

ALBERTA DE PASION, PLAINTIFF AND APPELLEE, VS. FLORENTINO DE PASION, DEFENDANT, ADRIANO ANCA, INTERVENOR AND APPELLANT.

G.R. No. L-15757. May 31, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiff brought this action before the Court of First Instance of Quezon praying that the extrajudicial partition executed by defendant be annulled, as well as the transfer certificate of title issued in the latter's name pursuant thereto, and that another transfer certificate of title be issued in favor of both plaintiff and defendant in the proportion of 3/4 for plaintiff and 1/4 for defendant. Plaintiff seeks also an accounting from defendant of the fruits of her share in the property in litigation.

Defendant set up the defense that the property in question, although registered in the name of his father, was in fact his own exclusive property, and that, even if the allegations of the complaint are true, plaintiffs action has already prescribed.

The original defendant Ramon de Pasion having died in the meantime, he was substituted by his son Florentino de Pasion, who filed an amended answer reiterating the same defenses set up by his predecessor.

There being no objection thereto, the trial court admitted the complaint in intervention filed by Adriana Anca who alleged to be entitled to one-half of the land in question being the only legitimate heir of Epifania Anca, the deceased wife of Bernardino de Pasion.

After trial, the lower court found that the right of action of both plaintiff and intervenor, being based on fraud, has already prescribed and, consequently, dismissed their complaints, without pronouncement as to costs. Only the intervenor has appealed.

The facts as found by the trial court are: Epifania Anca was the second wife of Bernardino de Pasion who was married on October 8, 1907. Epifania died on May 11, 1957 while Bernardino on January 24, 1938. Ramon de Pasion was the only child of Bernardino with his first wife, while Florentino is the only child of Ramon de Pasion. Alberta de Pasion is the only child of Epifania with an unknown father having been born on November 20, 1900. Adriana Anca is the only surviving sister of Epifania Anca.

The land in litigation was the subject of a homestead application filed by Bernardino de Pasion on April 28, 1916, which was approved on September 14, 1916. Pursuant thereto, Homestead Patent No. 12940 was issued on August 1, 1929, and on the same date, the register of deeds issued a certificate of title in his name.

On January 15, 1941, Ramon de Pasion executed a deed of extrajudicial partition adjudicating to himself the land in litigation, and pursuant thereto a transfer certificate of title was issued in his name by the register of deeds. On June 7, 1944, Ramon de Pasion sold the land to one Benito Gaelon and a new transfer certificate of title was issued in his name. Ramon de Pasion having repurchased the property from Gaelon, the register of deeds again

issued another title in his name. On November 29, 1950, Ramon de Pasion sold one-half of the land to one Manuel Trias who died after the sale. In order to obviate the necessity of impleading the heirs of Trias, the parties agreed to limit the present action to the remaining undivided half of the land.

The main theme of appellant is that the trial court erred in holding that her action has already prescribed considering that Epifania Anca from whom she derives her title died on May 11, 1937 and her complaint in intervention was filed only on July 22, 1958, or more than 20 years after her cause of action has accrued. She claims that the land in question being covered by a homestead patent which has the nature of a Torrens title her claim should be deemed imprescriptible even if the patent appears registered only in the name of Bernardino de Pasion because the land covered by it is conjugal in nature and so one-half thereof must be deemed to be registered also in the name of his wife Epifania Anca.

This claim is untenable for the imprescriptibility of a Torrens title can only be invoked by the person in whose name the title is registered. In other words, a person who owns a land covered by a Torrens title cannot lose its ownership by adverse possession on the part of a third person because of the principle underlying the Torrens system that the title is imprescriptible. The same rule applies to extinctive prescription in the sense that the owner of a registered land can file an action to recover the same regardless of the period of prescription. But this rule does not apply to a person who, not being the registered owner, claims the land in which case he should file his action within the prescriptive period. This is what the trial court invoked in its decision considering that the intervenor is not the registered owner of the land in litigation. Since she invoked fraud on the part of defendant, she should have brought her action within four years from the time the land was registered in his name sometime in 1941. In this sense, her right of action has already prescribed.

We believe, however, that under the principle of constructive trusteeship intervenor's right to claim the land has not prescribed because of the principle that the right of a cestui que trust against the trustee who has committed a breach of his trust never prescribes (*Sevilla, et al. vs. Concordia de los Angeles*, 97 Phil., 875; 51 Off. Gaz., [11] 5590; *Gayondato vs. Treasurer of the Philippine Islands*, 49 Phil., 244). This is the principle which in our opinion should have been invoked in her favor if she were entitled to the land. But such is not the case because the evidence shows, that the portion of land that belonged to her sister Epifania Anca cannot be inherited by her because of the presence of Alberta de Pasion who, according to the trial court, was an acknowledged natural child of Epifania. Such being the case, the right of Alberta de Pasion to the undivided portion belonging to Epifania has the effect of excluding the intervenor who as sister, only comes next in line of intestate succession (Articles 939 and 946, old Civil Code). We have, therefore, no other alternative than to declare that intervenor does not have any right to claim the portion of land belonging to her sister, not because of prescription as found by the trial court, but because she is not the logical heir entitled to inherit it.

Wherefore, the decision appealed from is affirmed, without costs.

Bengzon, C.J., Padilla, Labrador, Concepcion, Paredes, Dizon, De Leon, and Natividad, JJ., concur.
Reyes, J.B.L., concurs in the result.

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