

**MIGUEL CUENCO, SUBSTITUTED BY MARIETTA C. CUYEGKENG,
PETITIONER, VS. CONCEPCION CUENCO VDA. DE MANGUERRA,
RESPONDENT.**

G.R. No. 149844. October 13, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Inasmuch as the facts indubitably and eloquently show an implied trust in favor of respondent, the Court of Appeals did not err in affirming the Decision of the Regional Trial Court ordering petitioner to convey the subject property to her. That Decision satisfied the demands of justice and prevented unjust enrichment.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, challenging the August 22, 2001 Decision[2] of the Court of Appeals (CA) in CA-GR CV No. 54852. The assailed Decision disposed as follows:

“WHEREFORE, the decision appealed from is AFFIRMED.”[3]

On the other hand, the Regional Trial Court (RTC) Decision affirmed by the CA disposed as follows:

“WHEREFORE, considering that this action is essentially one for reconveyance or enforcement of a trust, judgment is hereby rendered ordering the substituted defendant Marietta Cuenco Cuyegkeng to reconvey or transfer, in a duly registrable public instrument, Lot No 903-A-6 under TCT No. 113781 of the Registry of Deeds of Cebu City, of the Banilad Estate with an area of 834 square meters, in favor of plaintiff Concepcion Cuenco Vda. De Manguerra; or should the substituted defendant, for one reason or another, fail to execute the necessary instrument once the decision becomes final, the Clerk of Court of this Court (RTC) is hereby instructed, in accordance with the Rules of Court, to prepare and execute the appropriate and requisite conveyance and instrument in favor of herein plaintiff which, in either case, shall be registered with the Office of the Register of Deeds of Cebu City.

Without costs in this instance.”[4]

The Facts

The facts were summarized by the appellate court as follows:

“On September 19, 1970, the [respondent] filed the initiatory complaint herein for specific performance against her uncle [Petitioner] Miguel Cuenco which averred, inter alia that her father, the late Don Mariano Jesus Cuenco (who became Senator) and said [petitioner] formed the ‘Cuenco and Cuenco Law Offices’; that on or around August 4, 1931, the Cuenco and Cuenco Law Offices served as lawyers in two (2) cases entitled ‘Valeriano Solon versus Zoilo Solon’ (Civil Case 9037) and ‘Valeriano Solon versus Apolonia Solon’ (Civil Case 9040) involving a dispute among relatives over ownership of lot 903 of the Banilad Estate which is near the Cebu Provincial Capitol; that records of said cases indicate the name of the [petitioner] alone as counsel of record, but in truth and in fact, the real lawyer behind the success of said cases was the influential Don

Mariano Jesus Cuenco; that after winning said cases, the awardees of Lot 903 subdivided said lot into three (3) parts as follows:

Lot 903-A: 5,000 [square meters]: Mariano Cuenco's attorney's fees

Lot 903-B: 5,000 [square meters]: Miguel Cuenco's attorney's fees

Lot 903-C: 54,000 [square meters]: Solon's retention

"That at the time of distribution of said three (3) lots in Cebu, Mariano Jesus Cuenco was actively practicing law in Manila, and so he entrusted his share (Lot 903-A) to his brother law partner (the [petitioner]); that on September 10, 1938, the [petitioner] was able to obtain in his own name a title for Lot 903-A (Transfer Certificate of Title [TCT] RT-6999 [T-21108]); that he was under the obligation to hold the title in trust for his brother Mariano's children by first marriage; that sometime in 1947, the Cuenco family was anticipating Mariano's second marriage, and so on February 1, 1947, they partitioned Lot 903-A into six (6) sub-lots (Lots 903-A-1 to 903-A-6) to correspond to the six (6) children of Mariano's first marriage (Teresita, Manuel, Lourdes, Carmen, Consuelo, and Concepcion); that the [petitioner] did not object nor oppose the partition plan; that on June 4, 1947, the [petitioner] executed four (4) deeds of donation in favor of Mariano's four (4) children: Teresita, Manuel, Lourdes, and Carmen, pursuant to the partition plan (per notary documents 183, 184, 185, 186, Book III, Series 1947 of Cebu City Notary Public Candido Vasquez); that on June 24, 1947, the [petitioner] executed the fifth deed of donation in favor of Mariano's fifth child – Consuelo (per notary document 214, Book III, Series 1947 of Cebu City Notary Public Candido Vasquez) (Exhibits '2' to '5'); that said five (5) deeds of donation left out Mariano's sixth child – Concepcion – who later became the [respondent] in this case; that in 1949, [respondent] occupied and fenced a portion of Lot 903-A-6 for taxation purposes (Exhibit 'F', Exhibit '6'); that she also paid the taxes thereon (Exhibit 'G'); that her father died on February 25, 1964 with a Last Will and Testament; that the pertinent portion of her father's Last Will and Testament bequeaths the lot.

'... near the Cebu provincial capitol, which were my attorney's fees from my clients, Victoria Rallos and Zoilo Solon, respectively – have already long been disposed of, and distributed by me, through my brother, Miguel, to all my said children in the first marriage;'

"That on June 3, 1966, the [petitioner] wrote a letter petitioning the Register of Deeds of Cebu to transfer Lot 903-A-6 to his name on the ground that Lot 903-A-6 is a portion of Lot 903-A; that on April 6, 1967, the [respondent] requested the Register of Deeds to annotate an affidavit of adverse claim against the [petitioner's] TCT RT-6999 (T-21108) which covers Lot 903-A; that on June 3, 1967, the Register of Deeds issued TCT 35275 covering Lot 903-A-6 in the name of the [petitioner] but carrying the earlier annotation of adverse claim; that in 1969, the [petitioner] tore down the wire fence which the [respondent] constructed on Lot 903-A-6 which compelled the latter to institute the instant complaint dated August 20, 1970 on September 19, 1970.

"On December 5, 1970, the answer with counterclaim dated December 3, 1970 of [petitioner] Miguel Cuenco was filed where he alleged that he was the absolute owner of Lot 903-A-6; that this lot was a portion of Lot 903-A which in turn was part of Lot 903 which was the subject matter of litigation; that he was alone in defending the cases involving Lot 903 without the participation of his brother Mariano Cuenco; that he donated five (5) of the six (6) portions of Lot 903-A to the five (5) children of his brother Mariano out of gratitude for the love and care they exhibited to him (Miguel) during the time of his long sickness; that he did not give or donate any portion of the lot to the [respondent] because she never visited him nor took care of him during his long sickness; that he became critically ill on February 11, 1946 and was confined at the Singian's Clinic in Manila and then transferred to Cebu where he nearly died in 1946; that his wife Fara Remia Ledesma Cuenco had an operation on January 1951 and was confined at the University of Santo Tomas Hospital and John Hopkins Hospital in the United States; that two of his children died at the University of Santo Tomas Hospital in 1951 and 1952; and that his wife was blind for many months due to malignant hypertension but [respondent] never remembered her nor did she

commiserate with him and his wife in their long period of sorrow.

“[Petitioner] Miguel Cuenco took the witness stand as early as September 13, 1974. His self-conducted direct examination lasted until 1985, the last one on November 22, 1985. Unfortunately, he died[5] before he was able to submit himself for cross-examination and so his testimony had to be stricken off the record. His only surviving daughter, Marietta Cuyegkeng, stood as the substitute [petitioner] in this case. She testified that she purchased Lot 903-A-6 (the property subject matter of this case) from her late father sometime in 1990 and constructed a house thereon in the same year; that she became aware of this case because her late father used to commute to Cebu City to attend to this case; and that Lot 903-A-6 is in her name per Transfer Certificate of Title #113781 of the Registry of Deeds for Cebu.”[6]

Ruling of the Court of Appeals

The CA found respondent’s action not barred by res judicata, because there was “no identity of causes of action between the Petition for cancellation of adverse claim in L.R.C. Records 5988 and the Complaint for specific performance to resolve the issue of ownership in Civil Case No. R-11891.”

The appellate court further found no reason to disturb the findings of the trial court that respondent “has the legal right of ownership over lot 903-A-6.” The CA ruled that the subject land “is part of the attorney’s fees of Don Mariano Cuenco, predecessor-in-interest of [Respondent] Concepcion Cuenco vda. de Manguerra and [petitioner] merely holds such property in trust for [her], his title there[to] notwithstanding.”

Finally, the CA held that the right of action of respondent “has not yet prescribed as she was in possession of the lot in dispute and the prescriptive period to file the case commences to run only from the time she acquired knowledge of an adverse claim over [her] possession.”

Hence, this Petition.[7]

The Issues

In her Memorandum, petitioner raises the following issues for our consideration:

“I.

On question of law, the Court of Appeals failed to consider facts of substance and significance which, if considered, will show that the preponderance of evidence is in favor of the petitioner.

“II.

On question of law, the Court of Appeals failed to appreciate the proposition that, contrary to the position taken by the trial court, no constructive or implied trust exists between the parties, and neither is the action one for reconveyance based upon a constructive or implied trust.

“III.

On question of law, the Court of Appeals erred in not finding that even where implied trust is admitted to exist the respondent’s action for relief is barred by laches and prescription.

“IV.

On question of law, the trial court and the appellate court erred in expunging from the records the testimony of Miguel Cuenco.”[8]

This Court’s Ruling

The Petition has no merit.

First Issue:

Evaluation of Evidence

Petitioner asks us to appreciate and weigh the evidence offered in support of the finding that Lot 903-A-6 constituted a part of Mariano Cuenco's share in the attorney's fees. In other words, she seeks to involve us in a reevaluation of the veracity and probative value of the evidence submitted to the lower court. What she wants us to do is contrary to the dictates of Rule 45 that only questions of law may be raised and resolved in a petition for review. "Absent any whimsical or capricious exercise of judgment, and unless the lack of any basis for the conclusions made by the lower courts be amply demonstrated, the Supreme Court will not disturb such factual findings." [9]

As a rule, findings of fact of the Court of Appeals affirming those of the trial court are binding and conclusive. Normally, such factual findings are not disturbed by this Court, to which only questions of law may be raised in an appeal by certiorari. [10] This Court has consistently ruled that these questions "must involve no examination of the probative value of the evidence presented by the litigants or any of them." [11] Emphasizing the difference between the two types of question, it has explained that "there is a question of law in a given case when the doubt or difference arises as to what the law is pertaining to a certain state of facts, and there is a question of fact when the doubt arises as the truth or the falsity of alleged facts." [12]

Indeed, after going over the records of the present case, we are not inclined to disturb the factual findings of the trial and the appellate courts, just because of the insistent claim of petitioner. His witnesses allegedly testified that Civil Case No. 9040 involving Lot 903 had not been handled by Mariano for defendants therein -- Apolonia Solon, Zoilo Solon, et al. It has sufficiently been proven, however, that these defendants were represented by the Cuenco and Cuenco Law Office, composed of Partners Mariano Cuenco and Miguel Cuenco.

Given as attorney's fees was one hectare of Lot 903, of which two five-thousand square meter portions were identified as Lot 903-A and Lot 903-B. That only Miguel handled Civil Case No. 9040 does not mean that he alone is entitled to the attorney's fees in the said cases. "When a client employs the services of a law firm, he does not employ the services of the lawyer who is assigned to personally handle the case. Rather, he employs the entire law firm." [13] Being a partner in the law firm, Mariano -- like Miguel -- was likewise entitled [14] to a share in the attorney's fees from the firm's clients. Hence, the lower courts' finding that Lot 903-A was a part of Mariano Cuenco's attorney's fees has ample support.

Second Issue:

Implied Trust

Petitioner then contends that no constructive or implied trust exists between the parties.

A trust is a legal relationship between one having an equitable ownership in a property and another having legal title to it. [15]

Trust relations between parties may either be express or implied. [16] Express trusts are created by the direct and positive acts of the parties, indicated through some writing, deed, will, or words evidencing an intention to create a trust. [17] On the other hand, implied trusts are those that, "without being express, are deducible from the nature of the transaction as matters of intent[;] or which are superinduced on the transaction by operation of law as a matter of equity, independently of the particular intention of the parties. Implied trusts may either be resulting or constructive trusts, both coming into being by operation of law." [18]

Resulting trusts are presumed to have been contemplated by the parties and are based on the equitable doctrine that valuable consideration, not legal title, determines the equitable title or interest.[19] These trusts arise from the nature of or the circumstances involved in a transaction,[20] whereby legal title becomes vested in one person, who is obligated in equity to hold that title for the benefit of another.

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.”[21]

A review of the records shows that indeed there is an implied trust between the parties.

Although Lot 903-A was titled in Miguel’s name, the circumstances surrounding the acquisition and the subsequent partial dispositions of this property eloquently speak of the intent that the equitable or beneficial ownership of the property should belong to Mariano and his heirs.

First, Lot 903-A was one half of the one-hectare portion of Lot 903 given as attorney’s fees by a client of the law firm of Partners Miguel and Mariano Cuenco. It constituted the latter’s share in the attorney’s fees and thus equitably belonged to him, as correctly found by the CA. That Lot 903-A had been titled in the name of Miguel gave rise to an implied trust between him and Mariano, specifically, the former holds the property in trust for the latter. In the present case, it is of no moment that the implied trust arose from the circumstance -- a share in the attorney’s fees -- that does not categorically fall under Articles 1448 to 1456 of the Civil Code. The cases of implied trust enumerated therein “does not exclude others established by the general law of trust.”[22]

Second, from the time it was titled in his name in 1938,[23] Lot 903-A remained undivided and untouched[24] by Miguel. Only on February 3, 1947, did Lourdes Cuenco,[25] upon the instruction of Mariano, have it surveyed and subdivided into six almost equal portions -- 903-A-1 to 903-A-6. Each portion was specifically allocated to each of the six children of Mariano with his first wife.[26]

Third, Miguel readily surrendered his Certificate of Title[27] and interposed no objection[28] to the subdivision and the allocation of the property to Mariano’s six children, including Concepcion.

Fourth, Mariano’s children, including Concepcion,[29] were the ones who shouldered the expenses incurred for the subdivision of the property.

Fifth, after the subdivision of the property, Mariano’s children -- including Concepcion[30] -- took possession of their respective portions thereof.

Sixth, the legal titles to five portions of the property were transferred via a gratuitous deed of conveyance to Mariano’s five children, following the allocations specified in the subdivision plan prepared for Lourdes Cuenco.[31]

With respect to Lot 903-A-6 in particular, the existence of Concepcion’s equitable ownership thereof is bolstered, not just by the above circumstances, but also by the fact that respondent fenced the portion allocated to her and planted trees thereon.[32]

More significantly, she also paid real property taxes on Lot 903-A-6 yearly, from 1956 until 1969[33] -- the year when she was dispossessed of the property. “Although tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession.”[34] Such realty tax payments constitute proof that the holder has a claim of title over the property.

Tellingly, Miguel started paying real property taxes on Lot 903-A-6 only on April 4, 1964,[35] after the death of

Mariano.[36] This fact shows that it was only in that year that he was emboldened to claim the property as his own and to stop recognizing Mariano's, and subsequently Concepcion's, ownership rights over it. It was only by then that the one who could have easily refuted his claim had already been silenced by death. Such a situation cannot be permitted to arise, as will be explained below.

Estoppel

From the time Lot 903-A was subdivided and Mariano's six children -- including Concepcion -- took possession as owners of their respective portions, no whimper of protest from petitioner was heard until 1963. By his acts as well as by his omissions, Miguel led Mariano and the latter's heirs, including Concepcion, to believe that Petitioner Cuenco respected the ownership rights of respondent over Lot 903-A-6. That Mariano acted and relied on Miguel's tacit recognition of his ownership thereof is evident from his will, executed in 1963, which states:

"I hereby make it known and declare that x x x all properties which my first wife and I had brought to, or acquired during our marriage, or which I had acquired during the years I was a widower -- including jewelry, war damage compensation, and two other lots also located at Cebu City, one near the South-Western University and the other near the Cebu provincial capitol, which were my attorney's fees from my clients, Victoria Rallos and Zoilo Solon, respectively -- have already long been disposed of, and distributed by me, through my brother, Miguel, to all my said six children in the first marriage." [37] (emphasis supplied)

Indeed, as early as 1947, long before Mariano made his will in 1963, Lot 903-A -- situated along Juana Osmeña Extension, Kamputhaw, Cebu City, [38] near the Cebu Provincial Capitol -- had been subdivided and distributed to his six children in his first marriage. Having induced him and his heirs to believe that Lot 903-A-6 had already been distributed to Concepcion as her own, petitioner is estopped from asserting the contrary and claiming ownership thereof.

The principle of estoppel in pais applies when -- by one's acts, representations, admissions, or silence when there is a need to speak out -- one, intentionally or through culpable negligence, induces another to believe certain facts to exist; and the latter rightfully relies and acts on such belief, so as to be prejudiced if the former is permitted to deny the existence of those facts. [39]

Third Issue:

Laches

Petitioner claims that respondent's action is already barred by laches.

We are not persuaded. Laches is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to it has either abandoned or declined to assert it. [40] In the present case, respondent has persistently asserted her right to Lot 903-A-6 against petitioner.

Concepcion was in possession as owner of the property from 1949 to 1969. [41] When Miguel took steps to have it separately titled in his name, despite the fact that she had the owner's duplicate copy of TCT No. RT-6999 -- the title covering the entire Lot 903-A -- she had her adverse claim annotated on the title in 1967. When petitioner ousted her from her possession of the lot by tearing down her wire fence in 1969, [42] she commenced the present action on September 19, 1970, [43] to protect and assert her rights to the property. We find that she cannot be held guilty of laches, as she did not sleep on her rights.

Fourth Issue:

Expunging of Testimony

Petitioner Cuyegkeng questions the expunging of the direct testimony of Miguel Cuenco. Respondent points out that this issue was not raised before the CA. Neither had petitioner asked the trial court to reconsider its Order expunging the testimony. Hence, this issue cannot for the first time be raised at this point of the appeal. Issues, arguments and errors not adequately and seriously brought below cannot be raised for the first time on appeal.[44] “Basic considerations of due process impel this rule.”[45]

WHEREFORE, the Petition is DENIED, and the assailed Decision AFFIRMED. Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez and Corona, JJ., concur.
Carpio-Morales, J., on leave.

[1] Rollo, pp. 9-59.

[2] Id., pp. 61-80. Eleventh Division. Penned by Justice Presbitero J. Velasco Jr., with the concurrence of Justices Ruben T. Reyes (chair) and Juan Q. Enriquez Jr. (member).

[3] Assailed CA Decision, p. 20; rollo, p. 80.

[4] RTC Decision, p. 5; rollo, p. 86.

[5] Miguel Cuenco died on June 20, 1990. Certificate of Death; records, Vol. III, p. 1079.

[6] Assailed Decision, pp. 2-5; rollo, pp. 62-65.

[7] This case was deemed submitted for resolution on May 23, 2003, when the Court received respondent’s Manifestation. On August 11, 2003, this Manifestation was taken up by the Third Division, which resolved to allow a substitution of parties. Petitioner’s Memorandum, signed by Atty. Rody P. Padlan, was filed on September 18, 2002; respondent’s Memorandum, signed by Atty. Paul Nicomedes L. Roldan, was received on October 17, 2002.

[8] Petitioner’s Memorandum, pp. 14-15; rollo, pp. 251-252.

[9] *Almora v. CA*, 309 SCRA 586, 597, July 2, 1999, per Gonzaga-Reyes, J. (citing *Tañedo v. CA*, 252 SCRA 80, 90, January 22, 1996, per Panganiban, J.).

[10] §1 of Rule 45 of the 1997 Rules of Civil Procedure.

[11] *Manila Bay Club Corporation v. CA*, 245 SCRA 715, 725, July 11, 1995, per Francisco, J.

[12] *Serna v. CA*, 308 SCRA 527, 534, June 18, 1999, per Pardo, J. (citing *Reyes v. CA*, 258 SCRA 651, 658, July 11, 1996, per Romero, J.).

[13] *Rilloraza, Africa, De Ocampo and Africa v. Eastern Telecommunications Phils., Inc.*, 309 SCRA 566, 574, July 2, 1999, per Pardo, J.

[14] Art. 1799 of the Civil Code states: “A stipulation which excludes one or more partners from any share in the profits or losses is void.”

[15] *Vda. de Esconde v. CA*, 253 SCRA 66, February 1, 1996 (citing *Tolentino*, Civil Code of the Philippines, [1991], Vol. IV, p. 669, which in turn cited 54 Am Jur. 21).

[16] Art. 1441 of the Civil Code.

- [17] Rosario v. CA, 310 SCRA 464, July 19, 1999 (citing O'laco v. Co Cho Chit, 220 SCRA 662, March 31, 1993).
- [18] Id., p. 475, per Gonzaga-Reyes, J. (citing Tigno v. CA, 280 SCRA 271, October 8, 1997; and Policarpio v. CA, 269 SCRA 344, March 7, 1997).
- [19] Rosario v. CA, supra.
- [20] Vitug, Civil Law Annotated [2003], Vol. III, p. 176.
- [21] Rosario v. CA, supra, p. 475, per Gonzaga-Reyes, J. (citing Morales v. CA, 274 SCRA 282, June 19, 1997; Huang v. CA, 236 SCRA 420, September 13, 1994; Vda. de Esconde v. CA, supra).
- [22] Art. 1447 of the Civil Code.
- [23] TCT No. 21108; records, Vol. I, p. 7.
- [24] The property was overgrown with shrubs. TSN, December 9, 1994, p. 6.
- [25] One of Mariano Cuenco's daughters. TSN, December 9, 1994, p. 6.
- [26] Annex "D" of respondent's Memorandum.
- [27] TSN, December 9, 1994, p. 7.
- [28] Id., pp. 27-28.
- [29] Respondent's Memorandum, p. 12; rollo, p. 308.
- [30] TSN, December 9, 1994, p. 9.
- [31] Records, Vol. I, p. 6.
- [32] TSN, June 11, 1973, p. 45.
- [33] Exhibit "G," Certification dated June 13, 1973.
- [34] Development Bank of the Philippines v. CA, 331 SCRA 267, 293, April 28, 2000, per Mendoza, J.
- [35] Miguel Cuenco paid realty taxes for the years 1945 to 1963 only on April 4, 1964. Exhibit "7," Certification dated July 31, 1974; records, Vol. III, p. 2065.
- [36] Mariano Cuenco died on February 25, 1964. TSN, June 11, 1973, p. 9.
- [37] Last Will and Testament of M. Jesus Cuenco, pp. 1-2; rollo, pp. 378-379.
- [38] Petitioner's Memorandum, p. 6; rollo, p. 243.
- [39] Hanopol v. Shoemart, Incorporated, 390 SCRA 439, October 4, 2002.
- [40] Westmont Bank v. Ong, 375 SCRA 212, January 30, 2002; De Castro v. CA, 384 SCRA 607, July 18, 2002.
- [41] Respondent's Memorandum, p. 32; rollo, p. 328.
- [42] Ibid.
- [43] Complaint; records, pp. 1-8.
- [44] Magellan Capital Management Corportion v. Zosa, 355 SCRA 157, March 26, 2001; Magnolia Dairy

Products Corp. v. NLRC, 252 SCRA 483, January 29, 1996.

[45] City of Cebu v. Heirs of Candido Rubi, 306 SCRA 408, 424, April 29, 1999, per Gonzaga-Reyes, J. (citing Mendoza v. CA, 274 SCRA 527, June 20, 1997).

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