

PAULINA, ESTRELLA, PACIFICO AND PEDRO, ALL SURNAMED T. TORRES, PLAINTIFFS-APPELLANTS, VS. MANUEL TERENCIO AND ROSARIO T. TERENCIO, AND MANSUETO, DOMIMADOR, TRINIDAD, BENJAMIN, A...

G.R. No. L-7549. May 31, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Estrella, Pacifico and Pedro, all surnamed Torres, and Paulina Torres, widow of Pedro Torres, brought this action before the Court of First Instance of Capiz against spouses Manuel Terencio and Rosario Torres, and Mansueto, Dominador, Trinidad, Benjamin, and Ambrosio, all surnamed Torres, for the partition of thirty-eight (38) parcels of land, situated in the municipality of Makato, province of Capiz, which are alleged to be owned pro indiviso as co-heirs by plaintiffs and defendants.

Plaintiffs claim that said parcels of land were formerly owned by the late Ambrosio Torres having acquired them during his first marriage; that Estrella, Pacifico, and Pedro, all surnamed Torres, are the legitimate children of the late Pedro Torres, who was a legitimate son of Ambrosio Torres; with his first wife Fernanda Castillo, also deceased, and Paulina is the widow of the late Pedro Torres; while Rosario, Mansueto, Dominador, Trinidad, Benjamin and Ambrosio are also the legitimate children of Ambrosio Torres with his second wife; that defendants had possessed and enjoyed the products of the lands in question for twenty-four years, having received out of said products a total of P133,200, thus depriving the plaintiffs of the possession and usufruct which correspond to them of said properties; that plaintiffs are entitled to one-half of said properties as well as of the products thereof and with regard to the other half they are likewise entitled to one-seventh of their value which amounts to P76,114; that plaintiffs had demanded from the defendants several times the partition of said properties but they refused time and again wherefore they filed the present action; and that in view of such refusal, plaintiffs suffered moral damages in the amount of P50,000.

Defendants filed a motion to dismiss on the following grounds: (1) that the right of action of the plaintiffs had already prescribed for the reason that the properties in question had already been divided among the heirs of the late Ambrosio Torres more than thirty-three years ago with the conformity of the late father of the plaintiffs; (2) that the complaint does not state facts sufficient to constitute a cause of action; and (3) that plaintiffs Paulina T. Torres and Estrella T. Tonel have no legal capacity to sue because the first is not assisted by her husband and the second does not appear to have any interest in the subject matter of the case. To this motion to dismiss defendants have attached a copy of the order of the court issued on August 8, 1938 in Civil Case No. 3561 to bolster up their claim that the action of the plaintiffs had already prescribed (Exhibit I).

Plaintiffs filed a written opposition to defendants' motion to dismiss. They contend that their right of action has not yet prescribed since its purpose is to ask for partition of the properties among their co-heirs and it is a wellsettled rule that the right to bring an action for partition never prescribed, while the complaint admits that

defendants had been in possession of the lands for twenty-four years, that possession cannot give rise to acquisitive prescription because it is not adverse and had been merely upon tolerance of the plaintiffs. As to the alleged lack of capacity of Estrella T. Tonel plaintiffs contend that the action concerns her paraphernal property and hence the assistance of her husband is not necessary. And with regard to the alleged lack of interest of Paulina T. Torres, she is joining the action as widow of the late Pedro Torres because of her usufructory interest in the properties in question.

The issues posed by the parties in their respective pleadings having been submitted to the court for resolution, the latter issued on September 12, 1951 and order upholding the motion to quash on the sole ground that the action of the plaintiffs had already prescribed. The court expressed the view that while an action for partition among co-heirs never prescribes, nevertheless, the action of the plaintiffs should be considered as one for recovery of title it appearing from the order of the court dated August 8, 1938 rendered in Civil Case No. 3561 that the properties had already been partitioned and distributed among the heirs of Ambrosio Torres more than 33 years ago which is tantamount to a repudiation of any right the plaintiffs may claim over said properties, and having filed the present action for partition more than 10 years after the issuance of said order it is evident that the action of the plaintiffs had already prescribed. It is from this order that plaintiffs have appealed, and the case is before Us certified by the Court of Appeals on the ground that the appeal involves purely questions of law.

It should be recalled that defendants filed a motion to dismiss on the ground that the cause of action has already prescribed, that the complaint does not state facts sufficient to constitute a cause of action, and that two of the plaintiffs have no capacity to sue, and the court, overruling the opposition, upheld said motion upon the theory that the action of the plaintiffs is one of recovery of title and had already prescribed because it was filed more than 10 years after defendants had acquired an adverse title over the properties in question. Is this view justified in the light of the averments made in the pleadings of both parties?

The procedure to be followed when a motion to dismiss is filed is that prescribed in Rule 123, Section 100 (Moran, Comments on the Rules of Court, Vol. I, 1952 ed., p. 186). "This section provides that "When a motion is based on facts not appearing on record the court may hear the matter on affidavits or depositions presented by the respective parties but the court may direct that the matter be heard wholly or partly on oral testimony or depositions." And in connection with the hearing of a motion to dismiss, this Court held that the parties may be allowed to present evidence if they so desire and the evidence should be taken down, except when the motion is based on the ground that the complaint does not state a cause of action [Asejo v. Leonoso, 44 O. G., (No. 10) p. 38077]. In the instant case, the parties did not present any evidence but relied merely on the averments made in the motion to dismiss and on the written opposition interposed thereto. It was only the defendants who attached to their motion to dismiss a copy of the order of the court rendered on August 8, 1938 in Civil Case No. 3561 to support their contention that the properties had already been distributed among the heirs more than 33 years ago and that said order constitutes now *res adjudicata*. What do these pleadings show? Does said order really make a finding that said properties had already been distributed among the heirs 33 years ago as claimed by the defendants? If it does then there is justification in the claim that said order has the effect of a *res adjudicata* and that the action of the plaintiffs should be considered not one of partition, but one recovery of title. Otherwise, the action can still prosper upon the theory that an action for partition among co-heirs does not prescribe.

To arrive at a correct solution of this incident, a little digression is necessary on the facts leading to the issuance of the order adverted to. That order was issued in the course of a petition for letters of administration filed by Paulina Torres, widow of Pedro Torres, in connection with the settlement of the estate of the late Ambrosio Torres. That petition was opposed by the widow of the deceased, one Filomenn Briones, and his children Rosario, Mansueto, Dominador, Trinidad, Benjamin and Ambrosio, who appear to be the some defendants herein, on the ground,

among other things, that the properties of the deceased had already been divided and distributed among his heirs who since then had been in possession, peacefully, continuously, publicly and adversely, of the properties that had been adjudicated to them for a period of more than 20 years, for which reason there no longer exist any property that may be the subject of judicial administration, and that said partition has been made with the conformity of Pedro Torres, predecessor-in-interest of the plaintiffs herein. And because of the issue thus raised which assails the right of petitioner to institute an action for the settlement of the estate, the parties agreed, before proceeding to present their evidence, to ask the court for a ruling on the question whether, under the circumstances, the petition should be granted or not in the light of the allegations in their pleadings. And acting on this agreement, the court issued an order denying the petition and making, among others, the following comment:

"Ambas partes, antes de la practica de pruebas, convinieron en someter la cuestion previa de si procede o no la solicitud de intestado en este expediente con vista de sus respectivos escritos.

"Concurren en el presente caso las siguientes circunstancias; Ambrosio Torres fallecio desde hace mas de 14 anos hasta ahora. No hay alegacion de que dejo deudas pero si la hay de que antes de su muerte, habia distribuido y repartido todos sus bienes entre sus hijos, con la cual distribucion se ha conformado su hijo Pedro Torres, finado marido de la promovente, y en virtud de la cual los hijos de dicho Ambrosio han poseido por mas de 20 anos hasta ahora los bienes heredados del finado Ambrosio. Los hijos de Pedro Torres estan actualmente proveidos de tutor.

"Por tales circunstancias y de conformidad con la doctrina sentada en el asunto de Fule contra Fule, 46 Jur. Fil., 334 y Abintestato de Jorge Asis (supra), el juzgado es de opinion de que no procede la presente solicitud de carta de administracion. Seria injusto poner en manos de un administrador los bienes que los herederos han estado poseyendo por mas de 10 anos a titulo de herencia. No hay razon para gravar tales bienes con el costo y gastos de un administrador. De todos modos no hay obstaculo para que los alegados derechos de los hijos de la promovente y los de ella misma se hagan valer en una accion de particion, ya que aquellos estan proveidos de un representante legal, que es su tutor." (Underlining supplied)

It thus appears from the foregoing comment that the purpose of the ruling was merely to determine whether, in view of the opposition of the other heirs of the deceased, the petition for the settlement of his estate and for the appointment of a judicial administrator was legally tenable, and the court made the ruling merely on the basis of the allegations made in the pleadings. The agreement was not to consider said allegations as facts but merely to make use of them as basis for the ruling of the court and the conclusions it has reached were made in view only of said allegations. In fact, when the parties agreed to submit that prejudicial question for a ruling they did so with the understanding that the parties would later present their evidence, if necessary, in support of their allegations. If such was the understanding it is now unfair to assume that the plaintiffs had agreed as a question of fact in said Civil Case No. 3561 that the properties of the late Ambrosio Torres had already been distributed among his heirs and that therefore they are now barred from asking the partition of the same properties. That order was merely based on a mere assumption of facts and as such cannot be considered as basis for the application of the doctrine of res adjudicata against the plaintiffs.

It is true that in paragraph 4 of the complaint there appears a statement to the effect that the defendants had possessed the properties and had enjoyed the products thereof for a period of 24 years thus depriving the plaintiffs of their possession and enjoyment for the same period, but such statement cannot be interpreted as an admission by the plaintiffs of an adverse possession in favor of the defendants because, as plaintiffs properly contend, there is nothing in that statement to show that the defendants had possessed the properties peacefully, openly, continuously and adversely as to give them title by acquisitive prescription. As a matter of fact, according to the plaintiffs, their possession was merely by tolerance and not adverse, as contended by the defendants.

It not appearing clearly in the pleadings that there has been a partition of the properties among the heirs, or that

the same had been acquired by the defendants by acquisitive prescription, there is no rational basis for concluding that the action of the plaintiffs had really prescribed it appearing clearly in the complaint that such action is for partition and not for recovery of title. In such a case, the ruling that an action for partition never prescribes still holds good. The most that can be said, considering the allegations in the pleadings, is that the grounds alleged in the motion to dismiss do not appear to be indubitable and the court should have deferred its determination until after the evidence has been presented as required by the rules (section 3, Rule 8). This is necessary to do justice to the plaintiffs who, as close relatives of the defendants, are just as much entitled to share in the properties of their common ancestor Ambrosio Torres. This is a matter that should be threshed out by the evidence, and, to this end, equity demands that plaintiffs be given a chance to prove their case.

Wherefore, the order appealed from is hereby set aside and the case shall be remanded to the lower court in order that it may be given due course in accordance with the rules, with costs against the appellees.

Pablo, Bengzon, Montemayor, Reyes, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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