

JUSTINO QUETULIO, ET AL., PLAINTIFFS-APPELLANTS, VS. NENA Q. DE LA CUESTA, ET AL., DEFENDANTS-APPELLEES.*G.R. No. L-25083. January 31, 1968*

Ponente: BENGZON, J.P., J.

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On June 4, 1964, Justino Quetulio, et al.[1] filed a complaint before the Court of First Instance of Ilocos Norte for recovery of real property against Nena de la Cuesta, et al., alleging inter alia that they are heirs in possession since 1906, of a parcel of land located at Bo. 23, Sarrat, Ilocos Norte, originally co-owned by Vicente, Emerenciano, Simon, Eulalio, Primo, Rosa, Vitaliano and Demetrio, all surnamed Quetulio, all of whom are now deceased; that in May 1948 Nena de la Cuesta, alleged owner of the property abounding theirs, caused her men to usurp the eastern portion of their land as a result of which they filed against her on May 19, 1948 Civil Case No. 705 which however was dismissed without prejudice on June 25, 1955; that on September 2, 3 and 4, 1963, the acts of usurpation were again committed despite their protests and demands for the defendants to stop, depriving them of fruits of the land worth P350, causing them P5,000 actual damages, P5,000 moral damages plus P1,000 attorney's fees.

In answer, the defendants alleged that the land in question was part of the land formerly owned since 1902 by Anselma Crisologo, wife of Ambrosio de la Cuesta. Upon the death of the spouses, their heirs - Tomas, Anastasio, Jose and Elias, all surnamed de la Cuesta, possessed the land. When the heirs partitioned the property, Tomas de la Cuesta got the land in question. Nena de la Cuesta, as wife of Tomas and usufructuary of 1/5 of the land and, Feliciano, Marcelino F. Fresnida and Fe, as children and heirs of Tomas, then took possession of the land after the death of Tomas de la Cuesta. They also claimed that whatever rights plaintiffs could assert had already prescribed the ten-year period of prescription not having been interrupted by the filing of Civil Case No. 705, and asked for P1,000 attorney's fees and P200 litigation fees.

Subsequently, on August 31, 1964, the defendants moved for the dismissal of the complaint on the ground of prescription, reiterating their stand that the filing of Civil Case Mo. 705 did not interrupt the period of prescription.

Plaintiffs opposed the proposed dismissal - maintaining that Civil Case No. 705, dismissed in June 1955 without prejudice, interrupted the period of prescription and later, in a supplemental memorandum, invoking imprescriptibility of actions to quiet title.

On September 10, 1964 the Court of First Instance dismissed the case on the ground of prescription and in support of its conclusion cited *Amar v. Odiamon*, L-15179, September 30, 1962. The court, on October 6, 1964, denied admission of plaintiffs' "First Amended Complaint". From this denial order and in relation to the dismissal of the complaint, plaintiffs appealed directly to Us.

The reason for the proposed amendment was stated by the plaintiffs themselves: To allege by necessity all the facts and circumstances that arose in Civil Case No. 705, as the present case is merely a refiling of Civil Case No.

705.[2] The proposed amended complaint Itself is substantially the same, except that the cause of action is alleged to have arisen on November 19, 1946, the alleged usurpation described more in detail and the alleged expenses are raised to P500.

Article 1116 of the new Civil Code provides: "Prescription already running before the effectivity of this Code shall be governed by the laws previously in force, but if since the time this Code took effect the entire period herein required for prescription should elapse, the present Code shall be applicable even though by the former laws a longer period might be required."

At the latest, the plaintiffs' cause of action accrued in May 1948 as alleged in the original complaint. The period of prescription started to run from then and clearly, the law applicable is Section 40 of Act 190 otherwise known as the Code of Civil Procedure, which provides for a ten-year prescriptive period for actions to recover title to or possession of real property or any interest therein, counted from the date of the accrual of the cause of action. The settled interpretation of this provision,[3] rightly applied by the lower court, is that "the filing of an action within the prescriptive period, if the plaintiff desists in its prosecution or [if it] is dismissed, does not suspend the running of the statute of limitations and takes no time out of the period of prescription under Act 190." This is so because Act 190 does not have any specific or express provision on the suspension or interruption of the prescriptive period by the institution of an action that is subsequently dismissed.

The denial of the permission to amend a complaint that was dismissed because on its face the cause has prescribed, is not justified where the allegation of fact upon which prescription was based is sought to be rectified by the amendment which plaintiff sought permission to make.[4] The proposed amendment in the present case, however, seeks no rectification of any fact which would do away with the application of prescription. On the contrary, the amendment would establish the cause of action to have arisen even earlier, in 1946, instead of 1948. Thus, even if the amendment is admitted, the cause would still have prescribed by 1964, when this present suit was brought.

WHEREFORE, the appealed order of the lower court denying admission of the proposed amended complaint and dismissing the original complaint, are hereby affirmed. With costs against appellants.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] The records do not show who are the other plaintiffs or other defendants.

[2] Pages 44-45 of the Record.

[3] *Amar v. Odiamon*, L-15179, Sept. 30, 1962.

[4] *Malayan Insurance Co., Inc. v. Delgado, et al.*, L-22811, May 19, 1966.

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