

MERCEDES DEIPARINE, RUFINA DEIPARINE, POLICARPIO DEIPARINE, NICHOLAS DEIPARINE, FRANCISCO DEIPARINE, JR., ARESENIO DEIPARINE, DINA CANADA, THERESA DEIPARINE, SOLITA DEIPARINE, ...

G.R. No. 111257. December 04, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

This is a case for partition of real estate, declaration of nullity of certain deeds, cancellation of certificate of title, and damages. The property subject of the controversy is a parcel of land denominated as Lot 1938 of the Talisay-Minglanilla Friar Lands Estate located in San Isidro, Talisay, Cebu. The lot was originally owned by Marcelo Deiparine who acquired the same from the government in 1923 under Friar Lands Certificate No. 2008. On April 28, 1923, Marcelo Deiparine was issued Patent No. 11403.[1] When he died sometime in 1929, the subject lot was inherited by his wife Leona Caballero and children Francisca, Filomena, Salvador, Supriana, Segundo, Justiniana, Macaria and Manuel, all surnamed Deiparine.

On April 15, 1930, Lot 1938 was subdivided into two (2) lots, Lot 1938-A with an area of 3,599 square meters and Lot 1938-B with an area of 3,608 square meters.[2] Manuel Deiparine took possession of Lot 1938-A and declared it in his name for taxation purposes, in 1966, 1974 and 1980.[3] Upon his death on April 8, 1968, his heirs took possession of Lot 1938-A.

Lot 1938-B, on the other hand, was sold to Justiniana Deiparine on October 28, 1933, as evidenced by a deed of sale written in Spanish.[4] Defendant Bacus took possession of the said lot.

On September 1982, Vicenta, Fortunato, Felicisima, Salvador Jr., and Restituta, all surnamed Deiparine, children and heirs of Salvador Deiparine Sr.; Ireneo, Domingo and Concepcion, all surnamed Laroa, children and heirs of Filomena Deiparine; Froilan Seguerra, only son and heir of Supriana Deiparine; Ignacia, Ana and Pedro, all surnamed Deiparine, children and heirs of Segundo Deiparine; and Rufo, Aurelia and Magdalena all surnamed Abalo, children and heirs of Macaria Deiparine, filed a complaint[5] for partition against the children and heirs of Manuel Deiparine, namely: Mercedes, Rufina, Policarpio, Nicolas, Eulogia, Francisco, and Arsenio, all surnamed Deiparine, and Justiniana Deiparine, before the then Court of First Instance of Cebu (now Regional Trial Court), which was docketed as Civil Case No. 22368. The complaint was later amended[6] on February 3, 1983 by the substitution of the original defendant Justiniana Deiparine with her heirs Leo, Pedro, Quintin, Ben, Prudy, Dorica and Marciana, all surnamed Bacus. In their complaint, plaintiffs prayed for the immediate partition of Lot 1938 and for defendants to deliver their shares and render an accounting.

On November 24, 1982, defendants filed their answer[7] alleging inter alia: that they inherited the lot which they presently occupy from their deceased parents Manuel Deiparine and the spouses of Simon Bacus and Justiniana Deiparine, who bought their respective portions of Lot 1938 from Marcelo Deiparine and later from their co-heirs; that prescription has set in; and that plaintiffs are in estoppel.

On April 5, 1984 or during the pendency of this case, the defendant heirs of Manuel Deiparine executed an Extra-Judicial Declaration of Heirs, adjudicating and partitioning among themselves Lot 1938-A.[8] The following day, April 6, 1984, said heirs, represented by defendant Dina Cañada, filed a petition for judicial reconstitution of title over Lot 1938-A with the RTC-Cebu which was docketed as LRC Rec. No. 3732, containing the allegation, among others, that there is no case pending litigation involving said property[9] On December 5, 1984, the trial court issued an Order[10] ordering the reconstitution of the certificate of title covering the subject parcel of land in the name of Manuel Deiparine.

On June 13, 1985, plaintiffs filed a second amended complaint[11] to include as party-defendants Dina Cañada, Teresa, Solita, Julio, Teofilo, Eleuterio, Dante, Estrella and Nicolas, all surnamed Deiparine, and Edgar Allan Pagapulaan. The second amended complaint also contained the additional allegations that defendant Dina Cañada, a close relative of defendants Deiparine, thru manipulation and in connivance with the other defendants and Edgar Pagapulaan, caused the issuance of a certificate of title to Lot 1938-A in the name of Manuel Deiparine; that verifications with the Bureau of Lands revealed the following forged, fraudulent and falsified documents, to wit: a Deed of Extra-Judicial Declaration of Heirs, with Special Power of Attorney dated April 5, 1984 was executed by the heirs of Manuel Deiparine; a verified Petition for Judicial Reconstitution of Title to Lot 1938-A dated April 4, 1984 was filed by Dina Cañada; and a Certification dated April 5, 1984 issued by defendant Edgar Pagapulaan; that due to the misleading effects of said documents, the court in the case for reconstitution of title, ordered the Register of Deeds of Cebu to reconstitute the certificate of title covering Lot 1938-A and consequently, TCT No. RT-3834 (NA) was issued in the name of Manuel Deiparine. They pray that the court declare said deeds as well as TCT No. RT-3834 (NA) null and void ab initio and without force and effect.

Traversing the amended complaint, the defendants filed their answer with counterclaim[12] containing basically the same allegations as that in their previous amended answer and alleging that the present case is *res judicata* on the registration case and that the decision in the registration case could not be collaterally attacked.

On October 18, 1988, plaintiffs filed another motion to admit third amended complaint[13] praying that the deed of sale over Lot 1938-B in favor of defendants (the Bacuses) be nullified on the ground that it contained infirmities.

On August 10, 1989, the trial court rendered judgment in favor of the defendants ruling that the evidence they have presented sufficiently proves their lawful acquisition of the subject land from Marcelo Deiparine and his heirs. The trial court reasoned that:

"x x x plaintiffs' parents never questioned the occupation of the disputed property by Manuel Deiparine and Justiniana Deiparine and later by their children. They did not protest over the segregation of Lot 1938-A in favor of Manuel Deiparine way back in 1930. They did not question Manuel Deiparine's act of securing a tax declaration and a title for his portion. They also did not protest over the tax payments made by Manuel Deiparine and the Bacus spouses, or those effected by the latter's children. The aforesaid posture of plaintiffs' parents patently indicated their acquiescence to or recognition of Manuel's and Justiniana's acquisition of the disputed property. Apart from defendants' positive testimonial and documentary evidence of such acquisition, therefore, laches and estoppel would operate to bar recovery even by plaintiffs' parents. Certainly, plaintiffs' position cannot be any better than their parents."

On appeal, the aforesaid decision was modified by the Court of Appeals[14] in its decision of January 29, 1993, the dispositive portion of which reads:

"WHEREFORE, the Decision of August 10, 1989 of the RTC-Cebu City, Branch 16, in Civil Case No. R-22368 is hereby MODIFIED as follows:

The heirs of Filomina Deiparine, Salvador Deiparine, Supriana Deiparine, Segundo Deiparine, Macaria Deiparine, Manuel Deiparine and Justiniana Deiparine, are declared to be co-owners in equal shares (per stirpes) of Lot 1938-A.

With respect to Lot 1938-B (Lot 8285), the 6/9 portion of the same is declared to be owned by defendants heirs of Justiniana Deiparine (5/9 portion by virtue of the deed of sale, dated October 28, 1933, and 1/9 portion by succession), while the remaining 3/9 portion is declared owned in common by the heirs of Segundo Deiparine, Macaria Deiparine and Salvador Deiparine who did not consent to the contract of sale. While no partition is effected, Lot 1938-B (Lot 8285) remains to be the co-ownership of said heirs in the aforesaid proportions.

Transfer Certificate of Title No. RT-3834 (NA) issued by the Registry of Deeds for the Province of Cebu in the name of Manuel Deiparine is declared null and void.

Defendants are ordered to render an accounting of their use and enjoyment of Lot 1938-A and Lot 1938-B, from the filing of the complaint up to the execution of this decision.

The parties are further, ordered to submit their project of partition over Lots 1938-A and 1938-B in accordance with the said sharing or proportions, for approval by the lower court, within forty-five (45) days from the finality of our Decision. No costs.

IT IS SO ORDERED."

Dissatisfied with the said decision, petitioners filed this petition for review on certiorari alleging that the Court of Appeals erred:

- 1) . . .in disregarding Exhs. 2 and 3;
- 2) . . .in not applying the laws on laches, estoppel and prescription;
- 3) . . .in nullifying the reconstituted titled (TCT No. RT-3834 [NA] and considering the titled lot of Manuel Deiparine as part of the estate of Marcelo Deiparine;
- 4) . . .in dismissing the decision of the Trial Court.

The petition essentially raises factual issues which normally are not reviewable by this Court in a petition under Rule 45 which is generally limited only to questions of law. Nevertheless, since the factual findings of the respondent Court of Appeals are at variance with those of the Regional Trial Court, we are compelled to review the records of the case both in the Court of Appeals and the Regional Trial Court.[15]

We have painstakingly reviewed the record of the case and find the decision of the respondent Court to be in accord with the evidence on record. We agree with the respondent Court's findings that petitioners' evidence consisting of the subdivision plan, tax declarations and tax receipts are not conclusive and indisputable evidence to show that the lot in question was sold to Manuel Deiparine, their predecessor-in-interest. A mere tax declaration does not vest ownership of the property upon the declarant. Neither do tax receipts nor declarations of ownership for taxation purposes constitute adequate evidence of ownership or of the right to possess realty.[16] The subdivision plan prepared at the instance of the petitioners' predecessor-in-interest cannot likewise be considered in their favor, the same being self-serving.[17] The respondent Court's observation is noteworthy:

"The fact that a portion of the subject land was sold by the heirs of Marcelo Deiparine to Justiniana Bacus would not lead to the conclusion that the other portion was previously sold to Manuel Deiparine. At most, it would only confirm that the land was earlier subdivided into two- Lot 1938-A and Lot 1938-B.

B. Anent the second ground, defendants assert that the sale to Manuel Deiparine by Marcelo Deiparine was evidenced by public documents and judicial records.

1. Defendants contend that the subdivision of the parcel of land into Lot 1938-A and Lot 1938-B was reflected in Exhibit A, the Friar Lands Sales Certificate Register.

While Exhibit A indicates that the whole Lot 1938 consisted of two lots- Lot 1938-A and Lot 1938-B, nowhere could we find in said document any indication that one portion specifically, Lot 1938-A, was owned by Manuel Deiparine. To repeat, the subdivision plan does not prove ownership by Manuel Deiparine of Lot 1938-A even if it was he who caused the subdivision of the property.

2. With respect to the tax declarations presented by defendants Deiparine, it is not correct for them to say that their predecessor-in-interest, Manuel Deiparine, had paid taxes on Lot 1938-A as early as May, 1923 referring to Exhibits 10, 11, 12 and 13. On the contrary, Official Receipt No. 2585478 (Exhibit 10), dated May 23, 1923, shows that the amount representing the taxes for the parcel of land was received from one Canuto Deiparine with the statement that it was paid by Marcelo Deiparine. The same is true with Official Receipt No. 794164 (Exhibit 11), dated March 28, 1927. On the other hand, Official Receipts Nos. 4066643 and 7069203 (Exhibits 12 and 13), dated May 26, 1924 and April 28, 1925, respectively, show that payments for the realty taxes were received from Canuto Deiparine and not Manuel Deiparine. On the other hand, defendants Deiparine's own Exhibit 14 shows that Manuel Deiparine started paying realty taxes only on April 11, 1978."[18]

The Extra-Judicial Declaration of Heirs with Special Power of Attorney, the Petition for Reconstitution of Title for Lot 1938-A, and the Transfer Certificate of Title No. RT-3834 (NA) in the name of Manuel Deiparine, in like manner, can not be considered evidence to prove that the lot in question was sold to petitioners' predecessor-in-interest considering that these were executed fraudulently and in bad faith. It must be stressed that the declaration of heirs and the petition for reconstitution were executed and filed only during the pendency of the present case, or more than fifty-four (54) years from the alleged sale. Worse, petitioners even misrepresented to the court in their petition for reconstitution that there is no pending litigation involving the subject property. The statement is clearly deceitful since the present case has long been pending with the RTC when petitioners filed their petition for reconstitution. Petitioners' bad faith in having the subject property titled in their name is also manifest when they presented in the reconstitution proceeding a Certification issued by one Edgar Alan Pagapulaan of the Bureau of Lands dated April 6, 1984 certifying that Lot 1938-A is registered in the name of Manuel Deiparine.[19] However, Pagapulaan admitted the falsity of his statement by issuing another Certification dated May 20, 1985 stating that the Friar Lands Sales Certificate was issued to Marcelo Deiparine and not to Manuel Deiparine.[20]

Again, we quote with favor the findings of the respondent Court, thus:

"x At the outset, let it be stated that the existence of a transfer certificate of title in the name of Manuel Deiparine, which could be the subject of reconstitution, was never alleged in the several answers of defendants, not even in their testimonies. If it were true that a transfer certificate of title covering Lot 1938-A was issued to Manuel Deiparine, then why was it that the number of said title was never mentioned? Even in their petition for reconstitution in the regional trial court, the petitioners therein (defendants herein), as represented by Dina Cañada, never mentioned that a certificate of title covering Lot 1938-A was issued to Manuel Deiparine. In fact, petitioners alleged in said petition that Lot No. 1938-A was registered in the name of Marcelo Deiparine. Accordingly, they prayed in their petition that:

'WHEREFORE, this Honorable Court is most respectfully prayed to declare null and void for all legal purposes the original and owner's copy of the certificate of title covering Lot 1938-A, situated in San Isidro, Talisay, Cebu which were burned and destroyed, and after due notice and hearing of this petition, to order and direct the Register of Deeds for the Province of Cebu, after payment to him the fees prescribed by law, to immediate (sic) reconstitute the said certificate of title, in the name of Marcelo Deiparine. x x x' "[21]

From the foregoing, it is evident that the reconstitution proceedings of the alleged lost title of petitioners'

predecessor-in-interest was fraudulent and hence cannot be the source of legitimate rights and benefits. In *Republic vs. Court of Appeals*,^[22] we ruled:

"The existence of the two titles of the Government ipso facto nullified the reconstitution proceedings and signified that the evidence in the said proceedings were sham and deceitful and were filed in bad faith. Such humbuggery or imposture cannot be countenanced and cannot be the source of legitimate rights and benefits.

x x x x x x x x

"To sustain the validity of the reconstituted titles would be to allow Republic Act No. 26 to be utilized as an instrument for land grabbing x x x or to sanction fraudulent machinations for depriving a registered owner of his land to undermine the stability and security of Torrens titles and to impair the Torrens system of registration."

Accordingly, the title [TCT No. RT-3834 (NA)] issued to Manuel Deiparine is null and void.

Petitioners' possession of the subject lot did not also ripen into ownership for the reason that they possessed the subject lot only as trustees for the other co-owners.

In *Salvador vs. Court of Appeals*^[23] we held that:

"the possession of a co-owner is like that of a trustee and shall not be regarded as adverse to the other co-owners but in fact as beneficial to all of them. Acts which may be considered adverse to strangers may not be considered adverse insofar as co-owners are concerned. A mere silent possession by a co-owner, his receipt of rents, fruits or profits from the property, erection of buildings and fences and the planting of trees thereon, and the payment of land taxes, cannot serve as proof of exclusive ownership, if it is not borne out by clear and convincing evidence that he exercised acts of possession which unequivocally constituted an ouster or deprivation of the rights of the other co-owners.

"Thus, in order that a co-owner's possession may be deemed adverse to the cestui que trust or the other co-owners, the following elements must concur: (1) that he has performed unequivocal acts of repudiation amounting to an ouster of the cestui que trust or the other co-owners; (2) that such positive acts of repudiation have been made known to the cestui que trust or the other co-owners; and (3) that the evidence thereon must be clear and convincing."

We sustain the respondent Court's findings that Manuel Deiparine, during his lifetime, did not by any express or implied act show that he was repudiating the co-ownership. While it is true that he took possession of Lot 1936-A after the death of Marcelo Deiparine, this hardly proves an act of repudiation as there was no showing that the said possession was to the exclusion of the other co-heirs.^[24]

Finally, the action for partition has not yet prescribed. An action to demand partition is imprescriptible or cannot be barred by laches.^[25] Each co-owner may demand at any time the partition of the common property.^[26]

WHEREFORE, the petition is hereby DENIED for lack of merit. The decision of the Court of Appeals dated January 29, 1993 in CA-G.R. CV No. 24136 is hereby AFFIRMED.

SO ORDERED.

Melo (Acting Chairman), Puno, and Mendoza, JJ., concur.

[1] Exh. "A", p. 432, Record.

[2] Exh. "2", -Deiparine.

- [3] Exhs. "4", "5" and "18"-Deiparine.
- [4] Exh. "2"-Bacus, p. 637, Rollo.
- [5] Pp. 1-4, Record.
- [6] Pp. 28-32, Id.
- [7] Pp. 10-13, Id.
- [8] Exh. "J", pp. 252-254, Id.
- [9] Exh. "K", 255-258, Id.
- [10] Exh. "M", pp. 261-262, Id.
- [11] pp. 246-251, Id.
- [12] Second Amended Answer with Counterclaim, pp. 295-299, Record.
- [13] Third Amended Complaint, pp. 509-515, Record.
- [14] Penned by Justice Jaime M. Lantin and concurred in by Justices Lorna S. Lombos dela Fuente and Cancio C. Garcia. CA-GR CV No. 24136.
- [15] Consolidated Bank and Trust Corp. (SOLIDBANK) vs. Court of Appeals, 246 SCRA 193 [1995]; Massive Construction, Inc. vs. Intermediate Appellate Court, 223 SCRA 1 [1993].
- [16] Republic vs. Intermediate Appellate Court, 224 SCRA 285 [1993]; Director of Lands vs. Intermediate Appellate Court, 219 SCRA 339 [1993].
- [17] Rizal Cement Co., Inc. vs Villareal, 135 SCRA, February 28, 1985.
- [18] CA Resolution dated June 3, 1993, p.3
- [19] Exhibit "L-1".
- [20] Exh. "I".
- [21] See CA Resolution, pp. 4-5.
- [22] 94 SCRA 872-873 [1979] cited in Jose vs. Court of Appeals, 192 SCRA 742 [1990].
- [23] 243 SCRA 239, 251 [1995].**
- [24] See CA Decision p. 15.
- [25] Del Banco vs. Intermediate Appellate Court, 156 SCRA 57 [1987].
- [26] Article 494 of the Civil Code.

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