

**SEVERINA MARABILLES, ET AL., PLAINTIFF AND APPELLANTS, VS.
ALEJANDRO QUITO AND AIDA QUITO, DEFENDANTS AND
APPELLEES.**

G.R. No. 10408. October 18, 1956

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This concerns an action instituted in the Court of First Instance of Camarines Sur by plaintiffs against defendants for the recovery of a parcel of land consisting of 18 hectares situated in Pili, Camarines Sur.

Defendants, instead of answering the complaint, filed a motion to dismiss on the grounds (1) that plaintiffs have no legal capacity to sue, (2) that the complaint states no cause of action, and (3) that the action had prescribed. Defendants attached to their motion as Annex A Transfer Certificate of Title No. 1065 issued in the name of one Guadalupe Saralde on March 31, 1941 and Original Certificate of Title No. 1018 as Annex B issued in the name of Patricio Marabiles on February 19, 1954. This is a homestead patent granted under Act No. 2874.

Plaintiffs filed a written opposition to the motion, to which defendants replied, and thereafter the court issued on November 8, 1954 an order sustaining the motion. Accordingly, it dismissed the complaint with costs against the plaintiffs. When plaintiffs appealed from this order to the Court of Appeals, the case was certified to us on the ground that the questions raised are purely of law.

One of the grounds on which the lower court dismissed the complaint is that plaintiffs do not have legal capacity to sue because it appears that the title of the land was issued in the name of Patricio Marabiles who already died and the complaint does not allege that Severina Marabiles and her child who now appears as plaintiffs had been duly declared as his heirs to entitle them to bring the action. The court is of the impression that judicial declaration of heirship is necessary in order that an heir may have legal capacity to bring the action to recover a property belonging to the deceased.

This theory is erroneous. The right to assert a cause of action as an heir, although he has not been judicially declared to be so, if duly proven, is well settled in this jurisdiction. This is upon the theory that the property of a deceased person, both real and personal, becomes the property of the heir by the mere fact of death of his predecessor in interest, and as such he can deal with it in precisely the same way in which the deceased could have dealt, subject only to the limitations which by law or by contract may be imposed upon the deceased himself (*Suiliong & Co. vs. Marine Insurance Co., Ltd., et al.*, 12 Phil, 13, 19). Thus, it has been held that "There is no legal precept or established rule which imposes the necessity of a previous legal declaration regarding their status as heirs to an intestate on those who, being of age and with legal capacity, consider themselves the legal heirs of a person, in order that they may maintain an action arising out of a right which belonged to their ancestor" (*Hernandez vs. Padua*, 14 Phil., 194). A recent case wherein this principle was maintained is *Cabuyao vs. Ga-agbay*, 95 Phil., 614.

Another ground on which the dismissal is predicated is that the complaint states no cause of action because while it

appears in the complaint that the land was transferred to one Guadalupe Saralde, deceased wife of defendant Alejandro Quito, there is no allegation that said Alejandro Quito and his daughter Aida, a co-defendant, had been declared heirs or administrators of the estate of the deceased. Because of this legal deficiency, the court has concluded that plaintiffs have no cause of action against defendants because there is no legal bond by which the latter may be linked with the property.

This conclusion is also erroneous. The rule is that, to determine the sufficiency of a cause of action on a motion to dismiss, only the facts alleged in the complaint should be considered,[1]and considering the facts herein alleged, there is enough ground to proceed with the case. Thus, it appears in the complaint that Guadalupe Saralde is the wife of Alejandro Quito, the defendant, and as said Guadalupe has already died, under the law, the husband and his daughter Aida are the legal heirs. We have already said that in order that an heir may assert his right to the property of a deceased, no previous judicial declaration of heirship is necessary. It was therefore a mistake to dismiss the complaint on this ground.

Lastly, the lower court found that the action of the plaintiffs had already prescribed because the 4-year period within which an action based on fraud may be brought had already elapsed it appearing that the title of plaintiffs' ancestor was cancelled and a new one issued in the name of Guadalupe Saralde in 1941, whereas the complaint was only filed in 1954. The court expressed the opinion that the fraud which is the basis of the action is deemed to have been discovered from the time the original title was cancelled and a new one issued in 1941 upon the theory that those titles constitute a public record which serves as a constructive notice to the public.

We also find his conclusion erroneous. While legally the registration of real property serves as a constructive notice on which an action based on fraud may be predicated, however, this cannot be invoked in the present case, for there is an averment in the complaint that the issuance of such title has been accomplished by defendant Alejandro Quito through fraud, deceit and misrepresentation and not through a valid and voluntary transfer. It is a rule well settled that the defense of prescription cannot be availed of when the purpose of the action is to compel a trustee to convey the property registered in his name for the benefit of the cestui que trust.[2] And when a person through fraud succeeds in registering the property in his name, the law creates what is called "constructive trust" in favor of the defrauded party and grants to the latter a right to vindicate the property regardless of the lapse of time. Thus, it has been held that "If a person obtains legal title to property by fraud or concealment, courts of equity will impress upon the title a so called constructive trust in favor of the defrauded party" (*Gayondato vs. Treasurer of the Philippine Islands*, 49 Phil., 244, 249; See also *Bancairen, et al. vs. Diones, et al.*, 98 Phil., 122). It is clear that the defense of prescription cannot be set up in this case. "

Wherefore, the order appealed from is hereby set aside, with costs against appellees.

Paras, C. J., Montemayor, Labrador, Endencia, and Felix, JJ., concur.

[1]*Pamintuan vs. Coatales*, 28 Phil., 487; *Blay vs. Batangas Trans. Co.*, 45 Off. Gaz., Supplement to No. 9, p. 1.

[2]*Manalang, et al. vs. Canlas, et al.* 94 Phil., 776; *Cristobal vs. Gomez*, 50 Phil., 810; *Castro vs. Castro*, 57 Phil., 675.

CONCURRING:

REYES, J. B. L., J.,

I concur with the reasons of the majority decision, but consider the statement to the effect that "property held under constructive trust can be vindicated regardless of the lapse of time" much too broad for unqualified assent. The rule of imprescriptibility is logical in case of express trusts, since a party who agrees to hold property for another, and upon whose promise confidence is reposed, will naturally be held to his agreement, and will not be allowed to set title in himself without first repudiating the trust expressly. The rule can be extended to resulting trusts, since the intent to create a trust exists in such case, even if all requisites of express trusts do not concur. But in constructive trusts, based on fraud or tort, the element of trust and confidence is not present, and the authorities are that no repudiation is required for the application of extinctive prescription (34 Am. Jur. pp. 88, 143; American Law Inst, Restatement on Restitution, sec. 179; Restatement on Trusts, sec. 219).

In this case, however, there is no satisfactory showing when the fraud was actually discovered, hence it can not be said that the period to demand restitution has already lapsed.

Padilla and Concepcion, JJ., concur.

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