

INOCENCIA TAGUIAD BUSICO, BEATRIZ ABONIN, FELIXBERTA ABONIN, GENARA ABONIN, AND ABUNDIO ABONIN, PLAINTIFFS-APPELLANTS, VS. SPS. SELWYN PIALAGO AND BIENVENIDA PIALAGO, SPOUSES AR...

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HERNANDO, J:

Before Us is an appeal interposed by plaintiffs-appellants from the Decision[1] dated October 13, 2005 of the Regional Trial Court (RTC), Branch 43 of Tanjay City (stationed in Dumaguete City) in Civil Case No. 11815, an action for recovery, possession, ownership and damages. The court a quo dismissed both plaintiff's Complaint and defendants' counterclaim, thus:

WHEREFORE, judgment is hereby rendered dismissing the complaint for lack of merit. Likewise, the counterclaim is hereby ordered dismissed for the reason that plaintiffs filed the instant complaint in good faith and of the honest belief that they are entitled to the relief prayed for.

SO ORDERED.[2]

The Antecedent Facts

Sometime on June 16, 1987, plaintiffs, through Inocencia Taguiad Busico, filed a case for recovery of possession and ownership coupled with damages against defendants.[3] In their Complaint, they alleged that they, through intestate succession from their predecessors Modesto Taguiad[4] and Andrea Ebiosa,[5] own Lot No. 1366 consisting of 9,903 square meters covered by Original Certificate of Title (OCT) No. 13002, located in San Jose, Negros Oriental. According also to plaintiffs, defendants occupied about 6,000 square meter portion of the property where they illegally and unlawfully constructed their houses and business establishments. When they demanded from defendants to vacate the property and to pay rentals for their use of the property, the latter refused, which then constrained plaintiffs to file the Complaint before the RTC. Incidentally, prior barangay conciliation was made before the institution of this action.

In their Answer,[6] defendants denied plaintiffs' assertion and claimed that they are the lawful owners and possessors of a portion of the property, as shown by valid deeds of conveyance in favor of their predecessors. Thus, they averred, among others, that plaintiffs had no cause of action against them as to render the Complaint dismissible.

Both parties presented their respective evidence during trial. Culled from their testimonial and documentary evidence, the parties were able to establish that:

Modesto Taguiad and Andrea Ebiosa are the original owners of the subject property. Modesto had six children namely: Cristina, Luisa, Silvina, Eugenia, Victoriano and Timoteo. According to plaintiffs, Modesto had two wives; the first set of children was Cristina, Luisa and Silvina while the second set of children by Modesto with Andrea was Eugenia, Victoriano and Timoteo. Additionally, plaintiffs claimed that the property is a paraphernal property of Andrea Ebiosa, such that only the latter children can inherit.[7]

Eugenia married Tomas Abonin. They begot four children, namely: Beatriz, Genara, Felixberta and Abundio. On the other hand, Victoriano married Felipa, who gave birth to a child, Inocencia. Timoteo had no issue.[8] This lineage however was based merely on testimonial evidence without any documents supporting the claim of filiation. What plaintiffs presented were certifications that "no record of birth" appeared for Andrea Ebiosa,[9] Inocencia Ebiosa Taguiad,[10] Beatriz Abonin,[11] Felixberta Abonin,[12] Genara Abonin,[13] and Abundio Abonin,[14] and the baptismal certificates of Eugenia Taguiad,[15] Victoriano Taguiad,[16] Inocencia Taguiad,[17] Beatriz Abonin,[18] Felixberta Abonin,[19] Genara Abonin,[20] and Abundio Abonin,[21] cannot be ascertained because the parish records were destroyed by fire. However, on May 20, 1999, the defense admitted that Felixberta, Genara, Abundio and Beatriz are the children of Tomas Abonin and Eugenia Taguiad.[22]

On the other hand, Selwyn Pialago[23] adduced evidence showing that his grandparents bought the property from the Abonins, who had been in possession thereof since they bought it. In support thereof, he presented an Extrajudicial Settlement and Sale dated July 12, 1957 whereby Genara Abonin, Felixberta Abonin, Abundio Abonin and Beatriz Abonin sold their 2/5 share of the property to Francisco Pialago[24] while Josefa Ybiosa, a purported heir of Victoriano Taguiad, sold on October 13, 1958 by way of Extrajudicial Settlement and Sale, another 1/5 share of the property to Francisco Pialago.[25] In effect, he claims that they own a total 3/5 portion of the property.

The Ruling of the RTC

On October 13, 2005, the trial court found that plaintiffs tarried for almost forty (40) years before instituting the present action to recover the property from the defendants. They were thus charged with laches for sleeping on their rights over the property despite the fact that some of them resided in the same area where the disputed property is situated, thus:

For the evidence on record, the plaintiffs admit by their oral testimony that it took them forty (40) years to file this instant case even though the other defendants and in particular, the Abunens were residing at Ajong Sibulan, Negros Oriental because they wanted their cousins from Mindanao, Inocencia Taguiad Busico to file the instant case.

This piece of evidence reveals that the majority of the plaintiffs who despite knowledge of the incursion made by the defendants on Lot No. 1366, never attempted to protect their rights over the same piece of land by filing the necessary case in Court. As one of the co-owners of Lot No. 1366, being one of the surviving heirs of the late Spouses Modesto Taguiad and Andres Ibeosa, the registered owners of the lot in question, they have all the chances and opportunities to preserve the lot owned in common. This move has never been resorted to by the said plaintiffs. The inaction made by such plaintiffs in dealing with Lot No. 1366 covered by Original Certificate of Title No. 13002 bind the other plaintiffs and in particular, Inocencia Taguiad Busico.

Inocencia Taguiad Busico who according to the other co-plaintiffs in this case, initiated this present action for recovery of possession and ownership and damages from the defendants, by her own testimony admits that Selwyn Pialago entered the land in question and constructed a house in 1958 and resided therein together with the latter's parents and grandparents. Obviously, said plaintiff had knowledge of such fact and just sleep for thirty nine years before filing this case. Her reasons for filing this action is that her aunt Juanita Renacia who had already gotten her share from the same land and was the one who taught her to recover it. This set of fact was not elaborated and not supported and corroborated by any evidence either by oral and documentary.[26]

The court a quo also gave due weight to the deeds of conveyance to the plaintiffs, who possessed and exercised dominion over the property since the sale.

The Assignment of Errors

Dissatisfied by the adverse judgment of the trial court, plaintiffs-appellants are before this Court on appeal based on the following assignment of errors, to wit:

1. The trial court erred in giving full effect to the Extrajudicial Settlement and Sale dated July 12, 1957 even assuming arguendo that the same is duly executed and is genuine because on the face of the document it effectively disposed only of 1/5 of the property instead of 2/5;
2. The trial court erred in giving full effect to the Extrajudicial Settlement and Sale dated October 13, 1958 for the reason that on the face of the document itself, the same was not able to dispose anything because the document did not show that the would-be-vendor is a child or is a successor of the registered owners.[27]

On the other hand, defendants-appellees' failure to pay the mediation fee resulted to their Appellees' Brief being expunge from the records per Resolution[28] dated February 21, 2014. Consequently, this decision is being rendered sans the Appellees' Brief.

The Ruling of this Court

We resolve to deny the appeal.

Heirs of Modesto Taquiad

Plaintiffs-appellants claim that the property was owned by Andrea Ebiosa as her paraphernal property. However, OCT No. 13002[29] is solely in the name of Modesto Taquiad. Hence, to claim that the property should be inherited only by Eugenia, Victoriano and Teotimo (the alleged children from the second family) and exclude Cristina, Luisa and Silvina, (the other alleged children of Modesto from the first family), cannot be legally done. Absent any proof that the property is a piece of paraphernal property of Andrea and that her children are only Eugenia, Victoriano and Teotimo, the presumption is that all the children of Modesto shall equally inherit the property.

Moreover, there is also the fact that the two extrajudicial settlement of estate of Modesto Taquiad and Andrea Ebiosa stated that the said spouses begot five children, namely: Cristina, Luisa, Silvina, Eugenia and Victoriano. There was no mention of a son named Teotimo or that Cristina, Luisa and Silvina are not the children of Andrea Ebiosa.

This is precisely the reason why the Supreme Court deems it proper for the putative heirs to be declared first as the surviving heirs of putative decedents in a special proceeding filed precisely for such purpose.[30] The settled rule is that where alleged heirs of a decedent in whose name a property was registered sue to recover the said property through the institution of an ordinary civil action, such as a complaint for reconveyance and partition, or nullification of transfer certificate of titles and other deeds or documents related thereto, they cannot seek declaration of heirship therein since the matter is "within the exclusive competence of the court in a special proceeding." [31] Further, such special proceeding must take precedence over the action for recovery of possession and ownership.[32]

The portion of the property
sold to the defendants

Selwyn Pialago claims that his predecessor Francisco Pialago bought a 3/5 portion of the property. However, even a cursory reading of the deeds of conveyance in Pialago's favor reveals that what was sold is merely 2/5 of the property.

Under Exhibit "1", the Extrajudicial Settlement of Estate dated July 12, 1957,[33] the children of Eugenia, namely: Beatriz, Genara, Felixberta and Abundio, appropriated for themselves the 1/5 share of Victoriano, aside

from the $\frac{1}{5}$ share of their mother Eugenia, such that, they sold a total $\frac{2}{5}$ portion of the property to Francisco Pialago, thus:

That Modesto Taquiad and Andrea Ybiosa, both died intestate in the Municipality of then New Ayuquitan (now San Jose) leaving no will nor testament and left no known debts which have not been settled up to this date, and upon his death he was survived by his five children, namely: Cristina Taquiad, Luisa Taquiad, Silvina Taquiad, Eugenia Taquiad, and Victoriano Taquiad, all of whom succeeds to the property above-described upon his death;

That Victoriano Taquiad died intestate in the municipality of San Jose, Negros Oriental, leaving no will nor testament and left no known debts which have not been settled up to this date, and upon his death he was survived by Eugenia Taquiad, who succeeds to his one-fifths ($\frac{1}{5}$) undivided share of the property above-described upon his death;

That, Eugenia Taquiad died intestate in the municipality of San Jose, Negros Oriental, leaving no will nor testament and left no known debts which have not been settled up to this dated, and upon her death she was survived by her children, namely: Beatriz Abonin, Genara Abonin, Felixberta Abonin, and Abundio Abonin, all of whom succeeds to her two-fifths ($\frac{2}{5}$) undivided share of the property above-described, upon her death.

xxx xxx xxx

That for and in consideration of the sum of THREE HUNDRED EIGHTY PESOS (Php380.00), xxx said Heirs-Vendors do by these presents hereby Sell, Transfer and Convey in favor of the Vendee, his heirs and assigns, the two-fifths ($\frac{2}{5}$) undivided share of the property above-described, which was inherited by them agreeing further to warrant in favor of the said vendee, his heirs and assigns, their title to the two-fifths ($\frac{2}{5}$) undivided shares of the property herein conveyed by them, which is in their actual possession.

xxx xxx xxx

On the other hand, Exhibit "2", the Extrajudicial Settlement and Sale dated October 13, 1958^[34] executed by Josefa Ybiosa de Taquiad states that she is the heir of Victoriano Taquiad and thus succeeds to his $\frac{1}{5}$ share of the property which she is selling to Francisco Pialago. It would seem therefore that this latter deed conveyed the same share of Victoriano to Francisco Pialago.

Based thus on these two deeds of sale, what was actually sold to Francisco Pialago was only $\frac{2}{5}$ share pertaining to the share of Eugenia and Victoriano. In effect, if the property consists of 9,903 square meters, $\frac{1}{5}$ portion thereof is equal to 1,980.60 square meters, which would mean that Francisco Pialago or his heirs, the defendants in this case, is entitled to 3,961.20 square meters and not $\frac{3}{5}$ portion as claimed.

The principle of laches

The court a quo ruled that laches has set in as to forestall the recovery of the property. It charged plaintiffs with inaction since it was even admitted by Inocencia that Selwyn entered the property in 1958.

We find that the trial court erred in ruling that laches has set in.

The pronouncement in *Heirs of Jose Maligaso, Sr. v. Encinas*^[35] is instructive. In said case, the Supreme Court ruled that the sheer lapse of time cannot legitimize nor deprive a registered owner of a parcel of land from its recovery.

Neither will the sheer lapse of time legitimize the petitioners' refusal to vacate the subject area or bar the respondents from gaining possession thereof. As ruled in *Spouses Ragudo v. Fabella Estate Tenants Association, Inc.*, laches does not operate to deprive the registered owner of a parcel of land of his right to recover possession thereof:

It is not disputed that at the core of this controversy is a parcel of land registered under the Torrens system. In a long line of cases, we have consistently ruled that lands covered by a title cannot be acquired by prescription or adverse possession. So it is that in *Natalia Realty Corporation vs. Vallez, et al.*, we held that a claim of acquisitive prescription is baseless when the land involved is a registered land because of Article 1126 of the Civil Code, in relation to Act 496 (now, Section 47 of Presidential Decree No. 1529).

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Petitioners would take exception from the above settled rule by arguing that FETA as well as its predecessor[-]in[-]interest, Don Dionisio M. Fabella, are guilty of laches and should, therefore, be already precluded from asserting their right as against them, invoking, in this regard, the rulings of this Court to the effect that while a registered land may not be acquired by prescription, yet, by virtue of the registered owner's inaction and neglect, his right to recover the possession thereof may have been converted into a stale demand.

While, at a blush, there is apparent merit in petitioners' posture, a closer look at our jurisprudence negates their submission.

To start with, the lower court found that petitioners' possession of the subject lot was merely at the tolerance of its former lawful owner. In this connection, *Bishop vs. Court of Appeals* teaches that if the claimant's possession of the land is merely tolerated by its lawful owner, the latter's right to recover possession is never barred by laches.

As registered owners of the lots in question, the private respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioners' occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches. (Citations omitted)

Nevertheless, this case is still susceptible to dismissal on the ground that plaintiffs-appellants failed to establish their relationship and filiation to Modesto and Andrea Ebiosa as previously explained. Moreover, if what they are claiming are the shares of Eugenia and Victoriano, the same had been also sold by Beatriz, Genara, Felixberta, Abundio and Josefa as evidenced by the two deeds of conveyances (Exhibits "1" and "2"). However, defendants-appellees can only own 2/5 share of the property and not 3/5 share as claimed by them because this was the portion sold to their predecessor, Francisco Pialago.

WHEREFORE, this appeal is DENIED. The Decision dated October 13, 2005 of the Regional Trial Court, Branch 43 of Tanjay City dismissing Civil Case No. 11815 is SUSTAINED based on lack of cause of action. The dismissal of the counterclaim is also SUSTAINED. Costs de oficio.

SO ORDERED.

Quijano-Padilla, and Azcarraga-Jacob, JJ., concur.

[1] Penned by Judge Winston M. Villegas.

[2] RTC Decision; RTC records, pp. 176-181.

[3] Complaint in Civil Case No. 11815; RTC records, pp. 2-5.

[4] The family name Taguiad is also spelled as "Tagui-ad" in the records.

[5] Her family name is also spelled as "Ebiosa", "Ebeosa" and "Ybiossa" in the records.

- [6] Answer dated February 3, 1997 in Civil Case No. 118015; RTC records, pp. 11-12.
- [7] Testimony of Felixberta Abonin Abol, *infra*.
- [8] See testimony of Felixberta Abonin Abol; TSN, May 20, 1999, p. 392.
- [9] Exhibit "C" and Exhibit "1"; RTC records, p. 61.
- [10] Exhibit "D" and Exhibit "2"; RTC records, p. 62. See also Exhibit "L" and Exhibit "4"; RTC records, p. 70.
- [11] Exhibit "M"; RTC records, p. 71.
- [12] Exhibit "N"; RTC records, p. 72.
- [13] Exhibit "O"; RTC records, p. 73.
- [14] Exhibit "P"; RTC records, p. 74.
- [15] Exhibit "E"; RTC records, p. 63.
- [16] Exhibit "F" and Exhibit "3"; RTC records, p. 64.
- [17] Exhibit "G"; RTC records, p. 65.
- [18] Exhibit "H"; RTC records, p. 66.
- [19] Exhibit "I"; RTC records, p. 67.
- [20] Exhibit "J"; RTC records, p. 68.
- [21] Exhibit "K"; RTC records, p. 69.
- [22] TSN, May 20, 1999; RTC records, pp. 389-390.
- [23] Testimony of Selwyn Pialago; TSN, August 11, 1999; RTC records, pp. 439-452; TSN, September 28, 1999, pp. 482-490; TSN, November 15, 2001; RTC records, pp. 51516-524.
- [24] Exhibit "1"; RTC records, pp. 168-170.
- [25] Exhibit "2"; RTC records, pp. 171-172.
- [26] RTC Decision, *supra*.
- [27] Assignment of Errors; Appellant's Brief; Rollo, pp. 19-31.
- [28] Rollo, pp. 63-64.
- [29] Exhibit "A"; RTC records, p. 59.
- [30] Reyes v. Enriquez, G.R. No. 162956, April 10, 2008, 551 SCRA 86; Heirs of Guido Yaptinchay, G.R. No. 124320. March 2, 1999, 304 SCRA 18.
- [31] *Ibid*.
- [32] Heirs of Teofilo Gabatan v. Court of Appeals, G.R. No. 150206, March 13, 2009, 581 SCRA 70.
- [33] RTC records, pp. 168-170.
- [34] RTC records, pp. 171-172.

[35] G.R. No. 182716, June 20, 2012.

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