

**ARSENIO OLEGARIO AND HEIRS OF ARISTOTELES F. OLEGARIO,
REPRESENTED BY CARMELITA GUZMAN-OLEGARIO, PETITIONERS,
VS. PEDRO C. MARI, REPRESENTED BY LILIA C. MARI-CAMBA,
RESPONDENT.**

G.R. No. 147951. December 14, 2009

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Possession, to constitute the foundation of acquisitive prescription, must be possession under a claim of title or must be adverse. Acts of a possessory character performed by one who holds the property by mere tolerance of the owner are clearly not in the concept of an owner and such possessory acts, no matter how long continued, do not start the running of the period of prescription.

In the present Petition for Review on Certiorari,[1] petitioners assail the April 18, 2001 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 52124, reversing the October 13, 1995 Decision[3] of the Regional Trial Court (RTC) of Pangasinan, Branch 39. The CA declared the respondent herein as the owner of Lot Nos. 17553, 17526 and 14356 of the Mangatarem cadastral survey.

Factual antecedents

As early as 1916,[4] Juan Mari, the father of respondent, declared his ownership over a parcel of land in Nancasalan, Mangatarem for tax purposes. He took possession of the same by delineating the limits with a bamboo fence,[5] planting various fruit bearing trees and bamboos[6] and constructing a house thereon.[7] After a survey made in 1950, Tax Declaration No. 8048[8] for the year 1951 specified the subject realty as a residential land with an area of 897 square meters and as having the following boundaries: North - Magdalena Fernandez; South - Catalina Cacayorin; East - Camino Vecinal; and West - Norberto Bugarin. In 1974, the subject realty was transferred to respondent, Pedro Mari, by virtue of a deed of sale.

Meanwhile, in 1947, Wenceslao Olegario, the husband of Magdalena Fernandez and father of petitioner Arsenio Olegario, filed a new tax declaration[9] for a certain 50-square meter parcel of land, indicating the following boundaries: North - Cesario and Antonio Fernandez; South - Juan Mari; East - Barrio Road; and West - Norberto Bugarin. Then on May 14, 1961, Wenceslao Olegario executed a "Deed of Quit-Claim of Unregistered Property"[10] in favor of Arsenio Olegario transferring to the latter inter alia the aforementioned 50-square meter property.

In the cadastral survey conducted from 1961 to 1962, the subject realty was identified as Lot Nos. 17526, 17553 and 14356 of the Mangatarem Cadastre. At this time, Wenceslao Olegario disputed Juan Mari's claim over Lot Nos. 17526 and 17553. Hence, on the two corresponding survey notification cards dated September 28, 1968,[11] the claimant appeared as "Juan Mari v. Wenceslao Olegario". With regard to Lot No. 14356, the survey notification card named Juan Mari as the claimant.

Sometime around 1988, respondent filed with the Department of Environment and Natural Resources Regional Office in Pangasinan a protest against the petitioners because of their encroachment into the disputed realty. After investigation, said office decided in favor of the respondent and found the latter to be the owner of Lot Nos. 17526, 17553 and 14356. Petitioners did not appeal and the said decision became final and executory.

In 1989, Arsenio Olegario caused the amendment of his tax declaration^[12] for the 50-square meter property to reflect 1) an increased area of 341 square meters; 2) the Cadastral Lot No. as 17526, Pls-768-D;^[13] and 3) the boundaries as: North-NE Lot 16385 & Road; South-NW-Lots 14363 & 6385, Pls-768-D; East-SE-Lot 17552, Pls-768-D and West-SW-Lot 14358, Pls-768-D.

Proceedings before the Regional Trial Court

In 1990, after discovering the amended entries in Arsenio Olegario's Tax Declaration No. 4107-R, respondent filed a complaint^[14] with the RTC of Lingayen, Pangasinan, for Recovery of Possession and Annulment of Tax Declaration No. 4107-R. Respondent alleged, inter alia, that Juan Mari, and subsequently his successor, was deprived by the Olegarios of the possession of portions of subject realty which respondent owned. Trial thereafter ensued.

On October 13, 1995, the RTC rendered judgment in favor of the petitioners, viz:

WHEREFORE, in the light of the foregoing considerations, judgment is hereby rendered as follows:

1. Declaring the defendants-Olegario the owners of Lots 17553 and 17526 of the Mangatarem cadastral survey.
2. Dismissing the plaintiff's Complaint on the ground of prescription of action and on the further ground that [he] failed to prove [his] ownership of any portion of the two lots mentioned in the next preceding paragraph (assuming arguendo that [his] action has not prescribed);
3. Ordering the plaintiff to pay the costs of this suit. No damages are awarded by the Court.

SO ORDERED.^[15]

Proceedings before the Court of Appeals

Respondent appealed to the CA which reversed the trial court's findings. The CA found respondent to have adduced stronger evidence of prior possession and ownership of the disputed realty. The dispositive portion of the CA Decision states:

WHEREFORE, the trial court's Decision dated October 13, 1995 is REVERSED and SET ASIDE and a new one is hereby entered declaring appellant Pedro C. Mari represented by Lilia C. Mari-Camba the lawful owner of Lot Nos. 17526, 17553 and 14356 of the Mangatarem Cadastre, without pronouncement as to costs.

SO ORDERED.^[16]

Petitioners, without filing a motion for reconsideration of the CA Decision, thereafter filed the present petition for review.

Issues

Petitioners raise the following issues:

1. Whether or not there was failure on [the part of] the Court of Appeals to appreciate and give weight to the evidence presented by the petitioners;
2. Whether or not the Court of Appeals erred in its decision in adjudicating ownership of the said lots in favor

of the respondent and [in] giving great weight to the respondent's evidence;

3. Whether or not the Court of Appeals erred in its failure to declare the action as barred by laches;

4. Whether or not the Court of Appeals failed to find an[d] declare the petitioners as having acquired ownership of the disputed lots by acquisitive prescription;

5. Whether or not the Court of Appeals erred in adjudicating the lot in favor of respondent and also [in] denying award of damages to petitioners.[17]

Petitioners' Arguments

Petitioners contend that they have been in possession of the disputed lots since 1948 or thereabouts, or for more than 30 years already. Hence, they acquired ownership thereover by virtue of prescription. They also impute negligence or failure on the part of respondent to assert his alleged rights within a reasonable time.

Respondent's Arguments

On the other hand, respondent asserts that petitioners claim ownership over only a certain 50-square meter parcel of land, as evidenced by their tax declaration which consistently declared only such area. It was only in September 1989 that petitioners sought to expand the area of their claim to 341 square meters by virtue of a letter to the Provincial Assessor of Pangasinan. Hence, respondent asserts that prescription has not set in. Respondent also contends that petitioners' occupancy has been illegal from the point of inception and thus, such possession can never ripen into a legal status.

Our Ruling

The petition has no merit.

Petitioners' Evidence is Weak

Considering the conflicting findings of the RTC and the CA, a circumstance that constitutes an exception[18] to the general rule that only questions of law are proper subjects of a petition under Rule 45, we shall assess and weigh the evidence adduced by the parties and shall resolve the questions of fact raised by petitioners.

A study of the evidence presented by petitioners shows that the CA did not err in finding such evidence weaker than that of respondent. Arsenio Olegario testified that as early as 1937 their family had built a nipa house on the land where they lived. Yet he also testified that the former owner of the land was his mother, Magdalena Fernandez.[19] Significantly, Magdalena Fernandez has never claimed and was never in possession or ownership of Lot Nos. 17553, 17526 and 14356. Petitioners' evidence thus supports the conclusion that in 1937 they were in possession, not of Lot No. 17526, but of their mother's land, possibly 50 square meters of it, which is the approximate floor area of the house. Conversely, petitioners' evidence fails to clearly prove that in 1937 they were already occupying the disputed lots. The records, in fact, do not show exactly when the Olegarios entered and started occupying the disputed lots.

The evidence shows that a hollow block fence, an improvement introduced by the Olegarios in 1965, now exists somewhere along the disputed lots. Petitioners' claim that they were in possession of the disputed lots even prior to 1965 based on the existence of the bamboo fence on the boundary of their land preceding the existence of the hollow block fence, however, holds no water. The testimony of Marcelino Gutierrez shows that formerly there was a bamboo fence demarcating between the land of the Olegarios and the Maris and that in 1964 or 1965 a hollow block fence was constructed. He did not say, however, that the place where the hollow block fence was constructed was the exact same place where the bamboo boundary fence once stood. Even the testimony of

Arsenio Olegario was ambiguous on this matter, viz:

Q

When was the [concrete] hollow block [fence] separating your property [from] the property of Juan Mari constructed?

A

It was constructed in 1965.

Q

Before the construction of that concrete hollow block fence between your land and the land of Juan Mari [in] 1965, what was the visible boundary between your land and the land of Juan Mari?

A

Bamboo fence, sir.[20]

Arsenio merely testified that a bamboo fence was formerly the visible boundary between his land and the land of Juan Mari; and that a concrete hollow block fence was constructed in 1965. His testimony failed to show that the concrete hollow block fence was constructed in the same position where the bamboo boundary fence once stood.

On the other hand, there is ample evidence on record, embodied in Tax Declaration No. 9404 for the year 1947; the survey sketch plan of 1961; and the survey plan of 1992, that the boundary claimed by the Olegarios kept moving in such a way that the portion they occupied expanded from 50 square meters (in the land of his mother) to 377 square meters.[21] Viewed in relation to the entire body of evidence presented by the parties in this case, these documents cannot plausibly all be mistaken in the areas specified therein. As against the bare claim of Arsenio[22] that his predecessor merely made an inaccurate estimate in providing 50 square meters as the area claimed by the latter in 1947 in the tax declaration,[23] we find it more plausible to believe that each of the documents on record stated the true area measurements of the parties' claims at the particular time each document was executed.

As correctly found by the CA, the earliest that petitioners can be considered to have occupied the disputed property was in 1965 when the concrete hollow block fence was constructed on the disputed lots.

Ownership and Prescription

As previously mentioned, respondent's predecessor, Juan Mari, had declared the disputed realty[24] for tax purposes as early as 1916. The tax declarations show that he had a two storey house on the realty. He also planted fruit bearing trees and bamboos thereon. The records[25] also show that the 897-square meter property had a bamboo fence along its perimeter. All these circumstances clearly show that Juan Mari was in possession of subject realty in the concept of owner, publicly and peacefully since 1916 or long before petitioners entered the disputed realty sometime in 1965.

Based on Article 538 of the Civil Code,[26] the respondent is the preferred possessor because, benefiting from his father's tax declaration of the subject realty since 1916, he has been in possession thereof for a longer period. On the other hand, petitioners acquired joint possession only sometime in 1965.

Despite 25 years of occupying the disputed lots, therefore, petitioners did not acquire ownership. Firstly, they had no just title. Petitioners did not present any document to show how the titles over Lot Nos. 17526 and 17533 were transferred to them, whether from respondent, his predecessor, or any other person.[27] Petitioners, therefore,

could not acquire the disputed real property by ordinary prescription through possession for 10 years. Secondly, it is settled that ownership cannot be acquired by mere occupation. Unless coupled with the element of hostility towards the true owner, occupation and use, however long, will not confer title by prescription or adverse possession.[28] In other words, possession, to constitute the foundation of a prescriptive right, must be possession under claim of title, that is, it must be adverse.[29]

Petitioners' acts of a possessory character - acts that might have been merely tolerated by the owner - did not constitute possession. No matter how long tolerated possession is continued, it does not start the running of the prescriptive period.[30] Mere material possession of land is not adverse possession as against the owner and is insufficient to vest title, unless such possession is accompanied by the intent to possess as an owner. There should be a hostile use of such a nature and exercised under such circumstance as to manifest and give notice that the possession is under a claim of right.[31]

Petitioners have failed to prove that their possession was adverse or under claim of title or right. Unlike respondent, petitioners did not have either the courage or forthrightness to publicly declare the disputed lots as owned by them for tax purposes. Tax declarations "prove that the holder has a claim of title over the property. Aside from manifesting a sincere desire to obtain title thereto, they announce the holder's adverse claim against the state and other interested parties".[32] Petitioners' omission, when viewed in conjunction with respondent's continued unequivocal declaration of ownership over, payment of taxes on and possession of the subject realty, shows a lack of sufficient adverseness of the formers' possession to qualify as being one in the concept of owner.

The only instance petitioners assumed a legal position sufficiently adverse to respondent's ownership of the disputed properties was when they declared Lot No. 17526 for tax purposes in their name in 1989.[33] Since then and until the filing of the complaint for recovery of possession in 1990, only one year had elapsed. Hence, petitioners never acquired ownership through extraordinary prescription of the subject realty.

On the other hand, being the sole transferee of his father, respondent showed through his tax declarations which were coupled with possessory acts that he, through his predecessor, had been in possession of the land for more than 30 years since 1916. "Open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period - ipso jure and without the need of judicial or other sanction, ceases to be public land and becomes private property." [34] Ownership of immovable property is acquired by extraordinary prescription through possession for 30 years.[35] For purposes of deciding the instant case, therefore, the possession by respondent and his predecessor had already ripened into ownership of the subject realty by virtue of prescription as early as 1946.

Laches

Petitioners cannot find refuge in the principle of laches. It is not just the lapse of time or delay that constitutes laches. The essence of laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, through due diligence, could or should have been done earlier, thus giving rise to a presumption that the party entitled to assert it had earlier abandoned or declined to assert it.

The essential elements of laches are: (a) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation complained of; (b) delay in asserting complainant's rights after he had knowledge of defendant's acts and after he has had the opportunity to sue; (c) lack of knowledge or notice by defendant that the complainant will assert the right on which he bases his suit and (d) injury or prejudice to the defendant in the event the relief is accorded to the complainant.[36]

In the instant case, the second and third elements are missing. Petitioners had notice and knew all along the

position of the respondent and his predecessor Juan Mari - they were standing pat on his ownership over the subject realty. This stand of respondent and his predecessor was recorded and clearly visible from the notification survey cards.[37] From 1968, the date of the cards, until 1989 there was nothing to indicate any change in the position of any of the parties. Moreover, that respondent had not conceded ownership and possession of the land to petitioners is clear also from the fact that Pedro Mari continued to declare the entire 897-square meter property in his name and pay taxes for the entire area after his father transferred the property to him.

On the other hand, it was petitioners who suddenly changed their position in 1989 by changing the area of the property declared in their name from 50 square meters to 341 square meters and specifying the details to make it appear that the tax declaration for the 50-square meter property pertained to Lot No. 17526. As previously discussed, it was only at this point, in 1989, that it can be clearly stated that petitioners were making their claim of ownership public and unequivocal and converting their possession over Lot No. 17526 into one in the concept of owner.

Upon discovery of this clear and unequivocal change in status of petitioners' position over the disputed land respondent immediately acted. He filed in 1990 the complaint for recovery of possession and nullification of tax declaration. Hence, we find no laches in the instant case.

In conclusion, we find no reversible error on the part of the CA in recognizing the ownership and right of possession of respondent over Lot Nos. 17526, 17553 and 14356. There is, thus, also no basis for an award of damages and attorney's fees in favor of petitioners.

WHEREFORE, the instant petition is DENIED. The assailed Decision of the Court of Appeals dated April 18, 2001 is AFFIRMED.

SO ORDERED.

Carpio[*], (Chairperson), Carpio Morales[**], Leonardo-De Castro[***], and Abad, JJ., concur.

[*] Per Special Order No. 775 dated November 3, 2009.

[**] In lieu of Justice Arturo D. Brion who is on leave per Special Order No. 807 dated December 7, 2009.

[***] Additional member per Special Order No. 776 dated November 3, 2009.

[1] Rollo, pp. 18-43.

[2] CA rollo, pp. 81-92; penned by Associate Justice Fermin A. Martin, Jr. and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mercedes Gozo-Dadole.

[3] Records, pp. 280-286; penned by Judge Eugenio G. Ramos.

[4] Tax No. 17893.

[5] Records, p. 68.

[6] Id. at 189.

[7] See tax declarations.

[8] This cancelled Tax No. 32661 which in turn cancelled Tax No. 17893.

[9] Exhibit "12", records, p. 216.

- [10] Exhibit "R", id. at 220.
- [11] Exhibits "A" and "B", id. at 202-203.
- [12] No. 4107-R.
- [13] Prior to 1989 this item remained blank.
- [14] Records, pp. 1-4.
- [15] Id. at 286.
- [16] CA rollo, pp. 91-92.
- [17] Rollo, pp. 200-201.
- [18] Philippine Phosphate Fertilizer Corporation v. Kamalig Resources, Inc., G.R. No. 165608, December 13, 2007, 540 SCRA 139, 151; Republic v. Enriquez, G.R. No. 160990, September 11, 2006, 501 SCRA 436, 442.
- [19] TSN, November 3, 1993, p. 7.
- [20] TSN, Nov. 3, 1993, p. 9.
- [21] 341 square meters of Lot No. 17526 plus 36 square meters of Lot No. 14356.
- [22] He testified that the 50-square meter area was just an estimate of the floor area of the house but not of the entire lot area claimed by them.
- [23] Significantly, the same area of 50 square meters was mentioned in the Deed of Quit-Claim of Unregistered Real property dated May 14, 1961.
- [24] Surveyed as Lots No. 17553, 17526 and 14356.
- [25] Records, p. 68.
- [26] Art. 538 of the Civil Code states:
- Possession as a fact cannot be recognized at the same time in two different personalities except in the cases of co-possession. Should a question arise regarding the fact of possession, the present possessor shall be preferred; if there are two possessors, the one longer in possession; if the dates of the possession are the same, the one who presents a title; and if all these conditions are equal, the thing shall be placed in judicial deposit pending determination of its possession or ownership through proper proceedings.
- [27] What is on record is a "Deed of Quitclaim of Unregistered Real Property" over a 50-square meter realty, which has not been proven to be the same as Lots 17526 and 17533.
- [28] Cequeña v. Bolante, 386 Phil. 419, 430 (2000).
- [29] Bogo-Medellin Milling Co., Inc. v. Court of Appeals, 455 Phil. 285, 298-299 (2003).
- [30] Larena v. Mapili, 455 Phil. 944, 954-955 (2003).
- [31] Bogo-Medellin Milling Co., Inc. v. Court of Appeals, supra note 29 at 300; The Director of Lands v. Court of Appeals, 367 Phil. 597 (1999).
- [32] Cequeña v. Bolante, supra note 28 at 430, citing Republic of the Phils. v. Court of Appeals, 328 Phil. 238, 248 (1996).

[33] Exhibit "U", records p. 223.

[34] San Miguel Corporation v. Court of Appeals, G.R. No. 57667, May 28, 1990, 185 SCRA 722, 724-725.

[35] Civil Code, Art. 1137.

[36] Bogo-Medellin Milling Co., Inc. v. Court of Appeals, supra note 29 at 302 citing Avisado v. Rumbaua, 406 Phil. 704 (2001).

[37] Exhibits "A" and "B", records, pp. 202-203.

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