

EMILIANO B. RAMOS, ET AL., PLAINTIFFS AND APPELLANTS, VS. GREGORIA T. RAMOS, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-19872. December 03, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

The parties appealed from the decision of the Court of First Instance of Negros Occidental, dismissing plaintiffs' complaint and holding that the intestate estate of Martin Ramos was settled in Civil Case No. 217, which was terminated on March 4, 1914, and that the judgment therein is res judicata and bars any litigation regarding the same estate (Civil Case No. 4522).

The documentary evidence reveals the following facts:

The spouses Martin Ramos and Candida Tanate died on October 4, 1906 and October 26, 1888, respectively. They were survived by their three legitimate children named Jose, Agustin and Granada. Martin Ramos was also survived by his seven natural children named Atanacia, Timoteo, Modesto, Manuel, Emiliano, Maria and Federico.

On December 10, 1906 a special proceeding was instituted in the Court of First Instance of Negros Occidental for the settlement of the intestate estate of the said spouses. The case was docketed as Civil Case No. 217 (its expediente is still existing). Rafael O. Ramos, a brother of Martin, was appointed administrator. The estate was administered for more than six years (Exh. F, G, H, I and J).

A project of partition dated April 25, 1913 was submitted. It was signed by the three legitimate children, Jose, Agustin and Granada; by the two natural children, Atanacia and Timoteo, and by Timoteo Zayco in representation of the other five natural children who were minors. It was sworn to before the justice of the peace (Exh. 3).

In the project of partition the conjugal hereditary estate was appraised at P74,984.93. It consisted of eighteen parcels of land, some head of cattle and the advances to the legitimate children (Exh. 3).

Under that project of partition, the following adjudications were made to the heirs:

Legitimate children:

VALUE

1. To Jose Ramos: (a) Hacienda Calaza with an area of 328 hectares,
- (b) a one-hectare town lot, (c) a 23-hectare lot in Sitio Bingig, and
- (d) some head of cattle

P25,291.66

2. To Granada Ramos: (a) a parcel of riceland with a capacity of 16 cavans of seedlings, located in Barrio Binicuel, Kabankalan, Negros Occidental and (b) some head of cattle.

1,891.66

3. To Agustin Ramos: (a) the remaining fourteen (14) lots out of the eighteen lots described in the inventory, which included the Hacienda Ylaya with an area of 185 hectares and (b) some head of cattle.

36,291.68

Natural children:

4. To each of the seven (7) natural children named Atanacia, Modesto, Timoteo, Federico, Manuel, Emiliano and Maria, were adjudicated personal properties valued at P1,785.35 consisting of (a) cash amounting to P1,760.35 and (b) P25, representing a one-seventh (1/7) of a one-sixth (1/6) portion in certain head of cattle allegedly representing one-third of the free portion of the estate of Martin Ramos, with an aggregate value of.

12,497.51

Total adjudications.

P75,972.51

It was agreed in the project of partition that Jose Ramos would pay the cash adjudications to Atanacia, Timoteo and Manuel, while Agustin Ramos would pay the cash adjudications to Modesto, Federico, Emiliano and Maria. It was further agreed that Jose Ramos and Agustin Ramos would pay their sister, Granada, the sums of P3,302.36 and P14,273.78, respectively (Exh. 3).

The record does not show whether assessed or market values were used in appraising the eighteen parcels of land. By way of explanation, it may be stated that, inasmuch as the ganancial estate had an appraised value of P74,984.93, one-half thereof or the sum of P37,492.46 represented the estate of Martin Ramos. One-third thereof was the free portion or P12,497.48. The shares of the seven natural children were to be taken from that one-third free portion. Dividing P12,497.48 by seven gives a result of P1,785.35 which represented the one-seventh share of each natural child in the free portion of the estate of their putative father, Martin Ramos. The partition was made in accordance with the old Civil Code which provides:

"ART. 840. When the testator leaves legitimate children or descendants, and also natural children, legally acknowledged, each of the latter shall be entitled to one-half of the portion pertaining to each of the legitimate children not bettered, provided that it can be included within the third for free disposal, from which it must be taken, after deducting the burial and funeral expenses.

"The legitimate children may satisfy the portion pertaining to the natural children in cash, or in other property of the estate, at a fair valuation."

The sum of P1,785.35, as the legal share of each natural child, was the amount which was indicated in the project of partition (Exh. 3) and which was to be satisfied in cash. The second paragraph of article 840 gives the legitimate children the right to satisfy in cash the hereditary portions of the natural children. (Article 840 was applied in the project of partition when it stated that each natural child had "una septima parte de un sexto de semovientes" but the statement in the project of partition that each legitimate child was entitled to "un tercio de los cinco quintos de los semovientes" is erroneous. It should be "un tercio de los cinco sextos de los semovientes").

Judge Richard Campbell, in his "decision" dated April 28, 1913, approved the project of partition as well as the intervention of Timoteo Zayco as guardian of the five heirs, who were minors. The court declared that the proceeding would be considered closed and the record should be archived as soon as proof was submitted that each heir had received the portion adjudicated to him (Exh. 4).

In an order dated February 3, 1914 Judge V. Nepomuceno asked the administrator to submit a report, complete with the supporting evidence, showing that the shares of the heirs had been delivered to them as required in the decision of April 28, 1913 (Exh. 5). In a manifestation dated February 24, 1914, which was signed by Jose, Agustin, Granada, Atanacia and Timoteo, all surnamed Ramos, and by Timoteo Zayco, the guardian, and which was sworn to before the justice of the peace on March 2 (not 4), 1914 and filed in court on March 5, 1914, they acknowledged:

"x x x hemos recibido del Administrador Judicial Rafael O. Ramos todas y cada una de las participaciones a que respectivamente tenemos derecho en los bienes relictos de los finados esposos Martin Ramos y Candida Tanate, de completo acuerdo y conformidad con el proyecto de reparticion que nosotros mismo sometemos al Juzgado en 25 de Abril de 1913 x x x" (Exh. 6).

Note that Granada Ramos and the natural children were assumed to have received their shares from the administrator although according to the project of partition, Jose Ramos and Agustin Ramos (not the administrator) were supposed to pay the cash adjudications to each of them. No receipts were attached to the manifestation, Exhibit 6. Apparently, the manifestation was not in strict conformity with the terms of Judge Nepomuceno's order and with the project of partition itself.

Lots Nos. 1370, 1371, 1372, 1375, 2158, 2159, 2161 and 2163 (eight lots) of the Himamaylan cadastre (page 8 of the Record on Appeal does not mention Lot 1370), which are involved in this case were registered as (as of 1958) in equal shares in the names of Gregoria Ramos and her daughter, Granada Ramos, as shown below (Exh. 8):

Lot No.

Original

Registration

Present title

Date

1370

Aug. 29, 1923

TCT No. RT-2238

Dec. 1, 1933

1371

-do-

TCT No. RT-2235

-do-

1372

-do-

TCT No. RT-2237

-do-

1375

-do-

TCT No. RT-2236

-do-

2158

Sept. 10, 1923

TCT No. RT-2230

-do-

2159

-do-

TCT No. RT-2233

-do-

2161

-do-

TCT No. RT-2232

-do-

2163

-do-

TCT No. RT-2231

-do-

Plaintiffs' version of the case. - A summary of plaintiffs' oral evidence is found in pages 4 to 13 of their well-written brief. It is reproduced below (omitting the citations of the transcript):

"Martin Ramos, who died in 1906 in the municipality of Himamaylan, Negros Occidental, left considerable real estate, the most valuable of which were the Hacienda Calaza and Hacienda Ylaya, both located in Himamaylan, Negros Occidental. Hacienda Calaza consists of sugar land, palay land and nipa groves with an area of 400 hectares and with a sugar quota allotment of 10,000 piculs, more or less, and having as its present actual value P500,000 more or less.

"All the children of Martin Ramos, whether legitimate or acknowledged natural, lived together in Hacienda Ylaya during his lifetime and were under his care. Even defendant Gregoria Ramos, widow of Jose Ramos, admitted that she dealt with plaintiffs as family relations, especially seeing them during Sundays in church as they lived with their father, and maintained closed and harmonious relations with them even after the death of their father. All said children continued to live in said house of their father for years even after his death.

"Upon their father's death, his properties were left under the administration of Rafael Ramos, the younger brother of their father and their uncle. Rafael Ramos continued to administer those properties of their father, giving plaintiffs money as their shares of the produce of said properties but plaintiffs not receiving any property or piece of land however, until 1913 when Rafael Ramos gathered all the heirs, including plaintiffs, in the house of their father, saying he would return the administration of the properties. He turned over Hacienda Ylaya to Agustin Ramos and Hacienda Calaza to Jose Ramos.

"All said children, defendants and plaintiffs alike, continued to live in the same house of their father in Hacienda Ylaya, now under the support of Agustin Ramos. Plaintiff Modesto Ramos who 'could understand Spanish a little', only left said house in 1911; plaintiff Manuel stayed there for one year and lived later with Jose Ramos for four years. Plaintiff Maria Ramos, who herself testified that she has 'a very low educational attainment', lived there until 1916 when she got married. Plaintiff Emiliano lived there with Agustin, helping him supervise the work in Hacienda Ylaya, until he transferred to Hacienda Calaza where he helped Jose Ramos supervise the work in said hacienda.

"Agustin Ramos supported plaintiffs, getting the money from the produce of Hacienda Ylaya, the only source of income of Agustin coming from said hacienda. Plaintiffs asked money from Agustin pertaining to their share in the produce of Hacienda Ylaya and received varied amounts, sometimes around P50 at a time, getting more when needed, and receiving P90 or P100 more or less a year.

"Jose Ramos gave plaintiffs also money as their shares from the products of Hacienda Calaza. Even Maria Ramos who upon her marriage in 1916 lived in La Carlota with her husband was given money whenever she went to Himamaylan. Plaintiffs received varied amounts or sums of money from Jose as their shares in the produce of Hacienda Ylaya more or less about P100 a year, mostly during the milling season every year while he was alive up to his death in 1930. Emiliano Ramos, now deceased and substituted by his widow, Rosario Tragico, moreover, received P300 from Jose Ramos in 1918 taken from the products of Hacienda Calaza when he went to the United States to study.

"Upon Jose Ramos' death his widow Gregoria Ramos, herself, his first cousin, their father and mother, respectively being brother and sister, continued to give plaintiffs money pertaining to their shares in the products of Hacienda Calaza. She however stopped doing so in 1951, telling them that the lessee Estanislao Lacson was not able to pay the lease rental.

"There was never any accounting made to plaintiffs by Jose Ramos, plaintiffs reposing confidence in their elder brother. Nor was any accounting made by his widow, defendant Gregoria Ramos, upon his death,

plaintiff Manuel Ramos moreover having confidence in her.

"Before the survey of these properties by the Cadastral Court, plaintiff Modesto Ramos was informed by the Surveying Department that they were going to survey these properties. Plaintiffs then went to see their elder brother Jose to inform him that there was a card issued to them regarding the survey and gave him 'a free hand to do something as an administrator'. They therefore did not intervene in the said cadastral proceedings because they were promised that they (defendants Jose and Agustin) would 'be the ones responsible to have it registered in the names of the heirs'. Plaintiffs did not file any cadastral answer because defendants Jose and Agustin told them 'not to worry about it as they have to answer for all the heirs'. Plaintiffs were 'assured' by defendants brothers.

"Plaintiffs did not know that intestate proceedings were instituted for the distribution of the estate of their father. Neither did plaintiffs Modesto, Manuel, Emiliano and Maria know (that) Timoteo Zayco, their uncle and brother-in-law of defendant widow Gregoria was appointed their guardian. There was an express admission by defendant Gregoria Ramos that Timoteo Zayco was her brother-in-law.

"Plaintiffs did not know of any proceedings of Civil Case No. 217. They never received any sum of money in cash - the alleged insignificant sum of P1,785.35 each - from said alleged guardian as their supposed share in the estate of their father under any alleged project of partition.

"Neither did Atanacia Ramos nor her husband, Nestor Olmedo, sign any project of partition or any receipt of share in (the) inheritance of Martin Ramos in cash. Nestor Olmedo did not sign any receipt allegedly containing the signatures of Atanacia assisted by himself as husband, Timoteo Ramos, and Timoteo Zayco as guardian ad-litem of the minors Modesto, Manuel, Federico, Emiliano and Maria. As a matter of fact, plaintiffs Modesto and Manuel were in 1913 no longer minors at the time of the alleged project of partition of the estate being approved, both being of age at that time. No guardian could in law act on their behalf.

"Plaintiffs only discovered later on that the property administered by their elder brother Jose had a Torrens Title in the name of his widow, Gregoria, and daughter, Candida, when plaintiff Modesto's children insisted and inquired from the Register of Deeds sometime in 1956 or 1957. Plaintiffs did not intervene in the intestate proceedings for (the) settlement of the estate of their brother Jose as they did not know of it.

"Plaintiffs were thus constrained to bring the present suit before the Court of First Instance of Negros Occidental on September 5, 1957 seeking for the reconveyance in their favor by defendants Gregoria and daughter Candida and husband Jose Bayot of their corresponding participations in said parcels of land in accordance with article 840 of the old Civil Code and attorney's fees in the sum of P10,000 plus costs and expenses of this litigation". (4-13 Brief).

Proceedings in the lower court. - The instant action was filed on September 5, 1957 against defendants Agustin Ramos, Granada Ramos and the heirs of Jose Ramos for the purpose of securing a reconveyance of the supposed participations of plaintiffs Atanacia, Emiliano, Manuel, Maria and Modesto, all surnamed Ramos, in the aforementioned eight (8) lots which apparently form part of Hacienda Calaza. (The plaintiffs did not specify that the said shares would amount to one-sixth of the said eight cadastral lots. One-sixth represented the one-third free portion of Martin Ramos' one-half shares in the said lots. And the said one-sixth portion was the share of his seven legally acknowledged natural children under article 840 of the old Civil Code).

The action is really directed against the heirs of Jose Ramos, namely, his wife Gregoria and his daughter Candida in whose names the said lots are now registered as shown in Exhibit 8 and in page 4 hereof. It is predicated on the theory that plaintiffs' shares were held in trust by the defendants. No deed of trust was alleged and proven.

The defendants denied the existence of a trust. They pleaded the defenses of (a) release of claim as shown in the project of partition, the decision and the receipt of shares forming part of the expediente of Civil Case No. 217

(Exh. 3, 4 and 6), (b) lack of cause of action, (c) res judicata and (d) prescription.

Timoteo Ramos, who was joined as a co-plaintiff, manifested that he had already received his own share of the inheritance, that he did not authorize anyone to include him as a plaintiff and that he did not want to be a party in this case. He moved that his name be stricken out of the complaint (44-45 Rec. on Appeal; Exh. 7).

Emiliano Ramos, who died in 1958, was substituted by his widow and their ten children (Exh. E, 61-64 Rec. on Appeal). The complaint is silent as to the fate of Federico Ramos, the seventh natural child of Martin Ramos.

As already noted, after trial, the lower court dismissed the complaint on the ground of res judicata. The plaintiffs as well as the defendants appealed.

Plaintiffs' appeal. - The plaintiffs contend that the trial court erred (1) in dismissing their complaint, (2) in denying their right to share in their father's estate and (3) in holding that the action was barred by res judicata or the prior judgment in the special proceeding for the settlement of Martin Ramos' intestate estate, Civil Case No. 217 of the Court of First Instance of Negros Occidental, Abintestado de los finados esposos Martin Ramos y Candida Tanate (Exh. F to J and 1 to 6).

The plaintiffs vigorously press on this Court their theory that the plaintiffs, as acknowledged natural children, were grievously prejudiced by the partition and that the doctrine of res judicata should not bar their action.

A preliminary issue, which should first be resolved, is the correctness of the trial court's "inexorable conclusion" the plaintiffs were the legally acknowledged natural children of Martin Ramos.

Plaintiffs' action is anchored on that premise.

The defendants failed to impugn that conclusion in their appellants' brief. Not having done so, it may be regarded as conclusive against them. That is the proposition advanced by the plaintiffs in their reply-brief.

The defendants in their appellees' brief assail that conclusion. It is true that an appellee may make an assignment of error in his brief but that rule refers to an appellee who is not an appellant (*Saenz vs. Mitchell*, 60 Phil. 69, 80). However, since an appellee is allowed to point out the errors committed by the trial court against him (*Relativo vs. Castro*, 76 Phil. 563; *Lucero vs. De Guzman*, 45 Phil. 852), defendants' contention that the plaintiffs were not legally acknowledged natural children may just as well be passed upon.

The defendants, in contesting the lower court's finding that the plaintiffs were legally acknowledged children, assume that the legitimate children committed a mistake in conferring successional rights on the plaintiffs.

We hold that the trial court's conclusion is correct. It is true that the acknowledgement of the plaintiffs is not evidenced by a record of birth, will or other public document (Art. 131, Old Civil Code). But the record of Civil Case No. 217, which is relied upon by the defendants to support their defense of res judicata, indubitably shows that the plaintiffs were treated as acknowledged natural children of Martin Ramos. The reasonable inference is that they were in the continuous possession of the status of natural children of Martin Ramos, as evidenced by his direct acts and the acts of his family (Art. 135, Old Civil Code).

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 implies that they were acknowledged. Obviously, defendants Agustin Ramos and Granada Ramos and the late Jose Ramos accorded successional rights to the plaintiffs because Martin 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 2266[3], New Civil Code).

Even the lower court, after treating the plaintiffs in 1913 in the intestate proceeding as acknowledged natural children, had no choice but to reaffirm that same holding in its 1961 decision in this case.

The crucial issue is prescription. With it the questions of res judicata and the existence of a trust are inextricably interwoven. Inasmuch as trust is the main thrust of plaintiffs' action, it will be useful to make a brief digression on the nature of trusts (fideicomisos) and on the availability of prescription and laches to bar the action for reconveyance of property allegedly held in trust.

"In its technical legal sense, a trust is defined as the right, enforceable solely in equity, to the beneficial enjoyment of property, the legal title to which is vested in another, but the word 'trust' is frequently employed to indicate duties, relations, and responsibilities which are not strictly technical trust." (89 C.J.S. 712).

"A person who establishes a trust is called the trustor; one in whom confidence is reposed is known as the trustee; and the person for whose benefit the trust has been created is referred to as the beneficiary" (Art. 1440, Civil Code). There is a fiduciary relation between the trustee and the cestui que trust as regards certain property, real, personal, money or choses in action (Pacheco vs. Arro, 85 Phil. 505).

"Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties. Implied trusts come into being by operation of law" (Art. 1441, Civil Code). "No express trusts concerning an immovable or any interest therein may be proven by oral evidence. An implied trust may be proven by oral evidence" (Ibid, Arts. 1443 and 1457).

"No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended" (Ibid, Art. 1444; Tuason de Perez vs. Caluag, 96 Phil. 981; Julio vs. Dalandan, L-19012, October 30, 1967, 21 SCRA 543, 546). "Express trusts are those which are created by the direct and positive acts of the parties, by some writing or deed, or will, or by words either expressly or impliedly evincing an intention to create a trust" (89 C.J.S. 722).

"Implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent, or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties" (89 C.J.S. 724). They are ordinarily subdivided into resulting and constructive trusts (89 C.J.S. 722).

"A resulting trust is broadly defined as a trust which is raised or created by the act or construction of law, but in its more restricted sense it is a trust raised by implication of law and presumed always to have been contemplated by the parties, the intention as to which is to be found in the nature of their transaction, but not expressed in the deed or instrument of conveyance" (89 C.J.S. 725). Examples of resulting trusts are found in article 1448 to 1455 of the Civil Code. See Padilla vs. Court of Appeals, L-31569, September 28, 1973, 53 SCRA 168, 179).

On the other hand, a constructive trust is a trust "raised by construction of law, or arising by operation of law". In a more restricted sense and as contradistinguished from a resulting trust, a constructive trust is "a trust not created by any words, either expressly or impliedly evincing a direct intention to create a trust, but by the construction of equity in order to satisfy the demands of justice. It does not arise by agreement or intention but by operation of law." (89 C.J.S. 726-727). "If a person obtains legal title to property by fraud or concealment, courts of equity will impress upon the title a so-called constructive trust in favor of the defrauded party". A constructive trust is not a trust in the technical sense (Gayondato vs. Treasurer of the P.I., 49 Phil. 244; See Art. 1456, Civil Code).

There is a rule that a trustee cannot acquire by prescription the ownership of property entrusted to him (Palma vs. Cristobal, 77 Phil. 712), or that an action to compel a trustee to convey property registered in his name in trust for

the benefit of the cestui qui trust does not prescribe (*Manalang vs. Canlas*, 94 Phil. 776; *Cristobal vs. Gomez*, 50 Phil. 810), or that the defense of prescription cannot be set up in an action to recover property held by a person in trust for the benefit of another (*Sevilla vs. De los Angeles*, 97 Phil. 875), or that property held in trust can be recovered by the beneficiary regardless of the lapse of time (*Marabilles vs. Quito*, 100 Phil. 64; *Bancairen vs. Diones*, 98 Phil. 122, 126; *Juan vs. Zuniga*, 62 O.G. 1351, 4 SCRA 1221; *Jacinto vs. Jacinto*; L-17957, May 31, 1962; See *Tamayo vs. Callejo*, 147 Phil. 31, 37).

That rule applies squarely to express trusts. The basis of the rule is that the possession of a trustee is not adverse. Not being adverse, he does not acquire by prescription the property held in trust. Thus, section 38 of Act 190 provides that the law of prescription does not apply "in the case of a continuing and subsisting trust" (*Diaz vs. Gorricho and Aguado*, 103 Phil. 261, 266; *Laguna vs. Levantino*, 71 Phil. 566; *Sumira vs. Vistan*, 74 Phil. 138; *Golfo vs. Court of Appeals*, 63 O.G. 4895, 12 SCRA 199; *Caladio vs. Santos*, 63 O.G. 1956, 10 SCRA 691).

The rule of imprescriptibility of the action to recover property held in trust may possibly apply to resulting trusts as long as the trustee has not repudiated the trust (*Heirs of Candelaria vs. Romero*, 109 Phil. 500, 502-3; *Martinez vs. Grano*, 42 Phil. 35; *Buencamino vs. Matias*, 63 O.G. 11033, 16 SCRA 849).

The rule of imprescriptibility was misapplied to constructive trusts (*Geronimo and Isidoro vs. Nava and Aquino*, 105 Phil. 145, 153. Compare with *Cuison vs. Fernandez and Bengzon*, 105 Phil. 135, 139; *De Pasion vs. De Pasion*, 112 Phil. 403, 407).

Acquisitive prescription may bar the action of the beneficiary against the trustee in an express trust for the recovery of the property held in trust where (a) the trustee has performed unequivocal acts of repudiation amounting to an ouster of the cestui qui trust; (b) such positive acts of repudiation have been made known to the cestui qui trust and (c) the evidence thereon is clear and conclusive (*Laguna vs. Levantino*, supra; *Salinas vs. Tuason*, 55 Phil. 729. Compare with the rule regarding co-owners found in the last paragraph of article 494, Civil Code; *Casanas vs. Rosello*, 50 Phil. 97; *Gerona vs. De Guzman*, L-19060, May 29, 1964, 11 SCRA 153, 157).

With respect to constructive trusts, the rule is different. The prescriptibility of an action for reconveyance based on constructive trust is now settled (*Alzona vs. Capunitan*, L-10228, February 28, 1962, 4 SCRA 450; *Gerona vs. De Guzman*, supra; *Claridad vs. Henares*, 97 Phil. 973; *Gonzales vs. Jimenez*, L-19073, January 30, 1965, 13 SCRA 80; *Bonaga vs. Soler*, 112 Phil. 651; *J.M. Tuason & Co., vs. Magdangal*, L-15539, January 30, 1962, 4 SCRA 84) Prescription may supervene in an implied trust (*Bueno vs. Reyes*, L-22587, April 28, 1969, 27 SCRA 1179; *Fabian vs. Fabian*, L-20449, January 29, 1968; *Jacinto vs. Jacinto*, L-17957, May 31, 1962, 5 SCRA 371).

And whether the trust is resulting or constructive, its enforcement may be barred by laches (90 C.J.S. 887-889; 54 Am Jur. 449-450; *Diaz vs. Gorricho and Aguado*, supra. Compare with *Mejia vs. Gampona*, 100 Phil. 277).

The plaintiffs did not prove any express trust in this case. The expediente of the intestate proceeding, Civil Case No. 217, particularly the project of partition, the decision and the manifestation as to the receipt of shares (Exh. 3, 4 and 6) negatives the existence of an express trust. Those public documents prove that the estate of Martin Ramos was settled in that proceeding and that adjudications were made to his seven natural children. A trust must be proven by clear, satisfactory, and convincing evidence. It cannot rest on vague and uncertain evidence or on loose, equivocal or indefinite declarations (*De Leon vs. Peckson*, 62 O.G. 994). As already noted, an express trust cannot be proven by parol evidence (*Pascual vs. Meneses*, L-18838, May 25, 1967, 20 SCRA 219, 228; *Cuaycong vs. Cuaycong*, L--21616, December 11, 1967, 21 SCRA 1192).

Neither have the plaintiffs specified the kind of implied trust contemplated in their action. We have stated that whether it is a resulting or constructive trust, its enforcement may be barred by laches.

In the cadastral proceedings, which supervened after the closure of the intestate proceeding, the eight lots involved herein were claimed by the spouses Jose Ramos and Gregoria T. Ramos to the exclusion of the plaintiffs (Exh. 8 to 19). After the death of Jose Ramos, the said lots were adjudicated to his widow and daughter (Exh. 8). In 1932 Gregoria T. Ramos and Candida Ramos leased the said lots to Felix Yulo (Exh. 20). Yulo in 1934 transferred his lease rights over Hacienda Calaza to Juan S. Bonin and Nestor Olmedo, the husband of plaintiff Atanacia Ramos (Exh. 22). Bonin and Olmedo in 1935 sold their lease rights over Hacienda Calaza to Jesus S. Consing (Exh. 23).

Those transactions prove that the heirs of Jose Ramos had repudiated any trust which was supposedly constituted over Hacienda Calaza in favor of the plaintiffs.

Under Act 190, whose statute of limitations applies to this case (Art. 1116, Civil Code), the longest period of extinctive prescription was only ten years (Diaz vs. Gorricho and Aguado, *supra*).

Atanacia, Modesto and Manuel, all surnamed Ramos, were already of age in 1914 (Exh. A to D). From that year, they could have brought the action to annul the partition. Maria Ramos and Emiliano Ramos were both born in 1896. They reached the age of twenty-one years in 1917. They could have brought the action from that year.

The instant action was filed only in 1957. As to Atanacia, Modesto and Manuel, the action was filed forty-three years after it accrued and, as to Maria and Emiliano, the action was filed forty years after it accrued. The delay was inexcusable. The instant action is unquestionably barred by prescription and *res judicata*.

This case is similar to *Go Chi Gun vs. Co*, 96 Phil. 622, where a partition judicially approved in 1916 was sought to be annulled in 1948 on the ground of fraud. It was contended that there was fraud because the real properties of the decedent were all adjudicated to the eldest son, while the two daughters, who were minors, were given only cash and shares of stocks. This Court, in upholding the petition, said:

"In any case, the partition was given the stamp of judicial approval, and as a matter of principle and policy we should sustain its regularity, in the absence of such cause or reason that the law itself fixes as a ground for invalidity" (on page 634.). "As the administration proceedings ended in the year 1916, the guardianship proceedings in 1931, and the action was brought only in the year 1948, more than 32 years from the time of the distribution and 27 years from the termination of guardianship proceedings", the action was barred by laches (on page 637). See *Lopez vs. Gonzaga*, L-18788, January 31, 1964, 10 SCRA 167; *Cuaycong vs. Cuaycong*, *supra*).

The leading case of *Severino vs. Severino*, 44 Phil. 343, repeatedly cited by the plaintiffs, does not involve any issue of prescription or laches. In that case, the action for reconveyance was seasonably brought. The alleged trustee was an overseer who secured title in his name for the land of his brother which was under his administration. He could not have acquired it by prescription because his possession was not adverse. On certain occasions, he had admitted that he was merely the administrator of the land and not its true owner.

More in point is the *Cuaycong* case, *supra* where the action for the reconveyance of property held in trust accrued in 1936 and it was filed only in 1961 or after the lapse of twenty-five years. That action was barred.

On its face, the partition agreement was theoretically correct since the seven natural children were given their full legitime, which under article 942 of the old Civil Code was their share as legal heirs. But it was possible that the lands were undervalued or were not properly appraised at their fair market value and, therefore, the natural children were short-changed in the computation of the value of their shares which the legitimate children could pay cash as allowed in article 840 of the old Civil Code. It is of common knowledge that anyone who received lands in the partition of a decedent's estate would ultimately have an advantage over the one who received cash because lands increase in value as time goes by while money is easily spent.

As pointed out in the statement of facts, it was anomalous that the manifestation, evidencing the alleged receipt by the natural children of their shares, should recite that they received their shares from the administrator, when in the project of partition itself, as approved by the probate court (Exh. 3 to 6), it was stipulated that Jose Ramos and Agustin Ramos would be the ones to pay the cash settlement for their shares. No receipts were submitted to the court to prove that Jose Ramos and Agustin Ramos paid to the plaintiffs the cash adjudicated to them in the project of partition.

The plaintiffs pinpoint certain alleged irregularities in the intestate proceeding. They aver that Modesto Ramos and Manuel Ramos were already of age in 1913 and could not therefore have been represented by Timoteo Zayco as guardian ad litem and that consequently, the two were denied due process. The plaintiffs accuse Zayco of not having competently protected the interests of the minors, Maria Ramos and Emiliano Ramos. They allege that Atanacia Ramos signed the project of partition and the "receipt" of shares (Exh. 3 and 6) without understanding those documents which were in Spanish. They assert that the lopsided and defective partition was not implemented.

In short, the plaintiffs contend that the partition was not binding on them. (Note that their brother, Timoteo, considered himself bound by that partition). They ask that the case be remanded to the lower court for the determination and adjudication of their rightful shares.

All those contentions would have a semblance of cogency and would deserve serious consideration if the plaintiffs had not slept on their rights. They allowed more than forty years to elapse before they woke up and complained that they were much aggrieved by the partition. Under the circumstances, their claims can hardly evoke judicial compassion. *Vigilantibus et non dormientibus jura subveniunt*. "If eternal vigilance is the price of safety, one cannot sleep on one's right for more than a tenth of a century and expect it to be preserved in its pristine purity" (Ozaeta, J. in *Asociacion Cooperativa de Credito Agricola de Miagao vs. Monteclaro*, 74 Phil. 281, 283).

The plaintiffs have only themselves to blame if the courts at this late hour can no longer afford them relief against the inequities allegedly vitiating the partition of their father's estate.

In connection with the *res judicata* aspect of the case, it may be clarified that in the settlement of a decedent's estate it is not de rigueur for the heirs to sign a partition agreement. "It is the judicial decree of distribution, once final, that vests title in the distributees" (*Reyes vs. Barretto-Datu*, L-17818, January 25, 1967, 19 SCRA 85, 91) which in this case was Judge Campbell's decision (Exh. 4).

A judgment in an intestate proceeding may be considered as a judgment in rem (*Varela vs. Villanueva*, 95 Phil. 248, 267. See Sec. 49[a], Rule 39, Rules of Court). There is a ruling that "if the decree of distribution was erroneous or not in conformity with law or the testament, the same should have been corrected by opportune appeal; but once it had become final, its binding effect is like that of any other judgment in rem, unless properly set aside for lack of jurisdiction or fraud". A partition approved by the court in 1939 could no longer be contested in 1956 on the ground of fraud. The action had already prescribed. "The fact that one of the distributees was a minor at the time the court issued the decree of distribution does not imply that the court had no jurisdiction to enter the decree of distribution." (*Reyes vs. Barreto-Datu*, *supra*, citing *Ramos vs. Ortuzar*, 89 Phil. 742). "A final order of distribution of the estate of a deceased person vests the title to the land of the estate in the distributees" (*Syllabus, Santos vs. Roman Catholic Bishop of Nueva Caceres*, 45 Phil. 895, 900).

Parenthetically, it may be noted that the filing of the instant case long after the death of Jose Ramos and other persons involved in the intestate proceeding renders it difficult to determine with certitude whether the plaintiffs had really been defrauded. What Justice Street said in *Sinco vs. Longa*, 51 Phil. 507, 518-9 is relevant to this case:

"In passing upon controversies of this character experience teaches the danger of accepting lightly charges of fraud made many years after the transaction in question was accomplished, when death may have sealed the lips of the principal actors and changes effected by time may have given a totally different color to the cause of controversy. In the case before us the guardian, Emilio Tevez, is dead. The same is true of Trinidad Diago, mother of the defendant Agueda Longa; while Agapito Longa is now living in Spain. It will be borne in mind also that, insofar as oral proof is concerned, the charge of fraud rests principally on the testimony of a single witness who, if fraud was committed, was a participant therein and who naturally would now be anxious, so far as practicable, to put the blame on others. In this connection it is well to bear in mind the following impressive language of Mr. Justice Story:

**** But length of time necessarily obscures all human evidence; and as it thus removes from the parties all the immediate means to verify the nature of the original transactions, it operates by way of presumption, in favor of innocence, and against imputation of fraud. It would be unreasonable, after a great length of time, to require exact proof of all the minute circumstances of any transaction, or to expect a satisfactory explanation of every difficulty, real or apparent, with which it may be incumbered. The most that can fairly be expected, in such cases, if the parties are living, from the frailty of memory, and human infirmity, is, that the material facts can be given with certainty to a common intent; and, if the parties are dead, and the cases rest in confidence, and in parol agreements, the most that we can hope is to arrive at probable conjectures, and to substitute general presumptions of law, for exact knowledge. Fraud, or breach of trust, ought not lightly to be imputed to the living, for the legal presumption is the other way; as to the dead, who are not here to answer for themselves, it would be the height of injustice and cruelty, to disturb their ashes, and violate the sanctity of the grave, unless the evidence of fraud be clear, beyond a reasonable doubt. (*Prevost vs. Gratz*, 6 Wheat, [U.S.], 481, 498)."

Defendants' appeal. - Defendants Granada Ramos, Gregoria T. Ramos, Candida Ramos, Jose Bayot and Agustin Ramos appealed from the lower court's decision insofar as it ignored their counter-claim for P50,000 as moral damages and P10,000 as attorney's fees. In their brief the claim for attorney's fees was increased to P20,000. They prayed for exemplary damages.

The defendants argue that plaintiffs' action was baseless and was filed in gross and evident bad faith. It is alleged that the action caused defendants mental anguish, wounded feelings, moral shock and serious anxiety and compelled them to hire the services of counsel and incur litigation expenses.

Articles 2219 and 2220 (also 1764 and 2206) of the Civil Code indicate the cases where moral damages may be recovered. The instant litigation does not fall within any of the enumerated cases. Nor can it be regarded as analogous to any of the cases mentioned in those articles. Hence, defendants' claim for moral damages cannot be sustained (*Ventanilla vs. Centeno*, 110 Phil. 811, 814). The worries and anxiety of a defendant in a litigation that was not maliciously instituted are not the moral damages contemplated in the law (*Solis & Yarisantos vs. Salvador*, L-17022, August 14, 1965, 14 SCRA 887).

"The adverse result of an action does not per se make the act wrongful and subject the actor to the payment of moral damages. The law could not have meant to impose a penalty on the right to litigate; such right is so precious that moral damages may not be charged on those who may exercise it erroneously." (*Barreto vs. Arevalo*, 99 Phil. 771, 779).

On the other hand, the award of reasonable attorney's fees is governed by article 2208 of the Civil Code which lays down the general rule that, in the absence of stipulation, attorney's fees and litigation expenses cannot be recovered. Article 2208 specifies eleven instances where attorney's fees may be recovered. The defendants did not point out the specific provision of article 2208 on which their counterclaim may be predicated.

What may possibly apply to defendants' counterclaim are paragraphs four and eleven which respectively provide

that attorney's fees may be recovered "in case of a clearly unfounded civil action or proceeding against the plaintiff" (defendant is a plaintiff in his counterclaim) or "in any other cases where the court deems it just and equitable" that attorney's fees should be awarded.

We hold that, notwithstanding the dismissal of the action, no attorney's fees should be granted to the defendants. Under the facts of the case, it cannot be asseverated with dogmatic finality that plaintiffs' action was manifestly unfounded or was maliciously filed to harass and embarrass the defendants. All indications point to the fact that the plaintiffs honestly thought that they had a good cause of action. They acted in evident good faith. (See *Herrera vs. Luy Kim Guan*, 110 Phil. 1020, 1028; *Rizal Surety & Insurance Co., Inc. vs. Court of Appeals*, L-23729, May 16, 1967, 20 SCRA 61).

Inasmuch as some of the plaintiffs were minors when the partition of their father's landed estate was made, and considering that they were not allotted even a few square meters out of the hundreds of hectares of land, which belonged to him, they had reason to feel aggrieved and to seek redress for their grievances. Those circumstances as well as the marked contrast between their indigence and the affluence of the heirs of their half-brother, Jose Ramos, might have impelled them to ask the courts to reexamine the partition of their father's estate.

It is not sound public policy to set a premium on the right to litigate. An adverse decision does not ipso facto justify the award of attorney's fees to the winning party (*Herrera vs. Luy Kim*, supra; *Heirs of Justiva vs. Gustilo*, 61 O.G. 6959, Cf. *Lazatin vs. Twano and Castro*, 112 Phil. 733, 741).

Since no compensatory and moral damages have been awarded in this case, defendants' claim for exemplary damages, which was ventilated for the first time in their appellants' brief, may be as an afterthought, cannot be granted (Art. 2229, Civil Code).

WHEREFORE, the trial court's judgment is affirmed with the clarification that defendants' counterclaim is dismissed. No costs.

SO ORDERED.

Makalintal, C.J., Barredo, Antonio, and Fernandez, JJ., concur.
Fernando, J., took no part.

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