

**ROSARIO PEREZ, FRANCISCA, JOSE, ROSA, TRINIDAD,
ENCARNACION, LEONCIA, JUAN, TOMAS, ANASTACIO, MOISES AND
MANUEL ALL SURNAMED ARCILLAS, PLAINTIFFS-APPELLANTS, VS.
PILAR ONG CHUA,...**

G.R. No. L-36850. September 23, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Appeal from the decision of the Court of First Instance of Zamboanga, dismissing the appellants' complaint for reconveyance on grounds of prescription and laches.

This appeal was originally brought to the Court of Appeals, but was certified to this Court because only questions of law are raised therein.

The following facts are not disputed:

On April 13, 1928, Francisco Arcillas and his wife Rosario Perez executed a deed of mortgage in favor of Nanon L. Worcester over twenty-three (23) parcels of land located in Zamboanga City, registered in the names of the spouses Arcillas, to secure their loan of US \$13,500.00. Under the contract, the loan was payable in installments to the creditor-mortgagee for a period of five years, "the first installment thereof to be paid on or before three (3) months after the date of this instrument and the remaining installments in regular quarterly intervals thereafter." [1]

For violation of the aforesated stipulation, an action for foreclosure of mortgage was instituted sometime in 1930 by Mrs. Worcester against the spouses Arcillas in the Court of First Instance of Zamboanga. During the pendency of the action, or on May 4, 1930, Francisco Arcillas died. He was survived by the plaintiffs herein, namely: his widow Rosario Perez, and their children Francisca, Jose, Rosa, Trinidad, Encarnacion, Leoncia, Juan, Tomas, Anastacio, Moises and Manuel, all surnamed Arcillas.

As no notice of death of defendant Francisco Arcillas was filed with the court, the trial judge proceeded with the case without substitution of the deceased by his legal representative or heirs. On August 23, 1930, a judgment was rendered in favor of the mortgagee. A writ of execution was thereafter issued, and in the ensuing auction sale conducted on September 19, 1930, the properties encumbered were sold to Mrs. Worcester as highest bidder. On October 6, 1930, the court issued the corresponding order of confirmation of sale; and upon registration of the sheriff's certificate of sale and the order of confirmation on November 24, 1930, the certificates of title of the spouses Arcillas were cancelled and, in lieu thereof, transfer certificates of title were issued in the name of Mrs. Worcester.

Two days later, Mrs. Worcester sold the said lands to Enrique Ong Chua, who obtained new certificates of title in his name, and possessed the said properties as owner. Upon Enrique's demise, the lands in question passed to his heirs: Pilar, Rufina, Justino, Alfonso, Benita, Rosa, Asuncion, Francisco and Teresita, all surnamed Ong Chua,

who have been in continuous, open and adverse possession of these lands up to the present time.

Thirty-eight years thereafter, or on October 14, 1968, Rosario Perez and her children filed the instant action in the Court of First Instance of Zamboanga against the Ong Chuas for annulment of their certificates of title and for reconveyance, and accounting of the fruits of, the twenty-three parcels of land in question. The complaint mainly alleged -

"That the Honorable Judge at the time, Nanon L. Worcester and Enrique Ong Chua, predecessor-in-interest of the herein defendants, by conspiring together and mutually helping one another, were guilty of fraud and/or committed mistake in transferring and acquiring these properties, to the damage and prejudice of the herein plaintiffs, thereby creating an implied trust for the benefit of the latter." [2]

As heretofore stated, the court a quo, sustaining the appellees' defenses of prescription and laches, ultimately dismissed the complaint.

We find no error committed by the trial court in dismissing the complaint. The appellants' cause of action to cancel the certificates of title in question accrued from 1930, the year of the recording of the sheriff's deed and the issuance of the certificates of title. Thirty-eight years had thus elapsed before appellants instituted the present action on October 14, 1968. The continuous and public assertion of title by the appellees and their predecessor-in-interest during this period of time was more than sufficient to extinguish the appellants' action. The period of extinctive prescription under Chapter III of the Code of Civil Procedure, the law in force at the time, was only ten years.

Appellants contend, however, that the judgment rendered by the court in the foreclosure proceedings in 1930 was erroneous because no proper substitution was made of Francisco Arcillas, one of the defendants who died during the pendency of the action; and since the certificates of title obtained by Mrs. Worcester under said erroneous judgment were subject to an implied trust, which is continuing and subsisting, the appellants' action for reconveyance cannot prescribe because prescription does not run against their predecessor's title registered under Act 496.

Appellants' thesis overlooks the settled doctrine in this jurisdiction that an action to enforce an implied trust may be barred not only by prescription for 10 years [3] but also by laches. [4] Implied trusts and express trusts are distinguishable. An express trust, which is created by the intention of the parties, disables the trustee from acquiring for his own benefit a property committed to his custody or management - at least while he does not openly repudiate the trust and makes such repudiation known to the beneficiary. Upon the other hand, in a constructive trust, which is exclusively created by law, laches constitutes the bar to an action to enforce the trust, and repudiation is not required, unless there is concealment of the facts giving rise to the trust. [5] Thus, in *Mejia de Lucas vs. Gampona* [6] this Court held that while a person may not acquire title to a registered property through continuing adverse possession in derogation of the title of the original registered owner, nevertheless, such owner or his heirs, by their inaction and neglect over a long period of time, may lose the right to recover the possession of the property and the title thereto from the defendants.

In *Go Chi Gun, et al. vs. Co Cho, et al.* [7], this Court spelled out the four elements of the equitable defense of laches, to wit: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendants' conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.

In the case at bar, these four elements are present. As pointed out, Mrs. Worcester, after having acquired the property at public auction and having obtained the certificates of title in her name, sold on November 26, 1930 the properties in question to Enrique Ong Chua, the appellees' predecessors-in-interest. Appellants allowed almost four decades to lapse before taking any remedial action. Because of their passivity and inaction during this entire period, appellees were made to feel secure in their belief that their late father had rightly acquired the lands in question and that no action would be filed against them. They were thus induced to spend time, effort and money in cultivating the land, paying the taxes, and introducing improvements therein. Undoubtedly, they would be prejudiced if the instant action for reconveyance is not barred. It is the established principle in this jurisdiction that inaction and neglect of a party to assert a right can convert what otherwise could be a valid claim into a stale demand.

WHEREFORE, the order appealed from is hereby affirmed, with costs against the appellants.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, Abad Santos, and De Castro, JJ., concur.

[1] p. 38, Record on Appeal.

[2] Paragraph 13, complaint; p. 6, record on appeal.

[3] Buencamino, et al. vs. Matias, et al., 16 SCRA 849; Joaquin vs. Cojuangco, 20 SCRA, 769; Fabian vs. Fabian, 22 SCRA 231.

[4] Diaz, et al. vs. Gorricho, 103 Phil. 261, 264--265; JM Tuazon & Co. vs. Magdangal, 4 SCRA 84; Alzona, et al. vs. Capunitan, et al. 4 SCRA 450.

[5] Diaz vs. Gorricho, supra.

[6] 100 Phil. 277.

[7] 96 Phil. 622.

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