

AQUILINO DE LA CERNA AND APOLINARIO DE LA CERNA, PLAINTIFFS-APPELLANTS, VS. LOURDES DE LA CERNA AND MIGUEL DE LA CERNA, DEFENDANTS-APPELLEES.

G.R. No. L-28838. August 31, 1976

Ponente: BARREDO, J.

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BARREDO, J.:

Direct appeal to the Supreme Court from the order, dated July 28, 1967, of the Court of First Instance of Davao in its Civil Case No. 5455 (for partition and reconveyance of property with damages), dismissing the said case after a preliminary hearing on the special and affirmative defense that the action has prescribed set up by therein defendants in their answers.

During the marital life of the spouses Narciso de la Cerna and Eladia Bustamante they acquired a parcel of residential land located at San Roque Street, City of Davao, with an area of 5,006 square meters, and covered by Transfer Certificate of Title No. 2582 issued by the Register of Deeds of Davao. Narciso de la Cerna died on October 20, 1945, and, on August 26, 1946, his surviving wife and their two children named Lourdes de la Cerna and Melecio de la Cerna executed a deed of "Extra-Judicial Partition" (Annex A, pp. 20-21, R.A.) whereby they effected a settlement and adjudication of the hereditary estate of the said deceased unto themselves by electing to be co-owners in undivided shares of the above-mentioned parcel of land, in the proportion of one-half (1/2) of the land to the wife Eladia Bustamante and the remaining one-half (1/2) thereof to the children Lourdes de la Cerna and Melecio de la Cerna. Said deed of extra-judicial partition and settlement was registered in the Office of the Register of Deeds of Davao on September 4, 1946, on the basis of which, new title to the land was issued in their names under Transfer Certificate of Title No. 2583. Then, sometime in 1949, Melecio de la Cerna ceded his share in the land in favor of his sister Lourdes de la Cerna in whose name title to the same property was duly issued under Transfer Certificate of Title No. T-1995.[1]

On February 27, 1967, Aquilino de la Cerna and her brother Apolinario de la Cerna, claiming to be the children (together with another brother, Antonio de la Cerna) of the late Narciso de la Cerna with his alleged first wife, Eulalia Quesada, instituted the action for partition and reconveyance here involved in the Court of First Instance of Davao, against Lourdes de la Cerna. They joined their own brother, Antonio de la Cerna, as defendant, for being an unwilling co-plaintiff.

On June 1, 1967, the two defendants simultaneously filed separate answers, with counterclaims. Both answers also set up the identically worded affirmative defenses, to wit:

"1. That the property in question was the paraphernal property of Eladia Bustamante, it having been acquired by her through purchase from her own and sole capital.

2. That granting, without admitting, that plaintiffs' assertion were true, the period has already elapsed since the cause of action accrued, and thereby rendering the same unenforceable due to prescription;

3. That the complaint states no cause of action." (Pp. 8 & 11, Record on Appeal.)

On July 24, 1967, the case was called for pre-trial. As the parties failed to agree on any point, the lower court set the case for trial on the merits. In the meanwhile, however, defendants filed a memorandum in support of their affirmative defenses, and the trial court, after a preliminary hearing thereon, dismissed the case in its order of July 28, 1967, worded as follows:

"This is an action for partition and reconveyance of property with damages instituted by Aquilino de la Cerna and Apolinario de la Cerna against Lourdes de la Cerna and Miguel de la Cerna.

"This morning, the parties came, informing the Court that they were ready for the preliminary hearing on the affirmative defense that the action has prescribed set up in the answer, which is a ground for a motion to dismiss.

"From September 4, 1946, the date Transfer Certificate of Title No. T-2583 was issued, to February 27, 1967, the date the complaint was filed, is more than 21 years. Since this action prescribed in four (4) years, the affirmative defense set up by the defendants is well taken.

"WHEREFORE, on the ground that the action has prescribed, the above-entitled case is hereby dismissed without pronouncement as to the costs.

"x x x x x x x x"

(Pp. 23-24, Record on Appeal.)

Plaintiffs moved for a reconsideration of this order of dismissal to no avail, hence this direct appeal to the Supreme Court, where they now claim in the sole assignment of error in their brief that "THE COURT A QUO ERRED IN DISMISSING THE PLAINTIFFS' COMPLAINT ON THE GROUND OF PRESCRIPTION WITHOUT TRIAL ON THE MERITS".

There is no dispute that the extra-judicial partition of the property of the deceased, Narciso de la Cerna, was executed by defendant-appellee Lourdes de la Cerna with her mother and her brother on August 26, 1946 and that the instrument of partition was registered in the Office of the Register of Deeds of Davao on September 4, 1946. It is, on the other hand, settled that such registration is deemed to be a constructive notice that said defendant had repudiated the alleged fiduciary or trust relationship between her and plaintiffs-appellants vis-a-vis the property in question and had thereby set up a title thereto adverse to them, as in fact a new title was issued on the strength of the registration of such extra-judicial partition. Such being the case, the contention of appellants that fraud was committed by defendant-appellee Lourdes de la Cerna in the execution of said instrument is of hardly any moment, considering that their subject action for partition and reconveyance of the property was filed only on February 27, 1967, or about twenty and a half (20-1/2) years after such registration and issuance of a new title in the name of defendant-appellee, and has therefore prescribed already. His Honor committed no error in so ruling. It is idle to bother as to whether the action here is one founded exclusively on fraud which prescribes in four (4) years or one based on constructive trust which is barred after ten years, there being no question that the appellees secured their title more than twenty years before the filing of the complaint, and it is from the date of the issuance of such title that the effective assertion of adverse title for purposes of the statute of limitations is counted. (Gerona vs. De Guzman, 11 SCRA 153).

"Inasmuch as petitioners seek to annul the aforementioned deed of 'extra-judicial settlement' upon the ground of fraud in the execution thereof, the action therefor may be filed within four (4) years from the discovery of the fraud (Mauricio vs. Villanueva, L-11072, September 24, 1959). Such discovery is deemed to have taken place, in the case at bar, on June 25, 1948, when said instrument was filed with the Register of Deeds and new certificates of title were issued in the name of respondents exclusively, for the registration of the deed of

extra-judicial settlement constitute constructive notice to the whole world (Diaz vs. Gorricho, L-11229, March 29, 1958; Avecilla vs. Yatco, L-11578, May 14, 1958; J. M. Tuason & Co., Inc. vs. Magdangal, L-15539, January 30, 1962; Lopez vs. Gonzaga, L-18788, January 31, 1964)." (Gerona vs. De Guzman, L-19060, May 29, 1964, 11 SCRA 153, 156-157.)[2]

"On the third point, assuming that there was fraud in the transfer of the properties, the lapse of time since the discovery of the alleged fraud in 1941 has extinguished any right on the part of the petitioners to seek the reconveyance of the properties. x x x

"x x x x x x x x

"The prescriptibility of an action for reconveyance based on implied or constructive trust, is now a settled question in this jurisdiction. It prescribes in ten years. (Boñaga vs. Soler, et al., G. R. No. L-15717, June 30, 1961; J. M. Tuason & Co. vs. Magdangal, G. R. No. L-15539, Jan. 30, 1962, special attention to footnote No. 1). Alzona vs. Capunitan, G. R. No. L-10228, Feb. 28, 1963; Bueno vs. Reyes, L-22587, April 28, 1969, 27 SCRA 1179." (Escay, et al. vs. Court of Appeals, et al., L-37504, 61 SCRA 369, 387-388.)[3]

WHEREFORE , the appealed judgment should be affirmed as it is hereby affirmed, with costs against appellants.

Fernando, Acting C.J., (Chairman), Antonio, and Concepcion, Jr., JJ., concur.

Aquino, J., concurs. This case is governed by the law of prescription in force prior to the Civil Code, as provided in art. 1116 thereof.

[1] Their mother and co-heir, Eladia Bustamante, appears to have died too, that is why the title was issued solely in the name of Lourdes de la Cerna.

[2] See: Gonzales vs. Jimenez, L-19073, Jan. 30, 1965, 13 SCRA 80; Buencamino vs. Matias, L-19397, April 30, 1966, 16 SCRA 849; Joaquin vs. Cujuangco, L-18060, July 25, 1967, 20 SCRA 769; Cuaycong, et al. vs. Cuaycong, et al., L-21616, Dec. 11, 1967, 21 SCRA 1192; Fabian, et al. vs. Fabian, et al., L-20449, Jan. 29, 1968, 22 SCRA 231.

[3] See, also, Annotation: Trust and Trust Relations, 61 SCRA 309-324, Sec. 19 on pp. 322-323.

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