

FRANCISCO A. TONGOY, FOR HIMSELF AND AS JUDICIAL ADMINISTRATOR OF THE ESTATE OF THE LATE LUIS D. TONGOY AND MA. ROSARIO ARANETA VDA. DE TONGOY, PETITIONERS, VS. THE HONORABLE CO...

G.R. No. L-45645. June 28, 1983

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition for certiorari, to review the decision of respondent Court of Appeals in CA-G.R. No. 45336-R, entitled "Mercedes T. Sonora, et al. versus Francisco A. Tongoy, et al.", promulgated on December 3, 1975.

The antecedent facts which are not controverted are quoted in the questioned decision, as follows:

"The case is basically an action for reconveyance respecting two (2) parcels of land in Bacolod City. The first is Lot No. 1397 of the Cadastral Survey of Bacolod, otherwise known as Hacienda Pulo, containing an area of 727,650 square meters and originally registered under Original Certificate of Title No. 2947 in the names of Francisco Tongoy, Jose Tongoy, Ana Tongoy, Teresa Tongoy and Jovita Tongoy in pro-indiviso equal shares. Said co-owners were all children of the late Juan Aniceto Tongoy. The second is Lot No. 1395 of the Cadastral Survey of Bacolod, briefly referred to as Cuaycong property, containing an area of 163,754 square meters, and formerly covered by Original Certificate of Title No. 2674 in the name of Basilisa Cuaycong.

"Of the original registered co-owners of Hacienda Pulo, three died without issue, namely: Jose Tongoy, who died a widower on March 11, 1961; Ana Tongoy, who also died single on February 6, 1957, and Teresa Tongoy who also died single on November 3, 1949. The other two registered co-owners, namely, Francisco Tongoy and Jovita Tongoy, were survived by children. Francisco Tongoy, who died on September 15, 1926, had six children; Patricio D. Tongoy and Luis D. Tongoy by the first marriage; Amado P. Tongoy, Ricardo P. Tongoy, Cresenciano P. Tongoy and Norberto P. Tongoy by his second wife Antonina Pabello whom he subsequently married sometime after the birth of their children. For her part, Jovita Tongoy (Jovita Tongoy de Sonora), who died on May 14, 1915, had four children: Mercedes T. Sonora, Juan T. Sonora, Jesus T. Sonora and Trinidad T. Sonora.

"By the time this case was commenced, the late Francisco Tongoy's aforesaid two children by his first marriage, Patricio D. Tongoy and Luis D. Tongoy, have themselves died. It is claimed that Patricio D. Tongoy left three acknowledged natural children named Fernando, Estrella and Salvacion, all surnamed Tongoy. On the other hand, there is no question that Luis D. Tongoy left behind a son, Francisco A. Tongoy, and a surviving spouse, Ma. Rosario Araneta Vda. de Tongoy.

"The following antecedents are also undisputed, though by no means equally submitted as the complete facts, nor seen in identical lights: On April 17, 1918, Hacienda Pulo was mortgaged by its registered co-owners to the Philippine National Bank (PNB), Bacolod Branch, as security for a loan of P11,000.00 payable in ten (10) years at 8% interest per annum. The mortgagors however were unable to keep up with the yearly amortizations, as a result of which the PNB instituted judicial foreclosure proceedings over Hacienda Pulo on

June 18, 1931. To avoid foreclosure, one of the co-owners and mortgagors, Jose Tongoy, proposed to the PNB an amortization plan that would enable them to liquidate their account. But, on December 23, 1932, the PNB Branch Manager in Bacolod advised Jose Tongoy by letter that the latter's proposal was rejected and that the foreclosure suit had to continue. As a matter of fact, the suit was pursued to finality up to the Supreme Court which affirmed on July 31, 1935 the decision of the CFI giving the PNB the right to foreclose the mortgage on Hacienda Pulo. In the meantime, Patricio D. Tongoy and Luis Tongoy executed on April 29, 1933 a Declaration of Inheritance wherein they declared themselves as the only heirs of the late Francisco Tongoy and thereby entitled to the latter's share in Hacienda Pulo. On March 13, 1934, Ana Tongoy, Teresa Tongoy, Mercedes Sonora, Trinidad Sonora, Juan Sonora and Patricio Tongoy executed an 'Escritura de Venta' (Exh. 2 or Exh. W), which by its terms transferred for consideration their rights and interests over Hacienda Pulo in favor of Luis D. Tongoy. Thereafter, on October 23, 1935 and November 5, 1935, respectively, Jesus Sonora and Jose Tongoy followed suit by each executing a similar 'Escritura de Venta' (Exhs. 3 or DD and 5 or AA) pertaining to their corresponding rights and interests over Hacienda Pulo in favor also of Luis D. Tongoy. In the case of Jose Tongoy, the execution of the 'Escritura de Venta' (Exh. 5 or AA) was preceded by the execution on October 14, 1935 of an Assignment of Rights (Exh. 4 or Z) in favor of Luis D. Tongoy by the Pacific Commercial Company as judgment lien-holder (subordinate to the PNB mortgage) of Jose Tongoy's share in Hacienda Pulo. On the basis of the foregoing documents, Hacienda Pulo was placed on November 8, 1935 in the name of Luis D. Tongoy, married to Maria Rosario Araneta, under Transfer Certificate of Title No. 20154 (Exh. 20). In the following year, the title of the adjacent Cuaycong property also came under the name of Luis D. Tongoy, married to Maria Rosario Araneta, per Transfer Certificate of Title No. 21522, by virtue of an 'Escritura de Venta' (Exh. 6) executed in his favor by the owner Basilisa Cuaycong on June 22, 1936 purportedly for P4,000.00. On June 26, 1936, Luis D. Tongoy executed a real estate mortgage over the Cuaycong property in favor of the PNB, Bacolod Branch, as security for loan of P4,500.00. Three days thereafter, on June 29, 1936, he also executed a real estate mortgage over Hacienda Pulo in favor of the same bank to secure an indebtedness of P21,000.00, payable for a period of fifteen (15) years at 8% per annum. After two decades, on April 17, 1956, Luis D. Tongoy paid off all his obligations with the PNB, amounting to a balance of P34,410.00, including the mortgage obligations on the Cuaycong property and Hacienda Pulo. However, it was only on April 22, 1958 that a release of real estate mortgage was executed by the bank in favor of Luis D. Tongoy. On February 5, 1966, Luis D. Tongoy died at the Lourdes Hospital in Manila, leaving as heirs his wife Maria Rosario Araneta and his son Francisco A. Tongoy. Just before his death, however, Luis D. Tongoy received a letter from Jesus T. Sonora, dated January 26, 1966, demanding the return of the shares in the properties to the co-owners.

"Not long after the death of Luis D. Tongoy, the case now before Us was instituted in the court below on complaint filed on June 2, 1966 by Mercedes T. Sonora, Juan T. Sonora[*], Jesus T. Sonora, Trinidad T. Sonora, Ricardo P. Tongoy and Cresenciano P. Tongoy. Named principally as defendants were Francisco A. Tongoy, for himself and as judicial administrator of the estate of the late Luis D. Tongoy, and Maria Rosario Araneta Vda. de Tongoy. Also impleaded as defendants, because of their unwillingness to join as plaintiffs, were Amado P. Tongoy, Norberto P. Tongoy[*] and Fernando P. Tongoy. Alleging in sum that plaintiffs and/or their predecessors transferred their interests on the two lots in question to Luis D. Tongoy by means of simulated sales, pursuant to a trust arrangement whereby the latter would return such interests after the mortgage obligations thereon had been settled, the complaint prayed that 'judgment be rendered in favor of the plaintiffs and against the defendants—

'(a) Declaring that the HACIENDA PULO, Lot 1397-B-3 now covered by T.C.T. No. 29152, Bacolod City, and the former Cuaycong property, Lot 1395 now covered by T.C.T. No. T-824 (RT-4049) (21522), Bacolod City, as trust estate belonging to the plaintiffs and the defendants in the proportion set forth in Par. 26 of this complaint;

'(b) Ordering the Register of Deeds of Bacolod City to cancel T.C.T. No. 29152 and T.C.T. No. T-824 (RT-4049) (21522), Bacolod City, and to issue new ones in the names of the plaintiffs and defendants in the

proportions set forth in Par. 26 thereof, based on the original area of HACIENDA PULO;

'(c) Ordering the defendants Francisco A. Tongoy and Ma. Rosario Araneta Vda. de Tongoy to render an accounting to the plaintiffs of the income of the above two properties from the year 1958 to the present and to deliver to each plaintiff his corresponding share with legal interest thereon from 1958 and until the same shall have been fully paid;

'(d) Ordering the defendants Francisco Tongoy and Ma. Rosario Araneta Vda. de Tongoy to pay to the plaintiffs as and for attorney's fees an amount equivalent to twenty-four per cent (24%) of the rightful shares of the plaintiffs over the original HACIENDA PULO and the Cuaycong property, including the income thereof from 1958 to the present; and

'(e) Ordering the defendants Francisco A. Tongoy and Ma. Rosario Vda. de Tongoy to pay the costs of this suit.

'Plaintiffs also pray for such other and further remedies just and equitable in the premises.'

"Defendants Francisco A. Tongoy and Ma. Rosario Vda. de Tongoy filed separate answers, denying in effect plaintiffs' causes of action, and maintaining, among others, that the sale to Luis D. Tongoy of the two lots in question was genuine and for a valuable consideration, and that no trust agreement of whatever nature existed between him and the plaintiffs. As affirmative defenses, defendants also raised laches, prescription, estoppel, and the statute of frauds against plaintiffs. Answering defendants counter claimed for damages against plaintiffs for allegedly bringing an unfounded and malicious complaint.

"For their part, defendants Norberto Tongoy and Amado Tongoy filed an answer under oath, admitting every allegation of the complaint. On the other hand, defendant Fernando Tongoy originally joined Francisco A. Tongoy in the latter's answer, but after the case was submitted and was pending decision, the former filed a verified answer also admitting every allegation of the complaint.

"Meanwhile, before the case went to trial, a motion to intervene as defendants was filed by and was granted to Salvacion Tongoy and Estrella Tongoy, alleging they were sisters of the full blood of Fernando Tongoy. Said intervenors filed an answer similarly admitting every allegation of the complaint.

"After trial on the merits, the lower court rendered its decision on October 15, 1968 finding the existence of an implied trust in favor of plaintiffs, but at the same time holding their action for reconveyance barred by prescription, except in the case of Amado P. Tongoy, Ricardo P. Tongoy, Cresenciano P. Tongoy, and Norberto P. Tongoy, who were adjudged entitled to reconveyance of their corresponding shares in the property left by their father Francisco Tongoy, having been excluded therefrom in the partition had during their minority, and not having otherwise signed any deed of transfer over such shares. The dispositive portion of the decision reads:

'IN VIEW OF ALL THE FOREGOING considerations, judgment is hereby rendered dismissing the complaint, with respect to Mercedes, Juan, Jesus and Trinidad, all surnamed Sonora. The defendants Francisco Tongoy and Rosario Araneta Vda. de Tongoy are hereby ordered to reconvey the proportionate shares of Ricardo P., Cresenciano P., Amado P., and Norberto P., all surnamed Tongoy in Hda. Pulo and the Cuaycong property. Without damages and costs.

'SO ORDERED.'

"Upon motion of plaintiffs, the foregoing dispositive portion of the decision was subsequently clarified by the trial court through its order of January 9, 1969 in the following tenor:

'Considering the motion for clarification of decision dated November 7, 1968 and the opposition thereto, and with the view to avoid further controversy with respect to the share of each heir, the dispositive portion of the

decision is hereby clarified in the sense that, the proportionate legal share of Amado P. Tongoy, Ricardo P. Tongoy, Cresenciano P. Tongoy and the heirs of Norberto P. Tongoy, in Hda. Pulo and Cuaycong property consist of 4/5 of the whole trust estate, leaving 1/5 of the same to the heirs of Luis D. Tongoy.

'SO ORDERED.'" (pp. 157-166, Vol. I, rec.).

Both parties appealed the decision of the lower court to respondent appellate court. Plaintiffs-appellants Mercedes T. Sonora, Jesus T. Sonora, Trinidad T. Sonora and the heirs of Juan T. Sonora questioned the lower court's decision dismissing their complaint on ground of prescription, and assailed it insofar as it held that the agreement created among the Tongoy-Sonora family in 1931 was an implied, and not an express, trust; that their action had prescribed; that the defendants-appellants were not ordered to render an accounting of the fruits and income of the properties in trust; and that defendants were not ordered to pay the attorney's fees of plaintiffs-appellants. For their part, defendants-appellants Francisco A. Tongoy and Ma. Rosario Araneta Vda. de Tongoy not only refuted the errors assigned by plaintiffs-appellants, but also assailed the findings that there was preponderance of evidence in support of the existence of an implied trust; that Ricardo P. Tongoy, Amado P. Tongoy and Norberto P. Tongoy are the legitimate half-brothers of the late Luis D. Tongoy; that their shares in Hacienda Pulo and Cuaycong property should be reconveyed to them by defendants-appellants; and that an execution was ordered pending appeal.

On December 3, 1975, respondent court rendered the questioned decision, the dispositive portion of which is as follows:

"WHEREFORE, judgment is hereby rendered modifying the judgment and Orders appealed from by ordering Maria Rosario Araneta Vda. de Tongoy and Francisco A. Tongoy —

"1) To reconvey to Mercedes T. Sonora, Juan T. Sonora (as substituted and represented by his heirs), Jesus T. Sonora and Trinidad T. Sonora each a 7/60th portion of both Hacienda Pulo and the Cuaycong property, based on their original shares;

"2) To reconvey to Ricardo P. Tongoy, Cresenciano P. Tongoy, Amado P. Tongoy and Norberto P. Tongoy (as substituted and represented by his heirs each a 14/135th portion of both Hacienda Pulo and the Cuaycong property, also based on their original shares; provided that the 12 hectares already reconveyed to them by virtue of the Order for execution pending appeal of the judgment shall be duly deducted;

"3) To render an accounting to the parties named in pars. 1 and 2 above with respect to the income of Hacienda Pulo and the Cuaycong property from May 5, 1958 up to the time the reconveyances as herein directed are made; and to deliver or pay to each of said parties their proportionate shares of the income, if any, with legal interest thereon from the date of filing of the complaint in this case, January 26, 1966, until the same is paid;

"4) To pay unto the parties mentioned in par. 1 above attorney's fees in the sum of P20,000.00; and

"5) To pay the costs.

"SO ORDERED" (pp. 207-208, Vol. I, rec.).

Petitioners Francisco A. Tongoy and Ma. Rosario Araneta Vda. de Tongoy (defendants-appellants) have come before US on petition for review on certiorari with the following assignments of errors (pp. 23-24, Brief for Petitioners):

- The Court of Appeals erred in finding that there was a trust constituted on Hacienda Pulo.
- The Court of Appeals erred in finding that the purchase price for the Cuaycong property was paid by Jose Tongoy and that said property was also covered by a trust in favor of respondents.

- Conceding, for the sake of argument, that respondents have adequately proven an implied trust in their favor, the Court of Appeals erred in not finding that the rights of respondents have prescribed, or are barred by laches.
- The Court of Appeals erred in finding that the respondents Tongoy are the legitimated children of Francisco Tongoy.
- Granting arguendo that respondents Tongoy are the legitimated children of Francisco Tongoy, the Court of Appeals erred in not finding that their action against petitioners has prescribed.
- The Court of Appeals erred in ordering petitioners to pay attorney's fees of P20,000.00.
- The Court of Appeals erred in declaring that execution pending appeal in favor of respondents Tongoy was justified.

I

It appears to US that the first and second errors assigned by petitioners are questions of fact which are beyond OUR power to review.

Thus, as found by the respondent Court of Appeals:

".....

"We shall consider first the appeal interposed by plaintiffs-appellants. The basic issues underlying the disputed errors raised suggest themselves as follows: 1) whether or not the conveyance respecting the questioned lots made in favor of Luis D. Tongoy in 1934 and 1935 were conceived pursuant to a trust agreement among the parties; 2) if so, whether the trust created was an express or implied trust; and 3) if the trust was not an express trust, whether the action to enforce it has prescribed.

"The first two issues indicated above will be considered together as a matter of logical necessity, being so closely interlocked. To begin with, the trial court found and ruled that the transfers made in favor of Luis D. Tongoy were clothed with an implied trust, arriving at this conclusion as follows:

'The Court finds that there is preponderance of evidence in support of the existence of constructive, implied or tacit trust. The hacienda could have been leased to third persons and the rentals would have been sufficient to liquidate the outstanding obligation in favor of the Philippine National Bank. But the co-owners agreed to give the administration of the property to Atty. Luis D. Tongoy, so that the latter can continue giving support to the Tongoy-Sonora family and at the same time, pay the amortization in favor of the Philippine National Bank, in the same manner that Jose Tongoy did. And of course, if the administration is successful, Luis D. Tongoy would benefit with the profits of the hacienda. Simulated deeds of conveyance in favor of Luis D. Tongoy were executed to facilitate and expedite the transaction with the Philippine National Bank. Luis D. Tongoy supported the Tongoy-Sonora family, defrayed the expenses of Dr. Jesus Sonora and Atty. Ricardo P. Tongoy, in their studies. Luis Tongoy even gave Sonoras their shares in the "beneficacion" although the "beneficacion" were included in the deeds of sale. The amount of consideration of the one-fifth (1/5) share of Jose Tongoy is one hundred (P100.00) pesos only. Likewise the consideration of the sale of the interests of the Pacific Commercial Company is only P100.00 despite the fact that Jose Tongoy paid in full his indebtedness in favor of said company. The letter of Luis D. Tongoy dated November 5, 1935 (Exhibit 'BB-1') is very significant, the tenor of which is quoted hereunder:

'Dear Brother Jose:

'Herewith is the deed which the bank sent for us to sign. The bank made me pay the Pacific the sum of P100.00 so as not to sell anymore the land in public auction. This deed is for the purpose of dispensing with the transfer of title to the Land in the name of the bank, this way we will avoid many expenses.

Yours,

'Luis D. Tongoy'

'Jose Tongoy signed the deed because he incurred the obligation with the Pacific and paid it. In releasing the second mortgage, Luis Tongoy paid only P100.00 and the deed was in favor of Luis Tongoy. This was done in order "to avoid many expenses" of both Jose and Luis as obviously referred to in the word "WE".

'Those two transactions with nominal considerations are irrefutable and palpable evidence of the existence of constructive or implied trust.

'Another significant factor in support of the existence of constructive trust is the fact that in 1933-34, when proposals for amicable settlement with the Philippine National Bank were being formulated and considered, Luis D. Tongoy was yet a neophyte (sic) in the practice of law, and he was still a bachelor. It was proven that it was Jose Tongoy, the administrator of Hda. Pulo, who provided for his expenses when he studied law, when he married Maria Araneta, the latter's property were leased and the rentals were not sufficient to cover all the considerations stated in the deeds of sale executed by the co-owners of Hda. Pulo, no matter how inadequate were the amounts so stated. These circumstances fortified the assertion of Judge Arboleda that Luis D. Tongoy at that time was in no condition to pay the purchase price of the property sold.

'But the Court considers the evidence of execution of express trust agreement insufficient. Express trust agreement was never mentioned in the plaintiffs' pleadings nor its existence asserted during the pre-trial hearings. It was only during the trial on the merits when Atty. Eduardo P. Arboleda went on to testify that he prepared the deed of trust agreement.

'Indeed the most formidable weapon the plaintiff could have used in destroying the "impregnable walls of the defense castle consisting of public documents" is testimony of Atty. Eduardo P. Arboleda. He is most qualified and in a knowable position to testify as to the truth of the existence of the trust agreement, because he was not only the partner of the late Luis D. Tongoy in their practice of law especially during the time he prepared and/or notarized the deeds of sale but he was also his colleague in the City Council. But however forceful would be the impact of his testimony, it did not go beyond the establishment of constructive or implied trust agreement. In the first place, if it is true that written trust agreement was prepared by him and signed by Luis D. Tongoy for the security of the vendor, why is it that only two copies of the agreement were prepared, one copy furnished Jose Tongoy and the other kept by Luis Tongoy, instead of making five copies and furnished copy to each co-owner, or at least one copy would have been kept by him? Why is it that when Atty. Arboleda invited Mrs. Maria Rosario Araneta Vda. de Tongoy and her son to see him in his house, Atty. Arboleda did not reveal or mention the fact of the existence of a written trust agreement signed by the late Luis D. Tongoy? The revelation of the existence of a written trust agreement would have been a vital and controlling factor in the amicable settlement of the case, which Atty. Arboleda would have played an effective role as an unbiased mediator. Why did not Atty. Arboleda state the precise context of the written agreement; its form and the language it was written, knowing as he should, the rigid requirements of proving the contents of a lost document. It is strange that when Mrs. Maria Rosario Araneta Vda. de Tongoy and her son were in the house of Atty. Arboleda, in compliance with his invitation for the supposed friendly settlement of the case, Atty. Arboleda did not even submit proposals for equitable arbitration of the case. On the other hand, according to Mrs. Tongoy, Mrs. Arboleda intimated her desire to have Atty. Arboleda be taken in. The Court refuses to believe that Judge Arboleda was aware of the alleged intimations of Mrs. Arboleda, otherwise he would not have tolerated or permitted her to indulge in such an embarrassing and uncalled for intrusion. The plaintiffs evidently took such ungainly insinuations with levity so much so that they

did not think it necessary to bring Mrs. Arboleda to Court to refute this fact.'

"The parties on either side of this appeal take issue with the conclusion that there was an implied trust, one side maintaining that no trust existed at all, the other that the trust was an express trust.

"To begin with, We do not think the trial court erred in its ultimate conclusion that the transfers of the two lots in question made in favor of the late Luis D. Tongoy by his co-owners in 1933 and 1934 created an implied trust in favor of the latter. While, on one hand, the evidence presented by plaintiffs-appellants to prove an express trust agreement accompanying the aforesaid transfers of the lots are incompetent, if not inadequate, the record bears sufficiently clear and convincing evidence that the transfers were only simulated to enable Luis D. Tongoy to save Hacienda Pulo from foreclosure for the benefit of the co-owners, including himself. Referring in more detail to the evidence on the supposed express trust, it is true that plaintiffs-appellants Jesus T. Sonora, Ricardo P. Tongoy, Mercedes T. Sonora and Trinidad T. Sonora have testified with some vividness on the holding of a family conference in December 1931 among the co-owners of Hacienda Pulo to decide on steps to be taken vis-a-vis the impending foreclosure of the hacienda by the PNB upon the unpaid mortgage obligation thereon. Accordingly, the co-owners had agreed to entrust the administration and management of Hacienda Pulo to Luis D. Tongoy who had newly emerged as the lawyer in the family. Thereafter, on the representation of Luis D. Tongoy that the bank wanted to deal with only one person - it being inconvenient at time to transact with many persons, specially when some had to be out of town - the co-owners agreed to make simulated transfers of their participation in Hacienda Pulo to him. As the evidence stands, even if the same were competent, it does not appear that there was an express agreement among the co-owners for Luis D. Tongoy to hold Hacienda Pulo in trust, although from all the circumstances just indicated such a trust may be implied under the law (Art. 1453, Civil Code; also see *Cuaycong vs. Cuaycong*, L-21616, December 11, 1967, 21 SCRA 1192, 1197-1198). But, whatever may be the nature of the trust suggested in the testimonies adverted to, the same are incompetent as proof thereof anent the timely objections of defendants-appellees to the introduction of such testimonial evidence on the basis of the survivorship rule. The witnesses being themselves parties to the instant case, suing the representatives of the deceased Luis D. Tongoy upon a demand against the latter's estate, said witnesses are barred by the objections of defendants-appellees from testifying on matters of fact occurring before the death of the deceased (Sec. 20[a], Rule 130), more particularly where such occurrences consist of verbal agreements or statements made by or in the presence of the deceased.

"Neither has the existence of the alleged contra-documento -- by which Luis D. Tongoy supposedly acknowledged the transfers to be simulated and bound himself to return the shares of his co-owners after the mortgage on the Hacienda had been discharged -- been satisfactorily established to merit consideration as proof of the supposed express trust. We can hardly add to the sound observations of the trial court in rejecting the evidence to the effect as insufficient, except to note further that at least plaintiffs-appellants Mercedes T. Sonora and Trinidad T. Sonora have testified having been apprised of the document and its contents when Luis D. Tongoy supposedly delivered one copy to Jose Tongoy. And yet as the trial court noted, no express trust agreement was ever mentioned in plaintiffs-appellants' pleadings or at the pre-trial.

"Nevertheless, there is on record enough convincing evidence not barred by the survivorship rule, that the transfers made by the co-owners in favor of Luis D. Tongoy were simulated and that an implied or resulting trust thereby came into existence, binding the latter to make reconveyance of the co-owners' shares after the mortgage indebtedness on Hacienda Pulo has been discharged. Thus it appears beyond doubt that Hacienda Pulo has been the source of livelihood to the co-owners and their dependents, when the subject transfers were made. It is most unlikely that all of the several other co-owners should have come at the same time to one mind about disposing of their participation in the hacienda, when the same counted so much in their subsistence and self-esteem. Only

extreme necessity would have forced the co-owners to act in unison towards earnestly parting with their shares, taking into account the meager considerations mentioned in the deeds of transfer which at their most generous gave to each co-owner only P2,000.00 for a 1/5 part of the hacienda. As it appears to Us, the impending foreclosure on the mortgage for P11,000.00 could not have created such necessity. Independent of testimony to the effect, it is not hard to surmise that the hacienda could have been leased to others on terms that would have satisfied the mortgage obligation. Moreover, as it turned out, the PNB was amenable, and did actually accede, to a restructuring of the mortgage loan in favor of Luis D. Tongoy, thereby saving the hacienda from foreclosure. As a matter of fact, the co-owners must have been posted on the attitude of the bank regarding the overdue mortgage loan, and its willingness to renew or restructure the same upon certain conditions. Under such circumstances, it is more reasonable to conclude that there was no compelling reason for the other co-owners to sell out their birthrights to Luis D. Tongoy, and that the purported transfers were, as claimed by them in reality simulated pursuant to the suggestion that the bank wanted to deal with only one person. In fact, as recited in the Escritura de Venta (Exh. AA) executed between Luis D. Tongoy and Jose Tongoy, it appears that the series of transfers made in favor of the former by the co-owners of Hacienda Pulo followed and was made pursuant to a prior arrangement made with the PNB by Luis D. Tongoy to redeem the shares or participation of his co-owners. That this was readily assented to in the anxiety to save and preserve Hacienda Pulo for all its co-owners appears very likely anent undisputed evidence that the said co-owners had been used to entrusting the management thereof to one among them, dating back to the time of Francisco Tongoy who once acted as administrator, followed by Jose Tongoy, before Luis D. Tongoy himself took over the hacienda.

"Strongly supporting the theory that the transfers were only simulated to enable Luis D. Tongoy (to) have effective control and management of the hacienda for the benefit of all the co-owners is preponderant evidence to the effect that he was in no financial condition at the time to purchase the hacienda. Witness Eduardo Arboleda who was a law partner of Luis D. Tongoy when the transfers were made, and who is not a party in this case, emphatically testified that Luis D. Tongoy could not have produced the money required for the purchase from his law practice then. On the other hand, the suggestion that his wife Ma. Rosario Araneta had enough income from her landed properties to sufficiently augment Luis D. Tongoy's income from his practice is belied by evidence that such properties were leased, and the rentals collected in advance, for eleven (11) crop years beginning 1931 (Exh. EEE), when they were not yet married.

"The financial incapacity of Luis D. Tongoy intertwines, and together gains strength, with proof that the co-owners as transferors in the several deeds of sale did not receive the considerations stated therein. In addition to the testimony of the notary public, Eduardo P. Arboleda, that no consideration as recited in the deeds of transfer were ever paid in his presence, all the transferors who testified including Jesus T. Sonora, Mercedes T. Sonora and Trinidad T. Sonora -- all denied having received the respective considerations allegedly given them. While said transferors are parties in this case, it has been held that the survivorship rule has no application where the testimony offered is to the effect that a thing did not occur (*Nantz vs. Agbulos*, CA-G.R. No. 4098-R, January 13, 1951; *Mendoza v. C. Vda. de Goitia*, 54 Phil. 557, cited by Moran, *Comments on the Rules of Court*, 1970 ed., Vol. 5, p. 174).

"Also of some significance is the fact that the deeds of transfer executed by Ana Tongoy, Teresa Tongoy, Mercedes Sonora, Trinidad Sonora, Juan Sonora, and Patricio Tongoy (Exh. W) as well as that by Jesus Sonora (Exh. DD), did not even bother to clarify whether Luis D. Tongoy as transferee of his co-owners' share was assuming the indebtedness owing to the PNB upon the mortgage on Hacienda Pulo. In an honest-to-goodness sale, it would have been most unlikely that the transferors would have paid no attention to this detail, least of all where, as in this case, the transfers were apparently prompted by the inability of the co-owners to discharge the mortgage obligation and were being pressed for payment.

"Furthermore, the tenor of the letter from Luis D. Tongoy to Jose Tongoy, dated November 5, 1935 (Exhibit BB-1), as heretofore quoted with portions of the decision on appeal, is very revealing of the fact that the steps taken to place Hacienda Pulo in the name of Luis D. Tongoy were made for the benefit not only of himself but for the other co-owners as well. Thus, the letter ends with the clause—'this way we will avoid many expenses.'

"Finally, it is not without significance that the co-owners and their dependents continued to survive apparently from the sustenance from Hacienda Pulo for a long time following the alleged transfers in favor of Luis D. Tongoy. In fact, it does not appear possible that Jesus T. Sonora and Ricardo P. Tongoy could have finished medicine and law, respectively, without support from Luis D. Tongoy as administrator of the common property.

"All the foregoing, considered together, constitute clear and convincing evidence that the transfers made in favor of Luis D. Tongoy by his co-owners were only simulated, under circumstances giving rise to an implied or resulting trust whereby Luis D. Tongoy is bound to hold title in trust for the benefit of his co-owners (cf. *de Buencamino, et al. vs. De Matias, et al.*, L-19397, April 30, 1966, 16 SCRA 849)" [pp. 170-181, Vol. I, rec.].

The Court of Appeals found enough convincing evidence not barred by the aforesaid survivorship rule to the effect that the transfers made by the co-owners in favor of Luis D. Tongoy were simulated.

All these findings of fact, as a general rule, are conclusive upon US and beyond OUR power to review. It has been well-settled that the jurisdiction of the Supreme Court in cases brought to IT from the Court of Appeals is limited to reviewing and revising errors of law imputed to it, its findings of fact being conclusive as a matter of general principle (*Chan vs. C.A.*, 33 SCRA 737, 744; *Alquiza vs. Alquiza*, 22 SCRA 494, 497).

The proofs submitted by petitioners do not place the factual findings of the Court of Appeals under any of the recognized exceptions to the aforesaid general rule.

I

The initial crucial issue therefore is -- whether or not the rights of herein respondents over subject properties, which were the subjects of simulated or fictitious transactions, have already prescribed.

The negative answer to the aforesaid query is found in Articles 1409 and 1410 of the New Civil Code. Said provisions state thus:

"Art. 1409. The following contracts are inexistent and void from the beginning:

".....

"2) Those which are absolutely simulated or fictitious;

".....

"These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived" (*italics supplied*).

"Art. 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe."

The characteristic of simulation is the fact that the apparent contract is not really desired nor intended to produce legal effects nor in any way alter the juridical situation of the parties. Thus, where a person, in order to place his property beyond the reach of his creditors, simulates a transfer of it to another, he does not really intend to divest himself of his title and control of the property; hence, the deed of transfer is but a sham. This characteristic of simulation was defined by this Court in the case of *Rodriguez vs. Rodriguez*, No. L-23002, July 31, 1967, 20 SCRA 908.

A void or inexistent contract is one which has no force and effect from the very beginning, as if it had never been entered into, and which cannot be validated either by time or by ratification (p. 592, Civil Code of the Philippines, Vol. IV, Tolentino, 1973 Ed.).

A void contract produces no effect whatsoever either against or in favor of anyone; hence, it does not create, modify or extinguish the juridical relation to which it refers (p. 594, Tolentino, *supra*).

The following are the most fundamental characteristics of void or inexistent contracts:

- 1) As a general rule, they produce no legal effects whatsoever in accordance with the principle "quod nullum est nullum producit effectum."
- 2) They are not susceptible of ratification.
- 3) The right to set up the defense of inexistence or absolute nullity cannot be waived or renounced.
- 4) The action or defense for the declaration of their inexistence or absolute nullity is imprescriptible.
- 5) The inexistence or absolute nullity of a contract cannot be invoked by a person whose interests are not directly affected (p. 444, Comments and Jurisprudence on Obligations and Contracts, Jurado, 1969 Ed.; italics supplied).

The nullity of these contracts is definite and cannot be cured by ratification. The nullity is permanent, even if the cause thereof has ceased to exist, or even when the parties have complied with the contract spontaneously (p. 595, Tolentino, *supra*).

In *Eugenio vs. Perdido, et al.*, No. L-7083, May 19, 1955, 97 Phil. 41, this Court thus reiterated:

"Under the existing classification, such contract would be 'inexisting' and the 'action or defense for declaration' of such inexistence 'does not prescribe' (Art. 1410 New Civil Code). While it is true that this is a new provision of the New Civil Code, it is nevertheless a principle recognized since *Tipton vs. Velasco*, 6 Phil. 67 that 'mere lapse of time cannot give efficacy to contracts that are null and void.'"

Consistently, this Court held that "where the sale of a homestead is null and void, the action to recover the same does not prescribe because mere lapse of time cannot give efficacy to the contracts that are null and void and inexistent" (*Angeles, et al. vs. Court of Appeals, et al.*, No. L-11024, January 31, 1958, 102 Phil. 1006).

In the much later case of *Guiang vs. Kintanar* (Nos. L-49634-36, July 25, 1981, 106 SCRA 49), this Court enunciated thus:

"It is of no consequence, pursuant to the same article, that petitioners, the Guiang spouses, executed on August 21, 1975, apparently in ratification of the impugned agreement, the deeds of sale covering the two lots already referred to and that petitioners actually received in part or in whole the money consideration stipulated therein, for according to the same Article 1409, contracts contemplated therein, as the one We are dealing with, 'cannot be ratified nor the defense of its illegality be waived.' Neither is it material, much less decisive, that petitioners had not earlier judicially moved to have the same annulled or set aside. Under Article 1410 of the Civil Code, '(t)he action or defense for declaration of the inexistence of a contract does not prescribe.'"

Evidently, therefore, the deeds of transfer executed in favor of Luis Tongoy were from the very beginning absolutely simulated or fictitious, since the same were made merely for the purpose of restructuring the mortgage over the subject properties and thus preventing the foreclosure by the PNB.

Considering the law and jurisprudence on simulated or fictitious contracts as aforesaid, the within action for reconveyance instituted by herein respondents which is anchored on the said simulated deeds of transfer cannot

and should not be barred by prescription. No amount of time could accord validity or efficacy to such fictitious transactions, the defect of which is permanent.

There is no implied trust that was generated by the simulated transfers; because being fictitious or simulated, the transfers were null and void ab initio — from the very beginning — and thus vested no rights whatsoever in favor of Luis Tongoy or his heirs. That which is inexistent cannot give life to anything at all.

II

But even assuming arguendo that such an implied trust exists between Luis Tongoy as trustee and the private respondents as cestui que trust, still the rights of private respondents to claim reconveyance is not barred by prescription or laches.

Petitioners maintain that, even conceding that respondents have adequately proven an implied trust in their favor, their rights have already prescribed, since actions to enforce an implied trust created under the old Civil Code prescribes in ten years.

"Under Act No. 190, whose statute of limitation would apply if there were an implied trust as in this case, the longest period of extinctive prescription was only ten years" (*Salao vs. Salao*, 70 SCRA 84; *Diaz vs. Gorricho and Aguado*, 103 Phil. 261, 226).

On the other hand, private respondents contend that prescription cannot operate against the cestui que trust in favor of the trustee, and that actions against a trustee to recover trust property held by him are imprescriptible (*Manalang vs. Canlas*, 50 OG 1980). They also cite other pre-war cases to bolster this contention, among which are: *Camacho vs. Municipality of Baliwag*, 28 Phil. 46; *Uy vs. Cho Jan Ling*, 19 Phil. 202 [pls. see pp. 258-259, Brief for Respondents, p. 398, rec.]. They further allege that possession of a trustee is, in law, possession of the cestui que trust and, therefore, it cannot be a good ground for title by prescription (*Laguna vs. Levantino*, 71 Phil. 566; *Cortez vs. Oliva*, 33 Phil. 480, cited on p. 261, Brief for Respondents, *supra*).

The rule now obtaining in this jurisdiction is aptly discussed in the case of *Bueno vs. Reyes* (27 SCRA 1179, 1183), where the Court through then Mr. Justice Makalintal, held:

"While there are some decisions which hold that an action upon a trust is imprescriptible, without distinguishing between express and implied trusts, the better rule, as laid down by this Court in other decisions, is that prescription does supervene where the trust is merely an implied one. The reason has been expressed by Mr. Justice J.B.L. Reyes in *J. M. Tuazon and Co., Inc. vs. Magdangal*, 4 SCRA 84, 88, as follows:

"Under Section 40 of the Old Code of Civil Procedure, all actions for recovery of real property prescribe in ten years, excepting only actions based on continuing or subsisting trusts that were considered by section 38 as imprescriptible. As held in the case of *Diaz vs. Gorricho*, L-11229, March 29, 1958, however, the continuing or subsisting trusts contemplated in Sec. 38 of the Code of Civil Procedure referred only to express unrepudiated trusts, and did not include constructive trusts (that are imposed by law) where no fiduciary relation exists and the trustee does not recognize the trust at all."

This doctrine has been reiterated in the latter case of *Escay vs. C.A.* (61 SCRA 370, 387), where WE held that implied or constructive trusts prescribe in ten years. "The prescriptibility of an action for reconveyance based on implied or constructive trust, is now a settled question in this jurisdiction. It prescribes in ten years" (*Boñaga vs. Soler, et al.*, 2 SCRA 755; *J.M. Tuazon and Co., Inc. vs. Magdangal*, 4 SCRA 88, special attention to footnotes).

Following such proposition that an action for reconveyance such as the instant case is subject to prescription in ten years, both the trial court and respondent appellate court are correct in applying the ten-year prescriptive period.

The question, however, is, from what time should such period be counted?

The facts of the case at bar reveal that the title to Hacienda Pulo was registered in the name of Luis D. Tongoy with the issuance of TCT No. 20154 on November 8, 1935; that the title to the adjacent Cuaycong property was transferred to Luis D. Tongoy with the issuance of TCT No. 21522 on June 22, 1936. The properties were mortgaged in the year 1936 by said Luis D. Tongoy for P4,500.00 and P21,000.00, respectively, for a period of fifteen years; that the mortgage obligations to the PNB were fully paid on April 17, 1956; that the release of mortgage was recorded in the Registry of Deeds on May 5, 1958; and that the case for reconveyance was filed in the trial court on June 2, 1966.

Considering that the implied trust resulted from the simulated sales which were made for the purpose of enabling the transferee, Luis D. Tongoy, to save the properties from foreclosure for the benefit of the co-owners, it would not do to apply the theory of constructive notice resulting from the registration in the trustee's name. Hence, the ten-year prescriptive period should not be counted from the date of registration in the name of the trustee, as contemplated in the earlier case of *Juan vs. Zuñiga* (4 SCRA 1221). Rather, it should be counted from the date of recording of the release of mortgage in the Registry of Deeds, on which date—May 5, 1958—the cestui que trust were charged with the knowledge of the settlement of the mortgage obligation, the attainment of the purpose for which the trust was constituted.

Indeed, as respondent Court of Appeals had correctly held:

"... as already indicated, the ten-year prescriptive period for bringing the action to enforce the trust or for reconveyance of plaintiffs-appellants' shares should be tolled from the registration of the release of the mortgage obligation, since only by that time could plaintiffs-appellants be charged with constructive knowledge of the liquidation of the mortgage obligations, when it became incumbent upon them to expect and demand the return of their shares, there being no proof that plaintiffs-appellants otherwise learned of the payment of the obligation earlier. More precisely then the prescriptive period should be reckoned from May 5, 1958 when the release of the mortgage was recorded in the Registry of Deeds, which is to say that the present complaint was still filed within the period on June 4, 1966" (p. 35 of questioned Decision, on p. 191, rec.).

Consequently, petitioner Francisco A. Tongoy as successor-in-interest and/or administrator of the estate of the late Luis D. Tongoy, is under obligation to return the shares of his co-heirs and co-owners in the subject properties and, until it is done, to render an accounting of the fruits thereof from the time that the obligation to make a return arose, which in this case should be May 5, 1958, the date of registration of the document of release of mortgage.

Hence, WE find no evidence of abuse of discretion on the part of respondent Court of Appeals when it ordered such accounting from May 5, 1958, as well as the imposition of legal interest on the fruits and income corresponding to the shares that should have been returned to the private respondents, from the date of actual demand which has been determined to have been made on January 26, 1966 by the demand letter (Exh. TT) of respondent Jesus T. Sonora to deceased Luis D. Tongoy.

III

With respect to the award of attorney's fees in the sum of P20,000.00, the same appears to have been properly made, considering that private respondents were unnecessarily compelled to litigate (*Flordelis vs. Mar*, 114 SCRA 41; *Sarsosa Vda. de Barsobin vs. Cuenco*, 113 SCRA 547; *Phil. Air Lines vs. C.A.*, 106 SCRA 393). As pointed out in the questioned decision of the Court of Appeals:

"As for the claim for attorney's fees, the same appears to be well taken in the light of the findings WE have made considering that prevailing plaintiffs-appellants were forced to litigate to enforce their rights, and that

equity under all the circumstances so dictate, said plaintiffs-appellants should recover attorney's fees in a reasonable amount. We deem P20,000.00 adequate for the purpose (p. 36 of Decision, p. 151, rec.).

IV

The remaining assignment of error dwells on the question of whether or not respondents Amado, Ricardo, Cresenciano and Norberto, all surnamed Tongoy, may be considered legitimated by virtue of the marriage of their parents, Francisco Tongoy and Antonina Pabello, subsequent to their births and shortly before Francisco died on September 15, 1926. Petitioners maintain that since the said respondents were never acknowledged by their father, they could not have been legitimated by the subsequent marriage of their parents, much less could they inherit from the estate of their father, the predecessor-in-interest of Luis D. Tongoy, who is admittedly the half brother of the said respondents.

Both the trial court and the respondent appellate court have found overwhelming evidence to sustain the following conclusions: that Amado P. Tongoy, Ricardo P. Tongoy, Cresenciano P. Tongoy and Norberto P. Tongoy were born illegitimate to Antonina Pabello on August 19, 1910 (Exh. A), August 12, 1914 (Exh. B), December 1, 1915 (Exhs. C and C-1) and August 4, 1922 (Exh. D), respectively; that Francisco Tongoy was their father; that said Francisco Tongoy had before them two legitimate children by his first wife, namely, Luis D. Tongoy and Patricio D. Tongoy; that Francisco Tongoy and Antonina Pabello were married sometime before his death on September 15, 1926 (Exh. H); that shortly thereafter, Luis D. Tongoy and Patricio D. Tongoy executed an Extra-Judicial Declaration of Heirs, leaving out their half-brothers Amado, Ricardo, Cresenciano, and Norberto, who were then still minors; that respondents Amado, Ricardo, Cresenciano and Norberto were known and accepted by the whole clan as children of Francisco; that they had lived in Hacienda Pulo with their parents, but when they went to school, they stayed in the old family home at Washington Street, Bacolod, together with their grandmother, Agatona Tongoy, as well as with the Sonoras and with Luis and Patricio Tongoy; that everybody in Bacolod knew them to be part of the Tongoy-Sonora clan; and that Luis D. Tongoy as administrator of Hacienda Pulo, also spent for the education of Ricardo Tongoy until he became a lawyer; and that even petitioners admit the fact that they were half-brothers of the late Luis D. Tongoy.

The bone of contention, however, hinges on the absence of an acknowledgment through any of the modes recognized by the Old Civil Code (please see Articles 131 and 135 of the Old Civil Code), such that legitimation could not have taken place in view of the provisions of Art. 121 of the same Code which states that "children shall be considered legitimated by a subsequent marriage only when they have been acknowledged by the parents before or after the celebration thereof."

Of course, the overwhelming evidence found by respondent Court of Appeals conclusively shows that respondents Amado, Ricardo, Cresenciano and Norberto have been in continuous possession of the status of natural, or even legitimated, children. Still, it recognizes the fact that such continuous possession of status is not, per se, a sufficient acknowledgment but only a ground to compel recognition (*Alabat vs. Alabat*, 21 SCRA 1479; *Pua vs. Chan*, 21 SCRA 753; *Larena vs. Rubio*, 43 Phil. 1017).

Be that as it may, WE cannot but agree with the liberal view taken by respondent Court of Appeals when it said:

"... It does seem equally manifest, however, that defendants-appellants stand on a purely technical point in the light of the overwhelming evidence that appellees were natural children of Francisco Tongoy and Antonina Pabello, and were treated as legitimate children not only by their parents but also by the entire clan. Indeed, it does not make much sense that appellees should be deprived of their hereditary rights as undoubted natural children of their father, when the only plausible reason that the latter could have had in mind when he married his second wife Antonina Pabello just over a month before his death was to give legitimate status to their

children. It is not in keeping with the more liberal attitude taken by the New Civil Code towards illegitimate children and the more compassionate trend of the New Society to insist on a very literal application of the law in requiring the formalities of compulsory acknowledgment, when the only result is to unjustly deprive children who are otherwise entitled to hereditary rights. From the very nature of things, it is hardly to be expected of appellees, having been reared as legitimate children by their parents and treated as such by everybody, to bring an action to compel their parents to acknowledge them. In the hitherto cited case of *Ramos vs. Ramos*, supra, the Supreme Court showed the way out of patent injustice and inequity that might result in some cases simply because of the implacable insistence on the technical amenities for acknowledgment. Thus, it held—

'Unacknowledged natural children have no rights whatsoever (*Buenaventura vs. Urbano*, 5 Phil. 1; *Siguiong vs. Siguiong*, 8 Phil. 5, 11; *Infante vs. Figueras*, 4 Phil. 738; *Crisolo vs. Macadaeg*, 94 Phil. 862). The fact that the plaintiffs, as natural children of Martin Ramos, received shares in his estate implied that they were acknowledged. Obviously, defendants Agustin Ramos and Granada Ramos and the late Jose Ramos and members of his family had treated them as his children. Presumably, that fact was well-known in the community. Under the circumstances, Agustin Ramos and Granada Ramos and the heirs of Jose Ramos, are estopped from attacking plaintiffs' status as acknowledged natural children (See Arts. 283 [4] and 2666 [3], New Civil Code). [*Ramos vs. Ramos*, supra].'

"With the same logic, estoppel should also operate in this case in favor of appellees, considering, as already explained in detail, that they have always been treated as acknowledged and legitimated children of the second marriage of Francisco Tongoy, not only by their presumed parents who raised them as their children, but also by the entire Tongoy-Sonora clan, including Luis D. Tongoy himself who had furnished sustenance to the clan in his capacity as administrator of Hacienda Pulo and had in fact supported the law studies of appellee Ricardo P. Tongoy in Manila, the same way he did with Jesus T. Sonora in his medical studies. As already pointed out, even defendants-appellants have not questioned the fact that appellees are half-brothers of Luis D. Tongoy. As a matter of fact, they are really children of Francisco Tongoy and Antonina Pabello, and only the technicality that their acknowledgment as natural children has not been formalized in any of the modes prescribed by law appears to stand in the way of granting them their hereditary rights. But estoppel, as already indicated, precludes defendants-appellants from attacking appellees' status as acknowledged natural or legitimated children of Francisco Tongoy. In addition to estoppel, this is decidedly one instance when technicality should give way to conscience, equity and justice (cf. *Vda. de Sta. Ana vs. Rivera*, L-22070, October 29, 1966, 18 SCRA 588)" [pp. 196-198, Vol. I, rec.].

It is time that WE, too, take a liberal view in favor of natural children who, because they enjoy the blessings and privileges of an acknowledged natural child and even of a legitimated child, found it rather awkward, if not unnecessary, to institute an action for recognition against their natural parents who, without their asking, have been showering them with the same love, care and material support as are accorded to legitimate children. The right to participate in their father's inheritance should necessarily follow.

The contention that the rights of the said respondents-Tongoys have prescribed, is without merit. The death of Francisco Tongoy having occurred on September 15, 1926, the provisions of the Spanish Civil Code is applicable to this case, following the doctrine laid down in *Villaluz vs. Neme* (7 SCRA 27) where this Court, through Mr. Justice Paredes, held:

"Considering that Maria Rocabo died (on February 17, 1937) during the regime of the Spanish Civil Code, the distribution of her properties should be governed by said Code, wherein it is provided that between co-heirs, the act to demand the partition of the inheritance does not prescribe (Art. 1965 [Old Civil Code]; *Baysa, et al. vs. Baysa*, 53 Off. Gaz. 7272). Verily, the 3 living sisters were possessing the property as administratrices of the other co-heirs, plaintiffs-appellants herein, who have the right to vindicate their inheritance regardless of the

lapse of time (Sevilla vs. De los Angeles, L-7745, 51 Off. Gaz. 5590, and cases cited therein)."

Even following the more recent doctrine enunciated in *Gerona vs. de Guzman* (11 SCRA 153) that "an action for reconveyance of real property based upon a constructive or implied trust, resulting from fraud, may be barred by the statute of limitations" (*Candelaria vs. Romero*, L-12149, Sept. 30, 1960; *Alzona vs. Capunita*, L-10220, Feb. 28, 1962)", and that "the action therefor may be filed within four years from the discovery of the fraud . . .", said period may not be applied to this case in view of its peculiar circumstances. The registration of the properties in the name of Luis D. Tongoy on November 8, 1935 cannot be considered as constructive notice to the whole world of the fraud.

It will be noted that the foreclosure on the original mortgage over Hacienda Pulo was instituted by PNB as early as June 18, 1931, from which time the members of the Tongoy-Sonora clan had been in constant conference to save the property. At that time all the respondents-Tongoy were still minors (except Amado, who was already 23 years old then), so that there could be truth to the allegation that their exclusion in the Declaration of Inheritance executed by Patricio and Luis Tongoy on April 29, 1933 was made to facilitate matters -- as part of the general plan arrived at after the family conferences to transfer the administration of the property to the latter. The events that followed were obviously in pursuance of such plan, thus:

March 13, 1934— An Escritura de Venta (Exh. 2 or W) was executed in favor of Luis D. Tongoy by Ana Tongoy, Teresa Tongoy, Mercedes Sonora, Trinidad Sonora, Juan Sonora and Patricio Tongoy, transferring their rights and interests over Hacienda Pulo to the former.

October 23, 1935— An Escritura de Venta (Exh. 3 or DD) was executed by Jesus Sonora, likewise transferring his rights and interests over Hacienda Pulo to Luis D. Tongoy;

November 5, 1935— An Escritura de Venta (Exh. 5 or AA) was also executed by Jose Tongoy in favor of Luis D. Tongoy for the same purpose; (Note: This was preceded by the execution on October 14, 1935 of an Assignment of Rights [4 or Z] in favor of Luis D. Tongoy by the Pacific Commercial Company as judgment lien-holder [subordinate of the PNB mortgage] of Jose Tongoy on Hacienda Pulo.

November 5, 1935— Hacienda Pulo was placed in the name of Luis D. Tongoy married to Ma. Rosario Araneta with the issuance of TCT 20154 (Exh. 20);

June 22, 1936— An Escritura de Venta was executed by Basilisa Cuaycong over the Cuaycong property in favor of Luis D. Tongoy, thereby resulting in the issuance of TCT No. 21522 in the name of Luis D. Tongoy married to Ma. Rosario Araneta;

June 26, 1936— Luis D. Tongoy executed a real estate mortgage over the Cuaycong property in favor of the PNB to secure a loan of P4,500.00; and

June 29, 1936— Luis D. Tongoy executed a real estate mortgage over Hacienda Pulo to secure a loan of P21,000.00 payable for fifteen years.

When the mortgages were constituted, respondents Cresenciano Tongoy and Norberto Tongoy were still minors, while respondent Amado Tongoy became of age on August 19, 1931, and Ricardo Tongoy attained majority age on August 12, 1935. Still, considering that such transfer of the properties in the name of Luis D. Tongoy was made in pursuance of the master plan to save them from foreclosure, the said respondents were precluded from doing anything to assert their rights. It was only upon failure of the herein petitioner, as administrator and/or successor-in-interest of Luis D. Tongoy, to return the properties that the prescriptive period should begin to run.

As above demonstrated, the prescriptive period is ten years from the date of recording on May 5, 1958 of the release of mortgage in the Registry of Deeds.

WHEREFORE, THE JUDGMENT APPEALED FROM IS HEREBY AFFIRMED IN TOTO.

SO ORDERED.

Guerrero and Escolin, JJ., concur.

Aquino and Abad Santos, JJ., in the result.

Concepcion Jr. and De Castro, JJ., took no part.

[*] During the pendency of the case below, the defendant Norberto P. Tongoy died and was substituted by his widow Eva Mabugat Tongoy, all his children Madonna, Majesty and Francisco, all surnamed Tongoy. Subsequently, plaintiff Juan T. Sonora also died and was substituted by his widow Elisa Cuison Sonora and his children Clarabelle and Romulo, both surnamed Sonora.

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