ZENAIDA M. SANTOS, PETITIONER, VS. CALIXTO SANTOS,ALBERTO SANTOS, ROSA SANTOS-CARREON AND ANTONIO SANTOS, RESPONDENTS.

G.R. No. 133895. October 02, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review[1] seeks to annul and set aside the decision dated March 10, 1998 of the Court of Appeals that affirmed the decision of the Regional Trial Court of Manila, Branch 48, dated March 17, 1993. Petitioner also seeks to annul the resolution that denied her motion for reconsideration.

Petitioner Zenaida M. Santos is the widow of Salvador Santos, a brother of private respondents Calixto, Alberto, Antonio, all surnamed Santos and Rosa Santos-Carreon.

The spouses Jesus and Rosalia Santos owned a parcel of land registered under TCT No. 27571 with an area of 154 square meters, located at Sta. Cruz Manila. On it was a four-door apartment administered by Rosalia who rented them out. The spouses had five children, Salvador, Calixto, Alberto, Antonio and Rosa.

On January 19, 1959, Jesus and Rosalia executed a deed of sale of the properties in favor of their children Salvador and Rosa. TCT No. 27571 became TCT No. 60819. Rosa in turn sold her share to Salvador on November 20, 1973 which resulted in the issuance of a new TCT No. 113221. Despite the transfer of the property to Salvador, Rosalia continued to lease and receive rentals from the apartment units.

On November 1, 1979, Jesus died. Six years after or on January 9, 1985, Salvador died, followed by Rosalia who died the following month. Shortly after, petitioner Zenaida, claiming to be Salvador's heir, demanded the rent from Antonio Hombrebueno,[2] a tenant of Rosalia. When the latter refused to pay, Zenaida filed an ejectment suit against him with the Metropolitan Trial Court of Manila, Branch 24, which eventually decided in Zenaida's favor.

On January 5, 1989, private respondents instituted an action for reconveyance of property with preliminary injunction against petitioner in the Regional Trial Court of Manila, where they alleged that the two deeds of sale executed on January 19, 1959 and November 20, 1973 were simulated for lack of consideration. They were executed to accommodate Salvador in generating funds for his business ventures and providing him with greater business flexibility.

In her Answer, Zenaida denied the material allegations in the complaint and as special and affirmative defenses, argued that Salvador was the registered owner of the property, which could only be subjected to encumbrances or liens annotated on the title; that the respondents' right to reconveyance was already barred by prescription and laches; and that the complaint stated no cause of action.

On March 17, 1993, the trial court decided in private respondents' favor, thus:

> WHEREFORE, viewed from all the foregoing considerations, judgment is hereby made in favor of the plaintiffs and against the defendants:
>
> a) Declaring Exh. "B", the deed of sale executed by Rosalia Santos and Jesus Santos on January 19, 1959, as entirely null and void for being fictitious or simulated and inexistent and without any legal force and effect;
>
> b) Declaring Exh. "D", the deed of sale executed by Rosa Santos in favor of Salvador Santos on November 20, 1973, also as entirely null and void for being likewise fictitious or simulated and inexistent and without any legal force and effect;
>
> c) Directing the Register of Deeds of Manila to cancel Transfer Certificate of Title No. T-113221 registered in the name of Salvador Santos, as well as, Transfer Certificate of Title No. 60819 in the names of Salvador Santos, Rosa Santos, and consequently thereafter, reinstating with the same legal force and effect as if the same was not cancelled, and which shall in all respects be entitled to like faith and credit; Transfer Certificate of Title No. T-27571 registered in the name of Rosalia A. Santos, married to Jesus Santos, the same to be partitioned by the heirs of the said registered owners in accordance with law; and
>
> d) Making the injunction issued in this case permanent.
>
> Without pronouncement as to costs.
>
> SO ORDERED.[3]

The trial court reasoned that notwithstanding the deeds of sale transferring the property to Salvador, the spouses Rosalia and Jesus continued to possess the property and to exercise rights of ownership not only by receiving the monthly rentals, but also by paying the realty taxes. Also, Rosalia kept the owner's duplicate copy of the title even after it was already in the name of Salvador. Further, the spouses had no compelling reason in 1959 to sell the property and Salvador was not financially capable to purchase it. The deeds of sale were therefore fictitious. Hence, the action to assail the same does not prescribe.[4]

Upon appeal, the Court of Appeals affirmed the trial court's decision dated March 10, 1998. It held that in order for the execution of a public instrument to effect tradition, as provided in Article 1498 of the Civil Code,[5] the vendor shall have had control over the thing sold, at the moment of sale. It was not enough to confer upon the purchaser the ownership and the right of possession. The thing sold must be placed in his control. The subject deeds of sale did not confer upon Salvador the ownership over the subject property, because even after the sale, the original vendors remained in dominion, control, and possession thereof. The appellate court further said that if the reason for Salvador's failure to control and possess the property was due to his acquiescence to his mother, in deference to Filipino custom, petitioner, at least, should have shown evidence to prove that her husband declared the property for tax purposes in his name or paid the land taxes, acts which strongly indicate control and possession. The appellate court disposed:

> WHEREFORE, finding no reversible error in the decision appealed from, the same is hereby AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.[6]

Hence, this petition where petitioner avers that the Court of Appeals erred in:

> I.
>
> ...HOLDING THAT THE OWNERSHIP OVER THE LITIGATED PROPERTY BY THE LATE HUSBAND OF DEFENDANT-APPELLANT WAS AFFECTED BY HIS FAILURE TO EXERCISE CERTAIN ATTRIBUTES OF OWNERSHIP.

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II

...HOLDING THAT DUE EXECUTION OF A PUBLIC INSTRUMENT IS NOT EQUIVALENT TO DELIVERY OF THE LAND IN DISPUTE.

III

...NOT FINDING THAT THE CAUSE OF ACTION OF ROSALIA SANTOS HAD PRESCRIBED AND/OR BARRED BY LACHES.

IV

...IGNORING PETITIONER'S ALLEGATION TO THE EFFECT THAT PLAINTIFF DR. ROSA [S.] CARREON IS NOT DISQUALIFIED TO TESTIFY AS TO THE QUESTIONED DEEDS OF SALE CONSIDERING THAT SALVADOR SANTOS HAS LONG BEEN DEAD.[7]

In this petition, we are asked to resolve the following:

1. Are payments of realty taxes and retention of possession indications of continued ownership by the original owners?

2. Is a sale through a public instrument tantamount to delivery of the thing sold?

3. Did the cause of action of Rosalia Santos and her heirs prescribe?

4. Can petitioner invoke the "Dead Man's Statute?"[8]

On the first issue, petitioner contends that the Court of Appeals erred in holding that despite the deeds of sale in Salvador's favor, Jesus and Rosalia still owned the property because the spouses continued to pay the realty taxes and possess the property. She argues that tax declarations are not conclusive evidence of ownership when not supported by evidence. She avers that Salvador allowed his mother to possess the property out of respect to her in accordance with Filipino values.

It is true that neither tax receipts nor declarations of ownership for taxation purposes constitute sufficient proof of ownership. They must be supported by other effective proofs.[9] These requisite proofs we find present in this case. As admitted by petitioner, despite the sale, Jesus and Rosalia continued to possess and administer the property and enjoy its fruits by leasing it to third persons.[10] Both Rosa and Salvador did not exercise any right of ownership over it.[11] Before the second deed of sale to transfer her 1/2 share over the property was executed by Rosa, Salvador still sought the permission of his mother.[12] Further, after Salvador registered the property in his name, he surrendered the title to his mother.[13] These are clear indications that ownership still remained with the original owners. In Serrano vs. CA, 139 SCRA 179, 189 (1985), we held that the continued collection of rentals from the tenants by the seller of realty after execution of alleged deed of sale is contrary to the notion of ownership.

Petitioner argues that Salvador, in allowing her mother to use the property even after the sale, did so out of respect for her and out of generosity, a factual matter beyond the province of this Court.[14] Significantly, in Alcos vs. IAC, 162 SCRA 823, 837 (1988), we noted that the buyer's immediate possession and occupation of the property corroborated the truthfulness and authenticity of the deed of sale. Conversely, the vendor's continued possession of the property makes dubious the contract of sale between the parties.

On the second issue, is a sale through a public instrument tantamount to delivery of the thing sold? Petitioner in her memorandum invokes Article 1477[15] of the Civil Code which provides that ownership of the thing sold is transferred to the vendee upon its actual or constructive delivery. Article 1498, in turn, provides that when the sale

is made through a public instrument, its execution is equivalent to the delivery of the thing subject of the contract. Petitioner avers that applying said provisions to the case, Salvador became the owner of the subject property by virtue of the two deeds of sale executed in his favor.

Nowhere in the Civil Code, however, does it provide that execution of a deed of sale is a conclusive presumption of delivery of possession. The Code merely said that the execution shall be equivalent to delivery. The presumption can be rebutted by clear and convincing evidence.[16] Presumptive delivery can be negated by the failure of the vendee to take actual possession of the land sold.[17]

In Danguilan vs. IAC, 168 SCRA 22, 32 (1988), we held that for the execution of a public instrument to effect tradition, the purchaser must be placed in control of the thing sold. When there is no impediment to prevent the thing sold from converting to tenancy of the purchaser by the sole will of the vendor, symbolic delivery through the execution of a public instrument is sufficient. But if, notwithstanding the execution of the instrument, the purchaser cannot have the enjoyment and material tenancy nor make use of it himself or through another in his name, then delivery has not been effected.

As found by both the trial and appellate courts and amply supported by the evidence on record, Salvador was never placed in control of the property. The original sellers retained their control and possession. Therefore, there was no real transfer of ownership.

Moreover, in Norkis Distributors, Inc. vs. CA, 193 SCRA 694, 698-699 (1991), citing the land case of Abuan vs. Garcia, 14 SCRA 759 (1965), we held that the critical factor in the different modes of effecting delivery, which gives legal effect to the act is the actual intention of the vendor to deliver, and its acceptance by the vendee. Without that intention, there is no tradition. In the instant case, although the spouses Jesus and Rosalia executed a deed of sale, they did not deliver the possession and ownership of the property to Salvador and Rosa. They agreed to execute a deed of sale merely to accommodate Salvador to enable him to generate funds for his business venture.

On the third issue, petitioner argues that from the date of the sale from Rosa to Salvador on November 20, 1973, up to his death on January 9, 1985, more or less twelve years had lapsed, and from his death up to the filing of the case for reconveyance in the court a quo on January 5, 1989, four years had lapsed. In other words, it took respondents about sixteen years to file the case below. Petitioner argues that an action to annul a contract for lack of consideration prescribes in ten years and even assuming that the cause of action has not prescribed, respondents are guilty of laches for their inaction for a long period of time.

Has respondents' cause of action prescribed? In Lacsamana vs. CA, 288 SCRA 287, 292 (1998), we held that the right to file an action for reconveyance on the ground that the certificate of title was obtained by means of a fictitious deed of sale is virtually an action for the declaration of its nullity, which does not prescribe. This applies squarely to the present case. The complaint filed by respondents in the court a quo was for the reconveyance of the subject property to the estate of Rosalia since the deeds of sale were simulated and fictitious. The complaint amounts to a declaration of nullity of a void contract, which is imprescriptible. Hence, respondents' cause of action has not prescribed.

Neither is their action barred by laches. The elements of laches are: 1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which the complaint seeks a remedy; 2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct as having been afforded an opportunity to institute a suit; 3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right in which he bases his suit; and 4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred.[18] These elements must all be

proved positively. The conduct which caused the complaint in the court a quo was petitioner's assertion of right of ownership as heir of Salvador. This started in December 1985 when petitioner demanded payment of the lease rentals from Antonio Hombrebueno, the tenant of the apartment units. From December 1985 up to the filing of the complaint for reconveyance on January 5, 1989, only less than four years had lapsed which we do not think is unreasonable delay sufficient to bar respondents' cause of action. We likewise find the fourth element lacking. Neither petitioner nor her husband made considerable investments on the property from the time it was allegedly transferred to the latter. They also did not enter into transactions involving the property since they did not claim ownership of it until December 1985. Petitioner stood to lose nothing. As we held in the same case of Lacsamana vs. CA, cited above, the concept of laches is not concerned with the lapse of time but only with the effect of unreasonable lapse. In this case, the alleged 16 years of respondents' inaction has no adverse effect on the petitioner to make respondents guilty of laches.

Lastly, petitioner in her memorandum seeks to expunge the testimony of Rosa Santos-Carreon before the trial court in view of Sec. 23, Rule 130 of the Revised Rules of Court, otherwise known as the "Dead Man's Statute."[19] It is too late for petitioner, however, to invoke said rule. The trial court in its order dated February 5, 1990, denied petitioner's motion to disqualify respondent Rosa as a witness. Petitioner did not appeal therefrom. Trial ensued and Rosa testified as a witness for respondents and was cross-examined by petitioner's counsel. By her failure to appeal from the order allowing Rosa to testify, she waived her right to invoke the dead man's statute. Further, her counsel cross-examined Rosa on matters that occurred during Salvador's lifetime. In Goñi vs. CA, 144 SCRA 222, 231 (1986), we held that protection under the dead man's statute is effectively waived when a counsel for a petitioner cross-examines a private respondent on matters occurring during the deceased's lifetime. The Court of Appeals cannot be faulted in ignoring petitioner on Rosa's disqualification.

WHEREFORE, the instant petition is DENIED. The assailed decision dated March 10, 1998 of the Court of Appeals, which sustained the judgment of the Regional Trial Court dated March 17, 1993, in favor of herein private respondents, is AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 3-15.

[2] Also spelled as Ombrebueno.

[3] Records, p. 558.

[4] Id. at 555-557.

[5] ART. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

[6] Rollo, p. 26.

[7] Id. at 5.

[8] Rule 130, Sec. 23. Disqualification by reason of death or insanity of adverse party.--Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the

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estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind.

[9] Rizal Cement Co., Inc. vs. Villareal, 135 SCRA 15, 23 (1985).

[10] RTC Records, p. 217 and 252.

[11] Ibid.

[12] Id. at 240.

[13] Id. at 251.

[14] Villanueva vs. CA, 294 SCRA 90, 92-93 (1998).

[15] ART. 1477. The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof.

[16] Montenegro vs. Roxas de Gomez, 58 Phil. 723, 727 (1933).

[17] Pasagui vs. Villablanca, 68 SCRA 18, 21 (1975).

[18] Maneclang vs. Buan, 208 SCRA 179, 193 (1992).

[19] See note 7.

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