

**ELADIA RAPATAN, ET AL., PLAINTIFFS AND APPELLANTS, VS.
ELPIDIO CHICANO, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 13828. February 25, 1960*

Ponente: BAUTISTA ANGELO, J.

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Plaintiffs brought this action against defendants before the Court of First Instance of Samar to recover the ownership and possession of a parcel of land and the damages which they claimed to have suffered as a result of their dispossession. Defendants answered the complaint setting up the defense that plaintiffs' cause of action has already prescribed. They also set up a counterclaim for moral damages and attorneys' fees in the total sum of P25,000.00.

When the case was called for trial, counsel for defendants moved to dismiss the complaint on the ground that the action of plaintiffs, being based on fraud, has already prescribed, and finding the same well taken, the court dismissed the complaint, but allowed defendants to present evidence on their counterclaim. Thereafter, the court rendered judgment condemning plaintiffs to pay, jointly and severally, defendants the amount of P5,000.00 as moral damages and the amount of P500.00 as attorneys' fees. From this decision plaintiff's appealed to this Court alleging as main error that the lower court dismissed the complaint on the ground of prescription.

The complaint alleges that plaintiffs are the exclusive and absolute owners of a parcel of land situated in Taft, Samar, by virtue of a decision rendered in their favor in a civil case; that sometime in 1946, the land became tax delinquent and so plaintiffs approached one Escolastico Chicano to request him to pay the same on condition that they will mutually share its produce and administration until after he is reimbursed of what he would pay; that having Chicano agreed to the proposal, he had a written agreement prepared which purportedly contained their understanding and in this belief the same was thumb-marked by plaintiffs who were not given a chance to read its contents nor given any copy of the document because they were assured that everything was in order; that plaintiffs affixed their signatures on said document relying on the good faith of defendants and on their assurance that what was orally agreed upon between them was embodied in that document; that plaintiffs, however, learned and discovered the fraud committed against them only in November, 1950, after the death of Escolastico Chicano, when they were driven by force and intimidation from the possession of the land; and that they repeatedly demanded from defendants that they be restored to its possession and when they refused they brought the present action. Plaintiff instituted the action on February 11, 1957.

Appellants' theory is that inasmuch as the purpose of their action is to recover the ownership and possession of real property, the same can be brought within 10 years after the cause of action accrues, which period has not yet expired considering that they were dispossessed of the property in 1950. Appellees, on the other hand, contend that since their right to recover the property is based on fraud, the same should be brought within 4 years from its discovery. The trial court sustained this theory of appellees and dismissed the complaint.

But the trial court did not merely dismiss the complaint but proceeded to receive evidence on the counterclaim of

defendants. In this respect, the trial court said: "With respect to the counterclaim alleged in the amended answer of the said defendants, the preponderance of evidence discloses that the imputations contained in the complaint that the late Escolastico G. Chicano, husband of Coleta de Chicano and father of Elpidio Chicano had acquired the land in question from the plaintiffs through fraud and that the said defendants' taking advantage of the ignorance of the plaintiffs herein managed fraudulently to transfer the tax declaration of the land in question in the name of the plaintiffs to the name of defendants are false, malicious and defamatory to the memory of the late Escolastico Chicano and the reputation of his heirs, Elpidio Chicano and Coleta de Chicano, thus causing the latter mental anguish, besmirched reputation, wounded feelings, moral shocks and similar injuries", and accordingly, ordered plaintiffs to pay the sum of P5,000.00 as moral damages.

Considering that the foregoing finding is a question of fact which involves an evaluation of the evidence, and the same is now assigned as error, we are of the opinion that this case comes within the appellate jurisdiction of the Court of Appeals.

Wherefore, it is ordered that this case be certified to the Court of Appeals for adjudication in accordance with law.

Paras, C. J., Bengzon, Labrador, Concepcion, Reyes, J.B.L. Endencia, Barrera, and Gutierrez David, JJ., concur.
Padilla, J., took no part.

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