

FELICIANA LICAYAN TALE, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, THIRD DIVISION, AND PATERNO G. TALISIK, RESPONDENTS.

G.R. No. 101028. April 23, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for review assails the decision of the Court of Appeals dated February 13, 1991, the dispositive portion of which states:

"WHEREFORE, the decision appealed from is hereby reversed and set aside and the complaint is ordered DISMISSED. Without costs." (Rollo, p. 16)

and the resolution dated July 16, 1991 dismissing the petitioner's motion for reconsideration. The setting aside of the trial court's decision was based on the sole ground that the petitioner's action for reconveyance is barred by prescription as the period of four (4) years had already expired.

This petition originated from a complaint for reconveyance and damages filed by the petitioner against the private respondent on August 19, 1977 with the Court of First Instance of Bukidnon.

The facts of the case are found in the decision of the trial court as follows:

"As revealed by the Records, it appears that plaintiff Feliciano Tale, now 82 years of age, daughter of the deceased Agustin Licayan or Manlicayan, inherited an agricultural land covered by OCT No. 125, Exhibit "K", located at Casisang, Malaybalay, Bukidnon with an area of 15.5947 hectares, but which only around 8.5 hectares or 1/2 of it was inherited by her from her deceased mother, Antonia Jose, declared in her name as owner under Tax Declaration No. 10301, Exhibit "C", for the year 1950, and Tax Declaration No. 03895, Exhibit "B", for the year 1974. Land taxes were paid by the plaintiff as shown by a series of tax receipts which dated as far back in 1950, Exhibits "F" to "F-18" inclusive.

During World War II, defendant Paterno Talisik, a veteran of World War II lived with Igmedio Tale, son of the plaintiff who later on married the daughter of Damiano Licayan Tale. The latter gave his son-in-law, Paterno Talisik a piece of agricultural land with an area of around 2.5 hectares which Damiano Tale bought from Dolores Dinulan who in turn acquired it from Benigno Sumalta.

Sometime in 1971, defendant Paterno Talisik caused the inclusion in his Free Patent No. 50711, covered by OCT No. P-5827, Exhibit "A", page 23, Records of Exhibits, a portion of plaintiff's land with an area of 2.2500 hectares as shown in the sketch plan prepared by Geodetic Engineer Rafael Tilanduca, Exhibit "D", page 26, Records of Exhibits.

The land now covered by OCT No. 5827 in the name of Paterno Talisik covers an aggregate area of 5 hectares instead of only 2.5 hectares, the size of the land which his father-in-law, Damiano Tale, gave during the war. This is so because the defendant had caused around 2.5 hectares of plaintiff's land included in his title.

The 2.5 hectares which defendant added to the 2.5 hectares given to him by his father-in-law can not be said to have been acquired by him through prescription because plaintiff's land, of which a portion of 2.5 hectares was included in the title of defendant Talisik was already covered by a Free Patent in the name of Agustin Licayan or Manlicayan, the father of plaintiff Feliciana Licayan Tale.

The issue involved in the case at bar hinges on the question of ownership of the 2.5 hectares of land included in defendant's title, Exhibit "A".

The court opines that notwithstanding the inclusion of the 2.5 hectares of plaintiff's land in defendant's title, the plaintiff still retained true and absolute ownership of the said portion for reason that the land in question formerly belongs to plaintiff's father and covered by OCT No. 125 in the name of Agustin Licayan. Prescription can not set in this case, because the portion of land claimed by the defendant was previously a part covered by the title of plaintiff's predecessor.

Defendant Talisik in his defense never adduced any evidence to support his claim of ownership on the questioned land, except the testimony of Silvano Amolat who testified that he used to buy bamboos from defendant Talisik presumably growing on the land in question which bamboo groves were claimed by plaintiff to have been planted by Agustin Licayan, her father." (Original Record, pp. 87-88)

On August 16, 1989, the Regional Trial Court of Malaybalay, Bukidnon, Branch 9 rendered its decision, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered declaring plaintiff Feliciana Licayan Tale as owner of the portion with an area of 2.5 hectares located on the northern side of defendant's land as shown in the sketch plan of Lot No. 748 Pls 800, Exhibit "D", being a portion of OCT No. 125, Exhibit "K", in the name of Agustin Licayan or Manlicayan, plaintiff's father.

"Ordering the defendant to execute a proper deed of conveyance on the aforesaid portion in favor of the plaintiff and to cause a survey and segregation of the aforesaid portion and deliver the same to the plaintiff." (Records, p. 89)

Not satisfied with the decision of the court a quo the private respondent interposed an appeal. The Court of Appeals issued its questioned decision.

The subsequent motion for reconsideration of the petitioner was denied by the Court of Appeals.

Hence, this petition.

The Court of Appeals, in its questioned decision, held that prescription bars the institution of the action for reconveyance based on fraud. Applying the rule espoused in *Esconde v. Barlongay*, (152 SCRA 602 [1987]) and *Balbin v. Medalla*, (108 SCRA 666 [1981]) that an action for reconveyance based on fraud must be filed within four years, the Court of Appeals ruled that the four-year period had already expired counting from January 31, 1972, the time the original certificate of title was issued to the private respondent, to August 19, 1977, the time when the complaint was filed.

We are constrained to reverse the appellate court. Although there is no question as to when the prescription period commences, the conclusion about the four-year prescriptive period is erroneous.

We hold that the prescriptive period for an action for reconveyance based on fraud is ten (10) years. The issue on the prescriptive period for such an action has been thoroughly discussed in the case of *Amerol v. Bagumbaran* (154 SCRA 396, 406-407 [1987]), to wit:

"xxx. It must be remembered that before August 30, 1950, the date of the effectivity of the new Civil Code, the old Code of Civil Procedure (Act No. 190) governed prescription. It provided:

"SEC. 43. Other civil actions; how limited.--Civil actions other than for the recovery of real property can only be brought within the following periods after the right of action accrues:

x x x x x x x x

"3. Within four years: x x x An action for relief on the ground of fraud, but the right of action in such case shall not be deemed to have accrued until the discovery of the fraud;

x x x x x x x x

"In contrast, under the present Civil Code, we find that just as an implied or constructive trust is an offspring of the law (Art. 1456, Civil Code), so is the corresponding obligation to reconvey the property and the title thereto in favor of the true owner. In this context, and vis-a-vis prescription, Article 1144 of the Civil Code is applicable.

"Article 1144. The following actions must be brought within ten years from the time of the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

x x x x x x x x

"An action for reconveyance based on an implied or constructive trust must perforce prescribe in ten years and not otherwise. A long line of decisions of this Court, and of very recent vintage at that illustrates this rule. Undoubtedly, it is now well-settled that an action for reconveyance based on an implied or constructive trust prescribes in ten years from the issuance of the Torrens title over the property. (Gonzales v. Jimenez, supra; Cuaycong v. Cuaycong, supra; De la Cerna v. Dela Cerna, No. L-28838, August 31, 1976, 72 SCRA 514 [1976]; Carantes v. Court of Appeals, No. L-33360, April 25, 1977, 76 SCRA 514 [1977], Jaramil v. Court of Appeals, No. L-31858, August 31, 1977, 78 SCRA 420 [1977]; Ruiz v. Court of Appeals, No. L--29213, October 21, 1977, 79 SCRA 525 [1977]; Vda. de Nacalaban v. Court of Appeals, No. L? 39478, November 29, 1977, 80 SCRA 428 [1977]; Duque v. Domingo, No. L-33762, December 29, 1977, 80 SCRA 654 [1977]; Armamento v. Guerrero, supra; Amansec v. Melendez, No. L-- 25422, July 23, 1980; 98 SCRA 639 [1980]; Heirs of Tamak Pangawaran Patiwayan v. Martinez, No. L-49027, June 10, 1986, 142 SCRA 252 [1986]) The only discordant note, it seems is Balbin v. Medalla, 108 SCRA 666 [1981] which states that the prescriptive period for a reconveyance action is four years. However, this variance can be explained by the erroneous reliance on Gerona v. de Guzman, 11 SCRA 153 [1964]. But in Gerona, the fraud was discovered on June 25, 1948, hence Section 43 (3) of Act No. 190, was applied, the New Civil Code not coming into effect until August 30, 1950 as mentioned earlier. It must be stressed at this juncture, that Article 1144 and Article 1456, are new provisions. They have no counterparts in the old Civil Code or in the old Code of Civil Procedure, the latter being then resorted to as legal basis of the four-year prescriptive period for an action for reconveyance of title of real property acquired under false pretenses."

The Court in Amerol v. Bagumbaran (supra) took note of the varying decisions on whether the four-year period or ten-year period should apply. Significantly, Justice Paras who penned Esconde v. Barlongay (supra), which formed a basis for the four-year rule of the questioned decision, and Justices Yap, Melencio-Herrera, Padilla, and Sarmiento who concurred in the July 31, 1987 decision constituted the same Second Division which promulgated the ten-year rule in Amerol v. Bagumbaran (supra) on September 10, 1987.

Justice Padilla in Amerol v. Bagumbaran, however, made this distinction in a concurring and dissenting opinion:

"I concur in the result. I do not however agree with the sweeping proposition that all actions for reconveyance, based upon the ground of fraud, prescribe in ten (10) years. A distinction should be made. Fraud, or *dolo*, it should be recalled, is of two (2) kinds: *dolo causante*, or that which determines or is the essential cause of the consent; and *dolo incidente*, or that which does not have such decisive influence and by itself cannot cause the giving of consent, but refers only to some particular or accident of obligation. (Tolentino, Civil Code of the Philippines, 1956 ed., Vol IV, p. 463).

If the fraud committed was but an incident to the registration of land (*dolo incidente*), as in the case at bar, then I would agree that the action for reconveyance prescribes in ten (10) years. But, where it is necessary to annul a deed or title before relief could be granted, as when fraud, which vitiates consent (*dolo causante*), is alleged to have been committed in the execution of the deed which became the basis for the registration of a parcel of land, the action for reconveyance should be filed within four (4) years from the discovery of the fraud." (*id.* at p. 409)

The ten-year prescriptive period was reiterated in subsequent cases, among them, *Caro v. Court of Appeals*, 180 SCRA 401, 405-406 [1989], and *Pagkatipunan v. Intermediate Appellate Court*, 198 SCRA 719, 731-732 [1991]).

In the case at bar, the period from the date of the issuance of the certificate of title over the real property which was January 31, 1972 to the filing of the action in August 19, 1977 is well within the ten-year period.

The Court of Appeals did not deem it necessary to rule on the question of ownership of the contested land since it dismissed the case on the ground of prescription. However, this Court having ruled that the action is not barred by prescription, the question of ownership of the 2.5 hectares of land included in the private respondent's title should now be examined.

We agree with the trial court's findings and conclusion. We rule in favor of the petitioner.

As revealed by the records, the petitioner, daughter of Agustin Licayan or Manlicayan, inherited a portion of the 15.5 hectares agricultural land covered by Original Certificate of Title No. 125 (Exhibit K). (TSN, November 25, 1980, pp. 7-8) The private respondent, on the other hand, received from Damiano Licayan, husband of Dolores Denalang, a piece of land with an area of only 2.5 hectares. (TSN, October 12, 1979, pp. 4-5, pp. 11-12) These two parcels of land are adjacent to each other. This is shown by the tax declarations of the petitioner and Dolores Denalang (predecessor-in-interest of the private respondent). The land of the petitioner is to the north of the private respondent's land.

An examination of the sketch map of the land of the private respondent covered by OCT No. P-5827 made by Rafael Tilanduca, a geodetic engineer of the Bureau of Lands (Exhibit D), shows that the contested area is to the north of the private respondent's land. It is apparent then that there was an encroachment made by the private respondent. He had only 2.5 hectares but he had more than 5 hectares titled under OCT No. P-5827.

There is no basis to reverse the factual findings of the lower court as these conform to the evidence in the records. We reiterate the well-settled rule that findings of trial courts are accorded great respect in the absence of any showing that they ignored, overlooked or failed to properly appreciate matters of substance which would affect the results. (*Pineda v. Court of Appeals*, 183 SCRA 602, 609 [1990] citing *Centino v. Court of Appeals*, 169 SCRA 206 [1989] and *Vda. de Alberto v. Court of Appeals*, 173 SCRA 436 [1989]).

It is noted that the private respondent claims that he did not have the full opportunity to present his evidence as the trial court considered the case submitted for decision upon the failure of said private respondent to secure a new counsel within 20 days as per the order of the trial court dated November 26, 1987. It was the respondent's fault for bringing a lawyer who, according to his brief in the Court of Appeals, was not physically and mentally fit, thus calling for the services of a new counsel. He was given 20 days, considering that the case had already

dragged for more than ten (10) years at the time. He did not comply with the court's order. There is already ample evidence in the records to support the trial court's finding. Moreover, there has been more than enough delay. The complaint was filed on August 19, 1977 and was finally decided by the trial court on August 16, 1989. Six judges have already presided over the case. We have carefully gone over the original records, including the transcript of stenographic notes, and the records of the appealed cases. We see no reason to remand this case to the trial court.

WHEREFORE, the petition is GRANTED. The assailed decision dated February 13, 1991 and resolution dated July 16, 1991 of the Court of Appeals are hereby SET ASIDE and the decision of the Regional Trial Court, Branch 9, Malaybalay, Bukidnon is REINSTATED.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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