

MODESTO G. ESPAÑO, SR., PETITIONER, VS. COURT OF APPEALS, HON. NICOLAS SIAN MONTEBLANCO AND CARIDAD JINON, RESPONDENTS.

G.R. No. 123823. February 17, 1997

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

On May 27, 1994, private respondent Caridad Jinon instituted Civil Case No. 21-88 before the Regional Trial Court of Iloilo City, Branch 31, for annulment of title, recovery of possession, ownership, reconveyance and damages against petitioner Modesto G. España, Sr. Involved are Lot Nos. 2843 and 1941 allegedly both registered and titled in the name of Modesto G. España, Sr. under Transfer Certificate of Title Nos. T-55995 and T-74937, all of the Cadastral Survey of Sta. Barbara, Leganes, Iloilo.

In her complaint, Caridad Jinon claims ownership over the two (2) parcels of land above-mentioned by way of succession from her grandparents, in representation of her father Mateo Jinon, who predeceased her and which ownership is evidenced by a Partition Agreement (Convenio de Particion) dated April 6, 1927 executed by herself and her uncles and co-heirs, Eusebio, Manuel, Anastacio and Eladio, all surnamed Jinon.

In his answer with counterclaim, España submits, among others, the defenses of laches and prescription. He alleges that since TCT No. 55995 (Lot 2843) was registered in his name as early as August 8, 1968, while TCT No. T-74937 (Lot 1941) was transferred to him on March 22, 1973, twenty-five (25) and twenty (20) years respectively had already passed when Civil Case No. 21-811 was filed on May 27, 1994. Therefore, the ten (10)-year prescriptive period for reconveyance based on implied trust had already elapsed.

Preliminary hearings on the affirmative defenses were scheduled by the court on October 28 and December 16, 1994. However, petitioner España moved for the dismissal of the case and, thus, submitted the issue on laches and prescription without presenting evidence inasmuch as, according to petitioner, the grounds relied upon are based on facts alleged by private respondent in the complaint.

The trial court ruled that the defenses of laches and prescription are evidentiary in nature which could not be established by mere allegations in the pleadings and must be proved during the trial on the merits. The Order dated February 28, 1995 reads:

"WHEREFORE, premises considered, let the issue of laches and prescription raised by defendant Modesto España be resolved during the trial of the case on the merits.

SO ORDERED."[1]

The motion for reconsideration subsequently filed was denied on April 21, 1995 by the lower court.

On June 2, 1995, España brought a petition for certiorari before the public respondent Court of Appeals seeking to annul the Order dated February 28, 1995 and the subsequent Order dated April 21, 1995 denying his motion for

reconsideration by the trial court, for having been issued with grave abuse of discretion amounting to lack of jurisdiction.

The appellate court dismissed the petition in a decision promulgated on August 17, 1995. A motion for reconsideration having been filed, the court a quo likewise denied the same in a resolution dated February 8, 1996.

Hence, this petition.

Petitioner prays for the dismissal of Civil Case No. 21-88 with prejudice on grounds of laches and prescription.

We deny the petition.

The essence of laches or "stale demands" is the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier,[2] thus giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it.[3]It is not concerned with mere lapse of time, the fact of delay, standing alone, being insufficient to constitute laches.[4]

There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances. Ultimately, however, the question of laches is addressed to the sound discretion of the court and, since it is an equitable doctrine, its application is controlled by equitable considerations.[5]

To substantiate his argument that private respondent in instituting Civil Case No. 21-88 is barred by laches, petitioner narrates factual averments, among which is the unreasonable length of time which took private respondent to institute the present suit from the time her cause of action accrued, which petitioner alleges to commence on April 6, 1927, the date when the Partition Agreement (Convenio de Particion) was executed between private respondent, her uncles and other co-heirs.

Clearly, these are factual matters over which the Supreme Court will not venture to make any determination for we are not a trier of facts. The issue whether or not private respondent's suit is barred by laches will be best ventilated in a full-blown proceeding before the trial court, for what is involved here is not a mere trifle but sizable parcels of land covered by two certificates of title, which private respondent claims to be part of her successional rights from her grandparents in representation of her father. True or not, private respondent must be given ample opportunity to prove her claim, and the petitioner to debunk the same.

Petitioner likewise avers that prescription has set in to extinguish private respondent's claim.

Prescription may be effectively pleaded in a motion to dismiss if the complaint shows on its face that the action had already prescribed at the time it was filed. In the case at bench, the only way by which we can determine whether or not prescription has set in is the date of the issuance of Transfer Certificate of Title Nos. T-55995 and T-74937, allegedly in the name of petitioner Españo. Unfortunately, however, both the trial court and the public respondent Court of Appeals found that petitioner failed to attach to his answer a copy of his alleged titles nor even to allege therein the dates when these titles were supposedly issued. Thus, the court was left with nothing to effectively compute prescription. We find no substantial evidence in the records, apart from the self-serving averments of the petitioner, to disturb this factual finding of both courts. Apparently, petitioner has no one to blame but himself.

We find occasion here to state the rule, once more, that an order denying a motion to dismiss is merely interlocutory and therefore not appealable, nor can it be the subject of a petition for review on certiorari. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The ordinary

procedure to be followed in that event is to file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment.[6] This is exactly what petitioner should have done in this case after his prayer for the dismissal of Civil Case No. 21-88 was denied by the trial court. Although the special civil action for certiorari may be availed of in case there is grave abuse of discretion or lack of jurisdiction on the part of the lower court, that vitiating error is indubitably not present in the instant case.

WHEREFORE, the petition is hereby DENIED with costs against petitioner.
SO ORDERED.

Padilla, (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Decision, p. 2; Rollo, p. 28.

[2] Chavez v. Bonto-Perez, 242 SCRA 73, 80 [1995], citing La Campana Food Products, Inc. v. Court of Appeals, 223 SCRA 151 [1993]; Radio Communications of the Philippines, Inc. v. National Labor Relations Commission, 223 SCRA 656 [1993]; Marcelino v. Court of Appeals, 210 SCRA 444 [1992].

[3] Ibid., citing Bergado v. Court of Appeals, 173 SCRA 497 [1989].

[4] Ibid., citing Donato v. Court of Appeals, 217 SCRA 196 [1993].

[5] Jimenez v. Fernandez, 184 SCRA 190, 197 [1990].

[6] Reyes v. Camilon, 192 SCRA 445, 452 [1990], citing Buaya v. Judge Polo, 169 SCRA 471 [1989].

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