

**DOMINICA CUTANDA, SEBASTIAN CUTANDA, JUANARIO CUTANDA,
SOTERO CUTANDA, CRISPIN CUTANDA, FLORENCIO CUTANDA,
TRINIDAD CUTANDA, NICANOR CUTANDA, GABINA CUTANDA
FLORES, AND CLAUDIO ...**

G.R. No. 109215. July 11, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision of the Court of Appeals dated March 31, 1992 in C.A.-G.R. CV No. 24546, insofar as it reverses the decision of the Regional Trial Court, Branch 1, Tagbilaran City declaring petitioners as the true and lawful owners of the subject lands.

The background of this case is as follows:

On August 4, 1988, private respondents brought an action for recovery of possession, accounting and damages against petitioners in the Regional Trial Court of Tagbilaran City. They alleged[1] that in the 1900's, their grandfather, Roberto Cutanda, owned two parcels of land in Bohol. One had an area of 31.0929 hectares and was covered by Tax Declaration No. 1246,[2] while the other was 7.0925 hectares and was covered by Tax Declaration No. 1247.[3] Both tax declarations were in Roberto Cutanda's name. Upon Roberto Cutanda's death, these lands were inherited by his children, namely: Doque, Diego, Pedro, Andres, and Anastacia, all surnamed Cutanda. Except for Doque who stayed in Bohol and administered the lands, all of Roberto Cutanda's children established residence in Leyte. In 1987, they returned to Bohol to personally work the inherited lands. Their plan, however, was frustrated as petitioners, who were occupying the lands, refused to leave. Private respondent thus prayed that each be declared owner of 1/5 of the subject real properties and that petitioners be ordered to return to them said properties.

In due time, petitioners filed their answers. One was prepared by the Citizen's Legal Assistance Office, while the other one, which was the one actually considered during the trial, was prepared by the Bureau of Legal Assistance of the Department of Agrarian Reform. Contending that private respondents had no cause of action, petitioners denied that private respondents' predecessor-in-interest, Roberto Cutanda, was the original owner of the lands in question. Instead, they claimed that the owner was their uncle and predecessor-in-interest, Anastacio Cutanda. It was alleged that Anastacio Cutanda died without children and that the real properties in question were inherited by his brothers and sisters whose children are the present petitioners. Claiming a better right to possess the subject properties, petitioners alleged that while they occupied the shares which their parents inherited from Anastacio Cutanda, some of them also worked as tenants cultivating the lands of their co-petitioners. They filed a counterclaim in which they sought the recovery of damages from private respondents.[4]

On September 28, 1989, the trial court rendered its decision[5] declaring petitioners to have acquired the ownership of the subject properties through prescription and dismissing private respondents' complaint. The court ordered private respondents to vacate the properties and remove whatever improvements they may have made, to

restore petitioners in possession of the lands, and to cease from laying further adverse claims over the lands. As basis for its ruling, the trial court made the following findings:

In the assessment of the evidence of the parties the court finds the evidence of the defendants preponderant and had established their case against plaintiffs, among the most outstanding facts are as follows:

1. Even plaintiffs document (Exhibit "C") visayan written testament/statement of Quirico Becauan dated February 25, 1935, it admitted that before 1935 Anastacio Cutanda had been in the possession of the land in question;

2. Gervacio Cutanda admitted that the defendants thru their predecessor-in-interest Anastacio Cutanda had squatted on the land since 1933 and since then because his father Roberto Cutanda, the alleged original owner of the land had transferred residence in Leyte, the land was with the defendants. Although, he came back in 1949, he and Sofronio only claimed back the land in 1987;

3. That, it is beyond doubt that the defendants have long been in possession and cultivation of the land as owners whose possession if tacked with Anastacio Cutanda since 1933 up to the present has been for more than 54 years;

4. That, Tax Declaration No. 10434 of Anastacio Cutanda from whom the defendants have inherited the land is dated as far back as 1933 and continuously until the present when different tax declarations were issued in the names of the defendants;

5. That, defendants' continuous possession, occupation and cultivation of the land is not rebutted, refuted by convincing, sufficient evidence by the plaintiffs whose claim is highly nebulous and unsatisfactory;

6. That, even assuming the plaintiffs have the right over the land in question, the fact that they have slept [on] their right since 1933 up to 1987 by failing to institute an action to recover its ownership and possession, plaintiffs are clearly guilty of laches;

....

8. That, Anastacio Cutanda's right over the land and succeeded by defendants since 1933 has beyond any cloud of doubt been sufficiently established.[6]

Private respondents appealed to the Court of Appeals. On March 31, 1992, the appellate court rendered a decision[7] which, while affirming the dismissal of the case against petitioners, nonetheless declared that there was no sufficient evidence that they were the owners of the properties. It stated:

However, this Court finds that the trial court has exceeded its jurisdiction in declaring defendants-appellees to be the true and lawful owners of the land in question there being no sufficient evidence on record that they have been in open, continuous, exclusive and notorious possession and occupation of the land under a bona fide claim of ownership for the period required by law as to acquire ownership thereof by prescription.[8]

Both parties moved for reconsideration of the appellate court's decision. On February 26, 1993, the Court of Appeals denied their motions for lack of merit. No further action was taken by private respondents so that the decision of the appellate court affirming the dismissal of their action for recovery of possession, accounting and damages became final. On the other hand, petitioners brought the instant petition for review, insofar as the Court of Appeals ruled that no sufficient evidence existed in the records to establish their ownership of the lands.

The sole issue for resolution in this petition is thus whether petitioners presented sufficient evidence to prove their ownership of the lands in question. Petitioners contend that: (1) the findings of fact of the Court of Appeals should not be binding upon this Court as they are in direct contradiction to that of the trial court;[9] (2) the decision of the Court of Appeals does not cite any reason for reversing the trial court's findings of fact;[10] (3) while agricultural

tenancy relations exist between them and the owners of the land, they were also owners of the shares inherited by their parents from Anastacio Cutanda;[11] and (4) as found by the trial court, petitioners and their predecessors have been in possession of the lands since 1933 and have consequently acquired the same through acquisitive prescription.[12]

The petition is meritorious.

First. While both the Court of Appeals and the trial court held that private respondents' action for recovery of possession (accion publiciana) was already barred, it appears that they relied upon different grounds. For the trial court, the ground was extinctive prescription. Paragraph no. 7 of its findings plainly states that -

7. Consequent to laches, plaintiffs' right to the land having allowed the defendants to possess, cultivate and claim as owners since 1933 up to 1987, their rights if any are lost by extinctive prescription and, therefore, defendants have acquired the rights over the parcels of land by acquisitive prescription.[13]

The Court of Appeals, on the other hand, held private respondents' action to be barred by laches, thus:

The failure of plaintiff-appellants and their predecessors-in-interest to assert their claim over the disputed properties from the time that Anastacio Cutanda allegedly usurped said lands in 1933 until the instant action was filed in 1988 -- a period of 55 years -- constitutes laches and bars this action to recover possession of said properties.[14]

In *Maneclang v. Baun*,[15] this Court distinguished prescription from laches as follows:

. . . While prescription is concerned with the fact of delay, laches is concerned with the effect of delay. Prescription is a matter of time; laches is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; laches is not. Laches applies in equity, whereas prescription applies at law. Prescription is based on fixed time, laches is not.

Based on this distinction, we hold that prescription, not laches, is the proper ground for holding private respondent's action to be barred. Art. 1106 of the Civil Code provides that by prescription, one acquires ownership and other real rights through the lapse of time, in the manner and under the conditions laid down by law. In the same way, rights and actions are lost by prescription. There are thus two kinds of prescription: (1) the acquisition of a right by the lapse of time, or acquisitive prescription; and (2) the loss of a right of action by the lapse of time, or extinctive prescription.

Private respondents' action was an accion publiciana to recover the right of possession and to be declared owners of the subject lands. Their complaint squarely put in issue the ownership of the lands in dispute. It may thus be properly treated as an accion reivindicatoria. As found by the Court of Appeals and by the trial court, however, petitioners' predecessor-in-interest, Anastacio Cutanda, acquired possession of said lands in 1933. On the other hand, private respondents did not assert ownership over the lands until 1988 - 55 years later, when they filed their present complaint for recovery of possession. It is settled that the remedies of accion publiciana or accion reivindicatoria must be availed of within 10 years from dispossession. Under Art. 555(4) of the Civil Code, the real right of possession is lost after the lapse of 10 years.[16] In *Cruz v. Court of Appeals*,[17] in which an action for recovery of possession and ownership of lands was brought only after 26 years had elapsed, this Court ruled:

And secondly, whether We consider the complaint of private respondents to recover possession of the property in question as accion publiciana or accion reivindicatoria, the same has prescribed after the lapse of ten years. After private respondents had abandoned for 26 years the property which is unregistered land, the law as well as justice and equity will not allow them "to lie in wait and spring as in an ambush" to dislodge and dispossess petitioners who during said period made and constructed residences, buildings and other valuable

improvements thereon, and enjoying the fruits therefrom.

Hence, insofar as petitioners are concerned, private respondents' cause of action was barred, not by laches, but by extinctive prescription, regardless of whether their complaint is considered as an *accion publiciana* or an *accion reivindicatoria*. As regards the private respondents who did not appeal from the ruling of the Court of Appeals, this question is now final.

Second. As already stated, the Court of Appeals reversed the trial court's ruling that petitioners had acquired the lands by prescription on the ground that there was no sufficient evidence to prove that petitioners had been in open, continuous and adverse possession of the lands. There is, however, nothing in the evidence to support this finding of the appellate court. To the contrary, the evidence in the record, both documentary and testimonial, shows: (1) that their common ancestor was the late Doque Cutanda, son of Eustaquio Cutanda and Rufina Atup;^[18] (2) that Doque Cutanda had several children, namely, Anastacio, Saturnino, Esperidion, Pedro, Honorio, German, Fortunata, Eustaquia, and Ponciana;^[19] (3) that, in his lifetime, Doque Cutanda acquired a parcel of agricultural land consisting of 31.0929 hectares, which was declared under Tax Declaration No. 6983^[20] in the name of his eldest child, Anastacio; (4) that Anastacio, who had no children, remained in possession of said land from 1933 until 1968 when he executed a deed of extrajudicial settlement of estate which adjudicated and partitioned said parcel of land among his brothers and sisters;^[21] (5) that after 1968, Anastacio's brothers and sisters worked on the land, as shown by several tax declarations^[22] and subsequently, their children and successors, herein petitioners, remained in actual and peaceful possession of said land until 1988 when private respondents filed their action to recover possession of the land; (6) that during such time, petitioners Dominica, Sebastian, Sotero, Januario and Nicanor were cultivating the share of their father while working as agricultural tenants on the shares of their uncles Honorio and German Cutanda;^[23] and (7) that petitioners Gabina, Crispin and Claudio Cutanda are the children and heirs of Honorio Cutanda working on their father's share while petitioners Florencio and Trinidad Cutanda are the children and heirs of German and Esperidion Cutanda, respectively.^[24]

The foregoing sufficiently establish that Anastacio Cutanda was in possession of the land covered by Tax Declaration No. 6983, which has an area of 31.0929 hectares, from 1933 up to 1968, or a period of 35 years. Such possession appears to be adverse, continuous and in the concept of an owner because Anastacio Cutanda cultivated the land, thereby, performing an act of ownership over it. It is to be noted that Anastacio's possession began under the former Civil Code. This fact brings this case squarely under the ruling in *Cruz v. Court of Appeals*,^[25] in which adverse possession of a parcel of unregistered land started in 1938 while the complaint for recovery of possession was filed only in 1964, after 26 years. The trial court dismissed the complaint and declared the adverse possessors as owners of the land. The Court of Appeals, however, reversed the trial court. On appeal, this Court in turn reversed the appellate court. We held that -

This contention of the petitioners is impressed with truth and merit as the same is borne out by the records and the transcript thereof which We have previously discussed. We, therefore, find that the ruling of the respondent court dating petitioner's adverse possession to the year 1953 is contrary to the admission of the private respondents thru counsel, and since petitioners' possession of the property in question commenced way back in 1938 which was at the time of the old Civil Code was still in force, the prescriptive period is governed under Section 41 of the Code of Civil Procedure because Article 1116 of the New Civil Code provides that "Prescription already running before the effectivity of this Code (August 30, 1950) shall be governed by laws previously in force." Section 41 of the C.C.P. states:

Sec. 41. Title to land by prescription. -- Ten years of actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly, continuously for ten years by occupancy, descent, grants or otherwise, in whatever way such occupancy may have commenced or continued,

shall vest in every actual possessor of such land a full complete title, saving to the persons under disabilities the rights, secured by the next section.[26]

Under the Code of Civil Procedure, therefore, ten years of actual adverse possession was required, regardless of how such occupancy may have commenced or continued, before possession ripened into full and complete title over the land. Applying this to the present case, by 1943, ten years after his possession of the subject parcel of land had begun, Anastacio Cutanda became owner of the land in question through acquisitive prescription.

Third. The Court of Appeals limited its review of the evidence to the issue of acquisitive prescription. Petitioners, however, submitted evidence to prove that they were heirs of Anastacio Cutanda's brothers and sisters, even as some of them were also working as tenants for their co-petitioners. Particularly compelling is the 1968 Deed of Extrajudicial Settlement of Real Estate executed by Anastacio Cutanda which pertinently states that:

WHEREAS, ANASTACIO CUTANDA, single, 90 years of age, with no common-law wife, illegitimate children or otherwise, through his own will desires to adjudicate and partition his three (3) parcels of land to his brothers and sisters or legal heirs, declared under Tax Dec. Nos. R-2485; R-2486; and R-6983 situated at Camambugan, Ubay, Bohol and Saguisinhan, Trinidad, Bohol, respectively, which are described and bounded as follows:

....

Tax Declaration No. 6983, situated at Saguisinhan, Trinidad, Bohol, with an area of 31.0929 hectares more or less: Bounded on the North by Justo Ogayon & creek; or East, by Saguisinhan Creek; on South, by Pablo Ebaoc, Graciano Ebaoc, Diosdado Ebaoc, Gaviro Mumar; and on West by Pablo Ebaoc, Mateo Nuera, Dominga Nuera; with improvements of 15 groups of bamboos.

....

WHEREAS, the brothers, sisters and heirs of said Anastacio Cutanda, through his will and voluntary deed, mutually agree to accept this extrajudicial partition made by said Anastacio Cutanda for the benefit of said brothers, sisters, and heirs of same.

As Anastacio Cutanda had acquired ownership of said parcel of land through the lapse of the period required by law, he could validly adjudicate and partition it among his brothers and sisters who were his only heirs. Petitioners, in turn, as children of Anastacio's brothers and sisters, acquired ownership of the subject land not through prescription but through hereditary succession.

But while we find sufficient evidence of ownership with respect to that parcel with an area of 31.0929 hectares covered by Tax Declaration No. 6983, we find no similar evidence to support the finding of the trial court that Anastacio Cutanda was also the owner of the other parcel of land consisting of seven hectares. Petitioner Florencio Cutanda himself admitted that he and the other petitioners were only claiming the 31-hectare land. His testimony is as follows:

Q

And Mr. Witness you will assure us here that this tax declaration No. R-6983 is the only parcel of land owned by either Doque Cutanda or Anastacio Cutanda situated in Trinidad, Cambangay Norte?

A

That is correct.

Q

You will not change your answer?

A

I will not.

Q

So that Mr. Witness considering that this case now involves two parcels of land, one with an area of 31 hectares and the other with an area of 7 hectares, you are only claiming the 31 hectares covered by Tax Decl. No. R-6983, am I correct?

A

Only the 31 hectares.

Q

You and your co-defendants are not claiming the 7 hectares?

A

This 7 hectares was already owned and claimed by Honorio Cutanda.

Q

You mean to tell us that Honorio Cutanda has a previous tax declaration covering this 7 hectares?

A

Yes, sir.

Q

But you are not in the possession of that tax declaration?

A

No, sir.[27]

Moreover, the alleged tax declaration in Honorio Cutanda's name covering the seven-hectare land was never presented in evidence. For these reasons, with respect to the said seven-hectare land, the ruling of the Court of Appeals that there is no sufficient evidence as to its ownership must be affirmed.

WHEREFORE, the decision of the Court of Appeals is set aside and another one is rendered declaring petitioners to be true and lawful owners of that parcel of land covered by Tax Declaration No. 6983 of the Tax Assessor's Office of Saguisinhan, Trinidad, Bohol, with an area of 31.0929 hectares. The complaint filed by respondents is dismissed.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Complaint; Rollo, pp. 30-33.

[2] Exh. A.

[3] Exh. B.

[4] Rollo, pp. 36-39.

[5] Id., p. 40.

[6] Id., at 41-42. (Emphasis added)

[7] Id., at 82.

[8] Id., at 94. (Emphasis added)

[9] Petition, pp. 8-11; Rollo, pp. 15-18.

[10] Id., pp. 18-19.

[11] Id., pp. 19- 20.

[12] Id., pp. 20-25.

[13] RTC Decision, p. 3; Rollo, p. 42. (Emphasis added)

[14] CA Decision, p. 9; Rollo, p. 90. (Emphasis added)

[15] 208 SCRA 179, 193 (1992)

[16] Art. 555 (4) provides:

A possessor may lose his possession:

(4) By the possession of another, subject to the provisions of Art. 537, if the new possession has lasted longer than one year. But the real right of possession is not lost till after the lapse of ten years. (Emphasis added)

See also Catholic Vicar Apostolic of Mountain Province v. Court of Appeals, 183 SCRA 1990 (1990)

[17] 93 SCRA 619, 635-636 (1979). (Emphasis added)

[18] TSN (Florencio Cutanda), p. 6, July 11, 1989.

[19] Id., at 7.

[20] Exh. 2.

[21] Exh. 5.

[22] Exh. 6, 6-A to 6-J.

[23] TSN (Florencio Cutanda), pp. 25-27, July 11, 1989.

[24] TSN (Bonifacio Gonzales), pp. 7-10, Aug. 10, 1989.

[25] Supra.

[26] 93 SCRA 630-631. (Emphasis added)

[27] TSN, pp. 33-35, July 11, 1989. (Emphasis added)

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