

BENITA O. CHIOCO AND CONSTANCIO PADILLA, PLAINTIFFS AND APPELLANTS, VS. SEVERO ONGSIAPCO AND IRENE MACASO, DEFENDANTS AND APPELLEES.*G. R. No. 11317. February 28, 1959*

Ponente: MONTEMAYOR, J.

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Plaintiffs Benita O. Chioco and her husband Constancio Padilla are appealing the orders of the Court of First Instance of Nueva Ecija of June 11, 1956, dismissing their complaint, and of July 27, 1956, denying their motion for reconsideration, in Civil Case No. 2090.

From what we gather from the pleadings and the appealed orders, the following facts may be narrated. On February 5, 1927, Lot 1709 of the San Jose Cadastre, Nueva Ecija, with an area of 1,606 square meters, was registered under the Torrens System in the name of Liceria de la Cruz and Lucina Virgo (OCT 6964). Some time in 1929, Julia Ortiz Luis, mother of plaintiff Chioco, allegedly bought from the registered owner Liceria de la Cruz, grandmother of the defendant, Severo Ongsiapco, a portion of Lot 1709, with an area of about 444 square meters, but the deed of sale was never registered, neither could the original or a copy of the instrument be produced.

On March 7, 1931, the entire Lot 1709 was sold at public auction by virtue of a decision in favor of Benedicto Adorable and against Liceria de la Cruz, Adorable in due time being issued TCT 14106, after the expiration of the period for redemption. On December 22, 1938, plaintiff Padilla allegedly bought a portion of Lot 1709, with an area of 750 square meters, and on April 24, 1939, at Padilla's request, he was issued a co-owner's copy of Adorable's title, TCT 14106.

On December 19, 1940, the heirs of Adorable sold to Flora Ramos the remaining portion of Lot 1709, with an area of 856 square meters. (Entry No. 2847/T-14106, p. 55, Record on Appeal). On September 20, 1945, Flora Ramos transferred her rights to Tomas Rizo. (Entry No. 2048/T-14106, p. 55, Record on Appeal). On October 4, 1945, Padilla sold the portion of Lot 1709 that he bought from Adorable to defendant Severo Ongsiapco, thereby making the latter and Tomas Rizo co-owners of the whole Lot 1709. (Entry No. 2051/T-14106, pp. 54-55, Record on Appeal). On March 29, 1946, Tomas Rizo sold his portion of the Lot 1709 to Ongsiapco and his wife and co-defendant, Irene Macaso, thereby consolidating their ownership of the whole lot, and on April 8, 1946, said spouses were issued TCT No. 22226. (Entry No. 2708/T22226, p. 56, Record on Appeal.)

According to the plaintiffs, however, sometime in the year 1946, the heirs of Adorable, buyer at public auction of Lot 1709, gave the option to repurchase the said lot to defendant Ongsiapco as an heir (grandson of Liceria de la Cruz) "and that is how it came to be that said defendants became the registered owners of Lot 1709, inadvertently including 1709-A" (the portion allegedly bought by Julia Ortiz Luis, mother of plaintiff Chioco, way back in 1929). (Paragraph 7, Complaint). Based on this theory, plaintiffs-appellants filed the present case, with two causes of action, praying among other things that judgment be rendered in their favor, ordering defendants to segregate

from their title the portion of Lot 1709 allegedly bought by Julia Ortiz Luis, and to execute the necessary conveyance thereof to them.

On May 7, 1956, defendant Irene Macaso filed a motion to dismiss the complaint on the grounds of lack of cause of action and prescription. On the same date, her husband and co-defendant, Ongsiapco, filed his answer with special defense of lack of cause of action, prescription, and estoppel, and with counterclaim for damages and attorney's fees. On June 11, 1956, after plaintiffs had filed their "Reply and Answer to Counterclaim" and "Answer to the Motion to Dismiss", the trial court dismissed the complaint against both defendants. Acting upon a motion for reconsideration, the trial court on July 27, 1956, modified its previous order of dismissal "in the sense that the order of dismissal with respect to defendant Irene Macaso refers to both causes of action, but with respect to the first defendant, Severo B. Ongsiapco, it refers merely to the first cause of action."

On appeal, appellants claim that:

"I. The lower court erred in dismissing the first cause of action of the complaint with respect to both defendants.

"II. The lower court erred in holding that because the land is registered the plaintiff's have constructive knowledge of such registration, and more than ten years having elapsed, 'prescription bars the action for any reason,' in the language of the court."

Appellants contend that since Ongsiapco, did not file a motion to dismiss the first cause of action, the trial court erred in dismissing the complaint on said first cause of action. However, in his answer, Ongsiapco interposed two special defenses, namely, that the cause of action states no cause of action, and that the cause of action, if any, is barred by prescription. The question may be asked as to whether a complaint may be dismissed when no motion for dismissal is filed, but one or more of the grounds of dismissal as provided in the Rules of Court is pleaded as an affirmative defense. Section 5, Rule 8 of the Rules of Court, reads as follows:

"Sec. 5. Affirmative defenses.— If no motion to dismiss has been filed, any of the grounds therefor as provided in this rule, may be pleaded as an affirmative defense and a preliminary hearing may be had thereon as if a motion to dismiss has been filed."

We believe and hold that an affirmative defense contained in an answer, such as, prescription, may be regarded as having the effect of a motion to dismiss, as may be gathered from Section 5 of Rule 8 of the Rules of Court, above-reproduced :

"The provision of section 5 permits a party in effect to answer and demur in the same pleading, for the motion to dismiss of the Rules of Court takes the place of the demurrer of the former Code of Civil Procedure. * * *" (Francisco, Rules of Court, Vol. I, 1948 Ed., p. 275).

"Under this section (Sec. 5, Rule 8), any defense that may be raised by a motion to dismiss under section I, may also be interposed by answer with equal validity and effect as if a motion to dismiss had been filed." (MEJIA Civil Practice and Procedure, Vol. I, p. 282, citing Salvador vs. Locsin, 931 Phil., 225—words in parenthesis supplied).

"When any of the grounds mentioned in section 1 is alleged as an affirmative defense in the answer, the court may hold a preliminary hearing on such special defense as if a motion to dismiss on that ground had been filed." (IBID., pp. 282-283, citing Maglunob vs. Nafco, 94 Phil., 461; 50 Off. Gaz. [3], 1081).

The main ground of the dismissal of the complaint was prescription; that since the present action was brought in 1956, about twenty-seven years after the alleged purchase of the portion of Lot 1709 in question by plaintiffs' predecessor-in-interest, or seventeen years from 1939 when appellants claim to have known that Lot 1709 was

registered land, the action is barred. Appellants assail this ruling, claiming that there is no prescription in this case because: (1) defendant Ongsiapco is a privy of Liceria de la Cruz, and the sale executed by the latter, although not registered, is perfectly valid and binding not only upon the contracting parties but also upon their privies (supposedly including herein defendant-appellee Ongsiapco) ; (2) prescription neither applies to a subsisting and continuing trust nor to an action by the vendee of real property in possession thereof to obtain the conveyance of it; and (3) defendants-appellees are purchasers in bad faith. Was privity really involved here? In other words, may defendant Ongsiapco be regarded as a privy of his grandmother, Liceria de la Cruz, as regards the parcel in question? True, Ongsiapco is the grandson of Liceria de la Cruz. However, the basis of privity is not personal relationship but rather property:

"The ground of privity is property, not personal relation." (Bailey vs. Sundberg, 49 F. 583, 586 1 CCA. 387) (WORDS & PHRASES, Vol. 33, p. 799)

"'Privies' occupy that relation to others because of derivating rights of property; 'privity' relating to persons in their relation to property, not to any question independent of property." (Ladonia State Bank vs. McDonald (Tex.) 7 S.W. 161, 162. IBID., p. 799)

"The ground of 'privity' is property, not personal relation. Absolute identity of interest is essential to 'privity.' * * *." (Logan vs. Atlanta & C.A.L.R. Co., 64 S.E. 515, 516, 82 S.C. 518, quoting Bigelow, Estop, p. 142; Freem. Judgm. Sec. 162; Smith vs. Moore 7 S.C. 215, 24 Am. Rep. 479.) (IBID., p. 800).

From the facts above-narrated, it is clear that the defendants herein derived their title to Lot 1709, particularly, the portion thereof in question, not because of their relationship with the original owner, Liceria de la Cruz, but by virtue of a series of transactions and conveyance beginning with the public auction sale of the whole Lot 1709 in favor of Adorable and the subsequent sales by Adorable's heirs of the said lot to different buyers, including plaintiff Padilla, culminating in the conveyance and transfer of the whole lot to the defendants, all of which conveyances were duly registered according to the Land Registration Act. It cannot be true that defendant Ongsiapco as an heir of Liceria, bought the lot, including the parcel in question directly from the heirs of Adorable in the year 1946 on an option to repurchase, because Lot 1709 was sold at public auction in 1931 and the period of repurchase or redemption expired in 1932. This, aside from the fact that, as already stated, the defendants bought the whole Lot 1709 not from Adorable or his heirs but from the successive vendees of Adorable. Neither can the claim of appellants that the purchase of the land in question by defendants was impressed with a trust, be accepted for the reason that, as already said, plaintiffs' predecessor-in-interest Liceria de la Cruz lost her title to the land by reason of the auction sale ordered by the Court. If Adorable, the purchaser in said public auction, could not be considered as holding said land in trust, neither could his successors-in-interest, including defendants herein, be so regarded. And the fact that one of the plaintiffs herein, Constancio Padilla, intervened in said purchase from Adorable, later selling the land he bought to the defendants herein, does not strengthen nor support the position of the plaintiffs.

In view of the foregoing, the orders appealed from are hereby affirmed, without prejudice to the continuation of the trial of the case with respect to the second cause of action as against defendant-appellee Ongsiapco. Appellants will pay the costs.

Paras, C. J., Padilla, Reyes, A., Bautista Angelo, Concepcion, and Endencia, JJ., concur.

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