

AQUILA LARENA JOINED BY HER HUSBAND, CANDIDO MERCADERA, PETITIONERS, VS. FRUCTUOSA MAPILI, JOSE MAPILI AND ROSELA VENELES, RESPONDENTS.

G.R. No. 146341. August 07, 2003

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In denying this appeal, the Court reiterates the well-known rule that the findings of fact of the Court of Appeals, affirming those of the trial court, are entitled to respect and even finality. Petitioners have not convinced this Court that their case constitutes one of the exceptions to this doctrine.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, challenging the July 21, 2000 Decision[2] and the November 8, 2000 Resolution[3] of the Court of Appeals (CA) in CA-GR No. 44927. The dispositive portion of the assailed Decision reads as follows:

"WHEREFORE, foregoing premises considered, the appeal, devoid of merit in fact and in law is hereby ordered DISMISSED, and the judgment of the Trial Court AFFIRMED IN TOTO, with costs against [petitioners]."[4]

The assailed Resolution denied petitioners' Motion for Reconsideration.

The Facts

The appellate court, quoting the Decision[5] of the Regional Trial Court (RTC) of Dumaguete City (Branch 30), summarized the facts of the case as follows:

"The record shows that Hipolito Mapili during his lifetime owned a parcel of unregistered land situated at Balabag, Valencia, Negros Oriental which was declared for taxation purposes in his name under Tax Declaration No. 1419 described as follows:

'A parcel of unregistered land situated at Balabag, Valencia, Negros Oriental. Bounded on the North by Apolonia Mapili 37.00; on the South by the Provincial Road 41.00; on the East by Perfecto Ozoa 11.00; on the West by Emeliana 16.40. Containing an area of Five Hundred Thirty Four (534) square meters more or less.'

'Hipolito Mapili died and was buried on July 14, 1934. He was survived by his only son, Magno Mapili and daughters Julia, Azucena, Anatolia and Abundia. These daughters have since died without issue. Magno Mapili died in 1944 survived by his widow, Rosela Veneles, and children Fructuosa, Jose, Generosa and Pantaleona.

'Under date of October 28, 1949, Filomena[6] Larena executed an Affidavit of Transfer of Real Property involving the property covered by Tax Declaration No. 1419, alleging that she bought the property from Hipolito Mapili. After the death of Filomena, Aquila Larena, her niece[,] took possession of the property[,] claiming that she bought the same from her said aunt.

`Plaintiffs Fructuosa Mapili, Jose Mapili and Rosela Veneles are suing Aquila Larena, the successor in interest of Filomena Larena[,] impleading Candido Mercadera, Aquila's husband, [as] co-defendant. Defendants Generosa Mapili-Bahandi and Pantaleona Mapili, sisters of [p]laintiffs[,] were impleaded as co-defendants for being unwilling co-plaintiffs. Defendant Rural Bank of Valencia, Inc.[7] was also sued as the banking institution from [which] defendant Aquila Larena obtained a loan using OCT No. FV-30714 of the property in question as collateral.

`Plaintiffs' [C]omplaint alleged that Filomena Larena falsely stated in her Affidavit of Transfer of Real Property (Exh. `B') that Hipolito Mapili sold the property to her on October 28, 1949[,] which Hipolito Mapili could not have done because he was already dead at that time (Exhibit `C').

`Defendants' Answer contends that Filomena Larena lawfully acquired the said property from Hipolito Mapili in a private document of sale which got lost during the last World War. By reason of the sale, Magno Mapili and his family had to move out of the land [allowing][8] Filomena Larena to take possession thereof as owner. Filomena Larena then sold the property to defendant Aquila Larena on February 17, 1968. Defendant Aquila Larena [attributed the statement in Filomena's affidavit][9] that she purchased the land from Hipolito Mapili on October 28, 1949 to a mistake committed by the one who assisted her in executing said transferor's affidavit.'"[10] (Citations omitted)

Ruling of the Court of Appeals

In dismissing petitioners' appeal, the CA declared that respondents had never lost their right to the land in question, as they were the heirs to whom the property had descended upon the death of the original claimant and possessor. It also found no legal justification for the application of prescription and laches.

Hence this Petition.[11]

The Issues

"1 - Did Felomina Larena, the predecessor of petitioner Aquila Larena, buy the property in question from its original owner Hipolito Mapili?

"2 - Is the lot in question now owned by Petitioner Aquila Larena by virtue of the joint operation of the principles of acquisitive prescription and laches?"[12]

There is really only one issue: Did Filomena (or Felomina) Larena acquire the subject property by means of sale, prescription and/or laches?

The Court's Ruling

The Petition is unmeritorious. The short answer to the above question is "No."

Sole Issue:

The Alleged Acquisition of Property

At the outset, we must emphasize that only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. Well-entrenched, indeed, is the doctrine that questions of fact are not proper subjects in this mode of appeal.[13] The factual findings of the CA affirming those of the trial court are final and conclusive and may not be reviewed on appeal, except under any of the following circumstances: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed

facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[14] Since none of these exceptions is present in this case, the CA's findings of fact remain final and conclusive and may not be reviewed on appeal.

Indeed, as found by both lower courts, the property had descended by succession from Hipolito Mapili to his only son, Magno -- the former's daughters having died without issue -- and on to the latter's own widow and children. These heirs took possession of the property up to the outbreak of the Second World War when they evacuated to the hinterlands, where they remained until the war was over.

It was in the 1970s when Petitioner Aquila Larena took possession of the property, alleging that she had purchased it from her aunt, who in turn claimed to have bought it from Hipolito. Aquila's allegations were never substantiated,[15] and the Affidavit of Transfer on which she had hinged her claim was even declared by the RTC to be spurious.[16] Hipolito was already dead[17] when the alleged transfer was made to her aunt. Not having acquired the property, the latter had nothing to sell.

Even the unwilling co-plaintiffs' testimonies before the RTC are hearsay. Their probative value is not based on personal knowledge,[18] but on the knowledge of some other person who was never presented on the witness stand.[19] Thus, they must be excluded, because the party against whom they were presented was deprived of the opportunity for cross-examination.[20]

The hearsay rule bars the admission of evidence that has not been given under oath or solemn affirmation and, more important, has not been subjected to cross-examination by opposing counsel. Cross-examination is required to test the perception, the veracity and the articulateness of the out-of-court declarant, upon whose reliability the worth of the out-of-court statement depends.[21]

Of no moment in the instant case is the issuance of a Torrens certificate pertaining to the disputed property.[22] It "does not create or vest title,"[23] but is merely an "evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein." [24] Land registration under the Torrens system was never intended to be a means of acquiring ownership.[25] Moreover, the Original Certificate of Title was never formally offered by petitioners. In its Order dated October 1, 1993,[26] the RTC considered their prolonged failure to offer it in evidence[27] as a waiver of their right to offer exhibits.[28] In so ruling, the court *quo* followed the rule that evidence not formally offered should not be considered.[29]

Neither does the existence of tax declarations change our mind. It is not a conclusive evidence of ownership, but a "proof that the holder has a claim of title over the property." [30] Tax Declaration No. 1419 for the year 1949 was registered in the name of the original owner, Hipolito Mapili.[31] A year later, Tax Declaration No. 9839 was registered in the name of Petitioner Aquila's aunt.[32] The RTC noted in its Decision[33] that beginning 1968, the property had already been registered in the name of Petitioner Aquila, as can be seen from Tax Declaration Nos. 18899,[34] 4027[35] and 03-640-C.

Normally, one will not pay taxes on a property not in one's actual or constructive possession.[36] Hence, being good indicia of possession in the concept of owner, the Tax Declarations in the name of Petitioner Aquila may strengthen her *bona fide* claim of acquisition of ownership.[37] Petitioners, however, have not been able to present the evidence needed to tack[38] the date of possession on the property in question.

Supposedly, there were testimonies favorable to petitioners. They allegedly indicate that after the war, the Mapilis returned to a different house that was built, not on the property in question, but on another.[39] They also showed that when the Larenas took possession of the property, there was no opposition.[40] The RTC did not consider

these testimonies, however, but held that the preponderance of evidence was with respondents.[41]

Contrary to the findings of the CA,[42] petitioners raise prescription and laches as special defenses. They contend: "[A]ssuming arguendo that [respondents] have a cause of action regarding the land in question, the same has been long barred by estoppel, laches and prescription[.]"[43] They further argue that even if the rules[44] provide that defenses not pleaded in the Answer are deemed waived, the court shall dismiss the claim if the pleadings or the pieces of evidence on record show that the action is barred by prescription.[45]

Unfortunately for petitioners, prescription cannot be taken in their favor because, as we mentioned earlier, there is no evidence on record that tacks on the property Petitioner Aquila's date of possession. "Acquisitive prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. In order to ripen into ownership, possession must be en concepto de dueño, public, peaceful and uninterrupted."[46] Coupled with the court a quo's finding that the claims of purchase were unsubstantiated, petitioners' acts of a possessory character -- acts that might have been merely tolerated by the owner -- did not constitute possession.[47] No matter how long tolerated possession is continued, it does not start the running of the prescriptive period.[48]

Gratia argumenti that the Tax Declarations indicate the date of actual or constructive possession, petitioners still cannot benefit therefrom. Tax Declaration No. 9839, on the one hand, was registered in 1950 in Filomena's name, not Aquila's. For lack of a just title,[49] the ordinary acquisitive prescription of ten years[50] cannot be applied. Moreover, only twenty-seven years had lapsed at the time the Complaint was filed -- a period that was short of three years for extraordinary acquisitive prescription[51] to apply. Tax Declaration No. 18899, on the other hand, was registered in Aquila's name in 1968. At the time the Complaint was filed, the elapsed period was still short of one year for ordinary acquisitive prescription[52] to apply. The same can be said of Tax Declaration No. 4027, filed for the year 1974, which fell short of seven years.

Laches is likewise unavailing. Defined, it is the "failure or neglect, for an unreasonable and unexplained length of time, to do that which could or should have been done earlier through the exercise of due diligence."[53] It is an "omission to assert a right within a reasonable time, warranting a presumption that the party entitled thereto has either abandoned or declined to assert it."[54]

Assuming that petitioners took possession of the property in the early 1970s, the filing by respondents of the Complaint in 1977 completely negates the assertion that the latter were negligent in asserting their claim.

WHEREFORE, the Petition is hereby DENIED, and the assailed Decision and Resolution AFFIRMED. Costs against petitioners.

SO ORDERED.

Puno, (Chairman), Sandoval-Gutierrez, Corona, and Carpio-Morales, JJ., concur.

[1] Rollo, pp. 4-15.

[2] Id., pp. 16-21. Penned by Justice Jose L. Sabio Jr. and concurred in by Justices Ramon Mabutas Jr. (Division chairman) and Demetrio G. Demetria (member) of the Eighth Division.

[3] Id., pp. 22-23; Justice Eliezer R. de los Santos replaced Justice Demetria as member.

[4] Assailed CA decision, p. 5; rollo, p. 20.

[5] Promulgated on January 21, 1994.

- [6] Petitioners' Memorandum dated July 15, 2001, spells the name as "Felomina" instead of "Filomena."
- [7] In view of the satisfaction of the mortgage debt, the Complaint against the bank was dismissed by the RTC on January 7, 1991, for lack of cause of action. See records, p. 293.
- [8] RTC Decision, p. 2; records, p. 296.
- [9] Id., pp. 3 & 297.
- [10] Assailed CA Decision, pp. 2-3; rollo, pp. 17-18.
- [11] The case was deemed submitted for decision on September 11, 2001, upon receipt by this Court of respondents' Memorandum, which was signed by Attys. Eddie G. Aba and Jose A. Arbas. Petitioners' Memorandum, signed by Atty. Saleto J. Eramas, was filed on August 28, 2001.
- [12] Petitioners' Memorandum, p. 5; rollo, p. 45.
- [13] *Perez v. Court of Appeals*, 374 Phil. 388, 409-410, October 1, 1999.
- [14] *Gonzales v. Court of Appeals*, 358 Phil. 806, 821, October 30, 1998; *Polotan Sr. v. Court of Appeals*, 357 Phil. 250, 256-257, September 25, 1998. See also *Lacanilao v. Court of Appeals*, 330 Phil. 1074, 1079-1080, September 26, 1996.
- [15] RTC Decision, pp. 5-6; records, pp. 299-300.
- [16] Assailed CA Decision, p. 5; rollo, p. 20.
- [17] RTC Decision, p. 1; records, pp. 112 & 295.
- [18] §36 (formerly §30) Rule 130 of the Rules of Court.
- [19] *People v. Licayan*, GR No. 144422, February 28, 2002.
- [20] Regalado, Remedial Law Compendium, Vol. II, 9[th] rev. ed., 2001, pp. 638-639.
- [21] *Country Bankers Insurance Corp. v. Lianga Bay and Community Multi-Purpose Cooperative, Inc.*, GR No. 136914, January 25, 2002.
- [22] RTC Decision, p. 5; records, p. 299.
- [23] *Adriano v. Pangilinan*, GR No. 137471, January 16, 2002, per Panganiban, J.
- [24] *Retuerto v. Barz*, GR No. 148180, December 19, 2001, per Kapunan, J. See also Aquino, *Land Registration and Related Proceedings*, 1997 rev. ed., p. 105.
- [25] *Roxas v. Enriquez*, 29 Phil. 31, 54, December 24, 1914.
- [26] Records, p. 294.
- [27] Minutes and RTC Order dated November 19, 1990; records, pp. 286-288.
- [28] There was no offer of exhibits despite the markings, per TSN, November 19, 1990, pp. 5-6.
- [29] §35 (now §34) of Rule 132 of the Rules of Court.
- [30] *Republic v. Court of Appeals*, 328 Phil. 238, July 12, 1996, per Torres Jr., J. See also *Director of Lands v. IAC*, 209 SCRA 214, 227, May 22, 1992.

[31] RTC Decision, p. 1; records, pp. 110-111, 295.

[32] Id., pp. 5, 113-114, 299. The name indicated was "Felomina Larena."

[33] Up to 1990; RTC Decision, p. 5; records, p. 299.

[34] Records, pp. 115-116.

[35] For the year 1974; records, pp. 117-118.

[36] Republic v. Court of Appeals, *supra*.

[37] Director of Lands v. Intermediate Appellate Court, *supra*.

[38] "x x x [T]acking of possession is allowed only when there is a privity of contract or relationship between the previous and present possessors." South City Homes, Inc. v. Republic, 185 SCRA 693, 700, May 25, 1990, per Cruz, J.

[39] Records, p. 297.

[40] Id., p. 298.

[41] RTC Decision, p. 7; records, p. 301.

Preponderance of evidence is that "adduced by one party which is more conclusive and credible than that of the other party." Stronghold Insurance Co., Inc. v. CA, 173 SCRA 619, 625, May 29, 1989, per Cortes, J.

[42] CA Decision, p. 5; rollo, p. 20.

[43] Page 2 of the Answer filed on February 1, 1978; records, p. 16; rollo, p. 60.

[44] §1 (formerly §2) of Rule 9 of the Rules of Court.

[45] Aznar III v. Bernad, 161 SCRA 276, 283, May 9, 1988.

[46] Lubos v. Galupo, GR No. 139136, January 16, 2002, per Pardo, J. Art. 1118 (formerly Art. 1941) of the Civil Code.

[47] Cuaycong v. Benedicto, 37 Phil. 781, 792-793, March 13, 1918. Art. 1119 (formerly Art. 1942) of the Civil Code.

[48] Cuaycong v. Benedicto, *supra*.

[49] "Just title is an act for the purpose of the transmission of ownership." Tolentino, Civil Code, Vol. II, 1991, p. 26. See also Vda. de Delima v. Tio, 143 Phil. 401, April 30, 1970.

[50] Art. 1134 (formerly Art. 1957) of the Civil Code.

[51] Art. 1137 (formerly Art. 1959) of the Civil Code.

[52] Art. 1134 (formerly Art. 1957) of the Civil Code.

[53] Ramos v. Heirs of Honorio Ramos Sr., GR No. 140848, April 25, 2002, per Panganiban, J.

[54] Westmont Bank (formerly Associated Banking Corp.) v. Ong, GR No. 132560, January 30, 2002, per Quisumbing, J. See also Santiago v. Court of Appeals, 278 SCRA 98, 112, August 21, 1997.

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