

TEODORA AMAR, FOR HERSELF AND AS ADMINISTRATRIX OF THE ESTATE OF THE LATE JUAN OCASO, PLAINTIFF AND APPELLANT, VS. JESUS ODIAMAN, DEFENDANT AND APPELLEE.

G.R. No. L-15179. September 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

This is an action filed by plaintiff-appellant on November 24, 1958 in the Court of First Instance of Capiz to recover a piece of land situated in barrio Majanlud, Sapián, Capiz, alleged to have been seized in April, 1948 by defendant-appellee Jesus Odiaman and others, by means of deceit, fraud and strategem and under false pretenses, and damages in the sum of P190.00 yearly, as products of the land since 1948, plus P800.00 for attorney's fees and other incidental expenses.

Upon motion of the defendant to dismiss the complaint on the ground that plaintiff's cause of action is already barred by the statute of limitations, for the reason that the complaint was filed after the expiration of 10 years from the date the cause of action accrued in April, 1948, the court dismissed said complaint in an order of this tenor:

"From the context of the complaint, it is clear that the cause of action herein accrued in April, 1948. The 10-year period from the date of accrual, therefore, expired after April, 1958. There is no allegation in the complaint tending to show that the running; of said 10-year period has been interrupted. The within cause, having accrued before the new Civil Code took effect, the question whether the said cause has prescribed or not should be answered from the old Code of Civil Procedure, Act No. 190, which provides that 'actions to enforce written contracts or to recover real property prescribe after ten years' (Osorio vs. Tan Jongko, et al., 98 Phil., 55, 51 Off. Gaz., 6221).

"Therefore, this case is hereby dismissed without special pronouncement as to costs.

"So ordered."

After a motion for reconsideration was denied, plaintiff filed an amended complaint alleging the same facts as those alleged in the original complaint, but adding the following allegations:

"3. That on September 8, 1948, plaintiff filed against the defendant Jesus Odiaman and others, a case of Forcible Entry in the Justice of the Peace Court of Sapián, Capiz, in which the defendants appealed to this Court and was registered as Civil Case No. V-484 of the Court of First Instance of Capiz. That said case was dismissed on July 17, 1951, upon plaintiff's own motion. That on May 29, 1952, the herein plaintiff filed a case registered as No. V-755 of the Court of First Instance of Capiz, against the defendant Jesus Odiaman, Florencio Obo, and Generoso Obo for ownership and for damages over the same parcel of land, but the complaint was dismissed on September 13, 1957, without prejudice of refiling the same. This case is a refiling of that dismissed case No. V-755 and the complaint is a reproduction of the same."

The court, treating said motion to amend the complaint as a second motion for reconsideration, denied the same

on January 13, 1959, in an order which, in part, reads:

"Plaintiff now offers to amend her complaint by including therein allegations to the effect that on September 18, 1948, she filed with the JP court of Sapián, Capiz, a forcible entry and detainer case, which she won in said JP court but which was dismissed on appeal by the CFI of Capiz on July 17, 1951 upon plaintiff's own motion; rrr.d that on May 29, 1952 said plaintiff filed another case with the CFI of Capiz involving the same cause and the same parties, but said case was likewise dismissed on September 13, 1957, albeit without prejudice.

"Plaintiff now argues that the filing of said cases constitute' judicial demands which interrupted the running of the extinctive prescription period.

"It is evident that the period of prescription started to run when the law applicable to the question was Act No. 190 which, in sections 40 and 43, provide that actions to enforce written contracts or to recover real property prescribe after ten years, and that the running of said period is not interrupted either by extra-judicial demand (*Osorio vs. Tan Jongko, et al.*, 98 Phil., 55; 51 Off. Gaz.. 6221) or by the presentation of judicial action (*Peralta vs. Alipio*, 97 Phil., 719).

"In view of the foregoing, plaintiff's motion of December 29. 1958, which is treated as second motion for reconsideration, is hereby denied, and the order of this Court dismissing the within complaint stands.

"So ordered."

Hence, this appeal.

Plaintiff-appellant, in assailing the lower court's action in dismissing her complaint, argues that the filing of the two cases involving the same property (one for ejectment, Civil Case No. R-7 of the Justice of the Peace Court of Sapián, dismissed while on appeal, upon her motion on July 17, 1951; and another for recovery, Civil Case No. V-755, which was also dismissed, without prejudice, on September 13, 1957) interrupted the running of the prescriptive period of her cause of action. In support of her contention, she cites Articles 1943, 1945 and 1946 of the old Civil Code. But these refer to interruption of possession in relation to acquisitive prescription. The dismissal of the action here is because of the extinctive prescription of action, and the pertinent article, if at all, is Article 1973 of the old Civil Code. However, this article has been repealed by Section 50 of Act 190 as held by this Court in *Pelaez vs. Abreu* (26 Phil., 415). The cases cited by appellant (*re Estate of Mijares*, 13 Phil., 63, and *Lichauco vs. Soriano*. 35 Phil., 203) are inapplicable because in both cases, the causes of action arose in 1889 and 1890, respectively, long before the enactment of Act 190, effective October 1, 1901.

It is disputed that herein plaintiff's cause of action accrued in April, 1948, when defendant and 3 others unlawfully deprived her of the possession of the property in question.

Article 1116 of the new Civil Code, provides:

"ART. 1116. Prescription already running before the effectivity of this Code shall be governed by laws previously in force; but if since the time this Code took effect the entire period herein required for prescription should elapse the present Code shall be applicable, even though by the former laws a longer period might be required." (*Italics supplied.*)

Since the prescriptive period in the case before us had already run (in April, 1948) prior to the effectivity of the new Civil Code (on August 30, 1950), and as the prescriptive period provided in the new Civil Code has not yet elapsed since its effectivity, then Art. No. 190,[1] the law in force in 1948, is the one applicable to the present case. Section 40 of said Act, states:

"SEC. 40. Period of Prescription as to Real Estate.—An action for recovery of title to, or possession of, real property, or an interest therein, can only be brought within ten years after the cause of such action accrues."

(Italics supplied.)

Interpreting this provision, we held in the case of *Peralta et al. vs. Alipio* (97 Phil., 719), that "the statute of limitations contained in the old Code of Civil Procedure (Act No. 190) contains no specific or express provision on the suspension or interruption of the running period of prescription by the institution of an action." Earlier, in two other cases, those of *Oriental Commercial Co., Inc. vs. Jureidini, Inc., et al.* (71 Phil., 25) and *Conspecto vs. Fruto* (31 Phil., 144), this Court declared that the filing of an action within the prescription period, if the plaintiff desists in its prosecution or is dismissed, does not suspend the running of the statute of limitations and takes no time out of the period of prescription under Act 190. The parties are left in exactly the same position as though no action had been commenced at all.[2]

In the light of the foregoing, we hold that the filing of the aforementioned Civil Case No. V-484 in the Court of First Instance of Capiz in 1948, which was dismissed upon plaintiff's motion in 1951, and of Civil Case No. V-775 in the same court in 1952, which was dismissed without prejudice in 1957, did not interrupt the running of the 10-year prescriptive period provided in the aforesaid Section 40 of Act No. 190 for the bringing of the present action. As already stated, herein plaintiff's cause of action accrued in April, 1948. The present action was instituted only in November, 1958, or 7 months after the period for bringing the same had elapsed. It is undoubtedly, barred by the Statute of Limitations. The lower court, therefore, correctly dismissed it.

Wherefore, the order appealed from is hereby affirmed, with costs against the plaintiff-appellant. So ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

[1] Code of Civil Procedure.

[2] See also *Santos vs. Vera*, 69 Phil., 412.

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