, absent the existence of an express trust, that "The legal construction most favor-able to (petitioners) that can be impressed upon the facts of the case is that a constructive or implied trust was created by operation of law upon the property in question,"[7] but petitioners' cause of action had prescribed upon the lapse of the ten-year period of acquisitive pres-cription provided by the then applicable statute (section 41 of Act 190)[8] for unregistered lands such as the land herein involved.

As found by the Court of Appeals., the land was sold to Sotero Medina on June 29, 1924 from which date Sotero and his wife took open, public, continuous and adverse possession of the land in the concept of owner. In 1957 when the present action was filed, thirty-three (33) years, much more than the 10-year statu-tory period for acquisitive prescription, had already elapsed.

In addition, the appellate court further held that petitioners' action to recover was likewise time-barred, pointing out that "the ten-year period under the statute of limitation within which plaintiffs could file an action for recovery of real property commenced to run in 1933 when plaintiff Margarita Medina was informed that the land in dispute belonged to her father Pedro Medina, for in that year she could have brought an action for reconveyance. The period of prescription commences to run from the day the action may be brought (Article 1150, Civil Code of the Philippines), and in an action based on fraud, as is the basis of the present action, the period of pres-cription begins from the discovery of the fraud (IV Tolentino's Civil Code of the Philippines 40, citing Anuran vs. Aquino, 38 Phil. 29 and Solatorio vs. Solatorio, 52 Phil. 444); the reasons a party might have had for not immediately taking judicial action is immaterial and does not stop the running of the period (Lamko vs. Dioso, No. L-6923, October 31, 1955)."[9] Respondent court had referred to such non-action as "perhaps in deference to the defendants who had raised and clothed her."[10]

The similar case of Cuaycong vs. Cuaycong,[11] where the Court, after finding the non-existence of an express trust applying Article 1443 of the Civil Code which bars parol evidence in proving the alleged creation of an express trust over immovables, held that "even assuming the alleged trust to be an implied one, the right al-legged by plaintiffs would have already prescribed since starting in 1936 when the trustor died, plaintiffs had already been allegedly refused by the aforesaid defendants in their demands over the land, and the compliance filed only

in 1961 - more than the 10-year period of prescription for the enforcement of such rights under the trust. It is settled that the right to enforce an implied trust in one's favor prescribes in ten (10) years. And even under the Code of Civil Procedure, action to recover real property such as lands prescribes in ten years (Sec. 40, Act 190)," fully supports the correctness of the decision under review.

ACCORDINGLY, the appealed decision is hereby affirmed.

Fernandez, De Castro, Melencio-Herrera, and Plana, JJ., concur.
Makasiar, and Guerrero, JJ., on leave.

* Fifth Division, composed of Enriquez, J., ponente and chairman, Concepcion Jr. and Ledesma, JJ. at the time of promulgation of the appealed decision on January 22, 1966. At the time of its promulgation of its extended Resolution denying on May 20, 1966 a second motion for reconsideration, Ledesma, J. had been replaced by Soriano, J. as the third member.

[1] This fact although disputed in the trial court was settled by the Court of Appeals, which upheld her legitimate filiation, page 6, Court of Appeals decision; *infra*.

[2] Record on Appeal, pages 24-29.

[3] The subject of express and implied trusts is extensively treated in *Ramos vs. Ramos*, 61 SCRA 284 (1974). There, as here, plaintiffs failed to prove any express trust and their action based on implied trust was held to be barred by prescription: "There is a rule that a trustee cannot acquire by prescription the ownership of property entrusted to him (*Palma vs. Cristobal*, 77 Phil. 712), or that an action to compel a trustee to convey property registered in his name in trust for the benefit of the cestui qui trust does not prescribe (*Manalang vs. Canlas*, 94 Phil. 776; *Cristobal vs. Gomez*, 50 Phil. 810), or that the defense of prescription cannot be set up in an action to recover property held by a person in trust for the benefit of another (*Sevilla vs. De los Angeles*, 97 Phil. 875), or that property held in trust can be recovered by the beneficiary regardless of the lapse of time (*Marabilles vs. Quito*, 100 Phil. 64; *Bancairen vs. Diones*, 98 Phil. 122, 126; *Juan vs. Zuniga*, 62 O.G. 1351, 4 SCRA 1221; *Jacinto vs. Jacinto*, L-17957, May 31, 1962. See *Tamayo vs. Callejo*, 147 Phil. 31, 37).

"That rule applies squarely to express trusts. The basis of the rule is that the possession of a trustee is not adverse. Not being adverse, he does not acquire by prescription the property held in trust. Thus, section 38 of Act 190 provides that the law of prescription does not apply 'in the case of a continuing and subsisting trust.'

"With respect to constructive trusts, the rule is different. The prescriptibility of an action for reconveyance based on constructive trust is now settled (*Alzona vs. Capunitan*, L-10228, Feb. 28, 1962, 4 SCRA 450; *Gerona vs. De Guzman*, *supra*; *Claridad vs. Henares*, 97 Phil. 973; *Gonzales vs. Jimenez*, L-19073, Jan. 30, 1965, 13 SCRA 80; *Bonaga vs. Soler*, 112 Phil. 651; *J.M. Tuason & Co. vs. Magdangal*, L-15539, January 30, 1962, 4 SCRA 84). Prescription may supervene in an implied trust (*Bueno vs. Reyes*, L-22587, April 28, 1969, 27 SCRA 1179; *Fabian vs. Fabian*, L-20449, Jan. 29, 1968; *Jacinto vs. Jacinto*, L-17957, May 31, 1962, 5 SCRA 371)."

[4] Resolution denying second motion for reconsideration, Annex F, Petition, p. 1-2.

[5] *Bureau of Forestry vs. Muñoz*, 23 SCRA 1183 (1968).

[6] T.s.n., Dec. 4, 1963, p. 120, continuation of transcript quoted by petitioners in their brief at p. 18.

[7] Resolution denying second motion for reconsideration, p. 2.

[8] "SEC. 41. Title to land by prescription. - Ten years actual adverse possession by a 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 what-ever way such occupancy may have commenced or continued shall vest in every actual occupant or pos-sessor 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 claim of title exclusive of any other right and adverse to all other claimants. . ." (Act 190)

[9] Resolution denying second motion for reconsi-deration, see fn. 4.

[10] Court of Appeals' decision of Jan. 22, 1966, page 12.

[11] 21 SCRA 1192, 1198 (1967).

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