

ASUNCION ABORDO, ET AL., PETITIONERS, VS. THE HON. COURT OF APPEALS AND ROMAN ABORDO, RESPONDENTS.*G.R. No. L-22288. November 29, 1966*

Ponente: REYES, J.B.L., J.

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Appeal from the decision of the Court of Appeals, in its CA-G.R. No. 28223-R, affirming the decision of the Court of First Instance of Leyte, in its Civil Case No. 2470, finding for the defendant Roman Abordo and Mercedes Redoña and declaring the said defendant to be the owner of Lot No. 2438 of the cadastral survey of La Paz, Leyte.

The plaintiffs-appellants, Asuncion Abordo, Jose Abordo and Mercedes Redoña, are the daughter, the son and the widow, respectively, of the late Isidoro Abordo; the deceased is the brother of the defendant Roman Abordo.

The plaintiffs-appellants sued for the reconveyance of the controverted lot, alleging in their complaint that Isidoro Abordo had, prior to his demise in 1929 and during the minority of his children, entrusted to Roman Abordo the matter of filing, in Isidoro's name and behalf, the answer in respect to lot 2438 of the La Paz, Leyte, cadastre, but that, in bad faith and breach of trust, Roman Abordo filed the answer in his own name and succeeded in securing, on 9 June 1936, Original Certificate of Title No. 18962 covering the lot, also in his own name.

The Court of Appeals found that the defendant-appellee took possession of a portion of the lot in 1929, and of the whole land in 1939, against the will of the widow and the children of the deceased, Isidoro Abordo; that Isidoro Abordo had been the declared owner, for taxation purposes, of the land, and the real estate taxes thereon were paid in his name from 1922 to 1940; that, except during the Japanese occupation, the land taxes from 1941 to 1949 were paid in the name of the declared owner, Isidoro Abordo, by her daughter, Asuncion Abordo; that it was only in 1959 that the defendant, Roman Abordo, declared the land in his name, for taxation purposes; that he paid the land tax in his name in 1959 and claimed that he paid also the land taxes for 1950 to 1958 but the tax receipts had been lost or destroyed.

However, the Court of Appeals, as well as the trial court, found the evidence insufficient to establish the creation by the deceased, Isidoro Abordo, of an express trust over the property, with his brother, Roman Abordo, as trustee, in favor of the plaintiffs, because of contradictions between the allegations in the complaint and the testimony of Asuncion Abordo and for lack of a written instrument to prove the existence of the alleged trust'. It, likewise, upheld the trial court's finding that the appellee had been in exclusive and adverse possession of the land since 1939, in view of an admission of such fact by the widow, Mercedes Redofia, in a complaint that she, in her behalf and in behalf of her minor children, filed in a reivindicatory action that was subsequently dismissed.

In their appeal to this Court, the plaintiffs presented the following questions for resolution:

- "1. Was the forcible possession of the land in dispute by the respondent Roman Abordo in 1939 a valid repudiation of the trust lawfully justifying his acquiring ownership of the same by acquisitive prescription?

2. Is the action of the petitioners for reconveyance filed in February 1959 barred by prescription to deprive them of the lawful ownership of the lot in dispute? "

The two foregoing legal questions assume that Isidoro Abordo did create an express trust, which is not the fact, as found by the Court of Appeals (Annex "A" to Petition, p. 4).

The finding of fact of the Court of Appeals as to the non-establishment of an express trust is final and not reviewable by the Supreme Court (*Cabrera vs. Lopez*, 84 Phil. 834; *Pacheco vs. Arro*, 85 Phil. 505). For lack of factual basis, therefore, the legal questions may not be resolved. If there was no trust, there is no trustee; nor is there any legal obstacle to the application on the rules of adverse possession in favor of appellee.

In appealing to this Court, the plaintiffs-appellants misconstrued the paragraph preceding the dispositive portion of the appealed decision, in which the Court of Appeals stated:

"It is possible, in view of the facts given in the first paragraph of this Opinion, that there was really an express trust. It is not uncommon for a surviving brother to forget such trust after the death of his trustor brother. Unfortunately, however, the widow and children of the deceased brother slept on their rights for more than twenty years before bringing the action in 1959 in the case at bar. It is regretted that we have found it impossible, due to the legal obstacles shown in the records, to right what could have been a wrong done by the appellee to the widow and children of his deceased brother." (*Italics supplied*)

They mistake the foregoing paragraph as a finding of fact, which, certainly, it could not be, since the Court of Appeals was referring only to a possibility, as shown in the underlined portions. The Court of Appeals was just stressing the laches on the part of appellants herein, and the staleness of their claim.

For the foregoing, the appeal is hereby dismissed, with costs against the appellants.

Concepcion, C.J., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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