

EPITACIO DELIMA, PACIANO DELIMA, FIDEL DELIMA, VIRGILIO DELIMA, GALILEO DELIMA, JR., BIBIANO BACUS, OLIMPIO BACUS AND PURIFICACION BACUS, PETITIONERS, VS. HON. COURT OF APPEALS,...

G.R. No. L-46296. September 24, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals reversing the trial court's judgment which declared as null and void the certificate of title in the name of respondents' predecessor and which ordered the partition of the disputed lot among the parties as co-owners.

The antecedent facts of the case as found both by the respondent appellate court and by the trial court are as follows:

During his lifetime, Lino Delima acquired Lot No. 7758 of the Talisay-Minglanilla Friar Lands Estate in Cebu by sale on installments from the government. Lino Delima later died in 1921 leaving as his only heirs three brothers and a sister namely: Eulalio Delima, Juanita Delima, Galileo Delima and Vicente Delima. After his death, TCT No. 2744 of the property in question was issued on August 3, 1953 in the name of "The Legal Heirs of Lino Delima, deceased, represented by Galileo Delima."

On September 22, 1953, Galileo Delima, now substituted by respondents, executed an affidavit of "Extra-judicial Declaration of Heirs." Based on this affidavit, TCT No. 2744 was cancelled and TCT No. 3009 was issued on February 4, 1954 in the name of Galileo Delima alone to the exclusion of the other heirs.

Galileo Delima declared the lot in his name for taxation purposes and paid the taxes thereon from 1954 to 1965.

On February 29, 1968, petitioners, who are the surviving heirs of Eulalio and Juanita Delima, filed with the Court of First Instance of Cebu (now Regional Trial Court) an action for reconveyance and/or partition of property and for the annulment of TCT No. 3009 with damages against their uncles Galileo Delima and Vicente Delima. Vicente Delima was joined as party defendant by the petitioners for his refusal to join the latter in their action.

On January 16, 1970, the trial court rendered a decision in favor of petitioners, the dispositive portion of which states:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the following are the declared owners of Lot No. 7758 of the Talisay-Minglanilla Friar Lands Estate presently covered by Transfer Certificate of Title No. 3009, each sharing a pro-indiviso share of one-fourth;

- 1) Vicente Delima (one-fourth)
- 2) Heirs of Juanita Delima, namely: Bibiano Bacus, Olimpio Bacus and Purification Bacus (one-fourth);

3) Heirs of Eulalio Delima, namely Epitacio, Paciano, Fidel, Virgilio and Galileo Jr., all surnamed Delima (one-fourth); and

4) The Heirs of Galileo Delima, namely Flaviana Vda. de Delima, Lily D. Arias, Helen Niadas, and Dionisio, Antonio, Eotu, Irene, and Fely, all surnamed Delima (one-fourth).

"Transfer Certificate of Title No. 3009 is declared null and void and the Register of Deeds of Cebu is ordered to cancel the same and issue in lieu thereof another title with the above heirs as pro-indiviso owners.

"After the payment of taxes paid by Galileo Delima since 1958, the heirs of Galileo Delima are ordered to turn over to the other heirs their respective shares of the fruits of the lot in question computed at P170.00 per year up to the present time with legal (interest).

"Within sixty (60) days from receipt of this decision the parties are ordered to partition the lot in question and the defendants are directed to immediately turn over possession of the shares here awarded to the respective heirs.

"Defendants are condemned to pay the costs of the suit.

"The counterclaim is dismissed.

"SO ORDERED." (pp. 54-55, Rollo)

Not satisfied with the decision, respondents appealed to the Court of Appeals. On May 19, 1977, respondent appellate court reversed the trial court's decision and upheld the claim of Galileo Delima that all the other brothers and sister of Lino Delima, namely Eulalio, Juanita and Vicente, had already relinquished and waived their rights to the property in his favor, considering that he (Galileo Delima) alone paid the remaining balance of the purchase price of the lot and the realty taxes thereon (p. 26, Rollo).

Hence, this petition was filed with the petitioners alleging that the Court of Appeals erred:

"1) In not holding that the right of a co-heir to demand partition of inheritance is imprescriptible. If it does, the defenses of prescription and laches have already been waived.

"2) In disregarding the evidence of the petitioners." (p. 13, Rollo)

The issue to be resolved in the instant case is whether or not petitioners' action for partition is already barred by the statutory period provided by law which shall enable Galileo Delima to perfect his claim of ownership by acquisitive prescription to the exclusion of petitioners from their shares in the disputed property.

Article 494 of the Civil Code expressly provides:

"Art. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

"Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

"A donor or testator may prohibit partition for a period which shall not exceed twenty years.

"Neither shall there be any partition when it is prohibited by law.

"No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership."

As a rule, possession by a co-owner will not be presumed to be adverse to the others, but will be held to benefit

all. It is understood that the co-owner or co-heir who is in possession of an inheritance pro-indiviso for himself and in representation of his co-owners or co-heirs, if, as such owner, he administers or takes care of the rest thereof with the obligation of delivering it to his co-owners or co-heirs, is under the same situation as a depository, a lessee or a trustee (*Bargayo v. Camumot*, 40 Phil. 857; *Segura v. Segura*, No. L-29320, September 19, 1988, 165 SCRA 368). Thus, an action to compel partition may be filed at any time by any of the co-owners against the actual possessor. In other words, no prescription shall run in favor of a co-owner against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership (*Del Blanco v. Intermediate Appellate Court*, No. 72694, December 1, 1987, 156 SCRA 55).

However, from the moment one of the co-owners claims that he is the absolute and exclusive owner of the properties and denies the others any share therein, the question involved is no longer one of partition but of ownership (*De Castro v. Echarri*, 20 Phil. 23; *Bargayo v. Camumot*, supra; *De los Santos v. Santa Teresa*, 44 Phil. 811). In such case, the imprescriptibility of the action for partition can no longer be invoked or applied when one of the co-owners has adversely possessed the property as exclusive owner for a period sufficient to vest ownership by prescription.

It is settled that possession by a co-owner or co-heir is that of a trustee. In order that such possession is considered adverse to the cestui que trust amounting to a repudiation of the co-ownership, the following elements must concur: 1) that the trustee has performed unequivocal acts amounting to an ouster of the cestui que trust; 2) that such positive acts of repudiation had been made known to the cestui que trust; and 3) that the evidence thereon should be clear and conclusive (*Valdez v. Olorga*, No. L-22571, May 25, 1973, 51 SCRA 71; *Pangan v. Court of Appeals*, No. L-39299, October 18, 1988, 166 SCRA 375).

We have held that when a co-owner of the property in question executed a deed of partition and on the strength thereof obtained the cancellation of the title in the name of their predecessor and the issuance of a new one wherein he appears as the new owner of the property, thereby in effect denying or repudiating the ownership of the other co-owners over their shares, the statute of limitations started to run for the purposes of the action instituted by the latter seeking a declaration of the existence of the co-ownership and of their rights thereunder (*Castillo v. Court of Appeals*, No. L-18046, March 31, 1964, 10 SCRA 549). Since an action for reconveyance of land based on implied or constructive trust prescribes after ten (10) years, it is from the date of the issuance of such title that the effective assertion of adverse title for purposes of the statute of limitations is counted (*Jaramil v. Court of Appeals*, No. L-31858, August 31, 1977, 78 SCRA 420).

Evidence shows that TCT No. 2744 in the name of the legal heirs of Lino Delima, represented by Galileo Delima, was cancelled by virtue of an affidavit executed by Galileo Delima and that on February 4, 1954, Galileo Delima obtained the issuance of a new title in his name numbered TCT No. 3009 to the exclusion of his co-heirs. The issuance of this new title constituted an open and clear repudiation of the trust or co-ownership, and the lapse of ten (10) years of adverse possession by Galileo Delima from February 4, 1954 was sufficient to vest title in him by prescription. As the certificate of title was notice to the whole world of his exclusive title to the land, such rejection was binding on the other heirs and started as against them the period of prescription. Hence, when petitioners filed their action for reconveyance and/or to compel partition on February 29, 1968, such action was already barred by prescription. Whatever claims the other co-heirs could have validly asserted before can no longer be invoked by them at this time.

ACCORDINGLY, the petition is hereby DENIED and the assailed decision of the Court of Appeals dated May 19, 1977 is AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Grino-Aquino, JJ., concur.

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