

**MARCIANO ASUNCION, PETITIONER, VS. HON. GREGORIO G. PINEDA,
JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH XXI,
PASIG, METRO MANILA, HEIRS OF MARIA OLIVEROS-SORIANO AND
H...**

G.R. No. L-47924. July 31, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

This petition for review seeks the annulment of the Order, dated 24 November 1977, issued by respondent Judge of the Court of First Instance of Rizal, Branch XXI, in Civil Case No. 26938, dismissing petitioner's complaint for reconveyance with damages.[1]

On 7 August 1977, petitioner filed a complaint before the Court of First Instance of Rizal, Branch XXI, docketed as Civil Case No. 26938, entitled "Marciano Asuncion vs. Heirs of Spouses Maria Oliveros and Alejandro Soriano, et al. and the Heirs of Spouses Sotero Oliveros and Fausta Alarcon, et al." [2] The complaint seeks to compel defendants therein (now private respondents) to execute a Deed of Reconveyance over 3.5 hectares located at the north-western portion of that parcel of land situated in Antipolo, Rizal, covered by T.C.T. No. 15394 (formerly O.C.T. No. 10) registered in the names of Estanislawa Partoza, Sotero Oliveros and Maria Oliveros.

The complaint alleges that the property was held in trust by the private respondents' grandfather, Macario Oliveros, for the benefit of petitioner's father, Filemon Oliveros Asuncion. According to petitioner, as plaintiff, Filemon O. Asuncion (his father) is the son of Marcela Oliveros, full-blood sister of Macario Oliveros; that Filemon possessed, developed and cultivated the disputed 3.5 hectares of the land originally covered by O.C.T. No. 10 long before the title was issued; that Macario Oliveros and Filemon (his nephew) agreed to consolidate the possession and cultivation of their respective lands in order that the former's application with the Bureau of Lands for a Homestead Patent would be approved, since the possession and cultivation of Macario was incomplete and was then opposed by a third party; that it was also agreed that the 3.5 hectares of Filemon would remain registered in the name of Macario to be held in trust and for the benefit of Filemon; that after the approval of the application and issuance of the Homestead Patent in the name of Macario Oliveros, Filemon, and, later, his only son, herein petitioner Marciano Asuncion, continued to cultivate and possess the 3.5 hectares up to the present; that after the death of Macario, O.C.T. No. 10 was transferred in the names of his compulsory heirs, namely, his wife Estanislawa Partoza, and two children, Sotero and Maria, both surnamed Oliveros.

Private respondents, the Heirs of Spouses Maria Oliveros and Alejandro Soriano, moved for the dismissal of the complaint on the ground, among other things, of *res judicata*. [3]

Pertinent facts of the case are stated in the here assailed 24 November 1977 Order of respondent Judge, which reads as follows:

"In Civil Case No. 21048 also pending in this sala, the heirs of the spouses Maria Oliveros and Alejandro Soriano filed an action for partition with damages against the heirs of the spouses Sotero Oliveros and Fausta Alarcon concerning a property situated in the Municipality of Antipolo, Rizal and covered by Transfer Certificate of Title No. 15394 (formerly Original Certificate of Title No. 10 in the name of the Heirs of Macario Oliveros) of the registry of deeds of Rizal.

"Plaintiff herein, Marciano Asuncion, filed a motion for intervention claiming 3 1/2 hectares of the property, alleging that he and his predecessors-in-interest had been personally in possession and in cultivation of said property in good faith, openly, continuously, exclusively, publicly and notoriously and with a bonafide claim of ownership, Plaintiffs filed an opposition.

"This Court, in denying the intervention, ruled:

'Intervenor does not claim to be an heir of Macario Oliveros. His claim of ownership based on possession which is alleged to be open, continuous, exclusive, public and in the concept of owner since time immemorial and long before the issuance of Original Certificate of Title No. 10, granting that this claim were true, cannot prevail upon the well-settled rule that the Torrens Title serves as evidence undefeasible [sic] title to the property in favor of the person whose name appears therein. After the expiration of the one-year period from the issuance of the decree of registration upon which it is based, it becomes incontrovertible.'

"Marciano Asuncion elevated the case to the Court of Appeals by means of a petition for mandamus and certiorari, (CA-G.R. No. SP-015636) seeking the annulment of the order of this Court denying his motion to intervene. In denying the petition the Court of Appeals ruled:

'PREMISES CONSIDERED, the Order appealed from is AFFIRMED. Petition is hereby DISMISSED and the Restraining Order issued in connection with this case is ordered LIFTED. Let the respondent Judge proceed with the partition proceedings. Without pronouncement as to costs.'

"The decision of the Court of Appeals is already final and executory.

"The motion to dismiss should be granted."

In dismissing petitioner's complaint, respondent Judge found that the same facts and the same cause of action alleged in petitioner's motion for intervention in Civil Case No. 21048 are present in the case at bar. And since the Order denying petitioner's motion for intervention in Civil Case No. 21048 had become final and executory, the present complaint is barred by said final Order.

Petitioner moved for a reconsideration of the above-said Order of 24 November 1977.[4] The motion was likewise denied on 7 February 1978.[5]

Petitioner filed a notice of appeal and appeal bond. Later, he withdrew the same, whereupon, the court a quo dismissed his appeal as per its Order dated 30 June 1978. In lieu of his withdrawn appeal, petitioner filed the instant petition for review on certiorari, on the ground that the issue involves jurisdiction of the lower court and that the instant petition is more expeditious than the ordinary appeal.[6]

On 23 April 1979, the Court resolved to give due course to the petition.

Two issues are raised by petitioner, to wit:

A. whether the denial of his Motion To Intervene in Civil Case No. 21048 for partition is a bar to the petition for Reconveyance, a remedy invoked by petitioner under Section 102 of the Land Registration Law, Act 496;

B. whether the action for reconveyance for the enforcement of the trust is subject to prescription under Act 496.

The crux of petitioner's arguments in support of this petition is that he is not seeking a remedy under Section 38 of Act 496 (Land Registration Law) but rather the enforcement of a trust under the provisions of Section 102 of the said Act. He maintains that when Macario Oliveros and Filemon O. Asuncion (petitioner's father) agreed to have their respective lands consolidated for the purpose of expediting the former's application for a Homestead Patent, there was created a fiduciary relationship between them. Citing the case of *Manalang, et al. vs. Canlas, et al.*, L-6307, 20 April 1954, Vol. No. 50, No. 6, O.G., May 1954, petitioner avers that an action to compel a trustee to convey the property registered in his name in trust for the benefit of a cestui que trust does not prescribe.

Petitioner further contends that the present complaint is not barred by the "prior judgment" rendered in Civil Case No. 21048 because the judgment therein was a denial of his "Intervention" and not a decision on the merits of his contention, while the case at bar is an independent complaint for reconveyance to enforce the sacred and inviolable trust between Macario Oliveros and Filemon O. Asuncion, which is affirmed by defendants in Civil Case No. 21048 (Heirs of Spouses Sotero Oliveros and Fausta Alarcon) in their Answer to the Motion for Intervention.[7]

On the other hand, private respondents, Heirs of Spouses Maria Oliveros and Alejandro Soriano, deny that there is such a trust agreement between Macario Oliveros, their grandfather, and Filemon O. Asuncion, petitioner's father, contrary to the sworn statement of the other private respondents, Heirs of Sotero Oliveros and Fausta Alarcon. Respondents (Heirs of Maria Oliveros) argue that if it were really true that during the lifetime of the Spouses Macario Oliveros and Estanislawa Partoza and Filemon O. Asuncion, there was such a trust agreement, the agreement should have been annotated at the back of Original Certificate of Title No. 10 and subsequently on T.C.T. No. 15394. And then, assuming arguendo that petitioner had a right to recover title to and possession of the property, respondents (Heirs of Maria Oliveros) allege that because of the failure of petitioner and his predecessor-in-interest to take action to recover the disputed property for sixty (60) years from the issuance of O.C.T. No. 10 in 1917, an action to recover title to and possession of the property in question has already prescribed.

Finally, respondents (Heirs of Maria Oliveros) insist that the denial of petitioner's motion to intervene in Civil Case No. 21048 has become final; hence, a bar to the filing of the present action for reconveyance which was correctly dismissed by respondent Judge.

It is well settled that the essential requisites for the existence of *res judicata*, are: (1) that the former judgment must be final; (2) it must have been rendered by a court having jurisdiction of the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions, (a) identity of parties; (b) identity of subject matter; and (c) identity of cause of action.

We note that in Civil Case No. 21048 which was an action for partition, the complainants were the Heirs of Spouses Maria Oliveros and Alejandro Soriano against the Heirs of Sotero Oliveros and Fausta Alarcon. Petitioner filed a motion to intervene therein which was denied by the court for reasons aforequoted. When petitioner's motion for intervention was denied, resultantly, he did not become a party to the case. Besides, the Order of the court denying his intervention is not a decision on the merits of Civil Case No. 21048. The said Order, therefore, does not constitute *res judicata vis-a-vis* the present case. Petitioner did not participate in the trial of Civil Case No. 21048 where he could have presented (but was not allowed) evidence to support his claim.

But, even granting for the sake of argument that petitioner is a party in Civil Case No. 21048, yet, as admitted by the parties, the case was still pending before the same court when the present case (Civil Case No. 26938) for reconveyance was filed by petitioner herein. In other words, there is as yet no final judgment, to speak of, in Civil Case No. 21048, which would have the effect of barring the present case, on the ground of *res judicata*. The

application of res judicata is at best not indubitable and the defense should, if at all, be alleged in the answer and resolved after trial on the merits, instead of by resolution of a simple motion to dismiss.[8] More so, where as in the present case, one set of respondents (Heirs of Sotero Oliveros) admit petitioner's claim.

For the foregoing reasons, we believe that the denial of herein petitioner's Motion To Intervene in Civil Case No. 21048 is not res judicata to his present action.

As regards, however, the second issue, we rule in the affirmative and against the petitioner.

In the case of Sinaon vs. Sorongon,[9] this Court held that the petitioners therein having been registered owners of the lot for more than forty (40) years and having possessed it during said period, their title had become indefeasible and their possession could not be disturbed. Any pretension as to the existence of an implied trust should not be countenanced.

In the case at bar, O.C.T. No. 10 in the name of Macario Oliveros was issued in 1917, or almost sixty (60) years before the filing of the present complaint. Even granting that an implied or constructive trust was created in favor of Filemon O. Asuncion, petitioner's father, under Article 1456 of the Civil Code, still an action to reconvey real property based upon a constructive or implied trust can be barred by prescription.[10]

Petitioner offers the document[11] wherein the Heirs of Sotero Oliveros (the other set of private respondents) acknowledge the claim of petitioner to the 3.5 hectares of the property under dispute. In the above cited Sinaon case, which involved substantially the same circumstances as in the present case, the Court declared:

"The trustors, who created the alleged trust, died a long time ago. An attempt to prove the trust was made by unreliable oral evidence. The title and possession of the Sinaons cannot be defeated by oral evidence which can be easily fabricated and contradicted. The contradictory oral evidence leaves the court sometimes bothered and bewildered.

"There was no express trust in this case. Express trusts concerning real property cannot be proven by parol evidence (Art. 1443, Civil Code). An implied trust 'cannot be established, contrary to the recitals of a Torrens title, upon vague and inconclusive proof' (Suarez v. Tirambulo, 59 Phil. 303; Salao v. Salao, L-26699, March 16, 1976, 70 SCRA 65, 83)."

Hence, we find that the present action is barred by prescription.

WHEREFORE, the petition is DISMISSED. Costs against petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] Rollo, pp. 24-25.

[2] Id., pp. 11-14.

[3] Id., pp. 20-21.

[4] Id., pp. 26-27.

[5] Id., p. 31.

[6] Id., p. 85.

[7] Id., pp. 18-19.

[8] Philippine United Sales Co. v. Gopengco, G.R. No. L-27728, February 29, 1972, 43 SCRA 371.

[9] G.R. No. L-59879, May 13, 1985, 136 SCRA 407.

[10] Medina v. Court of Appeals, G.R. No. L-26107, November 27, 1981, 109 SCRA 437; Gerona v. Guzman, G.R. No. L-19060, May 29, 1964, 11 SCRA 153; Tiburcio, et al. v. PHHC, G.R. No. L-13479, October 31, 1959, 106 Phil. 477

[11] Rollo, p. 18.

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