

CONSUELO MACONO CULTURA, JOSE CUBILLAS AND PANFILO SALINAS, PETITIONERS, VS. HON. LAURO L. TAPUCAR, BERNARDA E. ANDAYA AND ANDAYA REALTY CORPORATION, RESPONDENTS.

G.R. No. L-48430. December 03, 1985

Ponente: PATAJO, J.

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PATAJO, J.:

This is a petition for review by certiorari of the order of the Court of First Instance of Agusan del Norte and Butuan City in Civil Case No. 1949 granting the motion of the defendants in said case, the herein private respondents, to dismiss the complaint on the ground that plaintiffs' action had already prescribed.

In a complaint filed on May 31, 1977 by petitioners, the children and grandchildren of the deceased Juana Macono, it was alleged that during her lifetime she acquired by free patent a parcel of land with an area of 3,0974 hectares situated in Langihan, Butuan City, but that on November 26, 1934 defendant Bernarda E. Andaya by means of fraud, succeeded in having said Juana Macono execute in her favor a deed of sale of said property in consideration of the sum of P110.00, and subsequently secured a new certificate of title for said property in her name, and dispossessed plaintiffs thereof. The complaint further alleged that at the time the alleged deed of sale was executed petitioners were still minors, except Silvestre, and did not sign said deed of sale but after the death of Juana Macono on March 11, 1951, Bernarda E. Andaya reconstituted the certificate of title of the property in October 1951 and then sold the property to the other defendants. Plaintiffs, therefore, prayed that defendants be ordered to restore possession of the property to them and to pay jointly and severally actual damages of P3,000.00, moral damages of P30,000.00, exemplary damages of P3,000.00 and the sum of P50.00 a month from November 1934 until such time as possession of the property be restored to plaintiffs.

Defendants filed a motion to dismiss the complaint principally on the ground that plaintiffs' action had already prescribed and that defendants had acquired ownership of the property by acquisitive prescription, having been in possession thereof continuously in concept of owner since November 26, 1934 when the property was sold to defendant Bernarda E. Andaya by Juana Macono.

On August 8, 1977, the Trial Court sustained defendants' motion to dismiss, said Court ruling that plaintiffs' action had already prescribed under the provisions of the Code of Civil Procedure, which was the law applicable to the case since the period of prescription had commenced running before the New Civil Code went into effect.

In this present petition for review filed with this Court, petitioners contend that the lower court erred in finding that plaintiffs' cause of action had already prescribed under the provisions of the Code of Civil Procedure because the deed of sale allegedly executed in favor of Bernarda E. Andaya on November 26, 1934 was executed within the period of five years from the time of the issuance of the free patent in favor of Juana Macono and consequently said deed of sale was void ab initio and the action to have it so declared null and void does not prescribe.

An examination of the allegations of plaintiffs' complaint as well as the amended complaint shows that it was an

action filed to annul a deed of sale executed by means of fraud. There is no allegation in said complaint regarding the deed of sale of November 26, 1934 being null and void ab initio because it was executed within the period of five years from the issuance of the free patent granted Juana Macono in violation of Section 118 of Commonwealth Act 141, as amended. What determines the nature of an action are the allegations of the complaint (*Pamintuan vs. Court of Appeals*, 14 SCRA 438). And in *Rone vs. Claro*, 91 Phil. 250, this Court held that the purpose of an action or suit and the law to govern it, including the period of prescription, is to be determined not by the claim of the party filing the action, made in his argument or brief, but rather by the complaint itself, its allegations and the prayer for relief. Said ruling was reiterated in *Piano vs. Cayarong*, 7 SCRA 397.

In the present case, it would appear very clearly from the allegations of the complaint as well as the amended complaint and the prayer thereof that what plaintiffs sought was the annulment of the deed of sale executed by means of fraud. Paraphrasing *Rone vs. Claro*, supra, recovery of possession of the property may be the ultimate objective of plaintiffs, but to attain such goal they must need first travel over the road of relief sought to annul the deed of sale of November 26, 1934 on ground of fraud, otherwise even if the case were to be regarded as a direct action to recover title and possession, it would, nevertheless, be futile and could not prosper of the reason that defendants could always defeat it by merely presenting the deed of sale which is good and valid to legalize and justify the transfer of the land to the defendants, until annulled by the courts. Plaintiffs' action, therefore, prescribed in four years from the time the deed of sale in favor of Bernarda E. Andaya was registered with the Office of the Register of Deeds, which was on December 12, 1934. From said date petitioners are deemed to have constructive notice of the existence of said deed of sale. *Armentia vs. Patriarca*, 18 SCRA 1253; *Gatioan vs. Gaffud*, 27 SCRA 706.

Parenthetically, it may be added that there is no merit to the claim of petitioners that the deed of sale of November 26, 1934 in favor of Bernarda E. Andaya was executed within the period of five years from the issuance of the free patent in favor of Juana Macono and void ab initio. Said free patent was granted on November 25, 1929 pursuant to which Original Certificate of Title No. 226 was issued in the name of Juana Macono. The deed of sale claimed to be executed by means of fraud on November 26, 1934 was executed after the lapse of the period of five years.

There is, therefore, no basis for the claim of petitioners that their action to declare said deed of sale null and void has not prescribed since it is void ab initio, having been executed within the prohibited period of five years. The period of five years is to be reckoned from and after the date of the approval of the application for free patent up to and including the fifth year from and after the date of the issuance of the patent. Section 118 Commonwealth Act 141; *Beniga vs. Bugas*, 35 SCRA 111. The period of prescription that governs the present case, is therefore four years according to Section 43 of Act 190, the old Code of Civil Procedure, from the discovery of the fraud, which is December 12, 1934 when the deed of sale sought to be annulled was registered. Article 1116 Civil Code; *Philippine National Bank vs. Dionisio*, 9 SCRA 10.

IN VIEW OF THE FOREGOING, the petition is DISMISSED for lack of merit, with costs against petitioners.

SO ORDERED.

Plana, Gutierrez, Jr., and De la Fuente, JJ., concur.

Tehankee, J., (Chairman), in the result.

Melencio-Herrera and Relova, JJ., on leave.

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