AZNAR BROTHERS REALTY COMPANY, PETITIONER, VS. LAURENCIO AYING, IN HIS OWN BEHALF AND IN BEHALF OF THE OTHER HEIRS OF EMILIANO AYING, PAULINO AYING, IN HIS OWN BEHALF AND IN BEH...

G.R. NO. 144773. May 16, 2005

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

This resolves the petition for review on certiorari seeking the modification of the Decision[1] of the Court of Appeals (CA) dated March 7, 2000 which affirmed with modification the Decision of the Regional Trial Court (RTC) of Lapu-Lapu City, Branch 27 in Civil Case No. 2930-L; and the Resolution dated August 2, 2000 denying petitioner's motion for reconsideration of the aforementioned decision.

The antecedent facts are as follows:

The disputed property is Lot No. 4399 with an area of 34,325 square meters located at Dapdap, Lapu-Lapu City. Crisanta Maloloy-on petitioned for the issuance of a cadastral decree in her favor over said parcel of land. After her death in 1930, the Cadastral Court issued a Decision directing the issuance of a decree in the name of Crisanta Maloloy-on's eight children, namely: Juan, Celedonio, Emiliano, Francisco, Simeon, Bernabe, Roberta and Fausta, all surnamed Aying. The certificate of title was, however, lost during the war.

Subsequently, all the heirs of the Aying siblings executed an Extra-Judicial Partition of Real Estate with Deed of Absolute Sale dated March 3, 1964, conveying the subject parcel of land to herein petitioner Aznar Brothers Realty Company. Said deed was registered with the Register of Deeds of Lapu-Lapu City on March 6, 1964 under Act No. 3344 (the law governing registration for unregistered land), and since then, petitioner had been religiously paying real property taxes on said property.

In 1988, herein petitioner filed a Petition for Reconstitution of the Original Title as the original title over the subject property had been lost during the war. On April 12, 1988, the court granted said petition, thereby directing the Register of Deeds of Lapu-Lapu City to issue a reconstituted title in the name of the abovementioned Aying siblings. Thus, Original Certificate of Title (OCT) No. RO-2856 was issued.

In 1991, petitioner, claiming to be the rightful owner of the subject property, sent out notices to vacate, addressed to persons occupying the property. Unheeded, petitioner then filed a complaint for ejectment against the occupants before the Metropolitan Trial Court (MTC), Lapu-Lapu City.

On February 1, 1994, the MTC ordered the occupants to vacate the property. The case eventually reached this Court, docketed as G.R. No. 128102, entitled Aznar Brothers Realty Company vs. Court of Appeals, Luis Aying, Demetrio Sida, Felomino Augusto, Federico Abing, and Romeo Augusto.[2] On March 7, 2000, a Decision was promulgated in favor of herein petitioner, declaring it as the rightful possessor of the parcel of land in question.

Meanwhile, herein respondents, along with other persons claiming to be descendants of the eight Aying siblings, all in all numbering around 220 persons, had filed a complaint for cancellation of the Extra-Judicial Partition with Absolute Sale, recovery of ownership, injunction and damages with the RTC of Lapu-Lapu City. The complaint was dismissed twice without prejudice. Said complaint was re-filed on August 19, 1993, docketed as Civil Case No. 2930-L.

In their amended complaint, herein respondents (plaintiffs before the RTC) alleged that: they are co-owners of subject property, being descendants of the registered owners thereof under OCT No. RO-2856; they had been in actual, peaceful, physical, open, adverse, continuous and uninterrupted possession in concept of owner of subject parcel of land since time immemorial; their possession was disturbed only in the last quarter of 1991 when some of them received notices to vacate from petitioner and several weeks thereafter, earthmoving equipment entered the disputed land, bulldozing the same and destroying plants, trees and concrete monuments ("mohon"); respondents discovered that such activities were being undertaken by petitioner together with Sta. Lucia Realty and Development, Inc.; petitioner claimed to be the owner of subject property by virtue of an extra-judicial partition of real estate with deed of absolute sale executed in petitioner's favor by the alleged heirs of Crisanta Maloloy-on; the aforementioned extra-judicial partition of real estate with deed of absolute sale is a fraud and is null and void ab initio because not all the co-owners of subject property affixed their signature on said document and some of the co-owners who supposedly signed said document had been dead at the time of the execution thereof; petitioner entered subject land in bad faith, knowing fully well that it did not have any right to the land and used force, threat and intimidation against respondents; and they suffered moral damages.[3]

Petitioner (defendant before the RTC) filed its Answer, denying that respondents are the lawful owners of subject parcel of land by virtue of their being descendants or heirs of the registered owners of subject property. Instead, petitioner alleged that it had been in actual possession of subject land as owner thereof by virtue of the extra-judicial partition of real property and deed of absolute sale executed in its favor; that in fact, it had been paying taxes thereon religiously; that it tolerated about 6 persons to live on said land but said persons were eventually ejected by court order. Petitioner then raised the affirmative defenses of failure to state cause of action and prescription, as it took respondents 27 years, 10 months and 27 days to file the action to recover subject property, when an action to recover property based on an implied trust should be instituted within 4 years from discovery of the fraud.[4]

In the Pre-Trial Order dated January 30, 1995 of the RTC, the issues were narrowed down to the following:

- Whether or not the plaintiffs [herein respondents] are the heirs of the registered owners of Lot No. 4399.

- Whether or not plaintiffs are the owners of Lot No. 4399.

- Whether or not the defendant Aznar [herein petitioner] is estopped to make any claim on Lot No. 4399.

- Whether or not the defendant Aznar is a builder in bad faith.

- Whether or not the defendants are liable for damages and attorney's fees in favor of the plaintiffs.

- Whether or not the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale is valid and had, in effect, validly conveyed to defendant Aznar Lot No. 4399.

- Whether or not the plaintiffs' action has prescribed.[5]

After trial, the RTC rendered a Decision dated July 4, 1997, ruling that respondents' evidence failed to prove that the extra-judicial partition with deed of absolute sale was a totally simulated or fictitious contract and concluded that said document is valid, thus, effectively conveying to petitioner the property in question. It further held that

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respondents' action had prescribed in that the action is considered as one for reconveyance based on implied or constructive trust, it prescribed in 10 years from the registration of the deed on March 6, 1964; and if the action is considered as one for annulment of contract on the ground of fraud, it should have been filed within 4 years from discovery of the fraud. The trial court also ruled that respondents failed to present any admissible proof of filiation, hence, they were not able to prove that they are indeed heirs of the eight Aying siblings who appear as the registered owners under OCT No. RO-2856.

The dispositive portion of the RTC Decision reads as follows:

> WHEREFORE, judgment is hereby rendered dismissing the amended complaint on the ground of prescription, and declaring the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale dated March 3, 1964 as valid and binding, adjudging that Lot 4399 with an area of 34,325 square meters located at Dapdap, Mactan, Lapu-Lapu City had been validly conveyed to and in favor of Aznar Brothers Realty Company, and directing the Register of Deeds of Lapu-Lapu City to register the above-mentioned deed in accordance with law and to cancel Original Certificate of Title No. RO-2856, and to issue a transfer certificate of title in the name of Aznar Brothers Realty Company upon payment of the necessary registration fees pursuant thereto.
>
> The Writ of Preliminary Injunction issued in this case is hereby ordered dissolved.
>
> The Motion for Contempt filed by the plaintiffs against defendants is dismissed for want of factual and legal basis.
>
> Costs against the plaintiffs.
>
> SO ORDERED.[6]

Herein respondents appealed the foregoing decision to the CA and on March 7, 2000, said court promulgated its Decision, the dispositive portion of which is reproduced hereunder:

> THE FOREGOING CONSIDERED, the contested Decision while AFFIRMED is hereby MODIFIED. The heirs of Emiliano Aying, Simeon Aying and Roberta Aying are hereby declared as the lawful owners of the contested property but equivalent only to 3/8.
>
> SO ORDERED.

In modifying the RTC judgment, the CA ratiocinated that "an action for recovery of possession of registered land never prescribes in view of the provision of Section 44, Act No. 496 (now Sec. 47, PD 1520), to the effect that no title to registered land in derogation to that of a registered owner shall be acquired by prescription." The CA further ruled that even if the action is deemed to be based on implied trust, prescription did not begin to run since there is no evidence that positive acts of repudiation were made known to the heirs who did not participate in the execution of the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale. Thus, striking down the RTC's ruling that the respondents' complaint is dismissible on the ground of prescription, the CA held instead that herein respondents' action had not prescribed but upheld the validity of the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale, except as to the shares of the heirs of Emiliano, Simeon and Roberta, who did not participate in the execution of said document.

Herein petitioner's motion for reconsideration of the CA decision was denied per Resolution dated August 2, 2000.

Hence, the present petition for review on certiorari assailing the CA decision on the following grounds:

> I
>
> THE COURT OF APPEALS ERRED IN FAILING TO APPLY THE RULE THAT AN HEIR OF THE

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> ORIGINAL REGISTERED OWNER MAY LOSE HIS RIGHT TO RECOVER A TITLED PROPERTY BY REASON OF LACHES;
>
> II
>
> THE COURT OF APPEALS ERRED IN FAILING TO APPLY THE RULE THAT THE ACT OF REGISTRATION OF THE DEED OF PARTITION WITH SALE MAY BE CONSIDERED AN UNEQUIVOCAL REPUDIATION OF THE TRUST GIVING RISE TO PRESCRIPTION;
>
> III
>
> THE COURT OF APPEALS ERRED IN FAILING TO APPLY THE PROVISIONS OF ARTICLE 1104 OF THE CIVIL CODE TO THE EFFECT THAT IN THE ABSENCE OF BAD FAITH OR FRAUD, THE PARTITION WITH PRETERITION OF ANY COMPULSORY HEIR SHALL NOT BE RESCINDED.[7]

In their Comment, respondents argue that this case is an action to declare as null and void the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale, hence, under Article 1410 of the Civil Code, an action for declaration of an inexistent contract does not prescribe. Respondents further posit that the principle of laches should be applied against petitioner and not against them, as they (respondents) had been in actual possession of the subject property, while petitioner merely brought action to eject them more than 29 years after the alleged execution of the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale. They also refuted petitioner's arguments regarding the application of the principles of implied and constructive trusts in this case.

At the outset, it should be stressed that not all the plaintiffs who filed the amended complaint before the trial court had been impleaded as respondents in the present petition. The only parties impleaded are the heirs of Emiliano, Simeon and Roberta Aying, whom the CA adjudged as owners of a 3/8 portion of the land in dispute for not having participated in the execution of the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale.

It is significant to note that herein petitioner does not question the CA conclusion that respondents are heirs of the aforementioned three Aying siblings. Hence, the trial court and appellate court's findings that the Extra- Judicial Partition of Real Estate with Deed of Absolute Sale was not forged nor simulated and that the heirs of Emiliano, Simeon and Roberta Aying did not participate in the execution thereof, are now beyond cavil.

The issues raised by petitioner for the Court's resolution are (1) whether or not respondents' cause of action is imprescriptible; and (2) if their right to bring action is indeed imprescriptible, may the principle of laches apply.

Respondents alleged in their amended complaint that not all the co-owners of the land in question signed or executed the document conveying ownership thereof to petitioner and made the conclusion that said document is null and void. We agree with the ruling of the RTC and the CA that the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale is valid and binding only as to the heirs who participated in the execution thereof, hence, the heirs of Emiliano, Simeon and Roberta Aying, who undisputedly did not participate therein, cannot be bound by said document.

However, the facts on record show that petitioner acquired the entire parcel of land with the mistaken belief that all the heirs have executed the subject document. Thus, the trial court is correct that the provision of law applicable to this case is Article 1456 of the Civil Code which states:

> ART. 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.

In Vda. De Esconde vs. Court of Appeals,[8] the Court expounded thus:

> Construing this provision of the Civil Code, in Philippine National Bank v. Court of Appeals, the Court stated:

> A deeper analysis of Article 1456 reveals that it is not a trust in the technical sense for in a typical trust, confidence is reposed in one person who is named a trustee for the benefit of another who is called the cestui que trust, respecting property which is held by the trustee for the benefit of the cestui que trust. A constructive trust, unlike an express trust, does not emanate from, or generate a fiduciary relation. While in an express trust, a beneficiary and a trustee are linked by confidential or fiduciary relations, in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary.[9]

The concept of constructive trusts was further elucidated in the same case, as follows:

> . . . implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties. In turn, implied trusts are either resulting or constructive trusts. These two are differentiated from each other as follows:
> Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature of circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another. On the other hand, constructive trusts are created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.[10] (Emphasis supplied)

Based on such concept of constructive trusts, the Court ruled in said case that:

> The rule that a trustee cannot acquire by prescription ownership over property entrusted to him until and unless he repudiates the trust, applies to express trusts and resulting implied trusts. However, in constructive implied trusts, prescription may supervene even if the trustee does not repudiate the relationship. Necessarily, repudiation of said trust is not a condition precedent to the running of the prescriptive period.[11]

The next question is, what is the applicable prescriptive period?

In Amerol vs. Bagumbaran,[12] the Court expounded on the prescriptive period within which to bring an action for reconveyance of property based on implied or constructive trust, to wit:

> . . . under the present Civil Code, we find that just as an implied or constructive trust is an offspring of the law (Art. 1456, Civil Code), so is the corresponding obligation to reconvey the property and the title thereto in favor of the true owner. In this context, and vis-á-vis prescription, Article 1144 of the Civil Code is applicable.
> 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.

xxx xxx xxx

An action for reconveyance based on an implied or constructive trust must perforce prescribe in ten years and not otherwise. A long line of decisions of this Court, and of very recent vintage at that, illustrates this rule. Undoubtedly, it is now well-settled that an action for reconveyance based on an implied or constructive trust prescribes in ten years from the issuance of the Torrens title over the property.[13]

It has also been ruled that the ten-year prescriptive period begins to run from the date of registration of the deed or

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the date of the issuance of the certificate of title over the property, but if the person claiming to be the owner thereof is in actual possession of the property, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe.[14]

In the present case, respondents Wenceslao Sumalinog, an heir of Roberta Aying; Laurencio Aying, an heir of Emiliano Aying; and Paulino Aying, an heir of Simeon Aying, all testified that they had never occupied or been in possession of the land in dispute.[15] Hence, the prescriptive period of ten years would apply to herein respondents.

The question then arises as to the date from which the ten-year period should be reckoned, considering that the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale was registered under Act No. 3344 and not under Act No. 496 (Land Registration Act), despite the fact the land in dispute was already titled under Act No. 496 in the names of the Aying siblings at the time the subject document was executed.

In Spouses Abrigo vs. De Vera,[16] it was held that registration of instruments must be done in the proper registry, in order to affect and bind the land and, thus, operate as constructive notice to the world.[17] Therein, the Court ruled:

> x x x If the land is registered under the Land Registration Act (and has therefore a Torrens Title), and it is sold but the subsequent sale is registered not under the Land Registration Act but under Act 3344, as amended, such sale is not considered REGISTERED x x x .[18]

In this case, since the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale was registered under Act No. 3344 and not under Act No. 496, said document is deemed not registered. Accordingly, the ten-year prescriptive period cannot be reckoned from March 6, 1964, the date of registration of the subject document under Act No. 3344. The prescriptive period only began to run from the time respondents had actual notice of the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale.

The only evidence on record as to when such prescriptive period commenced as to each of the respondents are Wenceslao Sumalinog's (heir of Roberta Aying) testimony that about three years after 1964, they already learned of the existence of the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale;[19] and Laurencio Aying's (heir of Emiliano Aying) admission that he found out about the sale of the land in dispute a long time ago and can only estimate that it must be after martial law.[20] Paulino Aying (heir of Simeon Aying) gave no testimony whatsoever as to when the children of Simeon Aying actually learned of the existence of the document of sale. On the other hand, petitioner did not present any other evidence to prove the date when respondents were notified of the execution of the subject document.

In view of the lack of unambiguous evidence of when the heirs of Emiliano Aying and Simeon Aying discovered the existence of the document of sale, it must be determined which party had the burden of proof to establish such fact.

The test for determining where the burden of proof lies is to ask which party to an action or suit will fail if he offers no evidence competent to show the facts averred as the basis for the relief he seeks to obtain.[21] Moreover, one alleging a fact that is denied has the burden of proving it and unless the party asserting the affirmative of an issue sustains the burden of proof of that issue by a preponderance of the evidence, his cause will not succeed.[22] Thus, the defendant bears the burden of proof as to all affirmative defenses which he sets up in answer to the plaintiff's claim or cause of action; he being the party who asserts the truth of the matter he has alleged, the burden is upon him to establish the facts on which that matter is predicated and if he fails to do so, the plaintiff is entitled to a verdict or decision in his favor.[23]

In the case at bar, it was petitioner, as the defendant before the RTC, which set up in its Answer the affirmative defense of prescription. It was, therefore, incumbent upon petitioner to prove the date from which the prescriptive period began to run. Evidence as to the date when the ten-year prescriptive period began exists only as to the heirs of Roberta Aying, as Wenceslao Sumalinog admitted that they learned of the existence of the document of sale in the year 1967. As to the heirs of Emiliano Aying and Simeon Aying, there is no clear evidence of the date when they discovered the document conveying the subject land to petitioner. Petitioner miserably failed to adduce proof of when the heirs of Emiliano Aying and Simeon Aying were notified of the subject document. Hence, with regard to said heirs, the Court may consider the admission in the amended complaint that they learned of the conveyance of the disputed land only in 1991 when petitioner sent notices to vacate to the occupants of the subject land, as the date from which the ten-year prescriptive period should be reckoned.

Respondents filed their Amended Complaint on December 6, 1993.[24] Thus, with regard to respondent heirs of Roberta Aying who had knowledge of the conveyance as far back as 1967, their cause of action is already barred by prescription when said amended complaint was filed as they only had until 1977 within which to bring action. As to the respondent heirs of Emiliano and Simeon Aying, they were able to initiate their action for reconveyance of property based on implied or constructive trust well within the ten-year prescriptive period reckoned from 1991 when they were sent by petitioner a notice to vacate the subject property.

Evidently, laches cannot be applied against respondent heirs of Emiliano and Simeon Aying, as they took action to protect their interest well within the period accorded them by law.

With regard to petitioner's argument that the provision of Article 1104 of the Civil Code, stating that a partition made with preterition of any of the compulsory heirs shall not be rescinded, should be applied, suffice it to say that the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale is not being rescinded. In fact, its validity had been upheld but only as to the parties who participated in the execution of the same. As discussed above, what was conveyed to petitioner was ownership over the shares of the heirs who executed the subject document. Thus, the law, particularly, Article 1456 of the Civil Code, imposed the obligation upon petitioner to act as a trustee for the benefit of respondent heirs of Emiliano and Simeon Aying who, having brought their action within the prescriptive period, are now entitled to the reconveyance of their share in the land in dispute.

IN VIEW OF THE FOREGOING, the petition is PARTIALLY GRANTED and the Decision of the Court of Appeals dated March 7, 2000 is MODIFIED, as follows: The amended complaint of the heirs of Roberta Aying is DISMISSED on the ground of prescription. However, the heirs of Emiliano Aying and Simeon Aying, having instituted the action for reconveyance within the prescriptive period, are hereby DECLARED as the LAWFUL OWNERS of a 2/8 portion of the parcel of land covered by Original Certificate of Title No. RO-2856.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Bernardo Ll. Salas (retired), with former Presiding Justice Salome A. Montoya (retired) and Associate Justice Presbitero J. Velasco (now Court Administrator), concurring.

[2] G.R. No. 128102, March 7, 2000, 327 SCRA 359.

[3] See Amended Complaint, pp. 45-57, Records, Vol. 1.

[4] See Answer, appearing after page 193 of the Records, Vol. 1. Said pleading bears no pagination.

[5] Pre-Trial Order, p. 208, Records, Vol. 1.

[6] Rollo, p. 57.

[7] Rollo, p. 23.

[8] G.R. No. 103635, February 1, 1996, 253 SCRA 66.

[9] Id. at p. 74.

[10] Id. at pp.73-74.

[11] Id. at pp. 75-76.

[12] No. L-33261, September 30, 1987, 154 SCRA 396.

[13] Id. at pp. 406-407.

[14] Heirs of Jose Olviga vs. Court of Appeals, G.R. No. 104813, October 21, 1993, 227 SCRA 330.

[15] See TSN of September 29, 1995, p. 11; TSN of November 28, 1995, p. 8; TSN of February 16, 1996, p. 25.

[16] G.R. No. 154409, June 21, 2004.

[17] Spouses Abrigo vs. De Vera, G.R. No. 154409, June 21, 2004, citing Soriano v. Heirs of Magali, 8 SCRA 489 (1963).

[18] Paras, Civil Code of the Philippines Annotated (1990), Vol. V, p. 154.

[19] TSN of September 29, 1995, p. 10.

[20] TSN of November 28, 1995, p. 10.

[21] Republic vs. Vda. De Neri, G.R. No. 139588, March 4, 2004, 424 SCRA 676.

[22] 20 Am. Jur. 138-139.

[23] Francisco, The Revised Rules of Court in the Philippines, Vol. VII, Part II, 1997 ed., p. 7.

[24] See Record, Vol. 1, p. 42.

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