

POTENCIANO SUNGA, ET. AL, PETITIONERS, VS. BENITO DE GUZMAN, ET. AL., RESPONDENTS.

G.R. No. L-25847. June 19, 1979

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petitioners appeal, by this petition for certiorari, from the decision of the Court of Appeals* affirming, as being in accordance with law and the evidence, the decision of the Court of First Instance of Pampanga the dispositive portion of which reads as follows:

"WHEREFORE, this Court hereby renders judgment in favor of the plaintiffs and against the defendants declaring the plain-tiffs absolute owners of the three-ninth portion pro-indiviso of the property in litigation and orders the defendants to convey the said three-ninth portion pro-indiviso to the herein plaintiffs and to render an accounting of the corresponding harvest from 1947 up to the present to deliver to the plaintiffs whatever products or its corresponding value that may corres-pond to them as their participation of the harvest during that period and to pay attorney's fees in the amount of P500.00, with costs." (p. 52, Record on Appeal.)

As found by the Court of Appeals, the pertinent facts, quoting from its decision promulgated on January 17, 1966, are as follows:

"It is undisputed that the private contract of sale (Exhibit C), was signed by five (5) of the nine (9) legitimate heirs of the spouses Juan de Guzman and Lucia Montemayor. There is also no dis-pute that the property in question was a fishpond of 5,590 sq. m. situated in the barrio of Sebitanan, municipality of Sexmoan, province of Pampanga. It is also undisputed that five (5) of the heirs, namely, Gervacio, Felino, Casiano, Marcelino and Marciano, all surnamed De Guzman, were the only heirs among the nine (9) children who sold their respect-ive shares to Feliciano Sibug, a widower, for and in consideration of P700.00, as shown in the said deed of Sales, Exhibit C, on July 1, 1947. However, the referred deed of sale is not notarized nor regis-tered in the Register of Deeds of Pampanga. The records also disclosed that according to the declaration of real estate (Exh. B) the said property was still registered in the name of the father of the aforesaid plaintiffs-appellees up to October 5, 1962. The records further disclosed that the De Guzman couple died in 1935 and 1937, respectively, hence by operation of law, the nine (9) children succeeded in the ownership of the property in question. Demands were made by plaintiffs-appellees for the delivery of their respective shares from the defendants-appellants since 1955, but the latter refused to comply with their Lawfull (sic) demands. From the execution of the deed of sale, defendants-appellants were in physical possession of the fishpond in question, hence an action was instituted against the defendants on February 5, 1962.

"From the private deed of sale (Exhi-bit C) it is indisputably clear that five (5) of the heirs of the late Juan de Guzman and Lucia Montemayor signed and four (4) other did not sign. However, three (3) co--heirs only filed the complaint, namely, Benito, Emilia and Felisa, all surnamed De Guzman, which represents 3/9 of the property in question which cannot be considered as sold to the defendants-appellants by any stretch of the imagination. To claim now that the whole property in question was sold to the said defendants-appellants is absurd."

Upon the foregoing facts, the veracity of which not being challenged, is binding upon this Court, are predicated the legal issues raised by petitioners-appellants, which are as reflected in the errors assigned by them against the Court of Appeals, to wit:

"FIRST ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN DISREGARDING THE TESTIMONY OF BENITO DE GUZMAN REFERRING TO HIS KNOWLEDGE OF THE POSSESSION OF THE LAND IN QUESTION BY THE DEFENDENTS-APPELLANTS WAY BACK IN 1948.

"SECOND ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT TAKING INTO ACCOUNT THE TESTIMONY OF BENITO DE GUZMAN WHICH REFERS TO HIS KNOW-LEDGE AND HIS SISTERS OF THE SALE OF THE LAND IN QUESTION TO FELICIANO SIBUG IN 1948.

"THIRD ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT RULING THAT THE CAUSE OF ACTION PLEADED BY THE PLAINTIFFS-APPELLEES HAS ALREADY PRESCRIBED.

"FOURTH ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT RULING THAT THE APPELLANTS HAVE ACQUIRED OWNERSHIP OF THE LAND IN QUESTION THRU ACQUISITIVE AND EXTINCTIVE PRESCRIPTION."

As may be seen from the assignments of error, petitioners rely, mainly, if not solely, on the defense of prescription in resisting the action of respondents-appellees to recover their shares, consisting of 3/9 of the whole fish-pond, which they inherited from their parents, jointly with their other brothers and sisters, who sold their shares in the property to the predecessor of herein petitioners-appellants.

Petitioners-appellants' claim of prescription against respondents-appellees is made to rest on their alleged adverse possession of the whole fishpond, dating back from 1948. In support of their allegation of having possessed adversely the property in question, they quoted the following testimony of Benito de Guzman, one of the appellees:

Direct Examination

"Q. Do you know what happened to this land in 1948?

A. I know.

Q. What happened, will you please state to the Court?

A. Potenciano Sunga came in possession.

Q. Do you know the reasons why Potenciano Sunga took possession of this land?

A. I know.

Q. What is that, will you please state to the Court?

A. The share of my six brothers was sold to Potenciano Sunga. (t.s.n., Oct. 5, 1962, pages 6 and 7, Tiglao.)"

Cross Examination

"Q. According to you this Document Exhibit "C" you said you came to know of this document. Can you tell the Court when did you come to know of this document?

A. If I am not mistaken it was sold in 1948.

COURT: Answer the question.

Q. When did you come to know that document of the existence of that document?

A. It is only now that I saw this document.

Q. Mr. de Guzman, you stated that in 1955 you came to know the defendant Potenciano Sunga came in possession of the land sketched in Exhibit A, is that correct?

A. Yes, sir, it was in 1948 when he came to possession.

Q. In 1948 that was the first time you came to know that Potenciano Sunga took possession?

A. In 1948.

Q. How did you happen to know that Potenciano Sunga took possession of the land covered by the sketch in Exhibit "A"?

A. I came to know it from my 6 brothers who sold their shares.

Q. They also told you how much they sold the property you have described in this sketch?

A. Yes, sir, for P700.00.

Q. What about Emilia and Felisa de Guzman, if you know, did they come to know also that Potenciano Sunga came in possession of the land?

A. Yes, sir.

Q. That was also in 1948?

A. Yes, sir. (*Italics ours; t.s.n., Oct. 5, 1962, pages 16, 17, 18, Tiglao.*)"

What is notably significant from the above-quoted testimony is that appellees, while they knew of the possession of petitioners commencing in the year 1948, they knew of the sale only when they were told by their brothers who sold their share. As to when the information was given to appellees, the quoted testimony does not indicate in any positive manner. Had the information been given upon the execution of the document, and if the sale included the whole fishpond, not only the share of the vendors, there is no reason why appellees did not similarly sign as vendors on the private instrument of sale. What this proves is that appellees were not definitely aware that appellant's possession extended over the whole fishpond, including that which pertained to them as their share. In that state of their knowledge as to the extent and nature of petitioners-appellant's possession, said possession cannot be said to be adverse and open as to give rise to title by prescription in favor of petitioners-appellants.

A fishpond is not as physically or actually occupied or held in possession as a parcel of land, in that the signs of possession in the latter are more visible, and the extent of its exercise or enjoyment, more manifest and easily determined. Hence, the adverse nature of the possession of parcel of land is more overt as to satisfy also the other element of prescription that the possession must be open and public. In the case of a fishpond, owned in common, one or some of whose co-owners sell their undivided share to another, the only way the whole fishpond, including the shares of the other co-owners may be said to have been held in adverse possession by the vendee, as against the co-owners who did not sell, is if he harvests all the fish in the fishpond, leaving nothing for the other

co-owners who did not sell their share. This is not as easily ascertained as in the exercise of possession over a piece of land, which is relatively quite easy to show that the possession is to the exclusion of the other co-owners by the extent of the possession, as by actual occupation if the land is for occupancy, or the extent of the enjoyment of the produce of said land, as when it is for cultivation or raising of products sustained by the soil. When one harvests from a fishpond, of which he is only a part-owner, it must be assumed that his harvest is only to the extent he is right-fully entitled to, until the contrary is positively shown, which was not done in the present case.

Likewise, against appellants' pretension is the fact that the tax declaration (Exhibit "B") over the land has remained up to the present in the name of the original owners, the deceased parents of respondents-appellees. The possession of petitioners-appellants, was, therefore, not completely adverse or open, nor was it truly in the concept of an owner, which are indispensable elements for prescription to become legally effective as a means of acquiring real property. (Articles 1117 and 1118, Civil Code of the Philippines; Corpuz vs. Padilla, 5 SCRA 814, 820; Agolto vs. Court of Appeals, 33 SCRA 765, 771; Cabrera vs. Tiano, 8 SCRA 542, 545; Diñoso vs. Court of Appeals, 7 SCRA 666, 669; Mendoza, et al. vs. Mella, 17 SCRA 788, 792; Harden vs. Harden, et al., 20 SCRA 706, 711; Seminary of San Carlos vs. Municipality of Cebu, 19 Phil. 32, 40; Negrete vs. Court of First Instance of Marinduque, 48 SCRA 113, 122-123).

The argument of petitioner-appellant that they have not been giving respondents-appellees their share in the harvest, and by such act, they have shown repudiation of the trust which may have been created is not quite convincing. With the undisputed fact that petitioners-appellants had promised one of the respondents-appellees, Benito de Guzman, to pay him for his share in the land, petitioners-appellants have manifested their continuing recognition of the right of said respondent-appellee, including his two sisters, his co-respondents-appellees herein, over their corresponding share of the fishpond, as long as the promise was not expressly withdrawn, but has, as is apparent from the evidence, remained subsisting and continuing, since no definite date was fixed for the promise to be fulfilled. To constitute the failure to pay as promised as an act of repudiation of the trust, or as a manifestation of adverse possession, there should be an unequivocal act of refusal to make payment, or a definite reneging from the promise. This can happen only if a date has been fixed for the fulfillment of the promise, but the period had lapsed without the promise having been redeemed.

As also correctly held by the respondent Court, the promise of petitioners-appellants to pay for the share of respondents-appellees interrupts the possession as a source of prescriptive rights (Article 1125, Civil Code; San Carlos vs. Municipality of Cebu, 19 Phil. 32). In the case herein cited, Justice Moreland said:

"Any express or implied acknowledgment which the possessor makes with regard to the dominant rights of the true owner, interrupts the possession held for prescriptive purposes and defeats the operation of the law granting such rights."

In trying to refute this ruling of the Court of Appeals, petitioners-appellants cite Article 1155 of the New Civil Code which reads:

"The prescription of action is interrupted when they are filed before the Court, when there is a written extra-judicial demand by the creditors and when there is any written acknowledgment of the debt by the debtor."

As may easily be discerned, the cited provision has no relevance to possession as an element of prescription, referring as it does to "prescription of action", an entirely different matter from the "interruption of possession" for acquisitive prescriptive purposes, as held in the case of San Carlos vs. Municipality of Cebu, supra.

As to the alleged error of the Court for not dis-missing the case for the non-inclusion of indispensable parties, appellees contend that this question was never raised in the Motion to Dismiss filed by petitioners with the trial

court (pp. 6-10, Record on Appeal), nor in their brief in the Court of Appeals, and, therefore may not be raised, nor given consideration, for the first time in this Court. This is a valid proposition We have to uphold. Even by virtue of express provisions of law, representative suits that need not be joined by all parties in the same status or condition, and linked together with a common interest, are permissible. Thus anyone of the co-owners may bring an action for ejectment (Article 487, Civil Code), while pre-scription obtained by a co-proprietor or a co-owner shall benefit the others (Article 1111, Civil Code). Moreover, non-joinder of parties, is not a ground to dismiss an action. (Section 11, Rule 3, Revised Rules of Court; Salazar, et al vs. Ortizano, 16 SCRA 662, 666; MacLeod vs. Cohen-Erichs Corporation, 1 Federal Rules Service 306; Holmberg vs. Han-naford, 1 Federal Rules Service 307; Sanchez vs. Court of First Instance of Rizal, 40 Phil. 155, 159; De los Santos vs. Sheriff of Rizal, 64 Phil. 193, 198; Esperanza Montes vs. Enrique S. Castro and Rosendo M. Castro, 105 Phil. 1302, 1303-1304).

With the adverse disposition of all the assignments of error of the petitioners-appellants, We have to find their petition as devoid of any merit. We find the weight of justice and equity on the side of respondents-appellees who had not parted with their share, as their other brothers did who sold their share with a document signed by them, but not by respondents-appellees, a strong shield against the weak thrust of prescription as the sole defense of appellants in resisting the just claim of appellees for the recovery of their share, prosecuting their claim as paupers. So did the Court of First Instance see the position of appellees, as so also the Court of Appeals. We find no reason to make Us take a different view.

WHEREFORE, the judgment appealed from should be, as it is hereby, affirmed, and the present petition, dismissed, with costs against petitioners-appellants.

Teehankee, (Chairman), Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

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