

**LEOPOLDO C. LEONARDO, REPRESENTED BY HIS DAUGHTER  
EMERENCIANA LEONARDO, PETITIONER, VS. VIRGINIA TORRES  
MARAVILLA AND LEONOR C. NADAL, AS ADMINISTRATRICES OF  
THE ESTATE OF MARIA...**

*G.R. No. 143369. November 27, 2002*

Ponente: YNARES-SANTIAGO, J.

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**YNARES-SANTIAGO, J.:**

This is a petition for review seeking to set aside the decision[1] dated November 26, 1999 and the resolution[2] dated May 19, 2000 of the Court of Appeals[3] in CA-G.R. CV No. 52932, which affirmed the order[4] of the Regional Trial Court of Pasay City, Branch III, dismissing petitioner's complaint[5] for "Delivery of Possession of Property, Owner's Duplicate Certificate of Title, Rentals and Damages," in Civil Case No. 93-10282.

The instant controversy stemmed from a dispute over a 1,151.80 square meter lot, located in Pasay City, covered by Transfer Certificate of Title No. 2355 (34515),[6] and registered in the name of Mariano Torres y Chavarria, the predecessor-in-interest of respondents. Petitioner claims that he is the lawful owner of the disputed lot, having purchased it on September 29, 1972 from a certain Eusebio Leonardo Roxas,[7] who in turn acquired the same lot by purchase on August 28, 1972 from Mariano Torres y Chavarria.[8]

On September 14, 1972, Eusebio Leonardo Roxas sent a letter-request[9] to the Register of Deed of Pasay City asking for the registration of the deed of sale allegedly executed in his favor by Mariano Torres y Chavarria. The letter was entered in the Register's Primary Book under Entry No. 55780, Vol. V. The Office of the Register of Deeds, however, did not register the deed as it was awaiting the final disposition of a pending case[10] between Mariano Torres y Chavarria and a certain Francisco E. Fernandez involving title of the lot.[11] Incidentally, the said case was decided in favor of Mariano Torres y Chavarria, which decision became final and executory on September 21, 1972.[12]

On October 6, 1972, petitioner likewise asked the Register of Deeds to register the deeds of sale dated August 28, 1972 and the September 29, 1972 involving Transfer Certificate of Title No. 2355 (34515), and to issue the corresponding transfer certificate of title in his name.[13] Petitioner did not present the owner's duplicate copy of Transfer Certificate of Title No. 2355 (34515), which remained in the possession of respondents. Petitioner's letter-request was entered in the Primary Books of the Register of Deeds under Entry No. 55952, V.5, on October 19, 1972. The Register of Deeds, however, certified that the original copy of TCT No. 2355 (34515), could not be retrieved or located in the office of the Register of Deeds of Pasay, hence, the requested registration could not be effected.[14]

On November 13, 1972, petitioner executed an affidavit of adverse claim[15] over TCT No. 2355 (34515) which was entered in the Primary Book under Entry No. 56039, Vol. 5, on November 15, 1972.

On May 18, 1993, the Register of Deeds of Pasay City was able to retrieve the original copy of TCT No. 2355

(34515).[16]

On May 20, 1993, petitioner caused the annotation of his affidavit of adverse claim on TCT No. 2355 (34515),[17] and asked the respondents to deliver possession of the owner's duplicate copy of TCT No. 2355 (34515). When the latter ignored his demand, petitioner filed on September 6, 1993 a complaint for "Delivery of Possession of Property, Owner's Duplicate Certificate of Title, Rentals and Damages." Petitioner alleged that he filed the case against respondents only in 1993 because he was living abroad.[18]

In their Answer, respondents countered that since 1938 up to the present, the lot in question has been registered in the name of the late Mariano Torres y Chavarria, their predecessor-in-interest, and that they have been in material possession thereof in the concept of owners. In the settlement of the estate of Mariano Torres y Chavarria, who died on August 30, 1974,[19] his widow, Rosario Nadal, and his natural child, Virginia Torres Maravilla, acquired the disputed lot by succession.[20] After the demise of Rosario Nadal, sometime in January 1990, her share in the said lot was inherited by her sister, Leonor Nadal, who was appointed as special administratrix of the estate of Rosario Nadal.[21] Subsequently, Leonor Nadal was also appointed administratrix of the estate of Mariano Torres y Chavarria.[22] Respondents maintain that they have been in open and peaceful possession of the said property and that it was only in 1993 when they came to know of the alleged claim of petitioners over the same property.

Respondents contended further that the deeds of sale dated August 28, 1972 and September 29, 1972 are falsified documents and that the signature of Mariano Torres y Chavarria on the August 28, 1972 deed of absolute sale was a forgery. On February 28, 1994, respondents filed a motion to dismiss[23] the complaint on the grounds of: (1) non-payment of the correct docket fees; (2) prescription; and (3) laches. The motion to dismiss was denied on July 25, 1995.

Meanwhile, Leonor Nadal died on October 23, 1995, and was substituted by Fe Nadal Venturina on January 19, 1996.[24]

On motion of respondents, the trial court reconsidered its order of July 25, 1995, and issued an order on February 1, 1996, dismissing petitioner's complaint on the ground of prescription and laches.

Dissatisfied, petitioner appealed to the Court of Appeals which affirmed the assailed order on November 26, 1999. The motion for reconsideration was denied on May 19, 2000.

Hence, the instant petition contending that the Court of Appeals erred in holding that:

## I

THE RIGHT OF PETITIONER TO ENFORCE THE DEEDS (EXHS. 2 AND 4) THROUGH HIS COMPLAINT FILED ON SEPTEMBER 6, 1993 HAD ALREADY PRESCRIBED ON SEPTEMBER 29, 1982 PER ARTICLE 114[4];

## II

THE TITLE ON THE PROPERTY REMAINED IN THE VENDOR'S (MARIO TORRES) NAME BEFORE AND AFTER THE EXECUTION OF THE DEEDS (EXHS. 2 AND 4);

## III

IF THE ORIGINAL COPY OF THE TCT WAS LOST/MISSING IN THE FILES OF THE REGISTER OF DEEDS, PETITIONER SHOULD HAVE FILED A PETITION FOR RECONSTITUTION OF THE TITLE;

#### IV

PETITIONER'S INACTION FOR 21 YEARS TO ENFORCE HIS RIGHTS ON THE DEEDS (EXHS. 2 AND 4) MADE RESPONDENTS BELIEVE THAT HE HAD ABANDONED HIS RIGHTS ON THE PROPERTY; and,

#### V

LACHES HAD OPERATED NOTWITHSTANDING THAT PETITIONER WROTE THE REGISTER OF DEEDS OF PASAY CITY (EXH. 8) AND THE LATTER REPLIED THAT REGISTRATION COULD NOT BE EFFECTED BECAUSE THE TITLE WAS MISSING (EXH. 9).[25]

The issue in the instant case is whether or not petitioner's action is barred by prescription and laches.

The Court of Appeals ruled that petitioner's cause of action is founded on the deed of absolute sale allegedly executed by respondents' predecessor-in-interest on August 28, 1972, which purportedly conveyed the disputed lot to Eusebio Leonardo Roxas, and the deed of sale dated September 29, 1972, whereby the latter sold the same lot to petitioner. Being an action based on written contracts, petitioner's complaint falls under Article 1144[26] of the Civil Code, which provides that an action upon a written contract shall prescribe in ten years from the time the right of action accrued. Since petitioner brought the instant case only on September 6, 1993, or 21 years from the time his supposed right of action accrued on September 29, 1972, i.e., the date of execution of the contract conveying to him the questioned lot, his action was clearly barred by the statute of limitations.

Petitioner, on the other hand, contends that the applicable provision is Article 1141[27] and not 1144 of the Civil Code because his action is one for recovery of possession of real property which prescribes in thirty years.

The contention is without merit. Petitioner's action is actually an action for specific performance, i.e., to enforce the deed of absolute sale allegedly executed in his favor. It is a fundamental principle that ownership does not pass by mere stipulation but by delivery. The delivery of a thing constitutes a necessary and indispensable requisite for the purpose of acquiring the ownership of the same by virtue of a contract.[28] Under Article 1498 of the Civil Code, 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. Thus, the execution of the contract is only a presumptive, not conclusive delivery which can be rebutted by evidence to the contrary, as when there is failure on the part of the vendee to take material possession of the land subject of the sale in the concept of a purchaser-owner.[29]

In the case at bar, it is not disputed that the lot in question was never delivered to petitioner notwithstanding the alleged execution of a deed of absolute sale. From 1972 to 1993, petitioner neither had, nor demanded, material possession of the disputed lot. It was the respondents who have been in control and possession thereof in the concept of owners since 1938 up to the present. It follows that ownership of the lot was never transferred to petitioner. Hence, he can not claim that the instant case is an accion reivindicatoria or an action to recover ownership and full possession of the property which, in the first place, never came into his possession for lack of the requisite delivery. Thus, in *Danguilan v. Intermediate Appellate Court*,[30] where the requisite delivery was not effected, the Court held that:

Since in this jurisdiction it is a fundamental and elementary principle that ownership does not pass by mere stipulation but only by delivery (Civil Code, Art. 1095; *Fidelity and Surety Co. v. Wilson*, 8 Phil. 51), and the execution of a public document does not constitute sufficient delivery where the property involved is in the actual and adverse possession of third persons (*Addison v. Felix*, 38 Phil. 404; *Masallo v. Cesar*, 39 Phil. 134), it becomes incontestable that even if included in the contract, the ownership of the property in dispute did not

pass... Not having become the owner for lack of delivery, [one] cannot presume to recover the property from its present possessors. [The] action, therefore, is not one of revindicacion, but one against [the] vendor for specific performance of the sale ...

Clearly, the case filed by petitioner was an action for specific performance of a written contract of sale which, pursuant to Article 1144 of the Civil Code, prescribes in 10 years from the accrual of the right of action. In a contract of sale, there is a reciprocal obligation to pay the purchase price and the corresponding delivery of the thing sold, which obligations give rise to a right of action in case of breach.[31] Here, petitioner's right of action for specific performance or rescission arose when delivery of the thing sold was not effected on September 29, 1972, despite the payment of the purchase price. Hence, from 1972 to 1993, when petitioner filed the instant case, 21 years had elapsed barring the institution of petitioner's action which is definitely beyond the 10 year prescriptive period.

Petitioner's claim that the prescriptive period was tolled when he registered his adverse claim with the Register of Deeds is untenable. In *Garbin v. Court of Appeals, et al.*,[32] wherein an action for annulment of a deed of sale was dismissed on the ground of prescription and laches, the Court held that the registration of an adverse claim does not toll the running of the prescriptive period, thus:

x x x the title of the defendant must be upheld for failure or the neglect of the plaintiffs for an unreasonable and unexplained length of time of more than fifteen (15) years since they registered their adverse claim, or for a period of more than three (3) decades since the execution of the deed of sale in their favor upon which their adverse claim is based, to do that which, by exercising diligence, could or should have been done earlier. For it is this negligence or omission to assert a right within reasonable time that is construed that plaintiffs had abandoned their right to claim ownership under the deed of sale, or declined to assert it. Thus, when a person slept on his rights for 28 years from the time of the transaction, before filing the action, amounts to laches which cannot be excused even by ignorance resulting from inexcusable negligence (*Vda. de Lima v. Tiu*, 52 SCRA 516 [1970]).

In the same vein, the annotation on May 20, 1993 of the November 13, 1972 affidavit of adverse claim on TCT No. 2355 (34515) afforded no protection to petitioner for the same reason that said belated assertion of his alleged right over the property is barred by prescription and laches.

Moreover, the affidavit of adverse claim registered by petitioner in 1972 was ineffective. The law enforced at the time petitioner filed an adverse claim was Section 110, of Act 496,[33] also known as the Land Registration Act, (now Section 70[34] of P.D. No. 1529, or the Property Registration Decree[35]), which stated:

Sec. 110. Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Act for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed.

The statement shall be signed and sworn to, and shall state the adverse claimant's residence and designate a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim, and the court, upon a petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim and shall enter such decree therein as justice and equity may require. If the claim is adjudged to be invalid, the registration shall be cancelled. If in any case the court after notice and hearing shall find that a claim thus registered was frivolous or vexatious, it may tax the adverse claimant double or treble costs in its discretion.

In *Junio v. De los Santos, et al.*,[36] an action for cancellation of an adverse claim, the Court ruled that the

procedure for registration of voluntary instruments, like a deed of sale, is laid down in Section 57[37] of Act 496. But where the vendor refused to deliver to the vendee the owner's duplicate certificate of title, which title must be presented in order that the deed of conveyance may be registered and the corresponding transfer certificate of title may be issued,[38] the vendee may file with the Register of Deeds an adverse claim under Section 110 of Act No. 496. For an adverse claim to be valid, it must be shown that a demand was made on the vendor and that the latter refused to surrender the owner's duplicate certificate of title.[39]

In instant case, it was not shown that Mariano Torres y Chavarria, the registered owner of the disputed lot, refused to surrender the owner's duplicate certificate of title, nor that petitioner demanded the surrender thereof. In the affidavit of adverse claim registered by petitioner he merely stated: "9. That in the meantime the herein (VENDEE) LEOPOLDO C. LEONARDO has no means to get or secure the aforementioned Owner['s] Duplicate Copy of Title No. 2355 (34515) Pasay City Registry Office, from the said Parties, he (Leopoldo C. Leonardo) hereby requests the Register of Deeds of Pasay City to annotate whatever rights and interest on the ORIGINAL CERTIFICATE OF TITLE No. 2355 (34515), Pasay Registry Office, in the name of MARIANO C. TORRES as a Notice of Adverse Claim(s) in favor of LEOPOLDO C. LEONARDO to any third party/ies;" For lack of the requisite unjustified refusal of the registered owner to surrender the owner's duplicate certificate of title, the affidavit of adverse claim registered by petitioner is not valid.

Likewise, there is no merit in petitioner's assertion that the prescriptive period should commence to run only on May 18, 1993 when the original copy of Transfer Certificate of Title No. 2355 (34515) was retrieved by the Register of Deeds. The loss of the original title will not prevent petitioner's pursuit to enforce his right. Otherwise stated, the recovery of the original title or the reconstitution thereof is not the only means by which petitioner could protect his right. Under Article 1155 of the Civil Code - "[t]he prescription of actions is interrupted when they are filed in court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgement of the debt by the debtor." Petitioner therefore may pursue either judicial or extrajudicial means manifesting his interest in the questioned property in order to interrupt the prescriptive period.

Certainly, petitioner's action filed on September 6, 1993 is barred by the 10 year prescriptive period from the accrual of his alleged right of action on September 29, 1972. In the same vein, said action is barred by laches having allowed 21 years to lapse before enforcing his alleged right. 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.[40] *Tempus enim modus tollendi obligationes et actiones, quia tempus currit contra desides et sui juris contemptores* – For time is a means of dissipating obligations and actions, because time runs against the slothful and careless of their own rights.[41]

WHEREFORE, in view of all the foregoing, the instant petition is DENIED. The November 26, 1999 decision and the May 19, 2000 resolution of the Court of Appeals in CA-G.R. CV No. 52932, which sustained the February 1, 1996 order of the Regional Trial Court of Pasay City, Branch III, dismissing petitioner's complaint in Civil Case No. 93-10282 on the ground of prescription and laches, is AFFIRMED.

**SO ORDERED.**

Vitug, (Acting chairman), Carpio, and Azcuna, JJ., concur.  
Davide, Jr., C.J. (Chairman), on official leave.

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[1] Rollo, p. 192.

[2] Rollo, p. 208.

[3] Fourth Division, composed of Associate Justices: Mariano M. Umali (ponente); Romeo J. Callejo, Sr. (member); and Quirino D. Abad Santos, Jr. (chairman).

[4] Issued by Judge Angel V. Colet (Rollo, p. 311).

[5] Rollo, pp. 54; Amended Complaint, Rollo, p. 70.

[6] Records, p. 74.

[7] Rollo, p. 92.

[8] Rollo, p. 99.

[9] Rollo, p. 103.

[10] Mariano Torres Y Chavarria v. Francisco E. Fernandez, CA G.R. No. 47004-R.

[11] Rollo, p. 104.

[12] Rollo, p. 102.

[13] Rollo, p. 105.

[14] Rollo, p. 106.

[15] Rollo, p. 107.

[16] Court of Appeals Rollo, p. 113.

[17] Exhibit 3-B, Folder of Exhibits.

[18] Rollo, p. 19.

[19] Exhibit B, Folder of Exhibits.

[20] Answer, Rollo, p. 63.

[21] Ibid., Rollo, pp. 65-66.

[22] Id., Rollo, p. 66.

[23] Rollo, p. 76.

[24] Records, p. 342.

[25] Rollo, p. 25.

[26] Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

Upon a written contract;

Upon an obligation created by law;

Upon a judgment.

[27] Art. 1141. 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.

[28] *Danguilan v. Intermediate Appellate Court*, 168 SCRA 22, 31 [1988], citing *Garchitorena v. Almeda*, 48 O.G. 3432 [1950]; *Fidelity Deposit Co. v. Wilson*, 8 Phil. 51 [1907].

[29] *Santos v. Santos, et al.*, G.R. No. 133895, October 2, 2001; citing *Montenegro v. Roxas de Gomez*, 58 Phil. 723 [1993]; *Pasagui v. Villablanca*, 68 SCRA 18 [1975].

[30] *Danguilan*, *supra*.

[31] *Integrated Packaging Corporation v. Court of Appeals, et al.*, 333 SCRA 170 [2000]; citing *De Leon*, *Comments and Cases on Sales*, p. 5 [1995]; *Tolentino*, *IV Civil Code of the Philippines*, p. 175 [1985].

**[32] 253 SCRA 187, 194 [1996].**

[33] Took effect on February 1, 1903.

[34] Sec. 70. Adverse Claim — Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.

The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of said period, the annotation of adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest: Provided, however, that after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.

Before the lapse of thirty days aforesaid, any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and the court shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the registration thereof shall be ordered cancelled. If, in any case, the court, after notice and hearing shall find that the adverse claim thus registered was frivolous, it may fine the claimant in an amount not less than one thousand pesos, nor more than five thousand pesos, in its discretion. Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the Register of Deeds a sworn petition to that effect. (P.D. No. 1529 took effect on June 11, 1978).

[35] *Sanojas v. Court of Appeals*, 258 SCRA 79, 93-94 [1996].

[36] 132 SCRA 209, 211-212 [1984], citing *Roxas v. Dinglasan*, 28 SCRA 430 (1969); *Jovellanos Dimalanta*, 105 Phil. 1250 (1959).

[37] Sec. 57. An owner desiring to convey in fee his registered land or any portion thereof shall execute a deed of conveyance, which the grantor or grantee may present to the register of deeds in the province where the land lies, The grantor's duplicate certificate shall be produced and presented at the same time. The register of deeds shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee, and shall prepare and deliver to him an owner's duplicate certificate. The register of deeds shall note upon the original and duplicate certificates the date of transfer, the volume and page of the registration book where the new certificate is registered, and a reference by number to the last prior certificate.

The grantor's duplicate certificate shall be surrendered, and the word "canceled" stamped upon it. The original certificate shall also be stamped "canceled." The deed of conveyance shall be filed and indorsed with the number and place of registration of the certificate of title of the land conveyed.

[38] SEC. 55. No new certificate of title shall be entered, no memorandum shall be made upon any certificate of title by the register of deeds, in pursuance of any deed or other voluntary instrument, unless the owner's duplicate certificate is presented for such endorsement, except in cases expressly provided for in this Act, or upon the order of the court for cause shown; and whenever such order is made, a memorandum thereof shall be entered upon the new certificate of title and upon the owner's duplicate...

The production of the owner's duplicate certificate whenever a voluntary instrument is presented for registration shall be conclusive authority from the registered owner to the register of deeds to enter a new certificate or to make a memorandum shall be signing upon the registered owner and upon all persons claiming under him in favor of every purchaser for value and in good faith...(Now Section 52 of P.D. No. 1529)

[39] L.P. Leviste & Company, Inc. v. Noblejas et al., 89 SCRA 520, 529 [1979].

[40] R.F. Navarro & Co., Inc. v. Hon. Fotunato A. Vailoces, G.R. No. 102313, July 12, 2001, citing Vda. De Cabrera v. Court of Appeals, 267 SCRA 339 [1997].

[41] Pangilinan, et al., v. Court of Appeals, et al., 279 SCRA 590, 601 [1997].

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