

CATALINA BUAN VDA. DE ESCONDE, CONSTANCIA ESCONDE VDA. DE PERALTA, ELENITA ESCONDE AND BENJAMIN E SCONDE, PETITIONERS, VS. HONORABLE COURT OF APPEALS AND PEDRO ESCONDE, RESPONDE...

G.R. No. 103635. February 01, 1996

Ponente: ROMERO, J.

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ROMERO, J.:

This petition for review on certiorari seeks the reversal of the January 22, 1992 decision[1] in CA G.R. CV No. 26795 of the Court of Appeals affirming the Decision of the Regional Trial Court of Bataan, Branch 2.[2] The lower court declared that petitioners' action for reconveyance of real property based on an implied trust has been barred by prescription and laches.

Petitioners Constancia, Benjamin and Elenita, and private respondent Pedro, are the children of the late Eulogio Esconde and petitioner Catalina Buan. Eulogio Esconde was one of the children[3] and heirs of Andres Esconde. Andres is the brother of Estanislao Esconde, the original owner of the disputed lot who died without issue on April 1942. Survived by his only brother, Andres, Estanislao left an estate consisting of four (4) parcels of land in Samal, Bataan, namely: (a) Lot No. 1865 with 22,712 square meters; (b) Lot No. 1902 with 54,735 square meters; (c) Lot No. 1208 with 20,285 square meters; and (d) Lot No. 1700 with 547 square meters.

Eulogio died in April, 1944 survived by petitioners and private respondent. At that time, Lazara and Ciriaca, Eulogio's sisters, had already died without having partitioned the estate of the late Estanislao Esconde.

On December 5, 1946, the heirs of Lazara, Ciriaca and Eulogio executed a deed of extrajudicial partition,[4] with the heirs of Lazara identified therein as the Party of the First Part, that of Ciriaca, the Party of the Second Part and that of Eulogio, the Party of the Third Part. Since the children of Eulogio, with the exception of Constancia, were then all minors, they were represented by their mother and judicial guardian, petitioner Catalina Buan vda. de Esconde who renounced and waived her usufructuary rights over the parcels of land in favor of her children in the same deed. Salient provisions of the deed state as follows:

"1. TO ARTURO DOMINGUEZ, minor, Party of the First Part is adjudicated:

- (a) Lot No. 1865 of Samal Cadastre;
- (b) Portion of Lot No. 1208, Samal Cadastre, which portion has an area of FIVE (5) Luang;

2. TO JOVITA BUAN, RICARDO BUAN, and MELODY and LEOPOLDO OCONER, are adjudicated Lot No. 1902 Samal Cadastre, and to de (sic) divided as follows:

- (a) Jovita Buan - Undivided one-third (1/3) share;
- (b) Ricardo Buan - Undivided one-third (1/3) share;

(c) Melody Oconer - Undivided one-sixth (1/6) share;

(d) Leopoldo Oconer - Undivided one-sixth (1/6) share;

3. TO CONSTANCIA, PEDRO, BENJAMIN and ELENITA, all Surnamed ESCONDE, are adjudicated, in undivided equal shares each, the following:

(a) Lot No. 1208 Samal Cadastre, subject to the encumbrance of the right of ownership of Arturo Dominguez on the FIVE LUANG;

4. TO PEDRO ESCONDE is adjudicated exclusively Lot No. 1700 of the Cadastral Survey of Samal"; (Italics supplied.)

The deed bears the thumbmark of Catalina Buan and the signature of Constancia Esconde, as well as the approval and signature of Judge Basilio Bautista.[5]

Pursuant to the same deed, transfer certificates of title were issued to the new owners of the properties.[6] Transfer Certificate of Title No. 394 for Lot No. 1700 was issued on February 11, 1947 in the name of private respondent but Catalina kept it in her possession until she delivered it to him in 1949 when private respondent got married.

Meanwhile, Benjamin constructed the family home on Lot No. 1698-B[7] which is adjacent to Lot No. 1700. A portion of the house occupied an area of twenty (20) square meters, more or less, of Lot No. 1700. Benjamin also built a concrete fence and a common gate enclosing the two (2) lots, as well as an artesian well within Lot No. 1700.

Sometime in December, 1982, Benjamin discovered that Lot No. 1700 was registered in the name of his brother, private respondent. Believing that the lot was co-owned by all the children of Eulogio Esconde, Benjamin demanded his share of the lot from private respondent.[8] However, private respondent asserted exclusive ownership thereof pursuant to the deed of extrajudicial partition and, in 1985 constructed a "buho" fence to segregate Lot No. 1700 from Lot No. 1698-B.

Hence, on June 29, 1987, petitioners herein filed a complaint before the Regional Trial Court of Bataan against private respondent for the annulment of TCT No. 394. They further prayed that private respondent be directed to enter into a partition agreement with them, and for damages (Civil Case No. 5552).

In its decision of July 31, 1989, the lower court dismissed the complaint and the counterclaims. It found that the deed of extrajudicial partition was an unenforceable contract as far as Lot No. 1700 was concerned because petitioner Catalina Buan vda. de Esconde, as mother and judicial guardian of her children, exceeded her authority as such in "donating" the lot to private respondent or waiving the rights thereto of Benjamin and Elenita in favor of private respondent. Because of the unenforceability of the deed, a trust relationship was created with private respondent as trustee and Benjamin and Elenita as beneficiaries. The court said:

"Although the parties to the partition did not either contemplate or express it in said document, the resulting trust arose or was created by operation of Article 1456 of the new Civil Code, which reads: 'If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.' The persons from whom the two-thirds portion of Lot 1700 came are plaintiffs Benjamin and Elenita Esconde and the trustee was defendant Pedro Esconde, who acquired such portion through mistake by virtue of the subject partition. The mistake was the allotment or assignment of such portion to Pedro Esconde although it had rightfully belonged to said two plaintiffs more than two (2) years before." [9]

However, the lower court ruled that the action had been barred by both prescription and laches. Lot No. 1700 having been registered in the name of private respondent on February 11, 1947, the action to annul such title prescribed within ten (10) years on February 11, 1957 or more than thirty (30) years before the action was filed on June 29, 1987. Thus, even if Art. 1963 of the old Civil Code providing for a 30-year prescriptive period for real actions over immovable properties were to be applied, still, the action would have prescribed on February 11, 1977.

Hence, petitioners elevated the case to the Court of Appeals which affirmed the lower court's decision. The appellate court held that the deed of extrajudicial partition established "an implied trust arising from the mistake of the judicial guardian in favoring one heir by giving him a bigger share in the hereditary property." It stressed that "an action for reconveyance based on implied or constructive trust" prescribes in ten (10) years "counted from the registration of the property in the sole name of the co-heir." [10]

Petitioners are now before this Court charging the Court of Appeals with having erred in: (a) denying their appeal by reason of prescription and laches, and (b) not reversing the decision of the lower court insofar as awarding them damages is concerned.

Trust is the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter. [11] Trusts are either express or implied. An express trust is created by the direct and positive acts of the parties, by some writing or deed or will or by words evidencing an intention to create a trust. [12] No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended. [13]

On the other hand, 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. [14] In turn, implied trusts are either resulting or constructive trusts. These two are differentiated from each other as follows:

"Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another. On the other hand, constructive trusts are created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold." [15]

While the deed of extrajudicial partition and the registration of Lot No. 1700 occurred in 1947 when the Code of Civil Procedure or Act No. 190 was yet in force, we hold that the trial court correctly applied Article 1456. In *Diaz, et al. v. Gorricho and Aguado*, [16] the Court categorically held that while it is not a retroactive provision of the new Civil Code, Article 1456 "merely expresses a rule already recognized by our courts prior to the Code's promulgation." This article provides:

"Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes."

Construing this provision of the Civil Code, in *Philippine National Bank v. Court of Appeals*, the Court stated:

"A deeper analysis of Article 1456 reveals that it is not a trust in the technical sense for in a typical trust, confidence is reposed in one person who is named a trustee for the benefit of another who is called the cestui

que trust, respecting property which is held by the trustee for the benefit of the cestui que trust. A constructive trust, unlike an express trust, does not emanate from, or generate a fiduciary relation. While in an express trust, a beneficiary and a trustee are linked by confidential or fiduciary relations, in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary." [17]

In the case at bench, petitioner Catalina Buan vda. de Esconde, as mother and legal guardian of her children, appears to have favored her elder son, private respondent, in allowing that he be given Lot No. 1700 in its entirety in the extrajudicial partition of the Esconde estate to the prejudice of her other children. Although it does not appear on record whether Catalina intentionally granted private respondent that privileged bestowal, the fact is that, said lot was registered in private respondent's name. After TCT No. 394 was handed to him by his mother, private respondent exercised exclusive rights of ownership therein to the extent of even mortgaging the lot when he needed money.

If, as petitioners insist, a mistake was committed in allotting Lot No. 1700 to private respondent, then a trust relationship was created between them and private respondent. However, private respondent never considered himself a trustee. If he allowed his brother Benjamin to construct or make improvements thereon, it appears to have been out of tolerance to a brother. Consequently, if indeed, by mistake, [18] private respondent was given the entirety of Lot No. 1700, the trust relationship between him and petitioners was a constructive, not resulting, implied trust. Petitioners, therefore, correctly questioned private respondent's exercise of absolute ownership over the property. Unfortunately, however, petitioners assailed it long after their right to do so had prescribed.

The rule that a trustee cannot acquire by prescription ownership over property entrusted to him until and unless he repudiates the trust, applies to express trusts [19] and resulting implied trusts. [20] However, in constructive implied trusts, prescription may supervene [21] even if the trustee does not repudiate the relationship. Necessarily, repudiation of the said trust is not a condition precedent to the running of the prescriptive period.

Since the action for the annulment of private respondent's title to Lot No. 1700 accrued during the effectivity of Act No. 190, Section 40 of Chapter III thereof applies. It provides:

"Sec. 40. Period of prescription as to real estate. - An action for recovery of title to, or possession of, real property, or an interest therein, can only be brought within ten years after the cause of such action accrues."

Thus, in *Heirs of Jose Olviga v. Court of Appeals*, [22] the Court ruled that the ten-year prescriptive period for an action for reconveyance of real property based on implied or constructive trust which is counted from the date of registration of the property, applies when the plaintiff is not in possession of the contested property. In this case, private respondent, not petitioners who instituted the action, is in actual possession of Lot No. 1700. Having filed their action only on June 29, 1987, petitioners' action has been barred by prescription.

Not only that. Laches has also circumscribed the action for, whether the implied trust is constructive or resulting, this doctrine applies. [23] As regards constructive implied trusts, the Court held in *Diaz, et al. v. Gorricho and Aguado* [24] that:

"x x x in constructive trusts (that are imposed by law), there is neither promise nor fiduciary relation; the so-called trustee does not recognize any trust and has no intent to hold for the beneficiary; therefore, the latter is not justified in delaying action to recover his property. It is his fault if he delays; hence, he may be estopped by his own laches."

It is tragic that a land dispute has once again driven a wedge between brothers. However, credit must be given to petitioner Benjamin Esconde [25] for resorting to all means possible in arriving at a settlement between him and his brother in accordance with Article 222 of the Civil Code. [26] Verbally and in two letters, [27] he demanded

that private respondent give him and his sisters their share in Lot No. 1700. He even reported the matter to the barangay authorities for which three conferences were held.[28] Unfortunately, his efforts proved fruitless. Even the action he brought before the court was filed too late.

On the other hand, private respondent should not be unjustly enriched by the improvements introduced by his brother on Lot No. 1700 which he himself had tolerated. He is obliged by law to indemnify his brother, petitioner Benjamin Esconde, for whatever expenses the latter had incurred.

WHEREFORE, the instant petition for review on certiorari is hereby DENIED and the questioned decision AFFIRMED subject to the modification that private respondent shall indemnify petitioner Benjamin Esconde the expenses the latter had incurred for the improvements on Lot No. 1700. No costs.

SO ORDERED.

Regalado, Puno and Mendoza, JJ., concur.

[1] Penned by Associate Justice Minerva P. Gonzaga-Reyes and concurred in by Associate Justices Arturo B. Buena and Quirino D. Abad Santos, Jr.

[2] Presided by Judge Romeo G. Maglalang.

[3] Andres had two other children namely: Lazara and Ciriaca.

[4] Exh. "B".

[5] Page 3 of Exh. "B"; Record, p. 11.

[6] TCT No. 391 for Lot 1865 was issued to Arturo Dominguez; TCT No. 392 for Lot 1902 to the heirs of Ciriaca, and TCT No. 393 for Lot 1208 to the heirs of Eulogio: Constancia, Pedro, Benjamin and Elenita Esconde.

[7] This lot, which used to be part of Lot No. 1698 and co-owned by Eulogio and his sister Lazara, became the property of the former's heirs after Lot No. 1698 was extrajudicially partitioned on March 3, 1963 (Exh. "1").

[8] TSN, March 10, 1988, pp. 23-25; Exh. "E".

[9] RTC Decision, p. 29.

[10] CA Decision, p. 5.

[11] TOLENTINO CIVIL CODE OF THE PHILIPPINES, Vol. IV, 1991 ed., p. 669 citing 54 Am. Jur. 21.

[12] Sotto v. Teves, L-38018, October 31, 1978, 86 SCRA 154, 171 citing Cuaycong, et al. v. Cuaycong, et al., L-21616, December 11, 1967, 21 SCRA 1192, 1196.

[13] Art. 1443, Civil Code; Heirs of Maria de la Cruz y Gutierrez v. Court of Appeals, G.R. No. 76590, February 26, 1990, 182 SCRA 638, 643 citing Vda. de Mapa v. Court of Appeals, L-38972, September 28, 1987, 154 SCRA 294, 300.

[14] Philippine National Bank v. Court of Appeals, G.R. No. 97995. January 21, 1993, 217 SCRA 347, 353.

[15] O'Laco v. Co Cho Chit, G.R. No. 58010, March 31, 1993, 220 SCRA 656, 663.

[16] 103 Phil. 261, 264 (1958).

[17] Supra at pp. 353-354.

[18] This appears to have a factual basis as Catalina Buan vda. de Esconde joined the other petitioners in filing the action for annulment of title against private respondent.

[19] See: Ramos v. Ramos, L-19872, December 3, 1974, 61 SCRA 284, 299.

[20] O'Laco v. Co Cho Chit, supra at p. 668. See: Huang v. Court of Appeals. G.R. No. 108525, September 13, 1994, 236 SCRA 420, 429-430.

[21] Ibid.

[22] G.R. No. 104813, October 21, 1993, 227 SCRA 330, 334-335.

[23] Philippine National Bank v. Court of Appeals, supra at pp. 357-358.

[24] Supra at pp. 266.

[25] He was granted by the other petitioners a special power of attorney to appear for them in Civil Case No. 5552 and to enter into any agreement regarding the case (Record, p. 34).

[26] "Art 222. No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in Article 2035."

[27] Exhs. "E" & "F".

[28] RTC Decision, p. 7.

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