

**JUAN TOLENTINO ET AL., PLAINTIFFS AND APPELLANTS, VS.
CLODOALDO VITUG ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 11774. November 13, 1918*

Ponente: AVANCEÑA, J.

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The spouses Manuel Tolentino and Pascuala Ycban died, the latter dying earlier than the former, and were survived by four children named Santiago, Genoveva, Dolores, and Remigia. Santiago, Genoveva, and Dolores married, and on their death, they were survived by their respective descendants. Remigia was married to Vicente Rivera, with whom she had a son named Guillermo Rivera. Guillermo Rivera married Felipa Vitug with whom he had five children named Victor, Romualdo, Antonia, Pelagia, and Geronima, all surnamed Rivera.

After the death of Manuel Tolentino, which occurred in 1876, his property remained pro indiviso in the care and administration of his children. In 1889, certain disputes arose between Ancleto Yuson, husband of Dolores Tolentino, and the rest of the coheirs, and for this reason and on petition of Anacleto Yuson, an inventory was made of the property left by Manuel Tolentino, which property is described in paragraph 5 of the amended complaint, and by order of the Court of First Instance of Pampanga, said property was placed under the control of Licerio Flores. In 1895, said court appointed Julian Vitug to substitute Lucerio Flores in the management of the property. As such trustee, Julian Vitug took possession of the property. Upon the death of Julian Vitug on February 6, 1903, the control over the property was transferred to his children Felipa and Clodoaldo and to his grandchildren, the children of Felipa.

In this case, the plaintiffs, the descendants and heirs of Santiago, Genoveva, and Dolores Tolentino, ask that they be declared owners of the property described in the complaint and that they be paid the value of the fruits and products of the same. The defendants Clodoaldo Vitug, Felipa Vitug, and her children Victor, Romualdo, Antonia, Pelagia, and Geronima deny the fact of being mere trustees of the property and allege, as their principal defense, that each and all of them have been in possession of the property in question for more than ten years, such possession being public, continuous, under a claim of title, exclusive of any other right and adverse to all other claimants, in good faith and with just title, and that therefore the plaintiffs' action has prescribed.

On December 10, 1912, the plaintiffs filed a complaint in the Court of First Instance of Pampanga for the recovery of the property in question, but said complaint was, on June 22, 1914, dismissed without a consideration on the merits of the case. On October 15, 1914, the plaintiffs again brought the same action by virtue of a complaint which gave rise to the cause which is now before this court on appeal.

It is fully proven that in the year 1895, the Court of First Instance of Pampanga appointed Julian Vitug trustee of the property of Manuel Tolentino,, described in paragraph 5 of the amended complaint; that said Vitug accepted the trust, took the corresponding oath, and received the property. All of these facts are shown in Exhibit 1 which is a certified official copy of all proceedings had with relation to the trust over the property. This exhibit was duly authenticated at the trial and admitted by the court after sufficient evidence was introduced to show that the

originals were burned during the revolution.

The acceptance of this trust by Julian Vitug and the receipt by him of the property as such trustee have the weight of an admission on his part that the property so received by him did not belong to him but to the heirs of Manuel Tolentino.

Of the 17 parcels sought to be recovered in the complaint, those marked 3, 5, 13, 14, and 15 are in the possession of the defendant Clodoaldo Vitug. The other defendants, a mother and her children, possess the remaining parcels. All of the defendants allege that they have inherited this property from Julian Vitug, with the exception of the parcels, the title to which (Exhibits 1, 2, 10), is derived from her mother-in-law Remigia Tolentino, according to the defendant Felipa Vitug. However, upon examination of these exhibits, it is seen that they do not refer to the lands claimed by the plaintiffs. The land described on Exhibit 2 does not agree in description with any of the parcels claimed. Moreover, Exhibit 2 is not a title in the name of Remigia Tolentino, but a contract of sale in favor of Julian Vitug. The lands described in Exhibit 10 are included in Exhibit 1. Exhibit 1 is, in fact, a composition title with the State, issued in 1889 in favor of Remigia Tolentino. But, the description of the lands included in this exhibit does not coincide with that of any of the parcels claimed in the complaint. Moreover, it appears that in 1895 Remigia Tolentino intervened partly in the judicial proceedings had with regard to the trust over the property in question in favor of Julian Vitug. If any of the property given in trust to said Vitug was included in her composition title with the State, she would, undoubtedly, have protested against said trust; but it appears that she has not done that. We therefore arrive at the conclusion that the title to all the parcels claimed in the complaint and possessed by the defendants was derived from Julian Vitug. If, on the other hand, Julian Vitug was not the owner of these lands, he could not transmit the title to said lands to the defendants nor could the latter receive from the former any right to the same.

The principal defense relied upon by the defendants in this case is that of prescription. We believe however that this defense is not supported by the evidence.

Because Julian Vitug was a mere administrator and trustee of the property, his possession in such capacity was not adverse but was only in the name and in behalf of the owners of the same property, the heirs of Manuel Tolentino. The records do not show that Vitug has ever repudiated the trust or has expressed any claim of ownership over the property. His possession was not a possession for himself, but for the owner. As to him it did not amount to possession as owner. It could not, therefore, be a ground for prescription, neither can his heirs, the defendants, now take advantage of such possession for the purpose of the prescription which they allege. For this reason, the time for prescription alleged by the defendants can be computed only from the date of the death of Julian Vitug, that is, from February 8, 1903.

We have reached the foregoing conclusions, notwithstanding the allegation of the defendants that they took possession of these lands before the death of Julian Vitug. Clodoaldo Vitug testified that his father delivered to him the parcels which he now possesses, in order to cultivate them. He does not say that such lands were delivered to and received by him as his own. His possession, therefore, during the lifetime of his father, was nothing but the possession which he had as a mere administrator or trustee. Felipa Vitug on her part stated that she received the remaining parcels as her share thirty years before she gave her testimony (1915). But this testimony can not be true or at most refers to other lands, inasmuch as Julian Vitug came into possession of said land only since 1895, when they were intrusted to him.

Since February 8, 1903, the date of Julian Vitug's death, till December 10, 1912, when the plaintiffs presented for the first time in the Court of First Instance of Pampanga a complaint for the recovery of the property in question, a period of ten years has not elapsed. Hence, the plaintiffs still have the right to bring said action (section 40, Code

of Civil Procedure), and the defendants have not as yet acquired a title by prescription to said lands (section 41, id.). When said complaint was dismissed on July 22, 1914, ten years had already elapsed, but, in view of the fact that the dismissal of the complaint was had without any consideration of the merits of the case, the plaintiffs still have one year from said date of dismissal within which to bring a new action (section 49, id.). The plaintiffs having brought this new action, which is now the object of this appeal, on October 5, 1914, within the said period of one year, it can not be claimed that their action to recover the property in question has prescribed.

The plaintiffs also seek to recover from the defendants the sum of P185,000 representing the value of the products of the property in litigation. This claim can not be considered favorably except under the supposition that the defendants were the possessors in bad faith, but the evidence does not establish this assumption. Good faith is presumed in every possessor. The only circumstance which tends to refute this presumption is that testified to by Luciano Vitug to the effect that the defendant Clodoaldo Vitug was present when his father Julian Vitug received in trust the property in question. Clodoaldo denies this fact, and we doubt seriously the truth of Luciano Vitug's testimony, not only because of his antecedents as proved in the case which unfavorably affect his veracity, but also because of the enmity existing between him and the defendant Clodoaldo, and also because of the special interest he has shown in this cause against the defendants. The same witness testified that, on the death of Julian Vitug, he (witness) went with Juan Tolentino, one of the plaintiffs to request Clodoaldo Vitug to return the lands in question, but that said Clodoaldo Vitug flatly refused to do so, alleging that he had inherited them from his father. This circumstance shows that Clodoaldo Vitug did not admit the fact that the property had been intrusted to the care of his father. On the other hand, the complete failure of the plaintiffs to bring an action in the defense of their rights to the property—they having made no effort whatsoever till December 10, 1910, when they presented for the first time their complaint for the recovery of this property—might have, with reason, strengthened the belief of the defendants that they have lawfully inherited the property from Julian Vitug, and that the plaintiffs were not in any way entitled thereto.

In view of the foregoing circumstances, we hold that the defendants are possessors in good faith, and that, therefore, the fruits they have collected belong to them.

On the other hand, there is no evidence of what the fruits collected by the defendants were and of their value, and although three witnesses testified as to what these lands could produce, nevertheless their statements are conflicting and show that their estimates are not well founded.

The lower court accepted as proved the fact that the property in question was held in trust by Julian Vitug, but declared that said Vitug was the owner of the property, and further stated that, even if said Vitug were not the owner, the plaintiff's action has already prescribed, and for these reasons the said court absolved the defendants from the complaint.

In view, however, of the foregoing considerations it follows that the judgment of the lower court should be reversed, and that the property in question belongs to the heirs of Manuel Tolentino.

It, however, appears that the plaintiffs are not the only ones interested in the property, because the defendants Felipa Vitug and her children Victor, Romualdo, Antonia, Pelagia, and Geronima, have also an interest in said property, they being heirs of Manuel Tolentino. In view of the fact that some of the plaintiffs are minors, it follows that they can not partition the property among themselves without the intervention of the court. The prayer of the complaint does not include the delivery of the property to the plaintiffs, and in fact this delivery can not be made, because the property is held *pro indiviso*, and also because the plaintiffs are not the only ones interested therein.

With a reversal of the judgment appealed from, we hereby hold that the property described in the complaint

belongs to the heirs of Manuel Tolentino, and without prejudice to the rights of the defendants Felipa Vitug and her children, Victor, Romualdo, Antonia, Pelagia, and Geronima, as heirs of Manuel Tolentino, it is hereby ordered that the property be delivered by the defendants to the one who may duly represent all of the interested parties or to the administrator of the estate of Manuel Tolentino, upon his appointment and qualification. The defendants are hereby absolved from the other prayer of the complaint, without any special finding as to costs. So ordered.

Torres, Johnson, Street, Malcolm, and Fisher, J., concur.

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