

HEIRS OF QUIRICO SERASPI AND PURIFICACION R. SERASPI, PETITIONERS, VS. COURT OF APPEALS AND SIMEON RECASA, RESPONDENTS.

G.R. No. 135602. April 28, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This case is here for review of the decision[1] of the Court of Appeals, dated May 15, 1998, reversing the decision of Branch 1 of the Regional Trial Court, Kalibo, Aklan and dismissing, on the ground of prescription, the complaint filed by petitioners for the recovery of possession and ownership of two parcels of land in Banga, Aklan.

The facts are as follows:

Marcelino Recasa was the owner of two parcels of land described as follows:

PARCEL I: A parcel of cocal land located at Barangay Lapnag, Banga, Aklan, with an area of 770 square meters, more or less; bounded North by Lazaro Navarra, now Flocerfina Ibit; South by Celsa Retis; East by Banga-Libacao Provincial Road; and West by Aklan River, which parcel of land declared in the name of Marcelino Recasa under Tax Declaration No. 3721, Series of 1984, with an assessed value of P2,440.00;

PARCEL II: A parcel of cocal land with an area of 3,648 square meters, more or less, located in Barangay Lapnag, Banga, Aklan; bounded North by Concepcion Navarra; South by Diosdado Navarra; East by Gabriel Reloj; and West by National Road; covered by Tax Declaration No. 11079 in the name of Purificacion Seraspi, Series of 1984, and having an assessed value of P1,650.00.

During his lifetime, Marcelino contracted three (3) marriages. At the time of his death in 1943, he had fifteen (15) children from his three marriages. In 1948, his intestate estate was partitioned into three parts by his heirs, each part corresponding to the share of the heirs in each marriage.

In the same year, Patronicio Recasa, representing the heirs of the first marriage, sold the share of the heirs in the estate to Dominador Recasa, an heir of the second marriage. On June 15, 1950, Dominador, representing the heirs of the second marriage, in turn sold the share of the heirs to Quirico and Purificacion Seraspi whose heirs are the present petitioners. Included in this sale was the property sold by Patronicio to Dominador.

In 1958, the Seraspis obtained a loan from the Kalibo Rural Bank, Inc. (KRBI) on the security of the lands in question to finance improvements on the lands. However, they failed to pay the loan for which reason the mortgage was foreclosed and the lands were sold to KRBI as the highest bidder. Subsequently, the lands were sold by KRBI to Manuel Rata, brother-in-law of Quirico Seraspi. It appears that Rata, as owner of the property, allowed Quirico Seraspi to administer the property.

In 1974, private respondent Simeon Recasa, Marcelino's child by his third wife, taking advantage of the illness of Quirico Seraspi, who had been paralyzed due to a stroke, forcibly entered the lands in question and took

possession thereof.

In 1983, the Seraspis purchased the lands from Manuel Rata and afterwards filed a complaint against Simeon Recasa for recovery of possession of the lands.

The trial court ruled in favor of the Seraspis, stating that they had acquired the property through a sale and acquisitive prescription. However, on appeal, the Court of Appeals reversed on the ground that the action of the Seraspis was barred by the statute of limitations. Hence, this petition filed by Quirico Seraspi who, in the meantime, had passed away and was thus substituted by his heirs.

Two issues are presented: (1) whether petitioners' action is barred by extinctive prescription; and (2) whether private respondent Simeon Recasa acquired ownership of the properties in question through acquisitive prescription.

We rule for petitioners.

The Court of Appeals, while ruling that petitioners were able to establish the identity of the property as well as the credibility of their title $\frac{3}{4}$ the elements required to prove one's claim for recovery of property[2] $\frac{3}{4}$ nonetheless held that the action was barred by prescription. Citing *Arradaza v. Court of Appeals*,[3] it held that an action for recovery of title or possession of real property or an interest therein can only be brought within ten (10) years after the cause of action has accrued. Since the action for recovery of possession and ownership was filed by petitioners only on April 12, 1987, i.e., thirteen (13) years after their predecessor-in-interest had been allegedly deprived of the possession of the property by private respondent, it was held that the action had prescribed.

Arradaza involves acquisitive, not extinctive, prescription. What is more, the facts in that case arose before the effectivity of the Civil Code. Accordingly, what was applied was §41 of the Code of Civil Procedure which provides that title by prescription is acquired after ten (10) years, in whatever manner possession may have been commenced or continued, and regardless of good faith or with just title. On the other hand, what is involved here is extinctive prescription, and the applicable law is Art. 1141 of the Civil Code which provides:

Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

The question, therefore, is whether private respondent has acquired the ownership of the two lands by prescription. On this point, the Civil Code provides:

Art. 1117. Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary.

Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law.

Art. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

Thus, acquisitive prescription of dominion and other real rights may be ordinary or extraordinary, depending on whether the property is possessed in good faith and with just title for the time fixed by law.[4] Private respondent contends that he acquired the ownership of the questioned property by ordinary prescription through adverse possession for ten (10) years.

The contention has no merit, because he has neither just title nor good faith. As Art. 1129 provides:

For the purposes of prescription, there is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right.

In the case at bar, private respondent did not acquire possession of the property through any of the modes recognized by the Civil Code, to wit: (1) occupation, (2) intellectual creation, (3) law, (4) donation, (5) succession, (6) tradition in consequence of certain contracts, and (7) prescription.[5]

Private respondent could not have acquired ownership over the property through occupation since, under Art. 714 of the Civil Code, the ownership of a piece of land cannot be acquired by occupation. Nor can he base his ownership on succession for the property was not part of those distributed to the heirs of the third marriage, to which private respondent belongs. It must be remembered that in the partition of the intestate estate of Marcelino Recasa, the properties were divided into three parts, each part being reserved for each group of heirs belonging to one of the three marriages Marcelino entered into. Since the contested parcels of land were adjudicated to the heirs of the first and second marriages, it follows that private respondent, as heir of the third marriage, has no right over the parcels of land. While, as heir to the intestate estate of his father, private respondent was co-owner of all of his father's properties, such co-ownership rights were effectively dissolved by the partition agreed upon by the heirs of Marcelino Recasa.

Neither can private respondent claim good faith in his favor. Good faith consists in the reasonable belief that the person from whom the possessor received the thing was its owner but could not transmit the ownership thereof.[6] Private respondent entered the property without the consent of the previous owner. For all intents and purposes, he is a mere usurper.

Like private respondent, petitioners have not acquired the property through any of the modes recognized by law for the acquisition of ownership. The basis of petitioners' claim of ownership is the contract of sale they had with Rata, but this by itself is insufficient to make them owners of the property. For while a contract of sale is perfected by the meeting of minds upon the thing which is the object of the contract and upon the price,[7] the ownership of the thing sold is not transferred to the vendee until actual or constructive delivery of the property.[8] Hence, the maxim *non nudis pactis, sed traditione dominia dominica rerum transferuntur* (not mere agreements but tradition transfers the ownership of things).

Consequently, petitioners are not the owners of the property since it has not been delivered to them. At the time they bought the property from Rata in 1983, the property was in the possession of private respondent.

However, this does not give private respondent a right to remain in possession of the property. Petitioners' title to the property prevails over private respondents' possession in fact but without basis in law. As held in *Waite v. Peterson*,[9] when the property belonging to a person is unlawfully taken by another, the former has the right of action against the latter for the recovery of the property. Such right may be transferred by the sale or assignment of the property, and the transferee can maintain such action against the wrongdoer.

WHEREFORE, the decision of the respondent Court of Appeals is hereby REVERSED, and private respondent Simeon Recasa is ordered to return the possession of the contested parcels of land to petitioners as heirs of Quirico and Purificacion Seraspi.

SO ORDERED.

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

[1] Per Justice Eugenio S. Labitoria and concurred in by Justices Jainal D. Rasul and Marina L. Buzon.

[2] CIVIL CODE, Art. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

[3] 170 SCRA 12 (1989)

[4] CIVIL CODE, Art. 1117.

[5] Id., Art. 712. Ownership is acquired by occupation and by intellectual creation.

.....Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition.

.....They may also be acquired by means of prescription.

[6] Id., Art. 1127.

[7] Id., Art. 1475.

[8] Id., Art. 1477.

[9] 8 Phil 235 (1907)

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