

**ZOILA DUMANON, SEVERINA DUMANON, PEDRO REBOYON,
VICTORIANA MONTILLA, REFARADO FURIA, ROSARIO DE LAWAN,
FELICIDAD DE DULAYBA AND OLYMPIO DULAYBA,
PLAINTIFFS-APPELLANTS, VS. BUTUA...**

G.R. No. L-27675. December 15, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Appeal from the order dated September 10, 1966 (pp. 60--63, Record on Appeal, p. 10, Rollo) of the Court of First Instance of Agusan dismissing Civil Case No. 1029 of said court on a motion to dismiss filed by defendants Carlos Curilan and Rufina Naranjo (pp. 39-45, Record on Appeal, p. 10, Rollo).

The motion to dismiss alleged the following grounds:

- "1. THAT THE CAUSE OF ACTION IS BARRED BY STATUTE OF LIMITATIONS (Rule 16, Sec. 1, Par. (f) of the Rules of Court);
- "2. THAT THE COMPLAINT STATES NO CAUSE OF ACTION (par. (g));
- "3. THAT THE SUIT IS BETWEEN MEMBERS OF THE SAME FAMILY AND NO EARNEST EFFORTS TOWARDS A COMPROMISE HAVE BEEN MADE (par. (j))." (p. 40, Record on Appeal).

In its order granting the motion to dismiss, the court held that the action was barred by laches and the statute of limitation. A motion for reconsideration was filed of the dismissal order (pp. 74-75, Record on Appeal, p. 10, Rollo), but the same was denied, (p. 76, Record on Appeal, Id.). Plaintiffs then interposed the present appeal.

The records disclose that on January 26, 1965 plaintiffs (now herein appellants) filed a complaint which was amended, after a motion for a bill of particulars had been granted (pp. 24-35, Rollo), with prayer as follows:

"WHEREFORE, it is most respectfully prayed that judgment issue in favor of plaintiffs, as follows:

- "1. That upon filing of this case, let an order immediately issue directing (if still required) the appointment of defendant Felisa Azote Vda. de Dumanon as guardian ad litem for minors, namely: Racquel, Rosario and Ernesto Dumanon for the purpose of this case;
- "2. That plaintiffs aforesaid be declared absolute owners of the property in question ordering Carlos Curilan and Rufina Naranjo to vacate the premises and turning over the possession thereof to plaintiffs hereof and that said defendants be ordered to reconvey the property in question to plaintiffs hereof except the assisting husbands (Pedro Reboyon, Refarado Furia and Olympio Dulayba);
- "3. That TCT No. RT 82 and RT 479 in the names of Fermin Dumanon and Carlos Curilan and Rufina Naranjo, respectively, be cancelled and declared null and void and without force and effect;
- "4. That the deed of donation mentioned in paragraph 4 of the complaint and all the other documents which

may be found in this case be likewise declared void and inexistent;

"5. That the mortgage by defendants Carlos Curilan and his wife Rufina Naranjo be declared also as null and void and with-out force and effect;

"6. That the illegal annotation entered on TCT RO 82 in 1951 re the void donation be likewise declared null and void and that the defendant Register of Deeds be directed to issue to plaintiffs hereof their new Transfer Certificate of Title;

"7. That defendants except the Butuan City Rural Bank and Register of Deeds be ordered to pay jointly and severally to the plaintiffs hereof, the following, as follows: P2,000 for the value of the house destroyed by defendants Carlos Curilan and Rufina Naranjo; P700 a month from January, 1958 and up to the date this case is finally terminated; P2,000 for attorney's fees and expenses of litigation up to the present stage of the proceedings and that all said fees and expenses that may be incurred later be determined and fixed by this court or by the appellate court concerned in case of appeal; and for moral and exemplary damages that the plaintiffs suffered in the amount that this court or the appellate court concerned may fix in the final judgment of this case at the court's discretion."

The issue raised in this appeal of whether the order granting the motion to dismiss is proper, valid or legal requires an examination of the allegations of the complaints, because, for the purpose of the motion to dismiss they are deemed hypothetically admitted (*Lim, et al. vs. De los Santos*, G. R. No. L-18137, August 31, 1963, 8 SCRA 798). Only facts alleged in the complaint should be considered, specially when the ground alleged is prescription (*Cordova vs. Cordova*, G. R. No. L-9936, January 14, 1958; *Convets, Inc. vs. Nat. Dev. Co., et al.*, G. R. No. L-10232, February 28, 1958).

It is alleged in the first amended complaint (paragraph 4) that a deed of donation of the land in question was executed by Rufo and Paula Dumanon dated January 3, 1933, but claimed to be void because same was fraudulently executed, the supposed donors being illiterate, unable to read and write, and could not have signed the document, as they appear to have done so, and that they could not have parted with the land donated since they (donors) claimed the same as their own in the Cadastral proceedings and obtained OCT No. RO-23(1242) in their name in equal shares, free from any encumbrance, not even the supposed donation. This deed of donation is sought to be declared void and inexistent by the plaintiffs-appellants.

With respect to the above cause of action as ground for the annulment of the donation, the order dismissing the complaint is perfectly valid and legal. On the face of the complaint, it is manifest that the deed of donation, having been executed in 1933, the action to annul the deed on the ground of fraud, as is the essence of the cause alleged for its nullity, is already barred by prescription, as well as by laches, when the complaint was filed on January 26, 1965, after the lapse of 32 years.

It has been held that an action to annul an extrajudicial settlement upon the ground of fraud should be filed within four (4) years from the discovery of the fraud (*Gerona vs. de Guzman*, L-19060, May 29, 1964, 11 SCRA 153). An action to annul a contract of sale for lack of consideration also prescribes in 10 years (*Cunanan vs. De Antepasado*, L-16169, August 31, 1962, 5 SCRA 1028). From the allegation of the complaint, it can be deduced with certitude that appellants had discovered the fraud, at the latest, when the deed of donation was registered, because registration is notice to the whole world of such fact. Appellants, in effect, had by the allegations of the complaint admitted knowledge of the fraud in the execution of the deed of donation upon knowing that there exists such a deed, for their allegation is that the supposed donors could not have parted with the land, knowing them to be illiterate, unable to read and write, and, therefore, could not have signed the document as they appear to have done, and they had in fact claimed the land in the cadastral proceedings where they obtained a certificate of title in their name. The deed of donation is like either the deed of extra-judicial settlement or the deed of sale,

which are the documents involved in the aforecited cases, as a mode of transferring title to another. Hence, either on the ground of fraud or for lack of consideration (even donation is deemed to have also cause or consideration), the annulment of the donation as is sought in the present action is barred by prescription, on the authority of the aforecited cases - within 4 years from the discovery of the fraud, if such is alleged, 10 years, if no fraud is alleged.

Appellants, however, contend that the real and principal action in their complaint is the annulment of the registration of the deed of donation on November 21, 1951, which led to the cancellation of OCT No. RO-23 (1242) in the name of the donors, Rufo and Paula Dumanon, and the issuance of TCT No. 82 in the name of Fermin Dumanon, the donee in the aforementioned donation. It is alleged in the complaint (par. 5) that the registration was in bad faith and unauthorized, the defendants who caused the registration of the deed of donation being fully aware that the land lawfully belonged to plaintiffs-appellants and to Rufo Dumanon.

From the allegations of the complaint, it would appear that the registration of the deed of donation sought to be annulled as expressly prayed for in the complaint took place on November 16, 1951. At the time, one of the donors, Rufo Dumanon, was still alive, as could clearly be implied from the allegation of the complaint (paragraph 7). Again, on the basis of the allegation of the complaint itself on this particular matter, prescription lies to bar the action for the annulment of the registration of the document, exactly 14 years having elapsed from the time of said registration on November 16, 1951 to the filing of this action on January 26, 1965.

Even admitting as true the allegation that the registration of the deed of donation was in bad faith and unauthorized, at action to annul it on the ground of fraud should have to be filed within 4 years, from discovery of the fraud (*Rone, et al. vs. Claro, et al.*, G. R. No. L-4472, May 8, 1952; *Gerona vs. de Guzman*, *supra*, *Mapalo vs. Mapalo*, 17 SCRA 114). The fraud is deemed discovered at the latest, from the date of the registration of the deed of donation, because the registration is notice to the whole world that the deed of donation had been so registered (Section 51, Act 496).

Another theory deducible from the allegation of the complaint is that the allegedly unlawful registration of the deed of donation created an implied trust in favor of the plaintiffs-appellants as the real owners of the land. The defendants in whose name the land was registered became, by the principle of implied trust, the trustees with the plaintiffs-appellants as cestui que trust. Even so, prescription will lie to bar the present action to enforce the trust, for as held by prevailing jurisprudence, such action, held to be imprescriptible by earlier decisions, prescribes in 10 years, or even in only 4 years, if fraud had been committed, as when there is a breach of the fiduciary relation (*Miguel vs. Court of Appeals*, L-20271, October 30, 1969, 29 SCRA 760). While the rule of imprescriptibility of action to recover property held in trust may possibly apply to resulting trust as long as the trustee has not repudiated the trust (*Ramos vs. Ramos*, 61 SCRA 284), the allegation of the complaint itself shows on its face what may be considered an unequivocal act of repudiation. It is the act of registration by which the registrants obtained title in their names there-after claiming the property as their own to the exclusion of all others, with a right to dispose of the property as they did dispose of it when the defendants Feliza Azote Vda. de Dumanon, widow of Fermin Dumanon who became the registered owner of the land when the deed of donation was registered, with TCT No. 80, and their children sold the property to their co-defendants, spouses Carlos Curilan and Rufina Naranjo, appellees herein, who obtained TCT No. 479 in their name, thereby serving notice to appellants of the transaction, who accordingly could not claim ignorance of the sale of the property to said appellees, Carlos Curilan and Rufina Naranjo. Even assuming that a trust resulted by the registration of appellees of their deed of sale, action for the annulment of the sale has also prescribed because the complaint itself (paragraph 6) alleged fraudulent conspiracy in the sale between the heirs of Fermin Dumanon and appellees spouses, in which case the prescriptive period is four years from the discovery of the fraud, which should be when the sale was registered in the Registry of Deeds in 1957.

It is evident, from what has been said, that plaintiffs-appellants' action is barred by the lapse of ten years from the time their cause of action accrued (*Dira vs. Tañega*, L-23232, June 17, 1970, 33 SCRA 479) whether appellants' action is one to annul the deed of donation, or one to annul the registration thereof, with a view to asking for the reconveyance of the property to them, as is the ultimate relief prayed for (*Reyes vs. Apostol*, L-25375, October 30, 1970, 35 SCRA 524).

With respect to appellees, Carlos Curilan and Rufina Naranjo, who filed the motion to dismiss in question, pre-scription was properly pleaded as ground for their motion, because if the action has prescribed as against their vendors, logically it has prescribed also as against them, as the vendees of the land.

Appellants also contend that the ground invoked by appellees in their motion to dismiss and sustained by the lower court, was already available with the original complaint, even before it was amended, as a result of the granting of the motion for a bill of particulars which defendants filed; hence, in not filing the motion to dismiss seasonably the same should be denied, or that the ground therefor should not be sustained for not having been raised within the time to file the answer.

The time to file a motion to dismiss is co-terminous with the period to answer. This is as expressly provided by the Rules of Court, Section 1, Rule 16 (*J.M. Tuason vs. Rafor*, L-15537, June 30, 1962, 5 SCRA 478). Hence, as long as the time to file the answer has not lapsed, a motion to dismiss may be filed within such time, instead of an answer. It must be borne in mind that in the present case, defendants below filed a motion for a bill of particulars. The running of the period to answer was thereby suspended. It is resumed upon the amended complaint being filed in compliance with the court's order granting the motion for a bill of particulars. As the time to answer the amended complaint has not yet lapsed, the filing of a motion to dismiss the said complaint is equally still within the reglementary period. There is, therefore, no occasion to speak of the ground invoked for the motion to dismiss as already barred for failure to invoke it, since it was being invoked in the first and only motion to dismiss filed with demonstrated timeliness.

WHEREFORE, the errors assigned against the order appealed from having been found to be unfounded, the order appealed from should be as it is hereby affirmed. Costs against appellant.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, and Escolin, JJ., concur.

Aquino, J., concurring opinion.

Abad Santos, J., in the result.

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CONCURRING OPINION

AQUINO, J.:

I concur because it may be deduced from the allegations of the complaint that the 1933 donation was consummated. There was tradition by the fact that the spouses, who purchased the land from the donee's heirs, are

in possession of the land. The decision would have been clearer if the amended complaint and not merely the prayer thereof had been reproduced in the decision. Why the alleged donor, Rufo Dumamon, who was still alive in 1951 when the deed of donation, which was branded as inexistent, was registered, did not bring any action to declare the deed void, is a circumstance that weakens the petitioners' cause of action.

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