

## **RUSTICO ADILLE, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, EMETERIA ASEJO, TEODORICA ASEJO, DOMINGO ASEJO, JOSEFA ASEJO AND SANTIAGO ASEJO, RESPONDENTS.**

*G.R. No. L-44546. January 29, 1988*

Ponente: SARMIENTO, J.

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### **SARMIENTO, J.:**

In issue herein are property and property rights, a familiar subject of controversy and a wellspring of enormous conflict that has led not only to protracted legal entanglements but to even more bitter consequences, like strained relationships and even the forfeiture of lives. It is a question that likewise reflects a tragic commentary on prevailing social and cultural values and institutions, where, as one observer notes, wealth and its accumulation are the basis of self-fulfillment and where property is held as sacred as life itself. "It is in the defense of his property," says this modern thinker, that one "will mobilize his deepest protective devices, and anybody that threatens his possessions will arouse his most passionate enmity." [1]

The task of this Court, however, is not to judge the wisdom of values; the burden of reconstructing the social order is shouldered by the political leadership -- and the people themselves. The parties have come to this Court for relief and accordingly, our responsibility is to give them that relief pursuant to the decree of law.

The antecedent facts are quoted from the decision [2] appealed from:

xxx xxx xxx

x x x [Th]e land in question Lot 14694 of Cadastral Survey of Albay located in Legaspi City with an area of some 11,325 sq. m. originally belonged to one Felisa Alzul as her own private property; she married twice in her lifetime; the first, with one Bernabe Adille, with whom she had as an only child, herein defendant, Rustico Adillo; in her second marriage with one Procopio Asejo, her children were herein plaintiffs, - now, sometime in 1939, said Felisa sold the property in pacto de retro to certain 3rd persons, period of repurchase being 3 years, but she died in 1942 without being able to redeem, and after her death, but during the period of redemp-tion, herein defendant repurchased, by himself alone, and after that, he execu-ted a deed of extra-judicial partition representing himself to be the only heir and child of his mother Felisa with the consequence that he was able to secure title in his name alone also, so that OCT No. 21137 in the name of his mother was transferred to his name, that was in 1955; that was why after some efforts of compromise had failed, his half-brothers and sisters, herein plaintiffs, filed present case for partition with account-ing on the position that he was only a trustee on an implied trust when he redeemed, - and this is the evidence, but as it also turned out that one of plaintiffs, Emeteria Asejo was occupying a portion, defendant counterclaimed for her to vacate that, -

Well then, after hearing the evidence, trial Judge sustained defendant in his position that he was and became absolute owner, he was not a trustee, and therefore, dismissed case and also condemned plaintiff occupant, Emeteria to vacate; it is because of this that plaintiffs have come here and contend that trial Court erred in:

"I. ... declaring the defendant absolute owner of the property;

II. ... not ordering the partition of the property; and

III. ... ordering one of the plaintiffs who is in possession of the portion of the property to vacate the land, p. 1, Appellants' brief.

which can be reduced to simple question of whether or not on the basis of evidence and law, judgment appealed from should be maintained.[3]xxx xxx xxx

The respondent Court of Appeals reversed the trial court,[4] and ruled for the plaintiffs-appellants, the private respondents herein. The petitioner now appeals, by way of certiorari, from the Appellate Court's decision.

We required the private respondents to file a comment and thereafter, having given due course to the petition, directed the parties to file their briefs. Only the petitioner, however, filed a brief, and the private respondents having failed to file one, we declared the case submitted for decision.

The petition raises a purely legal issue: May a co-owner acquire exclusive ownership over the property held in common?

Essentially, it is the petitioner's contention that the property subject of dispute devolved upon him upon the failure of his co-heirs to join him in its redemption within the period required by law. He relies on the provisions of Article 1515 of the old Civil Code, Article 1613 of the present Code, giving the vendee a retro the right to demand redemption of the entire property.

There is no merit in this petition.

The right of repurchase may be exercised by a co-owner with respect to his share alone.[5] While the records show that the petitioner redeemed the property in its entirety, shouldering the expenses therefor, that did not make him the owner of all of it. In other words, it did not put to end the existing state of co-ownership.

Necessary expenses may be incurred by one co-owner, subject to his right to collect reimbursement from the remaining co-owners.[6] There is no doubt that redemption of property entails a necessary expense. Under the Civil Code:

ART. 488. Each co-owner shall have a right to compel the other co-owners to contribute to the expenses of preservation of the thing or right owned in common and to the taxes. Any one of the latter may exempt himself from this obligation by renouncing so much of his undivided interest as may be equivalent to his share of the expenses and taxes. No such waiver shall be made if it is prejudicial to the co-ownership.

The result is that the property remains to be in a condition of co-ownership. While a vendee a retro, under Article 1613 of the Code, "may not be compelled to consent to a partial redemption," the redemption by one co-heir or co-owner of the property in its totality does not vest in him ownership over it. Failure on the part of all the co-owners to redeem it entitles the vendee a retro to retain the property and consolidate title thereto in his name.[7] But the provision does not give to the redeeming co-owner the right to the entire property. It does not provide for a mode of terminating a co-ownership.

Neither does the fact that the petitioner had succeeded in securing title over the parcel in his name terminate the existing co-ownership. While his half-brothers and sisters are, as we said, liable to him for reimbursement as and for their shares in redemption expenses, he cannot claim exclusive right to the property owned in common. Registration of property is not a means of acquiring ownership. It operates as a mere notice of existing title, that is, if there is one.

The petitioner must then be said to be a trustee of the property on behalf of the private respondents. The Civil

Code states:

ART. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

We agree with the respondent Court of Appeals that fraud attended the registration of the property. The petitioner's pretension that he was the sole heir to the land in the affidavit of extrajudicial settlement he executed preliminary to the registration thereof betrays a clear effort on his part to defraud his brothers and sisters and to exercise sole dominion over the property. The aforequoted provision therefore applies.

It is the view of the respondent Court that the petitioner, in taking over the property, did so either on behalf of his co-heirs, in which event, he had constituted himself a negotiorum gestor under Article 2144 of the Civil Code, or for his exclusive benefit, in which case, he is guilty of fraud, and must act as trustee, the private respondents being the beneficiaries, under the Article 1456. The evidence, of course, points to the second alternative, the petitioner having asserted claims of exclusive ownership over the property and having acted in fraud of his co-heirs. He cannot therefore be said to have assumed the mere management of the property abandoned by his co-heirs, the situation Article 2144 of the Code contemplates. In any case, as the respondent Court itself affirms, the result would be the same whether it is one or the other. The petitioner would remain liable to the private respondents, his co-heirs.

This Court is not unaware of the well-established principle that prescription bars any demand on property (owned in common) held by another (co-owner) following the required number of years. In that event, the party in possession acquires title to the property and the state of co-ownership is ended.[8] In the case at bar, the property was registered in 1955 by the petitioner, solely in his name, while the claim of the private respondents was presented in 1974. Has prescription, then, set in?

We hold in the negative. Prescription, as a mode of terminating a relation of co-ownership, must have been preceded by repudiation (of the co-ownership). The act of repudiation, in turn, is subject to certain conditions: (1) a co-owner repudiates the co-ownership; (2) such an act of repudiation is clearly made known to the other co-owners; (3) the evidence thereon is clear and conclusive; and (4) he has been in possession through open, continuous, exclusive, and notorious possession of the property for the period required by law.[9]

The instant case shows that the petitioner had not complied with these requisites. We are not convinced that he had repudiated the co-ownership; on the contrary, he had deliberately kept the private respondents in the dark by feigning sole heirship over the estate under dispute. He cannot therefore be said to have "made known" his efforts to deny the co-ownership. Moreover, one of the private respondents, Emeteria Asejo, is occupying a portion of the land up to the present, yet, the petitioner has not taken pains to eject her therefrom. As a matter of fact, he sought to recover possession of that portion Emeteria is occupying only as a counterclaim, and only after the private respondents had first sought judicial relief.

It is true that registration under the Torrens system is constructive notice of title,[10] but it has likewise been our holding that the Torrens title does not furnish a shield for fraud.[11] It is therefore no argument to say that the act of registration is equivalent to notice of repudiation, assuming there was one, notwithstanding the long-standing rule that registration operates as a universal notice of title.

For the same reason, we cannot dismiss the private respondents' claims commenced in 1974 over the estate registered in 1955. While actions to enforce a constructive trust prescribes in ten years,[12] reckoned from the date of the registration of the property,[13] we, as we said, are not prepared to count the period from such a date in this case. We note the petitioner's sub rosa efforts to get hold of the property exclusively for himself beginning with his fraudulent misrepresentation in his unilateral affidavit of extrajudicial settlement that he is "the only heir

and child of his mother Felisa with the consequence that he was able to secure title in his name also." [14] Accordingly, we hold that the right of the private respondents commenced from the time they actually discovered the petitioner's act of defraudation. [15] According to the respondent Court of Appeals, they "came to know [of it] apparently only during the progress of the litigation." [16] Hence, prescription is not a bar.

Moreover, and as a rule, prescription is an affirmative defense that must be pleaded either in a motion to dismiss or in the answer otherwise it is deemed waived, [17] and here, the petitioner never raised that defense. [18] There are recognized exceptions to this rule, but the petitioner has not shown why they apply.

WHEREFORE, there being no reversible error committed by the respondent Court of Appeals, the petition is DENIED. The Decision sought to be reviewed is hereby AFFIRMED in toto. No pronouncement as to costs.

**SO ORDERED.**

Yap, (Chairman), Melencio-Herrera, Paras, and Padilla, JJ., concur.

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**[1] GREENE, FELIX, THE ENEMY 234 (1971).**

[2] Gatmaitan, Magno, Acting Pres. J.; Domondon, Sixto and Reyes, Samuel, JJ., Concurring.

[3] Rollo, 14-15.

[4] Solidum, Arsenio, Presiding Judge, Court of First Instance of Albay, Civil Case No. 5029.

[5] CIVIL CODE, art. 1612; CIVIL CODE (1889), art. 1514.

[6] Supra, art. 489.

[7] Supra, art. 1607.

[8] The modes of terminating a co-ownership other than by prescription are partition (CIVIL CODE, arts. 494; 1079, 1082), merger or consolidation, and loss of the thing (3 Manresa 486).

[9] Santos v. Heirs of Crisostomo, 41 Phil. 3342 (1921); Bargayo v. Camumot, 40 Phil. 857 (1920).

[10] Pres. Decree No. 1529, sec. 31.

[11] Amerol v. Bagumbaran, G.R. No. 33261, September 30, 1987.

[12] Supra.

[13] Gerona v. De Guzman, No. L-19060, May 29, 1964, 11 SCRA 153 (1964).

[14] Rollo, id., 14.

[15] Gerona v. De Guzman, supra.

[16] Rollo, id., 18.

[17] RULES OF COURT, Rule 9, sec. 2. A party need not plead the statute of limitations in a responsive pleading (or motion to dismiss) where the complaint itself shows that the claims have prescribed [Ferrer v. Erieta, No. L-41767, August 23, 1978, 84 SCRA 705 (1978)]. Likewise, it has been held that where the defendant had no way of knowing that the claim advanced by the plaintiff had prescribed, his failure to invoke the statute (in his answer or motion to dismiss) does not constitute a waiver of such a defense [Guanzo v. Ramirez, 32 Phil. 492 (1914)]. In

another case, we said that prescription need not be pleaded specifically in an answer where the evidence itself shows that prescription bars the plaintiff's claims [Philippine National Bank v. Perez, No. L-20412, February 28, 1966, 16 SCRA 270 (1966); see also Chua Lanko v. Dioso, 97 [Phil. 821 (1955); Philippine National Bank v. Pacific Commission House, No. L-22675, March 28, 1969, 27 SCRA 766 (1969)].

[18] Rollo, id., 18.

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