

**TARCELA R. VDA. DE BOUGH, ETC., PLAINTIFF AND APPELLANT, VS.
ESTEBAN, SERAFIN AND REMEDIOS, ALL SURNAMED SINGZON,
DEFENDANTS AND APPELLEES.**

G. R. No. L-5155. February 16, 1953

Ponente: PARAS, C.J.

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PARAS, C.J.:

On September 16, 1948, the plaintiff filed in the Court of First Instance of Leyte a complaint to recover from the defendants damages in the sum of P200,000 arising from the alleged unlawful possession by the defendants of three parcels of land belonging to the which lasted from 1928 to September 2, 1947. On October 13, 1948, the defendants filed an amended motion to dismiss the complaint on the ground that it failed to state a cause of action, or if a cause of action is stated in the complaint, that said cause of action has prescribed, or that the action is premature there having been no demand by the plaintiff upon the defendants prior to the filing of the complaint. In its order of October 25, 1948, the Court of First Instance of Leyte dismissed the complaint on the ground that the action had prescribed. The court ruled that the action, viewed either as one to recover damages for taking and retaining personal property or as one for damages incident to trespass upon real estate, had prescribed after four years in accordance with section 43 of the Code of Civil Procedure. From this judgment the plaintiff has appealed.

It appears that the three parcels of land in question had been the subject of a previous registration proceeding in the Court of First Instance of Leyte, wherein Irving Gustavus Bough, deceased husband of the plaintiff, was the applicant and the defendants were the oppositors. In this registration proceeding the Court of First Instance of Leyte rendered a decision in favor of the applicant, which was affirmed by the Court of Appeals on December 22, 1941, the decision of the latter court having been become final on February 5, 1942. The herein plaintiff and appellant contends that her cause of action accrued on March 10, 1945, because although the decision of the Court of Appeals became final on February 5, 1942, it was only on March 10, 1945, when the Province of Leyte was officially declared free from enemy control, and it was only then that the now deceased Irving Gustavus Bough, an American citizen and considered enemy alien during the Japanese military occupation, was in a position to file the necessary complaint. It is the sense of appellant's contention that, it was premature to bring any action for damages against the defendants before the final termination of the registration proceeding in which the ownership of the land was settled.

While we do not agree with appellant's suggestion that an action for damages against the defendant was not yet in order during the pendency of the registration proceeding, because the appellant and her deceased husband cannot be considered as having become the owners of the land only from the date the decision in the registration proceeding had, become final, we are of the opinion that the trial court erred in holding that the action has prescribed insofar as the totality of appellant's claim is concerned. It is evident that, assuming section 43 of the Code of Civil Procedure to be applicable, damages that might have been caused within the prescriptive period prior to the filing of the complaint are still recoverable.

The damages alleged to have been suffered by the appellant as a result of the unlawful possession on the part of the defendant-appellees are clearly divisible from year to year, though arising from a continuing act.

Wherefore, the appealed order is reversed and the case is remanded to the court below for further proceedings.

So ordered without costs in this instance.

Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo, and Labrador, JJ., concur.

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