

MARIANO A. VELEZ, SR. (DECEASED), ATTY. PURO M. VELEZ, ATTY. ALEJANDRO M. VELEZ, ENGR. PLUTARCO M. VELEZ AND SARAH VDA. DE VELEZ (FOR HERSELF AND HER CHILDREN BY THE LATE HOMER ...

G.R. No. 128576. August 13, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review of decision of the Court of Appeals dated March 22, 1996 in CA-G.R. CV No. 30381, reversing and setting aside the decision of the then Court of First instance of Cagayan de Oro City, Branch 17.

The spouses Felix Radaza and Estefania Abrogar were the owners of a ten-hectare agricultural land situated in Puntod, Macasandig, Cagayan de Oro City. Upon their death, ownership of the land passed by intestate succession to their surviving children namely - Ramona, Severo, Filomeno and Jacoba, - and grandchildren by their son, Jose, Sr. namely - Vicente, Felicito, Rosario and Jose, Jr. On March 12, 1938, the land was registered under Original Certificate of Title No. 7678[1] in the names of: Severo Radaza, 1/5 share; Filomeno Radaza, 1/5 share; Jacoba Radaza, 1/5 share; Ramona Radaza, 1/5 share; Vicente Radaza, 1/20 share; Felicito Radaza, 1/20 share; Rosario Radaza, 1/20 share; and Jose Radaza, Jr., 1/20 share.

On April 14, 1975, respondents, the surviving children of Ramona Radaza-Demetrio and Jose Radaza, Sr., instituted a complaint for Partition of Real Estate with Damages against petitioners, the heirs of the late Mariano Velez, Sr., docketed as Civil Case No. 4686 of the Court of First Instance of Cagayan de Oro City, Branch 17. They alleged that sometime in 1947, they discovered that the property had been claimed and fenced in by Mariano Velez, Sr., and that they were denied entry thereto. Due to financial reasons, it took them several years before instituting the complaint. In the meantime, they tried earnestly to recover ownership and possession of the land through extra-legal means.[2]

On the other hand, petitioners averred that the property had been partitioned among the heirs of Felix Radaza and Estefania Abrogar; that Mariano Velez, Sr. purchased the shares of Severo Radaza and Jacoba Radaza in 1936; that on May 30, 1947, Filomeno sold his share as well as Ramona's share to Mariano Velez, Sr.; that the share of Jose was likewise sold to Mariano Velez, Sr. by his wife Ciriaca Bacarro Radaza; and that since his acquisition of the property, Mariano Velez, Sr., by himself and through his heirs, has been in open, notorious, public and uninterrupted possession of the same in the concept of owners, and have exercised fully the attributes of its ownership.[3]

After trial, the court a quo rendered judgment as follows:

WHEREFORE, for all the foregoing considerations, judgment is hereby rendered in favor of the defendants and against the plaintiffs and the Court hereby:

- Orders the dismissal of the complaint filed by the plaintiffs;

- Declares the defendants as the absolute owners of the property in litigation;
- Declares the plaintiffs never again to molest nor disturb the defendants in their lawful, peaceful and rightful ownership, possession and enjoyment of the property in litigation;
- On the counterclaim, orders the plaintiffs, jointly and severally, to pay the defendants the amount of P20,000.00 as moral damages and P5,000.00 as attorney's fee; and
- Orders the plaintiffs to pay the costs.

SO ORDERED.[4]

Respondents appealed to the Court of Appeals, which reversed and set aside the lower court's decision, to wit:

WHEREFORE, the judgment appealed from is hereby REVERSED and SET ASIDE, and a new one entered directing the partition of the property covered by OCT No. 7678 in the portion of 2/5 to the plaintiffs-appellants and 3/5 to the defendants-appellees. Costs against the appellees.[5]

The motion for reconsideration filed by petitioner was denied by the appellate court.[6]

Hence, the instant petition for review.

The issues raised by petitioners are: whether the shares of Ramona Radaza and Jose Radaza were sold to Mariano Velez, Sr. and whether respondents are guilty of laches.

As regards the first issue, the findings of facts by the trial court conflict with those of the Court of Appeals. The trial court was morally convinced that the shares of Ramona Radaza and Jose Radaza, Sr. were sold to Mariano Velez, Sr. on two different transactions and occasions. On the other hand, the Court of Appeals held that the alleged sale made by Ramona Radaza to Filomeno of her 1/5 share and the subsequent sale made by Filomeno to Mariano Velez, Sr. of his share and that of Ramona's and the sale made by Ciriaca Radaza to Mariano Velez of the shares of the heirs of Jose Radaza, Sr., were of no force and effect[7] for there was no evidence presented in support thereof. The testimonies offered by petitioners to establish the alleged transactions were pure hearsay.

To prove the alleged sale of Ramona's share to Filomeno, petitioners capitalized on the affidavit and testimony of Francisco, who stated that in the middle 1930s, Ramona sold her share to his father, Filomeno, who paid Ramona three cows in consideration thereof; and that since then they had been in exclusive possession of the said property up to the time the same was sold to Mariano Velez, Sr. by his father. On the witness stand, Francisco testified that he returned to the disputed land sometime in 1936 and that his father built a house inside the lot.[8] However, the Court of Appeals ruled that it is improbable that he witnessed or could have had personal knowledge of the alleged sale because he started residing on the land in question from 1930 up to 1935 and that for three years thereafter, or up to February 28, 1938, he was enlisted in the Philippine Constabulary at Camp Kethly in Lanao. Such facts do not directly and convincingly establish the alleged sale of the portion of Ramona Radaza to Filomeno Radaza, hence, the same cannot be logically inferred.

As regards the shares of Jose Radaza, Sr.'s children which were allegedly sold by their mother, the Court of Appeals found nothing in the record to indicate that Ciriaca was authorized by Vicente, Felicito, Rosario and Jose, Jr. to make the alleged sale to Mariano Velez, Sr. Petitioners insist that Ciriaca sold her children's shares but the pertinent documents were lost during the war. To prove this alleged sale, petitioners again invoke Francisco Radaza's statement that the wife and heirs of Jose Radaza, Sr. sold their respective shares to the spouses Mariano Velez, Sr. and Patricia Mercado. However, the Court of Appeals observed that even Felicito, the son of Ciriaca, had no knowledge of the sale. With more reason, Francisco Radaza, who is a stranger to such alleged sale, cannot have any basis in making this statement.

Another piece of evidence petitioners offered to prove the alleged sale was the testimony of Isabelo Tabian, a former tenant of Ciriaca Radaza, who testified that Ciriaca told him, “Beloy I am going to take the land from you because there is difficulty in coming over this place and I am afraid I might get drown(ed). I might as well sell the land to Etoy (Mariano Velez, Sr.)” Tabian further testified that he delivered the land to Ciriaca. Thereafter, Sario Echem, a tenant of Mariano Velez, Sr., approached him asking for help in plowing the land which he was formerly cultivating.[9] While the Court of Appeals did not squarely rule on the weight of Tabian’s testimony, the same was likewise hearsay and cannot serve as proof of the alleged sale.

Anent the second issue, the principle of laches finds no application in this case.

Laches is the failure of 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, or to assert a right within reasonable time, warranting a presumption that the party entitled thereto has either abandoned it or declined to assert it.[10]

Fundamentally, laches is an equitable doctrine, its application is controlled by equitable considerations.[11] Concomitantly, it is a better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result.[12]

Petitioners invoke laches against the respondents for their failure to protest their occupation of the subject land since 1947. They allege that respondents slept on their rights because it took them twenty eight (28) years before they instituted this case.

The Court of Appeals held that laches could not have set in because the specific act of repudiation of the co-ownership was made only on March 27, 1974, when petitioners registered the affidavit of adverse claim executed by Mariano Velez and had the same annotated on respondents’ title with respect to the 3/5 portion of the land. It held that only then did the period of prescription start to run. However, since this case was filed on April 14, 1975 and only for a 3/5 portion thereof, then no prescription can be counted in favor of petitioners for the remaining 2/5.[13]

We agree with the Court of Appeals.

The land involved was registered under the Torrens system in the name of respondents and their predecessor-in-interest in 1938. The evidence shows that only 3/5 of the land was sold to Mariano Velez, Sr. and the 2/5 thereof remains in the name of respondents. The land being undivided, only the rights of the co-owners were transferred, thereby making the buyer another co-owner of the property. It is noteworthy that petitioners did not transfer the title of the land in their name. Instead, they merely annotated their claim over the 3/5 portion of the land. This leads to no other conclusion but a tacit recognition that ownership over the 2/5 share of the land does not belong to them. Article 494 of the Civil Code provides that prescription does not run against a co-owner “so long as he expressly or impliedly recognizes the co-ownership.”

Moreover, laches may not prevail against specific provision of law, since equity, which has been defined as “justice outside legality” is applied in the absence of and not against statutory law or rules of procedure.[14] Under the Property Registration Decree, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession.[15] It is well-settled that prescription and laches can not apply to registered land covered by the Torrens system.[16] Applying the above principles, respondents being the registered owner of the land can rest secure, without the necessity of waiting in the portals of the court, or sitting in the “mirador de su casa,” to avoid the possibility of losing his land.[17]

WHEREFORE, in view of the foregoing, the petition is DENIED. The decision of the Court of Appeals dated March 22, 1996 in CA-G.R. CV No. 30381 is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Austria-Martinez, JJ., concur.

- [1] Records, pp. 8-9.
- [2] Rollo, pp. 170-172.
- [3] Ibid., pp. 200-203.
- [4] Records, Decision, pp. 500-501.
- [5] Rollo, Decision, p. 65.
- [6] Ibid., Resolution, p. 69.
- [7] Rollo, Decision, pp. 61-62.
- [8] Rollo, pp. 217-218.
- [9] Rollo, Memorandum for Petitioners, p. 224.
- [10] Philgreen Trading Construction Corporation v. Court of Appeals, 271 SCRA 719 1997.
- [11] Sotto v. Teves, 86 SCRA 154 1978.
- [12] Santiago v. Court of Appeals, 278 SCRA 98 1997.
- [13] Rollo, p. 64.
- [14] Mateo v. Diaz, G.R. No. 137305, January 17, 2002.
- [15] Section 47, PD 1529.
- [16] Mateo v. Diaz, *supra*; Quevada v. Glorioso, 294 SCRA 608 1998; Bishop v. CA, 208 SCRA 636 1992; Umbay v. Alecha, 135 SCRA 427 1985.
- [17] Bishop v. CA, *supra*.

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