

**ERLINDA PILAPIL AND HEIRS OF DONATA ORTIZ BRIONES,
NAMELY: ESTELA, ERIBERTO AND VIRGILIO SANTOS, ANA SANTOS
CULTURA, ELVIRA SANTOS INOCENTES, ERNESTO MENDOZA,
RIZALINA SANTOS, A...**

G.R. No. 150175. February 05, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

On 10 March 2006, this Court promulgated its Decision[1] in the above-entitled case, ruling in favor of the petitioners. The dispositive portion[2] reads as follows:

IN VIEW OF THE FOREGOING, the assailed Decision of the Court of Appeals in CA-GR CV No. 55194, dated 31 August 2001, affirming the Decision of the Cebu City RTC in Civil Case No. CEB-5794, dated 28 September 1986, is hereby REVERSED and SET ASIDE; and the Complaint for partition, annulment, and recovery of possession filed by the heirs of Maximino in Civil Case No. CEB-5794 is hereby DISMISSED.

On 10 May 2006, a Motion for Reconsideration[3] of the foregoing Decision was filed by Atty. Celso C. Reales of the Reales Law Office on behalf of the respondents, heirs of Maximino R. Briones. On 19 May 2006, petitioners Erlinda Pilapil and the other co-heirs of Donata Ortiz Vda. de Briones, through counsel, filed an Opposition to Respondents' Motion for Reconsideration,[4] to which the respondents filed a Rejoinder[5] on 23 May 2006. Thereafter, Atty. Amador F. Brioso, Jr. of the Canto Brioso Arnedo Law Office entered his appearance as collaborating counsel for the respondents.[6] Atty. Brioso then filed on 11 June 2006 and 16 June 2006, respectively, a Reply[7] and Supplemental Reply[8] to the petitioners' Opposition to respondents' Motion for Reconsideration. Finally, petitioners filed a Rejoinder[9] to the respondents' Reply and Supplemental Reply on 5 July 2006.

The facts of the case, as recounted in the Decision,[10] are as follows -

Petitioners are the heirs of the late Donata Ortiz-Briones (Donata), consisting of her surviving sister, Rizalina Ortiz-Aguila (Rizalina); Rizalina's daughter, Erlinda Pilapil (Erlinda); and the other nephews and nieces of Donata, in representation of her two other sisters who had also passed away. Respondents, on the other hand, are the heirs of the late Maximino Briones (Maximino), composed of his nephews and nieces, and grandnephews and grandnieces, in representation of the deceased siblings of Maximino.

x x x x

Maximino was married to Donata but their union did not produce any children. When Maximino died on 1 May 1952, Donata instituted intestate proceedings to settle her husband's estate with the Cebu City Court of First Instance (CFI), 14th Judicial District, designated as Special Proceedings No. 928-R. On 8 July 1952, the CFI issued Letters of Administration appointing Donata as the administratrix of Maximino's estate. She submitted an Inventory of Maximino's properties, which included, among other things, the following parcels of land x x x.

x x x x

The CFI would subsequently issue an Order, dated 2 October 1952, awarding ownership of the aforementioned real properties to Donata. On 27 June 1960, Donata had the said CFI Order recorded in the Primary Entry Book of the Register of Deeds, and by virtue thereof, received new TCTs, covering the said properties, now in her name.

Donata died on 1 November 1977. Erlinda, one of Donata's nieces, instituted with the RTC a petition for the administration of the intestate estate of Donata. Erlinda and her husband, Gregorio, were appointed by the RTC as administrators of Donata's intestate estate. Controversy arose among Donata's heirs when Erlinda claimed exclusive ownership of three parcels of land, covered by TCTs No. 21542, 21545, and 58684, based on two Deeds of Donation, both dated 15 September 1977, allegedly executed in her favor by her aunt Donata. The other heirs of Donata opposed Erlinda's claim. This Court, however, was no longer informed of the subsequent development in the intestate proceedings of the estate of Donata; and as far as this Petition is concerned, all the heirs of Donata, including Erlinda, appear to be on the same side.

On 21 January 1985, Silverio Briones (Silverio), a nephew of Maximino, filed a Petition with the RTC for Letters of Administration for the intestate estate of Maximino, which was initially granted by the RTC. The RTC also issued an Order, dated 5 December 1985, allowing Silverio to collect rentals from Maximino's properties. But then, Gregorio filed with the RTC a Motion to Set Aside the Order, dated 5 December 1985, claiming that the said properties were already under his and his wife's administration as part of the intestate estate of Donata. Silverio's Letters of Administration for the intestate estate of Maximino was subsequently set aside by the RTC.

On 3 March 1987, the heirs of Maximino filed a Complaint with the RTC against the heirs of Donata for the partition, annulment, and recovery of possession of real property, docketed as Civil Case No. CEB-5794. They later filed an Amended Complaint, on 11 December 1992. They alleged that Donata, as administratrix of the estate of Maximino, through fraud and misrepresentation, in breach of trust, and without the knowledge of the other heirs, succeeded in registering in her name the real properties belonging to the intestate estate of Maximino.

x x x x

After trial in due course, the RTC rendered its Decision, dated 8 April 1986, in favor of the heirs of Maximino
x x x.

x x x x

x x x[T]he RTC declared that the heirs of Maximino were entitled to ½ of the real properties covered by TCTs No. 21542, 21543, 21544, 21545, 21546, and 58684. It also ordered Erlinda to reconvey to the heirs of Maximino the said properties and to render an accounting of the fruits thereof.

The heirs of Donata appealed the RTC Decision, dated 8 April 1986, to the Court of Appeals. The Court of Appeals, in its Decision, promulgated on 31 August 2001, affirmed the RTC Decision, x x x.

x x x x

Unsatisfied with the afore-quoted Decision of the Court of Appeals, the heirs of Donata filed the present Petition, x x x.

In its Decision, dated 10 March 2006, this Court found the Petition meritorious and, reversing the Decisions of the Court of Appeals and the Regional Trial Court (RTC), dismissed the Complaint for partition, annulment, and recovery of possession of real property filed by the heirs of Maximino in Civil Case No. CEB-5794. This Court summed up its findings,[11] thus -

In summary, the heirs of Maximino failed to prove by clear and convincing evidence that Donata managed, through fraud, to have the real properties, belonging to the intestate estate of Maximino, registered in her name. In the absence of fraud, no implied trust was established between Donata and the heirs of Maximino under Article 1456 of the New Civil Code. Donata was able to register the real properties in her name, not through fraud or mistake, but pursuant to an Order, dated 2 October 1952, issued by the CFI in Special Proceedings No. 928-R. The CFI Order, presumed to be fairly and regularly issued, declared Donata as the sole, absolute, and exclusive heir of Maximino; hence, making Donata the singular owner of the entire estate of Maximino, including the real properties, and not merely a co-owner with the other heirs of her deceased husband. There being no basis for the Complaint of the heirs of Maximino in Civil Case No. CEB-5794, the same should have been dismissed.

Respondents move for the reconsideration of the Decision of this Court raising still the arguments that Donata committed fraud in securing the Court of First Instance Order, dated 2 October 1952, which declared her as the sole heir of her deceased husband Maximino and authorized her to have Maximino's properties registered exclusively in her name; that respondents' right to succession to the disputed properties was transmitted or vested from the moment of Maximino's death and which they could no longer be deprived of; that Donata merely possessed and held the properties in trust for her co-heirs/owners; and that, by virtue of this Court's ruling in *Quion v. Claridad*[12] and *Sevilla, et al. v. De Los Angeles*,[13] respondents' action to recover title to and possession of their shares in Maximino's estate, held in trust for their benefit by Donata, and eventually, by petitioners as the latter's successors-in-interest, is imprescriptible. Respondents also advance a fresh contention that the CFI Order, dated 2 October 1952, being based on the fraudulent misrepresentation of Donata that she was Maximino's sole heir, was a void order, which produced no legal effect. Lastly, respondents asseverate that, by relying on certain procedural presumptions in its Decision, dated 10 March 2006, this Court has sacrificed their substantive right to succession, thus, making justice "subservient to the dictates of mere procedural fiats." [14]

While this Court is persuaded to reexamine and clarify some points in its previous Decision in this case, it does not find any new evidence or argument that would adequately justify a change in its previous position.

On the finding of fraud

As this Court declared in its Decision, the existence of any trust relations between petitioners and respondents shall be examined in the light of Article 1456 of the New Civil Code, which provides that, "[i]f 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." Hence, the foremost question to be answered is still whether an implied trust under Article 1456 of the New Civil Code had been sufficiently established in the present case.

In the Decision, this Court ruled in the negative, since there was insufficient evidence to establish that Donata committed fraud. It should be remembered that Donata was able to secure certificates of title to the disputed properties by virtue of the CFI Order in Special Proceedings No. 928-R (the proceedings she instituted to settle Maximino's intestate estate), which declared her as Maximino's sole heir. In the absence of proof to the contrary, the Court accorded to Special Proceedings No. 928-R the presumptions of regularity and validity. Reproduced below are the relevant portions[15] of the Decision -

At the onset, it should be emphasized that Donata was able to secure the TCTs covering the real properties belonging to the estate of Maximino by virtue of a CFI Order, dated 2 October 1952. It is undisputed that the said CFI Order was issued by the CFI in Special Proceedings No. 928-R, instituted by Donata herself, to settle the intestate estate of Maximino. The petitioners, heirs of Donata, were unable to present a copy of the CFI Order, but this is not surprising considering that it was issued 35 years prior to the filing by the heirs of Maximino of their Complaint in Civil Case No. CEB-5794 on 3 March 1987. The existence of such CFI Order,

nonetheless, cannot be denied. It was recorded in the Primary Entry Book of the Register of Deeds on 27 June 1960, at 1:10 p.m., as Entry No. 1714. It was annotated on the TCTs covering the real properties as having declared Donata the sole, absolute, and exclusive heir of Maximino. The non-presentation of the actual CFI Order was not fatal to the cause of the heirs of Donata considering that its authenticity and contents were never questioned. The allegation of fraud by the heirs of Maximino did not pertain to the CFI Order, but to the manner or procedure by which it was issued in favor of Donata. Moreover, the non-presentation of the CFI Order, contrary to the declaration by the RTC, does not amount to a willful suppression of evidence that would give rise to the presumption that it would be adverse to the heirs of Donata if produced. x x x.

x x x x

The CFI Order, dated 2 October 1952, issued in Special Proceedings No. 928-R, effectively settled the intestate estate of Maximino by declaring Donata as the sole, absolute, and exclusive heir of her deceased husband. The issuance by the CFI of the said Order, as well as its conduct of the entire Special Proceedings No. 928-R, enjoy the presumption of validity pursuant to the Section 3(m) and (n) of Rule 131 of the Revised Rules of Court, reproduced below -

SEC. 3. Disputable presumptions. - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(m) That official duty has been regularly performed;

(n) That a court, or judge acting as such, whether in the Philippines or elsewhere, was acting in the lawful exercise of jurisdiction.

By reason of the foregoing provisions, this Court must presume, in the absence of any clear and convincing proof to the contrary, that the CFI in Special Proceedings No. 928-R had jurisdiction of the subject matter and the parties, and to have rendered a judgment valid in every respect; and it could not give credence to the following statements made by the Court of Appeals in its Decision.

x x x x

There was totally no evidentiary basis for the foregoing pronouncements. First of all, the Petition filed by Donata for Letters of Administration in Special Proceedings No. 928-R before the CFI was not even referred to nor presented during the course of the trial of Civil Case No. CEB-5794 before the RTC. How then could the Court of Appeals make a finding that Donata willfully excluded from the said Petition the names, ages, and residences of the other heirs of Maximino? Second, there was also no evidence showing that the CFI actually failed to send notices of Special Proceedings No. 928-R to the heirs of Maximino or that it did not require presentation of proof of service of such notices. It should be remembered that there stands a presumption that the CFI Judge had regularly performed his duties in Special Proceedings No. 928-R, which included sending out of notices and requiring the presentation of proof of service of such notices; and, the heirs of Maximino did not propound sufficient evidence to debunk such presumption. They only made a general denial of knowledge of Special Proceedings No. 928-R, at least until 1985. There was no testimony or document presented in which the heirs of Maximino categorically denied receipt of notice from the CFI of the pendency of Special Proceedings No. 928-R. The only evidence on record in reference to the absence of notice of such proceedings was the testimony of Aurelia Briones (Aurelia), one of the heirs of Maximino, x x x.

x x x x

Aurelia's testimony deserves scant credit considering that she was not testifying on matters within her personal knowledge. The phrase "I don't think" is a clear indication that she is merely voicing out her opinion on how she

believed her uncles and aunts would have acted had they received notice of Special Proceedings No. 928-R.

It is worth noting that, in its foregoing ratiocination, the Court was proceeding from an evaluation of the evidence on record, which did not include an actual copy of the CFI Order in Special Proceedings No. 928-R. Respondents only submitted a certified true copy thereof on 15 June 2006, annexed to their Supplemental Reply to petitioners' opposition to their motion for reconsideration of this Court's Decision. Respondents did not offer any explanation as to why they belatedly produced a copy of the said Order, but merely claimed to have been "fortunate enough to obtain a copy" thereof from the Register of Deeds of Cebu.[16]

Respondents should be taken to task for springing new evidence so late into the proceedings of this case. Parties should present all their available evidence at the courts below so as to give the opposing party the opportunity to scrutinize and challenge such evidence during the course of the trial. However, given that the existence of the CFI Order in Special Proceedings No. 928-R was never in issue and was, in fact, admitted by the petitioners; that the copy submitted is a certified true copy of the said Order; and that the said Order may provide new information vital to a just resolution of the present case, this Court is compelled to consider the same as part of the evidence on record.

The CFI Order[17] in question reads in full as -

O R D E R

This is with reference to the Motion of the Administratrix, dated January 5, 1960, that she be declared the sole heir of her deceased husband, Maximino Suico Briones, the latter having died without any legitimate ascendant nor descendant, nor any legitimate brother or sister, nephews or nieces.

At the hearing of this incident today, nobody appeared to resist the motion, and based on the uncontradicted testimony of Donata G. Ortiz that she was the nearest surviving relative of the deceased Maximino Suico Briones at the time of the latter's death, and pursuant to the pertinent provisions of the new Civil Code of the Philippines, the Court hereby declares the aforesaid Donata G. Ortiz the sole, absolute and exclusive heir of the estate of the deceased Maximino Suico Briones, and she is hereby entitled to inherit all the residue of this estate after paying all the obligations thereof, which properties are those contained in the Inventory, dated October 2, 1952.

Cebu City, January 15, 1960.

From the contents of the afore-quoted Order, this Court is able to deduce that the CFI Order was in fact issued on 15 January 1960 and not 2 October 1952, as earlier stated in the Decision. It was the inventory of properties, submitted by Donata as administratrix of Maximino's intestate estate, which was dated 2 October 1952.[18] Other than such observation, this Court finds nothing in the CFI Order which could change its original position in the Decision under consideration.

While it is true that since the CFI was not informed that Maximino still had surviving siblings and so the court was not able to order that these siblings be given personal notices of the intestate proceedings, it should be borne in mind that the settlement of estate, whether testate or intestate, is a proceeding in rem,[19] and that the publication in the newspapers of the filing of the application and of the date set for the hearing of the same, in the manner prescribed by law, is a notice to the whole world of the existence of the proceedings and of the hearing on the date and time indicated in the publication. The publication requirement of the notice in newspapers is precisely for the purpose of informing all interested parties in the estate of the deceased of the existence of the settlement proceedings, most especially those who were not named as heirs or creditors in the petition, regardless of whether such omission was voluntarily or involuntarily made.

This Court cannot stress enough that the CFI Order was the result of the intestate proceedings instituted by Donata before the trial court. As this Court pointed out in its earlier Decision, the manner by which the CFI judge conducted the proceedings enjoys the presumption of regularity, and encompassed in such presumption is the order of publication of the notice of the intestate proceedings. A review of the records fails to show any allegation or concrete proof that the CFI also failed to order the publication in newspapers of the notice of the intestate proceedings and to require proof from Donata of compliance therewith. Neither can this Court find any reason or explanation as to why Maximino's siblings could have missed the published notice of the intestate proceedings of their brother.

In relying on the presumptions of the regular performance of official duty and lawful exercise of jurisdiction by the CFI in rendering the questioned Order, dated 15 January 1960, this Court is not, as counsel for respondents allege, sacrificing the substantive right of respondents to their share in the inheritance in favor of mere procedural fiats. There is a rationale for the establishment of rules of procedure, as amply explained by this Court in *De Dios v. Court of Appeals*[20] -

Procedural rules are designed to insure the orderly and expeditious administration of justice by providing for a practical system by which the parties to a litigation may be accorded a full and fair opportunity to present their respective positions and refute each other's submissions under the prescribed requirements, conditions and limitations. Adjective law is not the counterfoil of substantive law. In fact, there is a symbiotic relationship between them. By complying faithfully with the Rules of Court, the bench and the bar are better able to discuss, analyze and understand substantive rights and duties and consequently to more effectively protect and enforce them. The other alternative is judicial anarchy.

Thus, compliance with the procedural rules is the general rule, and abandonment thereof should only be done in the most exceptional circumstances. The presumptions relied upon by this Court in the instant case are disputable presumptions, which are satisfactory, unless contradicted or overcome by evidence. This Court finds that the evidence presented by respondents failed to overcome the given presumptions.

Although Donata may have alleged before the CFI that she was her husband's sole heir, it was not established that she did so knowingly, maliciously and in bad faith, so as for this Court to conclude that she indeed committed fraud. This Court again brings to the fore the delay by which respondents filed the present case, when the principal actors involved, particularly, Donata and Maximino's siblings, have already passed away and their lips forever sealed as to what truly transpired between them. On the other hand, Special Proceedings No. 928-R took place when all these principal actors were still alive and each would have been capable to act to protect his or her own right to Maximino's estate. Letters of Administration of Maximino's estate were issued in favor of Donata as early as 8 July 1952, and the CFI Order in question was issued only on 15 January 1960. The intestate proceedings for the settlement of Maximino's estate were thus pending for almost eight years, and it is the burden of the respondents to establish that their parents or grandparents, Maximino's surviving siblings, had absolutely no knowledge of the said proceedings all these years. As established in *Ramos v. Ramos*,[21] the degree of proof to establish fraud in a case where the principal actors to the transaction have already passed away is proof beyond reasonable doubt, to wit -

"x x x But length of time necessarily obscures all human evidence; and as it thus removes from the parties all the immediate means to verify the nature of the original transactions, it operates by way of presumption, in favor of innocence, and against imputation of fraud. It would be unreasonable, after a great length of time, to require exact proof of all the minute circumstances of any transaction, or to expect a satisfactory explanation of every difficulty, real or apparent, with which it may be encumbered. The most that can fairly be expected, in such cases, if the parties are living, from the frailty of memory, and human infirmity, is, that the material facts can be given with certainty to a common intent; and, if the parties are dead, and the cases rest in confidence,

and in parol agreements, the most that we can hope is to arrive at probable conjectures, and to substitute general presumptions of law, for exact knowledge. Fraud, or breach of trust, ought not lightly to be imputed to the living; for, the legal presumption is the other way; as to the dead, who are not here to answer for themselves, it would be the height of injustice and cruelty, to disturb their ashes, and violate the sanctity of the grave, unless the evidence of fraud be clear, beyond a reasonable doubt (*Prevost vs. Gratz*, 6 Wheat. [U.S.], 481, 498).

Moreover, even if Donata's allegation that she was Maximino's sole heir does constitute fraud, it is insufficient to justify abandonment of the CFI Order, dated 15 January 1960,[22] considering the nature of intestate proceedings as being in rem and the disputable presumptions of the regular performance of official duty and lawful exercise of jurisdiction by the CFI in rendering the questioned Order, dated 15 January 1960, in Special Proceedings No. 928-R.

On prescription of the right to recover based on implied trust

Assuming, for the sake of argument, that Donata's misrepresentation constitutes fraud that would impose upon her the implied trust provided in Article 1456 of the Civil Code, this Court still cannot sustain respondents' contention that their right to recover their shares in Maximino's estate is imprescriptible. It is already settled in jurisprudence that an implied trust, as opposed to an express trust, is subject to prescription and laches.

The case of *Ramos v. Ramos*[23] already provides an elucidating discourse on the matter, to wit -

"Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties. Implied trusts come into being by operation of law" (Art. 1441, Civil Code). "No express trusts concerning an immovable or any interest therein may be proven by oral evidence. An implied trust may be proven by oral evidence" (*Ibid*; Arts. 1443 and 1457).

"No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended" (*Ibid*; Art. 1444; *Tuason de Perez vs. Caluag*, 96 Phil. 981; *Julio vs. Dalandan*, L-19012, October 30, 1967, 21 SCRA 543, 546). "Express trusts are those which are created by the direct and positive acts of the parties, by some writing or deed, or will, or by words either expressly or impliedly evincing an intention to create a trust" (89 C.J. S. 122).

"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" (89 C.J.S. 724). They are ordinarily subdivided into resulting and constructive trusts (89 C.J.S. 722).

"A resulting trust is broadly defined as a trust which is raised or created by the act or construction of law, but in its more restricted sense it is a trust raised by implication of law and presumed always to have been contemplated by the parties, the intention as to which is to be found in the nature of their transaction, but not expressed in the deed or instrument of conveyance" (89 C.J.S. 725). Examples of resulting trusts are found in Article 1448 to 1455 of the Civil Code. See *Padilla vs. Court of Appeals*, L-31569, September 28, 1973, 53 SCRA 168, 179).

On the other hand, a constructive trust is a trust "raised by construction of law, or arising by operation of law." In a more restricted sense and as contradistinguished from a resulting trust, a constructive trust is "a trust not created by any words, either expressly or impliedly evincing a direct intention to create a trust, but by the construction of equity in order to satisfy the demands of justice. It does not arise by agreement or intention but by operation of law." (89 C.J.S. 726-727). "If a person obtains legal title to property by fraud or concealment, courts of equity will impress upon the title a so-called constructive trust in favor of the defrauded party." A constructive trust is not a trust in the technical sense (*Gayondato vs. Treasurer of the P.I.*, 49 Phil. 244; See Art. 1456, Civil Code).

There is a rule that a trustee cannot acquire by prescription the ownership of property entrusted to him (*Palma vs. Cristobal*, 77 Phil. 712), or that an action to compel a trustee to convey property registered in his name in trust for the benefit of the cestui qui trust does not prescribe (*Manalang vs. Canlas*, 94 Phil. 776; *Cristobal vs. Gomez*, 50 Phil. 810), or that the defense of prescription cannot be set up in an action to recover property held by a person in trust for the benefit of another (*Sevilla vs. De los Angeles*, 97 Phil. 875), or that property held in trust can be recovered by the beneficiary regardless of the lapse of time (*Marabilles vs. Quito*, 100 Phil. 64; *Bancairen vs. Diones*, 98 Phil. 122, 126; *Juan vs. Zuñiga*, 62 O.G. 1351; 4 SCRA 1221; *Jacinto vs. Jacinto*, L-17957, May 31, 1962. See *Tamayo vs. Callejo*, 147 Phil. 31, 37).

That rule applies squarely to express trusts. The basis of the rule is that the possession of a trustee is not adverse. Not being adverse, he does not acquire by prescription the property held in trust. Thus, Section 38 of Act 190 provides that the law of prescription does not apply "in the case of a continuing and subsisting trust" (*Diaz vs. Gorricho and Aguado*, 103 Phil. 261, 266; *Laguna vs. Levantino*, 71 Phil. 566; *Sumira vs. Vistan*, 74 Phil. 138; *Golfo vs. Court of Appeals*, 63 O.G. 4895, 12 SCRA 199; *Caladiao vs. Santos*, 63 O.G. 1956, 10 SCRA 691).

The rule of imprescriptibility of the action to recover property held in trust may possibly apply to resulting trusts as long as the trustee has not repudiated the trust (*Heirs of Candelaria vs. Romero*, 109 Phil. 500, 502-3; *Martinez vs. Graño*, 42 Phil. 35; *Buencamino vs. Matias*, 63 O. G. 11033, 16 SCRA 849).

The rule of imprescriptibility was misapplied to constructive trusts (*Geronimo and Isidoro vs. Nava and Aquino*, 105 Phil. 145, 153. Compare with *Cuison vs. Fernandez and Bengzon*, 105 Phil. 135, 139; *De Pasion vs. De Pasion*, 112 Phil. 403, 407).

Acquisitive prescription may bar the action of the beneficiary against the trustee in an express trust for the recovery of the property held in trust where (a) the trustee has performed unequivocal acts of repudiation amounting to an ouster of the cestui qui trust; (b) such positive acts of repudiation have been made known to the cestui qui trust and (c) the evidence thereon is clear and conclusive (*Laguna vs. Levantino*, supra; *Salinas vs. Tuason*, 55 Phil. 729. Compare with the rule regarding co-owners found in the last paragraph of Article 494, Civil Code; *Casañas vs. Rosello*, 50 Phil. 97; *Gerona vs. De Guzman*, L-19060, May 29, 1964, 11 SCRA 153, 157).

With respect to constructive trusts, the rule is different. The prescriptibility of an action for reconveyance based on constructive trust is now settled (*Alzona vs. Capunitan*, L-10228, February 28, 1962, 4 SCRA 450; *Gerona vs. De Guzman*, supra; *Claridad vs. Henares*, 97 Phil. 973; *Gonzales vs. Jimenez*, L-19073, January 30, 1965, 13 SCRA 80; *Boñaga vs. Soler*, 112 Phil. 651; *J. M. Tuason & Co., vs. Magdangal*, L-15539, January 30, 1962, 4 SCRA 84). Prescription may supervene in an implied trust (*Bueno vs. Reyes*, L-22587, April 28, 1969, 27 SCRA 1179; *Fabian vs. Fabian*, L-20449, January 29, 1968; *Jacinto vs. Jacinto*, L-17957, May 31, 1962, 5 SCRA 371).

And whether the trust is resulting or constructive, its enforcement may be barred by laches (90 C.J.S. 887-889; 54 Am Jur. 449-450; *Diaz vs. Gorricho and Aguado*, supra; Compare with *Mejia vs. Gampona*, 100 Phil. 277). [Emphases supplied.]

A present reading of the *Quion*[24] and *Sevilla*[25] cases, invoked by respondents, must be made in conjunction with and guided accordingly by the principles established in the afore-quoted case. Thus, while respondents' right to inheritance was transferred or vested upon them at the time of Maximino's death, their enforcement of said right by appropriate legal action may be barred by the prescription of the action.

Prescription of the action for reconveyance of the disputed properties based on implied trust is governed by Article 1144 of the New Civil Code, which reads -

ART. 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.

Since an implied trust is an obligation created by law (specifically, in this case, by Article 1456 of the New Civil Code), then respondents had 10 years within which to bring an action for reconveyance of their shares in Maximino's properties. The next question now is when should the ten-year prescriptive period be reckoned from. The general rule is that an action for reconveyance of real property based on implied trust prescribes ten years from registration and/or issuance of the title to the property,[26] not only because registration under the Torrens system is a constructive notice of title,[27] but also because by registering the disputed properties exclusively in her name, Donata had already unequivocally repudiated any other claim to the same.

By virtue of the CFI Order, dated 15 January 1960, in Special Proceedings No. 928-R, Donata was able to register and secure certificates of title over the disputed properties in her name on 27 June 1960. The respondents filed with the RTC their Complaint for partition, annulment, and recovery of possession of the disputed real properties, docketed as Civil Case No. CEB-5794, only on 3 March 1987, almost 27 years after the registration of the said properties in the name of Donata. Therefore, respondents' action for recovery of possession of the disputed properties had clearly prescribed.

Moreover, even though respondents' Complaint before the RTC in Civil Case No. CEB-5794 also prays for partition of the disputed properties, it does not make their action to enforce their right to the said properties imprescriptible. While as a general rule, the action for partition among co-owners does not prescribe so long as the co-ownership is expressly or impliedly recognized, as provided for in Article 494, of the New Civil Code, it bears to emphasize that Donata had never recognized respondents as co-owners or co-heirs, either expressly or impliedly.[28] Her assertion before the CFI in Special Proceedings No. 928-R that she was Maximino's sole heir necessarily excludes recognition of some other co-owner or co-heir to the inherited properties; Consequently, the rule on non-prescription of action for partition of property owned in common does not apply to the case at bar.

On laches as bar to recovery

Other than prescription of action, respondents' right to recover possession of the disputed properties, based on implied trust, is also barred by laches. The defense of laches, which is a question of inequity in permitting a claim to be enforced, applies independently of prescription, which is a question of time. Prescription is statutory; laches is equitable.[29]

Laches is defined as the failure to assert a right for an unreasonable and unexplained length of time, warranting a presumption that the party entitled to assert it has either abandoned or declined to assert it. This equitable defense is based upon grounds of public policy, which requires the discouragement of stale claims for the peace of society.[30]

This Court has already thoroughly discussed in its Decision the basis for barring respondents' action for recovery of the disputed properties because of laches. This Court pointed out therein[31] that -

In further support of their contention of fraud by Donata, the heirs of Maximino even emphasized that Donata lived along the same street as some of the siblings of Maximino and, yet, she failed to inform them of the CFI Order, dated [15 January 1960], in Special Proceedings No. 928-R, and the issuance in her name of new TCTs covering the real properties which belonged to the estate of Maximino. This Court, however, appreciates such information differently. It actually works against the heirs of Maximino. Since they only lived nearby, Maximino's siblings had ample opportunity to inquire or discuss with Donata the status of the estate of their

deceased brother. Some of the real properties, which belonged to the estate of Maximino, were also located within the same area as their residences in Cebu City, and Maximino's siblings could have regularly observed the actions and behavior of Donata with regard to the said real properties. It is uncontested that from the time of Maximino's death on 1 May 1952, Donata had possession of the real properties. She managed the real properties and even collected rental fees on some of them until her own death on 1 November 1977. After Donata's death, Erlinda took possession of the real properties, and continued to manage the same and collect the rental fees thereon. Donata and, subsequently, Erlinda, were so obviously exercising rights of ownership over the real properties, in exclusion of all others, which must have already put the heirs of Maximino on guard if they truly believed that they still had rights thereto.

The heirs of Maximino knew he died on 1 May 1952. They even attended his wake. They did not offer any explanation as to why they had waited 33 years from Maximino's death before one of them, Silverio, filed a Petition for Letters of Administration for the intestate estate of Maximino on 21 January 1985. After learning that the intestate estate of Maximino was already settled in Special Proceedings No. 928-R, they waited another two years, before instituting, on 3 March 1987, Civil Case No. CEB-5794, the Complaint for partition, annulment and recovery of the real property belonging to the estate of Maximino. x x x

Considering the circumstances in the afore-quoted paragraphs, as well as respondents' conduct before this Court, particularly the belated submission of evidence and argument of new issues, respondents are consistently displaying a penchant for delayed action, without any proffered reason or justification for such delay.

It is well established that the law serves those who are vigilant and diligent and not those who sleep when the law requires them to act. The law does not encourage laches, indifference, negligence or ignorance. On the contrary, for a party to deserve the considerations of the courts, he must show that he is not guilty of any of the aforesaid failings.[32]

On void judgment or order

Respondents presented only in their Reply and Supplemental Reply to the petitioners' Opposition to their Motion for Reconsideration the argument that the CFI Order, dated 15 January 1960, in Special Proceedings No. 928-R is void and, thus, it cannot have any legal effect. Consequently, the registration of the disputed properties in the name of Donata pursuant to such Order was likewise void.

This Court is unconvinced.

In the jurisprudence referred to by the respondents,[33] an order or judgment is considered void when rendered by the court without or in excess of its jurisdiction or in violation of a mandatory duty, circumstances which are not present in the case at bar.

Distinction must be made between a void judgment and a voidable one, thus -

"* * * A voidable judgment is one which, though not a mere nullity, is liable to be made void when a person who has a right to proceed in the matter takes the proper steps to have its invalidity declared. It always contains some defect which may become fatal. It carries within it the means of its own overthrow. But unless and until it is duly annulled, it is attended with all the ordinary consequences of a legal judgment. The party against whom it is given may escape its effect as a bar or an obligation, but only by a proper application to have it vacated or reversed. Until that is done, it will be efficacious as a claim, an estoppel, or a source of title. If no proceedings are ever taken against it, it will continue throughout its life to all intents a valid sentence. If emanating from a court of general jurisdiction, it will be sustained by the ordinary presumptions of regularity, and it is not open to impeachment in any collateral action. * * *"

But it is otherwise when the judgment is void. "A void judgment is in legal effect no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are

equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers. The purchaser at a sale by virtue of its authority finds himself without title and without redress." (Freeman on Judgments, sec. 117, citing *Campbell vs. McCahan*, 41 Ill., 45; *Roberts vs. Stowers*, 7 Bush, 295, *Huls vs. Buntin*, 47 Ill., 396; *Sherrell vs. Goodrum*, 3 Humph., 418; *Andrews vs. State*, 2 Sneed, 549; *Hollingsworth vs. Bagley*, 35 Tex., 345; *Morton vs. Root*, 2 Dill., 312; *Commercial Bank of Manchester vs. Martin*, 9 Smedes & M., 613; *Hargis vs. Morse*, 7 Kan., 259. See also *Cornell vs. Barnes*, 7 Hill, 35; *Dawson and Another vs. Wells*, 3 Ind., 399; *Meyer vs. Mintonye*, 106 Ill., 414; *Olson vs. Nunnally*, 47 Kan., 391; *White vs. Foote L. & M. Co.*, 29 W. Va., 385.)

It is not always easy to draw the line of demarcation between a void judgment and a voidable one, but all authorities agree that jurisdiction over the subject-matter is essential to the validity of a judgment and that want of such jurisdiction renders it void and a mere nullity. In the eye of the law it is non-existent. (*Fisher vs. Harnden*, 1 Paine, 55; *Towns vs. Springer*, 9 Ga., 130; *Mobley vs. Mobley*, 9 Ga., 247; *Beverly and McBride vs. Burke*, 9 Ga., 440; *Central Bank of Georgia vs. Gibson*, 11 Ga., 453; *Johnson vs. Johnson*, 30 Ill., 215; *St. Louis and Sandoval Coal and Mining Co. vs. Sandoval Coal and Mining Co.*, 111 Ill., 32; *Swiggart vs. Harber*, 4 Scam., 364; *Miller vs. Snyder*, 6 Ind., 1; *Seely vs. Reid*, 3 Greene [Iowa], 374.)^[34]

The fraud and misrepresentation fostered by Donata on the CFI in Special Proceedings No. 928-R did not deprive the trial court of jurisdiction over the subject-matter of the case, namely, the intestate estate of Maximino. Donata's fraud and misrepresentation may have rendered the CFI Order, dated 15 January 1960, voidable, but not void on its face. Hence, the said Order, which already became final and executory, can only be set aside by direct action to annul and enjoin its enforcement.^[35] It cannot be the subject of a collateral attack as is being done in this case. Note that respondents' Complaint before the RTC in Civil Case No. CEB-5794 was one for partition, annulment, and recovery of possession of the disputed properties. The annulment sought in the Complaint was not that of the CFI Order, dated 15 January 1960, but of the certificates of title over the properties issued in Donata's name. So until and unless respondents bring a direct action to nullify the CFI Order, dated 15 January 1960, in Special Proceedings No. 928-R, and attain a favorable judgment therein, the assailed Order remains valid and binding.

Nonetheless, this Court also points out that an action to annul an order or judgment based on fraud must be brought within four years from the discovery of the fraud.^[36] If it is conceded that the respondents came to know of Donata's fraudulent acts only in 1985, during the course of the RTC proceedings which they instituted for the settlement of Maximino's estate, then their right to file an action to annul the CFI Order, dated 15 January 1960, in Special Proceedings No. 928-R (earlier instituted by Donata for the settlement of Maximino's estate), has likewise prescribed by present time.

In view of the foregoing, the Motion for Reconsideration is DENIED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Penned by Associate Justice Minita V. Chico-Nazario with Chief Justice Artemio V. Panganiban, Associate Justices Consuelo Ynares-Santiago, and Romeo J. Callejo, concurring; Rollo, pp. 286-305.

[2] Id. at 304-305.

[3] Id. at 306-315.

[4] Id. at 320-336.

[5] Id. at 338-343.

[6] Id. at 345-346.

[7] Id. at 348-363.

[8] Id. at 364-378.

[9] Id. at 342-356.

[10] Id. at 287-293.

[11] Id. at 304.

[12] 74 Phil. 100 (1943).

[13] 97 Phil. 875 (1955).

[14] Rollo, p. 359.

[15] Id. at 296-300.

[16] Id. at 369.

[17] Id. at 379.

[18] When the Decision was promulgated on 10 March 2006, in the absence of an actual copy of the CFI Order in question, this Court relied on the date of issuance of the said Order as recorded in the Primary Entry Book of the Register of Deeds.

[19] Bautista, v. de Guzman, 211 Phil. 26, 35 (1983); Varela v. Villanueva, 95 Phil. 248, 266-267 (1954); McMaster v. Reissman & Co., 68 Phil. 142, 144 (1939).

[20] G.R. No. 80491, 12 August 1992, 212 SCRA 519, 521.

[21] G.R. No. L-19872, 3 December 1974, 61 SCRA 284, 305.

[22] See Solivio v. Court of Appeals (G.R. No. 83484, 12 February 1990, 182 SCRA 119, 131), wherein this Court quoted that, "Failure to disclose to the adversary, or to the court, matters which would defeat one's own, claim or defense is not such extrinsic fraud as will justify or require vacation of the judgment." (49 C.J.S. 489, citing Young v. Young, 2 SE 2d 622; First National Bank & Trust Co. of King City v. Bowman, 15 SW 2d 842; Price v. Smith, 109 SW 2d 1144, 1149.)

[23] 158 Phil. 935, 950-952 (1974).

[24] Supra note 12.

[25] Supra note 13.

[26] Marquez v. Court of Appeals, 360 Phil. 843, 849-850 (1998).

[27] Presidential Decree No. 1529, otherwise known as the Land Registration Act, Section 31.

[28] Vda. de Alberto v. Court of Appeals, G.R. No. 29759, 18 May 1989, 173 SCRA 436, 446-447.

[29] Vda. de Rigonan v. Derecho, G.R. No. 159571, 15 July 2005, 463 SCRA 627, 647.

[30] Id. at 648.

[31] Rollo, pp. 300-301.

[32] Vda. de Alberto v. Court of Appeals, *supra* note 28 at 450.

[33] Republic v. Atlas Farms, Inc., 398 Phil. 1135 (2000); Narciso v. Sta. Romana-Cruz, 385 Phil. 208 (2000); Ramos v. Court of Appeals, G.R. No. 42108, 29 December 1989, 180 SCRA 635; Estoesta v. Court of Appeals, G.R. No. 74817, 8 November 1989, 179 SCRA 203; Caro v. Court of Appeals, G.R. No. L-31426, 29 February 1988, 158 SCRA 270; Gomez v. Concepcion, 47 Phil. 717 (1925).

[34] Gomez v. Concepcion, *id.* at 722-723.

[35] Balangcad v. Justices of the Court of Appeals, G.R. No. 84888, 12 February 1992, 206 SCRA 169, 171.

[36] Gallanosa v. Arcangel, G.R. No. L-29300, 21 June 1978, 83 SCRA 676, 686.

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