ELOY IMPERIAL, PETITIONER VS. COURT OF APPEALS, REGIONAL TRIAL COURT OF LEGASPI CITY, CESAR VILLALON, JR., TERESA VILLALON, ANTONIO VILLALON, AUGUSTO VILLALON, ROBERTO VILLALON...

G.R. No. 112483. October 08, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Petitioner seeks to set aside the Decision of the Court of Appeals in C.A.-G.R. CV No. 31976[1] , affirming the Decision of the Regional Trial Court of Legazpi City[2] , which rendered inofficious the donation made by Leoncio Imperial in favor of herein petitioner, to the extent that it impairs the legitime of Victor Imperial, and ordering petitioner to convey to herein private respondents, heirs of said Victor Imperial, that portion of the donated land proportionate to Victor Imperial's legitime.

Leoncio Imperial was the registered owner of a 32,837-square meter parcel of land covered by Original Certificate of Title No. 200, also known as Lot 45 of the Cadastral Survey of Albay. On July 7, 1951, Leoncio sold the said lot for P1.00 to his acknowledged natural son, petitioner herein, who then acquired title over the land and proceeded to subdivide it into several lots. Petitioner and private respondents admit that despite the contract's designation as one of "Absolute Sale", the transaction was in fact a donation.

On July 28, 1953, or barely two years after the donation, Leoncio filed a complaint for annulment of the said Deed of Absolute Sale, docketed as Civil Case No. 1177, in the then Court of First Instance of Albay, on the ground that he was deceived by petitioner herein into signing the said document. The dispute, however, was resolved through a compromise agreement, approved by the Court of First Instance of Albay on November 3, 1961[3] , under which terms: (1) Leoncio recognized the legality and validity of the rights of petitioner to the land donated; and (2) petitioner agreed to sell a designated 1,000-square meter portion of the donated land, and to deposit the proceeds thereof in a bank, for the convenient disposal of Leoncio. In case of Leoncio's death, it was agreed that the balance of the deposit will be withdrawn by petitioner to defray burial costs.

On January 8, 1962, and pending execution of the above judgment, Leoncio died, leaving only two heirs --- the herein petitioner, who is his acknowledged natural son, and an adopted son, Victor Imperial. On March 8, 1962, Victor was substituted in place of Leoncio in the above-mentioned case, and it was he who moved for execution of judgment. On March 15, 1962, the motion for execution was duly granted.

Fifteen years thereafter, or on July 26, 1977, Victor died single and without issue, survived only by his natural father, Ricardo Villalon, who was a lessee of a portion of the disputed land. Four years hence, or on September 25, 1981, Ricardo died, leaving as his only heirs his two children, Cesar and Teresa Villalon.

Five years thereafter, or sometime in 1986, Cesar and Teresa filed a complaint for annulment of the donation with the Regional Trial Court of Legazpi City, docketed as Civil Case No. 7646. Petitioner moved to dismiss on the

ground of res judicata, by virtue of the compromise judgment rendered by the Court of First Instance of Albay. The trial court granted the motion to dismiss, but the Court of Appeals reversed the trial court's order and remanded the case for further proceedings.

On October 18, 1989, Cesar and Teresa filed an amended complaint in the same case, Civil Case No. 7646, for "Annulment of Documents, Reconveyance and Recovery of Possession" with the Regional Trial Court of Legazpi City, seeking the nullification of the Deed of Absolute Sale affecting the above property, on grounds of fraud, deceit and inofficiousness. In the amended complaint, it was alleged that petitioner caused Leoncio to execute the donation by taking undue advantage of the latter's physical weakness and mental unfitness, and that the conveyance of said property in favor of petitioner impaired the legitime of Victor Imperial, their natural brother and predecessor-in-interest.[4]

In his Answer, petitioner: (1) alleged that Leoncio had conveyed sufficient property to Victor to cover his legitime, consisting of 563 hectares of agricultural land in Manito, Albay; (2) reiterated the defense of res judicata, and (3) raised the additional defenses of prescription and laches.

Plaintiff Cesar Villalon died on December 26, 1989, while the case was pending in the Regional Trial Court, and was substituted in this action by his sons, namely, Antonio, Roberto, Augusto, Ricardo and Cesar, Jr., all surnamed Villalon, and his widow, Esther H. Villalon.

The RTC held the donation to be inofficious and impairing the legitime of Victor, on the basis of its finding that at the time of Leoncio's death, he left no property other than the 32,837-square meter parcel of land which he had donated to petitioner. The RTC went on further to state that petitioner's allegation that other properties existed and were inherited by Victor was not substantiated by the evidence.[5]

The legitime of Victor was determined by the trial court in this manner:

Considering that the property donated is 32,837 square meters, one half of that or 16,418 square meters becomes the free portion of Leoncio which could be absorbed in the donation to defendant. The other half, which is also 16,418 square meters is where the legitime of the adopted son Victor Imperial has to be taken.

The proportion of the legitime of the legitimate child (including the adopted child) in relation to the acknowledged natural child (defendant) is 10 is to 5[,] with the acknowledged natural child getting ½ of the legitime of the legitimate (adopted) child, in accordance with Art. 895 of the New Civil Code which provides:

> "The legitime of each of the acknowledged natural children and each of the natural children by legal fiction shall consist of one-half of the legitime of each of the legitimate children or descendants."

From the 16,418 square meters left (after the free portion has been taken) plaintiffs are therefore entitled to 10,940 square meters while defendant gets 5,420 square meters.[6]

The trial court likewise held that the applicable prescriptive period is 30 years under Article 1141 of the Civil Code[7] , reckoned from March 15, 1962, when the writ of execution of the compromise judgment in Civil Case 1177 was issued, and that the original complaint having been filed in 1986, the action has not yet prescribed. In addition, the trial court regarded the defense of prescription as having been waived, this not being one of the issues agreed upon at pre-trial.

Thus, the dispositive portion of the RTC's Decision of December 13, 1990 reads:

> WHEREFORE, premises considered, the Deed of Absolute Sale otherwise known as Doc. No. 8; Book No. 14; Page No. 1; Series of 1951 of the Notarial file of Pompeyo B. Calleja which is considered a donation, is hereby reduced proportionately insofar as it affected the legitime of the late Victor Imperial, which share is inherited

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> by the plaintiffs herein, to the extent that plaintiffs are ordered to be given by defendant a portion of 10,940 square meters thereof.
>
> In order to avoid further conflict, the 10,940 share to be given to plaintiffs should include the portion which they are presently occupying, by virtue of the extended lease to their father Ricardo Villalon, where the bungalow in question stands.
>
> The remaining portion to be given to plaintiffs may come from any other portion that may be agreed upon by the parties, otherwise, this court will appoint a commissioner to undertake the partition.
>
> The other 21,897 square meters should go to the defendant as part of his legitime and by virtue of the reduced donation.
>
> No pronouncement as to damages as they were not sufficiently proved.
>
> SO ORDERED.[8]

The Court of Appeals affirmed the RTC Decision in toto.

Before us, petitioner questions the following findings of respondent court: (1) that there was no res judicata, there being no identity of parties and cause of action between the instant case and Civil Case No. 1177; (2) that private respondents had a right to question the donation; (3) that private respondents' action is barred by prescription, laches and estoppel; and (4) that the donation was inofficious and should be reduced.

It is an indispensable requirement in res judicata that there be, between the first and second action, identity of parties, of subject matter and of cause of action.[9] A perusal of the records leads us to conclude that there is no identity of parties and of cause of action as between Civil Case No. 1177 and Civil Case No. 7646. Civil Case No. 1177 was instituted by Leoncio in his capacity as donor of the questioned donation. While it is true that upon his death, Victor was substituted as plaintiff of the action, such does not alter the fact that Victor's participation in the case was in representation of the interests of the original plaintiff, Leoncio. The purpose behind the rule on substitution of parties is to ensure that the deceased party would continue to be properly represented in the suit through the duly appointed legal representative of the estate[10] , or his heir, as in this case, for which no court appointment is required.[11] Petitioner's argument, therefore, that there is substantial identity between Leoncio and private respondents, being heirs and successors-in-interest of Victor, is unavailing.

Moreover, Leoncio's cause of action as donor of the property was fraud, purportedly employed upon him by petitioner in the execution of the donation. While the same circumstances of fraud and deceit are alleged in private respondents' complaint, it also raises the additional ground of inofficiousness of donation.

Contrary to petitioner's contentions, inofficiousness of donation does not, and could not, form part of Leoncio's cause of action in Civil Case No. 1177. Inofficiousness as a cause of action may arise only upon the death of the donor, as the value of the donation will then be contrasted with the net value of the estate of the donor-deceased.[12]

Consequently, while in Civil Case No. 1177, Leoncio sought the revocation in full of the donation on ground of fraud, the instant case actually has two alternative causes of action. First, for fraud and deceit, under the same circumstances as alleged in Leoncio's complaint, which seeks the annulment in full of the donation, and which the trial court correctly dismissed because the compromise agreement in Civil Case No. 1177 served as a ratification and waiver on the part of Leoncio of whatever defects in voluntariness and consent may have been attendant in the making of the donation. The second cause of action is the alleged inofficiousness of the donation, resulting in the impairment of Victor's legitime, which seeks the annulment, not of the entire donation, but only of that portion diminishing the legitime.[13] It is on the basis of this second cause of action that private

respondents prevailed in the lower courts.

Petitioner next questions the right of private respondents to contest the donation. Petitioner sources his argument from Article 772 of the Civil Code, thus:

> Only those who at the time of the donor's death have a right to the legitime and their heirs and successors in interest may ask for the reduction of inofficious donations. xxx

As argued by petitioner, when Leoncio died on January 8, 1962, it was only Victor who was entitled to question the donation. However, instead of filing an action to contest the donation, Victor asked to be substituted as plaintiff in Civil Case No. 1177 and even moved for execution of the compromise judgment therein.

No renunciation of legitime may be presumed from the foregoing acts. It must be remembered that at the time of the substitution, the judgment approving the compromise agreement has already been rendered. Victor merely participated in the execution of the compromise judgment. He was not a party to the compromise agreement.

More importantly, our law on succession does not countenance tacit repudiation of inheritance. Rather, it requires an express act on the part of the heir. Thus, under Article 1051 of Civil Code:

The repudiation of an inheritance shall be made in a public or authentic instrument, or by petition presented to the court having jurisdiction over the testamentary or intestate proceedings.

Thus, when Victor substituted Leoncio in Civil Case No. 1177 upon the latter's death, his act of moving for execution of the compromise judgment cannot be considered an act of renunciation of his legitime. He was, therefore, not precluded or estopped from subsequently seeking the reduction of the donation, under Article 772. Nor are Victor's heirs, upon his death, precluded from doing so, as their right to do so is expressly recognized under Article 772, and also in Article 1053:

> If the heir should die without having accepted or repudiated the inheritance, his right shall be transmitted to his heirs.

Be that as it may, we find merit in petitioner's other assignment of errors. Having ascertained this action as one for reduction of an inofficious donation, we cannot sustain the holding of both the trial court and the Court of Appeals that the applicable prescriptive period is thirty years, under Article 1141 of the Civil Code. The sense of both courts that this case is a "real action over an immovable" allots undue credence to private respondents' description of their complaint, as one for "Annulment of Documents, Reconveyance and Recovery of Possession of Property", which suggests the action to be, in part, a real action enforced by those with claim of title over the disputed land.

Unfortunately for private respondents, a claim for legitime does not amount to a claim of title. In the recent case of Vizconde vs. Court of Appeals[14] , we declared that what is brought to collation is not the donated property itself, but the value of the property at the time it was donated. The rationale for this is that the donation is a real alienation which conveys ownership upon its acceptance, hence, any increase in value or any deterioration or loss thereof is for the account of the heir or donee.[15]

What, then, is the prescriptive period for an action for reduction of an inofficious donation? The Civil Code specifies the following instances of reduction or revocation of donations: (1) four years, in cases of subsequent birth, appearance, recognition or adoption of a child;[16] (2) four years, for non-compliance with conditions of the donation;[17] and (3) at any time during the lifetime of the donor and his relatives entitled to support, for failure of the donor to reserve property for his or their support.[18] Interestingly, donations as in the instant case,[19] the reduction of which hinges upon the allegation of impairment of legitime, are not controlled by a particular

prescriptive period, for which reason we must resort to the ordinary rules of prescription.

Under Article 1144 of the Civil Code, actions upon an obligation created by law must be brought within ten years from the time the right of action accrues. Thus, the ten-year prescriptive period applies to the obligation to reduce inofficious donations, required under Article 771 of the Civil Code, to the extent that they impair the legitime of compulsory heirs.

From when shall the ten-year period be reckoned? The case of Mateo vs. Lagua, 29 SCRA 864, which involved the reduction for inofficiousness of a donation propter nuptias, recognized that the cause of action to enforce a legitime accrues upon the death of the donor-decedent. Clearly so, since it is only then that the net estate may be ascertained and on which basis, the legitimes may be determined.

It took private respondents 24 years since the death of Leoncio to initiate this case. The action, therefore, has long prescribed.

As for the trial court's holding that the defense of prescription had been waived, it not being one of the issues agreed upon at pre-trial, suffice it to say that while the terms of the pre-trial order bind the parties as to the matters to be taken up in trial, it would be the height of injustice for us to adhere to this technicality when the fact of prescription is manifest in the pleadings of the parties, as well as the findings of fact of the lower courts.[20]

A perusal of the factual antecedents reveals that not only has prescription set in, private respondents are also guilty of estoppel by laches. It may be recalled that Leoncio died on January 8, 1962. Fifteen years later, Victor died, leaving as his sole heir Ricardo Villalon, who also died four years later. While Victor was alive, he gave no indication of any interest to contest the donation of his deceased father. As we have discussed earlier, the fact that he actively participated in Civil Case No. 1177 did not amount to a renunciation of his inheritance and does not preclude him from bringing an action to claim his legitime. These are matters that Victor could not possibly be unaware of, considering that he is a lawyer[21] . Ricardo Villalon was even a lessee of a portion of the donated property, and could have instituted the action as sole heir of his natural son, or at the very least, raised the matter of legitime by way of counterclaim in an ejectment case[22] filed against him by petitioner in 1979. Neither does it help private respondents' cause that five years have elapsed since the death of Ricardo in 1981 before they filed their complaint with the RTC.

Estoppel by laches is the failure or neglect for an unreasonable or unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, warranting a presumption that the person has abandoned his right or declined to assert it.[23] We find the necessity for the application of the principle of estoppel by laches in this case, in order to avoid an injustice.

A final word on collation of donations. We observe that after finding the donation to be inofficious because Leoncio had no other property at the time of his death, the RTC computed the legitime of Victor based on the area of the donated property. Hence, in its dispositive portion, it awarded a portion of the property to private respondents as Victor's legitime. This was upheld by the Court of Appeals.

Our rules of succession require that before any conclusion as to the legal share due to a compulsory heir may be reached, the following steps must be taken: (1) the net estate of the decedent must be ascertained, by deducting all the payable obligations and charges from the value of the property owned by the deceased at the time of his death; (2) the value of all donations subject to collation would be added to it.[24]

Thus, it is the value of the property at the time it is donated, and not the property itself, which is brought to collation. Consequently, even when the donation is found inofficious and reduced to the extent that it impaired Victor's legitime, private respondents will not receive a corresponding share in the property donated. Thus, in this

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case where the collatable property is an immovable, what may be received is: (1) an equivalent, as much as possible, in property of the same nature, class and quality;[25] (2) if such is impracticable, the equivalent value of the impaired legitime in cash or marketable securities;[26] or (3) in the absence of cash or securities in the estate, so much of such other property as may be necessary, to be sold in public auction.[27]

We believe this worth mentioning, even as we grant the petition on grounds of prescription and laches.

ACCORDINGLY, the decision of the Court of Appeals in C.A. G.R. CV No. 31976, affirming in toto the decision of the Regional Trial Court in Civil Case No. 7646, is reversed and set aside. No costs.

SO ORDERED.

Melo, Vitug, Panganiban, and Purisima, JJ., concur.

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[1] Rendered by the Seventh Division. Penned by Associate Justice Nathanael P. De Pano, Jr., and concurred in by Associate Justices Nicolas P. Lapeña, Jr. and Ma. Alicia Austria-Martinez.

[2] Branch 10; presided by Judge Antonio A. Arcangel.

[3] Annex “B” of Petition; Rollo, 43.

[4] Annex C-1 of Petition; Rollo, 52-53.

[5] Ibid., 66-67.

[6] RTC Decision; Rollo, 68-69.

[7] Article 1141 of the Civil Code provides: “Real actions over immovables prescribe after thirty years. xxx”

[8] RTC Decision; Rollo, 69-70.

[9] Casil vs. Court of Appeals, 285 SCRA 264; Municipality of San Juan vs. Court of Appeals,279 SCRA711; Cartlet vs. Court of Appeals, 275 SCRA 97.

[10] Torres, Jr. vs. Court of Appeals, 278 SCRA 793.

[11] Revised Rules of Court, Rule 3, Sec. 16.

[12] Under Article 771 of the Civil Code, “(d)onations which in accordance with the provisions of Article 752, are inofficious bearing in mind the estimated net value of the donor’s property at the time of his death, shall be reduced with regard to the excess, but this reduction shall not prevent the donations from taking effect during the life of the donor, nor shall it bar the donee from appropriating the fruits. xxx.”

[13] See Mateo vs. Lagua, 29 SCRA 864.

[14] 286 SCRA 217; see also Civil Code, Art. 1071.

[15] Vizconde vs. Court of Appeals, op. cit.

[16] Civil Code, Art. 763.

[17] Id., Art. 764.

[18] Id., Art. 750.

[19] Governed by Articles 752 and 771 of the Civil Code, which read thus:

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> Art. 752. xxx (N)o person may give or receive, by way of donation, more than what he may give or receive by will.
>
> The donation shall be inofficious in all that it may exceed this limitation.
>
> Art.771. Donations which in accordance with the provisions of Article 752, are inofficious bearing in mind the estimated net value of the donor's property at the time of his death, shall be reduced with regard to the excess, but this reduction shall not prevent the donations from taking effect during the life of the donor, nor shall it bar the donee from appropriating the fruits. xxx

[20] See Revised Rules of Court, Rule 118; Sec. 3 and Rule 9, Sec. 1 which respectively provide:

> Pre-trial order. --- After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of and control the course of the action during the trial, unless modified by the court to prevent manifest injustice. (Emphasis supplied)
>
> Defenses and objections not pleaded. --- xxx (W)hen it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is an action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

[21] Amended Complaint, Annex C-1 of Petition; Rollo, 52

[22] Motion to Dismiss Complaint, Annex "D" of Petition; Rollo, 56-57.

[23] Madeja vs. Patcho, 132 SCRA 540.

[24] Civil Code, Art. 908; Vizconde vs. Court of Appeals, supra; Mateo vs. Lagua, supra.

[25] Civil Code, Article 1073, which provides:

> "The donee's share of the estate shall be reduced by an amount equal to that already received by him; and his co-heirs shall receive an equivalent, as much as possible, in property of the same nature, class and quality."

[26] Civil Code, Art. 1074:

> "Should the provisions of the preceding article be impracticable, if the property donated was immovable, the co-heirs shall be entitled to receive its equivalent in cash or securities, at the rate of quotation; and should there be neither cash nor marketable securities in the estate, so much of the other property as may be necessary shall be sold at public auction. xxx "

[27] Id.

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