

FELIX GOCHAN AND SONS REALTY CORPORATION AND STA. LUCIA REALTY AND DEVELOPMENT CORPORATION, PETITIONERS, VS. HEIRS OF RAYMUNDO BABA, NAMELY, BESTRA BABA, MARICEL BABA, CRESENCIA...*G.R. No. 138945. August 19, 2003*

Ponente: YNARES-SANTIAGO, J.

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The purpose of an action or suit and the law to govern it, including the period of prescription, is to be determined by the complaint itself, its allegations and prayer for relief.[1] Thus, while the issues of possession and fraud are material to the prescriptibility of suits captioned as reconveyance and quieting of title,[2] it would not be so where, from the allegations of the complaint, the action is in reality one for declaration of nullity of contracts on the ground of absence of the essential requisites thereof. These contracts are void *ad initio* and actions to declare their inexistence do not prescribe.[3]

This is a petition for review on certiorari seeking to set aside the February 12, 1999 Decision[4] of the Court of Appeals in CA-G.R. CV No. 57080, which reversed the May 3, 1997 Order[5] of the Regional Trial Court of Lapu-Lapu City, Branch 54, in Civil Case No. 4494-L.

The facts show that Lot No. 3537, a conjugal property of spouses Raymundo Baba and Dorotea Inot, was originally titled under Original Certificate of Title No. RO-0820,[6] in the name of Dorotea. After Raymundo's demise in 1947, an extrajudicial settlement of his estate, including Lot No. 3537, was executed on December 8, 1966,[7] among the heirs of Raymundo, namely, Dorotea Inot and his 2 children, Victoriano Baba and Gregorio Baba. One-half undivided portion of the 6,326 square meter lot was adjudicated in favor of Dorotea, and the other half divided between Victoriano and Gregorio. On December 28, 1966, Dorotea, Victoriano and Gregorio, in consideration of the amount of P2,346.70, sold Lot No. 3537 to petitioner Felix Gochan and Sons Realty Corporation (Gochan Realty).[8] Consequently, OCT No. RO-0820 was cancelled and in lieu thereof, Transfer Certificate of Title No. T-1842, dated February 23, 1968 was issued in favor of Gochan Realty.[9] Sometime in 1995, the latter entered into a joint venture agreement with Sta. Lucia Realty and Development Corporation Inc. for the development, among others, of Lot No. 3537, into a subdivision.[10]

On June 13, 1996, respondents Bestra, Maricel, Crecencia, Antonio and Petronila, all surnamed Baba, filed a complaint for quieting of title and reconveyance with damages against petitioners with the RTC of Lapu-Lapu City, Branch 54, docketed as Civil Case No. 4494-L. They alleged that they are among the 7 children of Dorotea Inot and Raymundo Baba; that petitioners connived with Dorotea Inot, Victoriano and Gregorio Baba in executing the extrajudicial settlement and deed of sale which fraudulently deprived them of their hereditary share in Lot No. 3537; and that said transactions are void insofar as their respective shares are concerned because they never consented to the said sale and extrajudicial settlement, which came to their knowledge barely a year prior to the filing of the complaint.[11]

In its answer,[12] petitioner Gochan Realty averred that respondents have no personality to sue because they are not children of Dorotea Inot and Raymundo Baba; that even assuming they are lawful heirs of the spouses, their action is barred by estoppel, laches and prescription for having been filed more than 28 years after the issuance of the transfer certificate of title in its name; and that any defect in the transactions leading to its acquisition of Lot No. 3537 will not affect its title because it is a purchaser in good faith and for value.

Meanwhile, petitioner Sta. Lucia Realty and Development Corporation Inc. was declared in default for failure to file an answer within the reglementary period.[13]

On May 3, 1997, the complaint for quieting of title and reconveyance with damages filed against petitioner was dismissed on the ground of prescription and laches. The trial court ruled that respondents' action is one for enforcement of implied or constructive trust based on fraud which prescribes in 10 years from the issuance of title over the property. Hence, respondents' action was barred by prescription and laches for having been filed after 28 years from the time Gochan Realty obtained title to the property.

Respondents appealed to the Court of Appeals which reversed the decision of the trial court and reinstated the complaint of respondents. While it also found that respondents' action is a suit to enforce an implied or constructive trust based on fraud, it ruled that since respondents are in possession of the disputed property, their action cannot be barred by prescription and laches, being in the nature of a suit for quieting of title. Petitioner's motion for reconsideration was denied on May 25, 1999.

Hence, the instant petition where the sole issue raised for resolution is whether or not respondents' complaint is dismissible on the ground of prescription and laches.

In determining whether the complaint is barred by the statute of limitations, both courts held that respondents' action is grounded on fraud, and applied the rule that the fraudulent conveyance of the property creates an implied trust, an obligation created by law, which prescribes in ten years from the date of the issuance of the certificate of title.[14] However, the Court of Appeals held that such an action does not prescribe when the disputed property is in the possession of the plaintiff seeking reconveyance.[15] The issue of possession, however, is not material in the case at bar. A circumspect scrutiny of the complaint reveals that although the respondents describe the extrajudicial settlement and deed of sale as fraudulent insofar as their shares are concerned, their action in reality seeks to declare said deeds as inexistent for lack of consent, an essential element for the existence of a contract. The settled rule is that the purpose of an action or suit and the law to govern it, including the period of prescription, is to be determined by the complaint itself, its allegations and prayer for relief.[16]

In the case at bar, the allegations of the complaint unmistakably assail the extrajudicial settlement and deed of sale with respect to their share on the ground of absence of consent. Thus, respondents alleged in their complaint -

2.2 Dorotea Inot, Gregorio Baba, Victoriano Baba and defendant Felix Gochan and Realty Corporation, conniving and confederating with each other, with the evil motive and bad intent of getting the corresponding hereditary share of the plaintiffs... caused the [issuance of a] Transfer Certificate of Title covering the entire lot in the name of defendant Felix Gochan and Realty Corporation... They have made to appear in a document denominated as Extrajudicial Settlement dated 8 February 1966 and Deed of Absolute Sale dated 28 December 1966 in favor of defendant Felix Gochan and Realty Corporation, that they have validly executed the same free from legal infirmity and element of perjury, notwithstanding clear and full knowledge about plaintiff's real right and interest thereto, machine copies of the said document are hereto attached as Annex "C" and "D" respectively;

2.3 To all legal intents and purposes, plaintiffs herein never disposed of their share to anybody much less to the defendant Felix Gochan and Realty Corporation.

2.4 Subsequently, other defendant Sta. Lucia Realty Corporation, despite its knowledge about the defect in the title entered into a Joint Venture Agreement with other defendant Felix Gochan Realty Corporation and the same being annotated in TCT No. T-1824 as Entry Nos. 9371-XIII-D.B,9372 and 9373;

2.5 Complainants, upon knowledge about the said humiliating situation, did not waste time in exhausting all its recovering mode and legal remedies thru seeking relief unto this Honorable Court.

2.6 The assessed value of the lot is P38,220.00;

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3.0 Consequently, the fraudulent acts of the defendant Felix Gochan and Realty Corporation and the eventual participation of the defendant Sta. Lucia Realty Corporation shall have no legal and valid effect insofar as the corresponding and respective share of each plaintiff is concerned which is Three Hundred Fifty Five (355) Square meters, more or less, each or a total area of One Thousand Nine Hundred Seventy-Five (1,975) square meters, more or less. The deed of conveyance aforestated shall not therefore bind the plaintiffs;[17]

Hence, for purposes of determining whether respondents' action has prescribed, fraud in the conveyance of the disputed lot and the possession thereof by the respondents are not material. The fact that the conveyance of a property was fraudulent, either because it was procured without the knowledge of some of the co-owners or by virtue of the owner's forged signature or by a fictitious deed of sale, does not automatically make fraud the basis for reconveyance of the disputed property. The real question in the instant case (without, however, prejudging the validity or invalidity of the sale to Gochan Realty), is whether or not from the allegations of the complaint, there exists a cause of action to declare the inexistence of the contract of sale with respect to the shares of respondents in Lot No. 3537 on the ground of absence of any of the essential requisites of a valid contract. If the answer is in the negative, then the dismissal of the complaint must be upheld, otherwise, the dismissal on the ground of prescription is erroneous because actions for the declaration of inexistence of contracts on the ground of absence of any of the essential requisites thereof do not prescribe.

Under Article 1318 of the Civil Code, there is no contract unless the following requisites concur: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation. The absence of any of these essential requisites renders the contract inexistent and an action or defense to declare said contract void ab initio does not prescribe, pursuant to Article 1410 of the same Code. In *Delos Reyes v. Court of Appeals*,[18] it was held that one of the requisites of a valid contract under Article 1318 of the Civil Code, namely, the consent and the capacity to give consent of the parties to the contract, is an indispensable condition for the existence of consent. There is no effective consent in law without the capacity to give such consent. In other words, legal consent presupposes capacity. Thus, there is said to be no consent, and consequently, no contract when the agreement is entered into by one in behalf of another who has never given him authorization therefor unless he has by law a right to represent the latter. [19]

In *Heirs of Romana Ingjug-Tiro v. Casals*,[20] the Court, applying Article 1410 of the Civil Code declared that a claim of prescription is unavailing where the assailed conveyance is void ab initio with respect to those who had no knowledge of the transaction. The case involved a fraudulent sale and extrajudicial settlement of a lot executed without the knowledge and consent of some of the co-owners. It was held that the sale of the realty is void in so far as it prejudiced the shares of said co-owners and that the issuance of a certificate of title over the whole property in favor of the vendee does not divest the other co-owners of the shares that rightfully belonged to them. The nullity of the said sale proceeds from the absence of legal capacity and consent to dispose of the property. Thus -

Article 1458 of the New Civil Code provides: "By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price

certain in money or its equivalent." It is essential that the vendors be the owners of the property sold otherwise they cannot dispose that which does not belong to them. As the Romans put it: "Nemo dat quod non habet." No one can give more than what he has. The sale of the realty to respondents is null and void insofar as it prejudiced petitioners' interests and participation therein. At best, only the ownership of the shares of Luisa, Maria and Guillerma in the disputed property could have been transferred to respondents.

Consequently, respondents could not have acquired ownership over the land to the extent of the shares of petitioners. The issuance of a certificate of title in their favor could not vest upon them ownership of the entire property; neither could it validate the purchase thereof which is null and void. Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has. Being null and void, the sale to respondents of petitioners' shares produced no legal effects whatsoever.

Similarly, the claim that Francisco Ingjug died in 1963 but appeared to be a party to the Extrajudicial Settlement and Confirmation of Sale executed in 1967 would be fatal to the validity of the contract, if proved by clear and convincing evidence. Contracting parties must be juristic entities at the time of the consummation of the contract. Stated otherwise, to form a valid and legal agreement it is necessary that there be a party capable of contracting and a party capable of being contracted with. Hence, if any one party to a supposed contract was already dead at the time of its execution, such contract is undoubtedly simulated and false and therefore null and void by reason of its having been made after the death of the party who appears as one of the contracting parties therein. The death of a person terminates contractual capacity.

In actions for reconveyance of property predicated on the fact that the conveyance complained of was null and void ab initio, a claim of prescription of action would be unavailing. The action or defense for the declaration of the inexistence of a contract does not prescribe...[21]

Likewise, in the cases of *Solomon v. Intermediate Appellate Court*,^[22] *Vda. De Portugal v. Intermediate Appellate Court*,^[23] *Garanciang v. Garanciang*,^[24] and *Lacsamana v. Court of Appeals*,^[25] the Court ruled that conveyances by virtue of a forged signature or a fictitious deed of sale are void ab initio. The absence of the essential requisites of consent and cause or consideration in these cases rendered the contract inexistent and the action to declare their nullity is imprescriptible.

Nemo dat quod non habet -- No one can give more than what he has.^[26] Assuming that the allegations in respondents' complaint are true, their claim that the execution of the extrajudicial settlement and the deed of sale involving Lot No. 3537, which led to the issuance of a certificate of title in the name of Gochan Realty, was without their knowledge or consent, gives rise to an imprescriptible cause of action to declare said transactions inexistent on the ground of absence of legal capacity and consent. Hence, the dismissal of respondents' complaint on the ground of prescription was erroneous.

On the other hand, laches is defined as 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. It is negligence or omission to assert a right within a reasonable time, warranting presumption that the party entitled to assert it has abandoned it or has declined to assert it.^[27] Its elements are: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation 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.^[28]

Though laches applies even to imprescriptible actions,^[29] its elements must be proved positively.^[30] Laches is evidentiary in nature which could not be established by mere allegations in the pleadings and can not be resolved

in a motion to dismiss.[31] At this stage therefore, the dismissal of the complaint on the ground of laches is premature.

It is but fair, without prejudging the issues, that the parties be allowed to substantiate their respective claims and defenses in a full-blown trial, and obtain a ruling on all the issues presented in their pleadings.[32] Indeed, while the averments in the complaint show that respondents' action is imprescriptible, Gochan Realty is not precluded from presenting evidence that it is a purchaser in good faith or that respondents have no personality to sue for reconveyance or, even assuming that they are lawful heirs of Dorotea Inot and Raymundo Baba, that they are guilty of laches or are estopped from questioning the validity of the extrajudicial partition and deed of sale of Lot No. 3537 with respect to their shares.

The trial court thus erred in dismissing respondent's complaint on the ground of prescription and laches, and while the Court of Appeals is correct in ordering the reinstatement of the complaint, its decision is sustained on a different ground.

WHEREFORE, in view of all the foregoing, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. CV No. 57080, which ordered that the instant case be REMANDED to the Regional Trial Court of Lapu-Lapu City, Branch 54, for trial and judgment on the merits is AFFIRMED.

SO ORDERED.

Vitug, Carpio, and Azcuna, JJ., concur.

Davide, Jr., C.J., abroad, on official business.

[1] Tavera v. Philippine Tuberculosis Society, Inc., 197 Phil. 919, 926 (1982); citing Rone, et al. v. Claro, et al., 91 Phil. 250 (1952).

[2] Del Campo v. Court of Appeals, G.R. No. 108228, 1 February 2001, 351 SCRA 1, 10-11; citing David, et al. v. Malay, et al., G.R. No. 132644, 19 November 1999, 318 SCRA 711; Armamento v. Guerrero, G.R. No. L-34228, 21 February 1980, 96 SCRA 178; Javier v. Court of Appeals, G.R. No. 101177, 28 March 1994, 231 SCRA 498; Alzona, et al. v. Capunitan Reyes, 114 Phil. 377 (1962); Gonzales v. Jimenez, Sr., 121 Phil. 84 (1965); Cuaycong, et al. v. Cuaycong, et al., 129 Phil. 439 (1967); Faja v. Court of Appeals, G.R. No. L-45045, 28 February 1977, 75 SCRA 441; Heirs of Jose Olviga v. Court of Appeals, G.R. No. 104813, 21 October 1993, 227 SCRA 330.

[3] Civil Code, Article 1318 in relation to Article 1410.

[4] Penned by Associate Justice Eugenio J. Labitoria and concurred in by Associate Justices Jesus M. Elbinias and Marina L. Buzon.

[5] Penned by Judge Rumoldo R. Fernandez.

[6] Records, p. 7.

[7] Id., p. 9.

[8] Id., p. 10.

[9] Id., p. 8.

[10] Joint Venture Agreement, Rollo, p. 35.

[11] Complaint, Records, p. 1; Reply, Records, p. 27.

[12] Records, p. 21.

[13] Order dated October 30, 1996, Records, p. 51.

[14] *Amerol v. Bagumbayan*, G.R. No. L-30212, 30 September 1987, 154 SCRA 388, 406-407; citing the Civil Code, Articles 1456 and 1144.

ARTICLE 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

Article 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

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[15] *Del Campo v. Court of Appeals*, supra, note 2.

[16] *Tavera v. Philippine Tuberculosis Society, Inc.*, supra, note 1.

[17] Complaint, Records, pp. 2-4.

[18] 372 Phil. 522, 534-535 (1999).

[19] *Id.*, citing Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. IV, p. 445; citing 8 *Manresa* 646; *Bumanlag v. Alzate*, G.R. No. L-39119, 14 September 1986, 144 SCRA 480; *Mindanao Academy v. Yap*, 121 Phil. 204 (1965); *Estoque v. Pajimula*, 133 Phil. 55 (1968); *Segura v. Segura*, G.R. No. L-29320, 19 September 1988, 165 SCRA 368; *Frias v. Esquive*, G.R. No. L-24679, 30 October 1975, 167 SCRA 487; Civil Code, Articles 1317 and 1453.

[20] G.R. No. 134718, 20 August 2001, 363 SCRA 435.

[21] *Id.*, pp. 441-442.

[22] G.R. No. 70263, 14 May 1990, 185 SCRA 352, 363-364.

[23] G.R. No. L-73564, 25 March 1988, 159 SCRA 178, 183.

[24] 138 Phil. 237, 239 (1969).

[25] 351 Phil. 526, 533-534 (1998).

[26] *Heirs of Romana Ingjug-Tiro v. Casals*, supra.

[27] *Abrazaldo v. Court of Appeals*, G.R. No. 144817, March 7, 2002.

[28] *Santos v. Santos*, G.R. No. 133895, 2 October 2001, 366 SCRA 395, 405-406; citing *Maneclang v. Court of Appeals*, G.R. No. 27876, 22 April 1992, 208 SCRA 179.

[29] *Buenaventura v. Court of Appeals*, G.R. No. 50837, December 28, 1992, 216 SCRA 818, 823; citing *Rafols v. Barba*, G.R. No. L-28446, 13 December 1982, 119 SCRA 146.

[30] Santos v. Santos, *supra*.

[31] National Irrigation Administration v. Court of Appeals, 376 Phil. 362, 376 (1999); España, Sr. v. Court of Appeals, 335 Phil. 983, 987 (1997).

[32] Heirs of Romana Ingjug-Tiro v. Casals, *supra*.

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