

**HEIRS OF ROSA DUMALIANG AND CIRILA DUMALIANG,
REPRESENTED BY NICANOR B. GUIAB, FELIPE D. GUMABON AND
FRANCISCO MARADDAG, PETITIONERS, VS. DAMIANO SERBAN,
ERNESTO SERBAN, WILSON ...**

G.R. NO. 155133. February 21, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on Certiorari filed by the heirs[3] (petitioners) of Rosa and Cirila Dumaliang (Dumaliang sisters), represented by Nicanor A. Guiab (Guiab),[4] Felipe D. Gumabon (Gumabon)[5] and Francisco Maraddag[6] assailing the Decision[7] dated October 17, 2001 and the Resolution[8] dated August 26, 2002 of the Court of Appeals in CA-G.R. CV No. 63887.

The subject matter of the instant controversy is the 56,804-square meter portion of the 76,804-sq m lot located in Echague, Isabela originally covered by Original Certificate of Title (OCT) No. 2524 of the Register Deeds of Isabela under the names of Rosa and Cirila Dumaliang. In May 1965, Gumabon and Guiab together with some of the heirs[9] of the Dumaliang sisters conveyed 20,000 sq m of the lot covered by OCT No. 2524 in favor of Damiano Serban (respondent Damiano) by virtue of an Extra-Judicial Partition of Estate and Deed of Absolute Sale dated May [10], 1965. However, on July 19, 1965, Transfer Certificate of Title (TCT) No. 26676 was issued in respondent Damiano's name covering the entire lot on the basis of a Deed of Extra-Judicial Settlement and Sale[11] dated June 20, 1962.

On November 4, 1997, petitioners, as pauper litigants,[12] filed with the Regional Trial Court (RTC) of Echague, Isabela, a complaint for declaration of inexistence of contract, reconveyance, cancellation of title and damages against respondent Damiano. The case was docketed as Civil Case No. 24-0479 and raffled to Branch 24. The same was subsequently amended on August 24, 1998 to include the other respondents namely: Ernesto[13], Wilson, Dominga, Virgilio[14] and Mariano, all surnamed Serban, in whose names the subsequent separate titles to the subject lot were issued.

In their amended complaint, petitioners alleged that: they are the legitimate heirs of the Dumaliang sisters who died on August 6, 1939 and January 13, 1936; that upon the sale of the 20,000 sq m portion of the lot covered by OCT No. 2524 to respondent Damiano in 1965, the latter asked for the original title to effect transfer of the 20,000 sq m lot to his name and the same was given to him by Gumabon, one of the contracting heirs who was in custody of the title; in 1992, petitioners finally decided to partition the remaining 56,804 sq m of the lot covered by OCT No. 2524 but learned from Gumabon that the original title was still in the custody of respondent Damiano who failed to return the same; they made inquiry from respondent Damiano and the latter cannot produce the title because the title for the 20,000 sq m he bought was still under process and in the custody of another person for the processing; fearing that the title could have been lost, petitioners went to the Office of the Provincial Assessor to inquire and investigate; they discovered that there is a Deed of Extra-Judicial Settlement and Sale[15] dated June

20, 1962, allegedly signed by the legal heirs of the Dumaliang sisters transferring the entire 76,804 sq m lot in respondent Damiano's favor which became the basis of the issuance of TCT No. 26676 on July 19, 1965; that such deed was fraudulent, void and inexistent since some of the signatures therein were falsified while the other signatories could not have affixed their signatures and personally appeared before the notary public in 1962 since they were already dead, and a compulsory heir did not also sign; that the entire lot had already been partitioned and several titles were already issued to respondent Damiano's children who are also impleaded as respondents; respondents' refusal to surrender possession of the subject lot despite demand illegally deprived them of their primary source of income.

In his Answer with counterclaim to the original complaint,[16] respondent Damiano admitted having bought 20,000 sq m of the subject lot from some of the heirs of the Dumaliang sisters. By way of special and affirmative defenses, respondents alleged that long after the instrument embodying the sale of 20,000 sq m in his favor was executed, a representative of the petitioners offered to sell the remaining portion, and after he expressed willingness to buy the remaining portion, the representative caused the preparation of the instrument by Atty. Anastacio J. Pascua in his office where the transaction took place, and the owner's copy of OCT No. 2524 was given to him on June 20, 1962; that right after the said transaction, respondent Damiano started to possess and cultivate the entire lot and subsequently obtained a new title on July 19, 1965; that respondent Damiano has been in lawful and peaceful possession of the said lot, and that he subdivided the lot and donated the same to his six children who are now in possession and cultivation thereof; that the complaint should be dismissed for failure to state a valid cause of action, laches, prescription, estoppel and/or statute of fraud. Respondent Damiano prayed for damages.

The trial court set the case for hearing on the affirmative defenses. However, respondents manifested that they will just submit their memorandum. The RTC required petitioners to file their comment thereon.

Thereafter, or on December 29, 1998, and based only on respondents' Memorandum and petitioners' opposition, the RTC rendered an Order[17] dismissing the complaint on the ground of laches. It found that after the deed of sale was executed in 1965, respondent Damiano registered the same and the title was issued in his name; that he took possession and cultivation of the land since then up to this time; that the subject lot was even transferred to his children; that petitioners did not file any protest or assail the possession/cultivation of respondents over the entire lot for the past several years if it is true that only portions of the lot were sold; that the pleadings or records do not show that any one of the petitioners took cultivation or possession of any single portion they claim they did not sell or convey; that they are guilty of laches since it took them a period of thirty two (32) years before they thought of enforcing their rights; that the registration of the Deed is a constructive notice to the whole world since the land was covered by a Torrens title.

Petitioners' Motion for Reconsideration was denied in an Order[18] dated April 21, 1999.

Petitioners filed their appeal with the CA. Respondents did not file their brief.

On October 17, 2001, the CA issued its assailed Decision affirming the RTC and dismissing the appeal. The CA found that respondent Damiano was issued TCT No. T-26676 in his name on July 19, 1965 and has since then been in possession of the whole lot, thus petitioners were put to knowledge of the said issuance of title; that Section 1 of Act No. 496, as amended by Section 52 of Presidential Decree No. 1529, effects a constructive notice to the whole world of such issuance of title; that the act of registration creates a constructive notice to the whole world; that petitioners' total inaction in asserting their rights or interests in the subject lot for 32 long years is an indication of laches on their part.

Petitioners' Motion for Reconsideration was denied by the CA in a Resolution dated August 26, 2002. The CA

declared that if a person obtains a title to property by fraud or concealment, as alleged by petitioners, the court will impress upon the title a constructive trust in favor of the defrauded party, in which case, reconveyance is the proper remedy but such remedy must be filed within ten years from the issuance of title since such issuance operates as a constructive notice.[19]

Hence, the instant Petition for Review on Certiorari filed by petitioners.

The lone issue presented is whether or not the Court of Appeals erred in affirming the RTC in the dismissal of the petition on the ground of laches.

Petitioners reiterated their contention that they merely conveyed 20,000 sq m of the lot covered by OCT No. 2524 to respondent Damiano in 1965; that the alleged 1962 Extra-Judicial Partition and Deed of Sale which conveyed the entire lot to respondents was forged; that said deed was allegedly executed in 1962 by the Dumaliang sisters who were already deceased since 1930s; that laches is not applicable in this case as the title of respondents was obtained by means of a void document; that the right to file an action for reconveyance on the ground that the certificate of title was obtained by means of a fictitious deed of sale is virtually an action for the declaration of its nullity, which action does not prescribe. Petitioners claim that laches is addressed to the sound discretion of the court, and its application is controlled by equitable considerations and cannot defeat justice or perpetrate fraud; that it was only in 1992 when they discovered the existence of the falsified deed and immediately brought the instant action; that a new title issued in respondent Damiano's name and subsequently to the other respondents does not necessarily mean that they have acquired ownership over the same; and that the Torrens system is not a means of acquiring titles to land and indefeasibility of title does not attach to titles secured by fraud or misrepresentation.

We find the petition impressed with merit.

In *España, Sr. v. Court of Appeals*, [20] we defined laches as follows:

The essence of laches or “stale demands” is the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, thus giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it. It is not concerned with mere lapse of time, the fact of delay, standing alone, being insufficient to constitute laches.

There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances. Ultimately, however, the question of laches is addressed to the sound discretion of the court since it is an equitable doctrine, its application is controlled by equitable considerations. [21]

The four basic elements of laches are: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and, (4) injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is not held to be barred. [22] These elements must all be proved positively.[23]

In this case, only the first element was proven, that is, the act of respondent Damiano in registering the entire 76,804 sq m based on a Deed of Extra-Judicial Settlement and Sale dated June 20, 1962 and the issuance of TCT No. 26676 under his name in 1965.

The second element speaks of delay in asserting the complainant's rights. However, the mere fact of delay is

insufficient basis to conclude that herein petitioners are guilty of laches.[24] It is required that (1) complainant must have had knowledge of the conduct of defendant or of one under whom he claims; and, (b) he must have been afforded an opportunity to institute suit.[25]

The trial court held that since the issuance of TCT No 26676 in respondent Damiano's name in 1965 up to the filing of the instant case, 32 years had already lapsed, thus laches had already set in. However, the delay must be attended by knowledge on petitioners' part of the transfer of the entire lot in respondent Damiano's name in July, 1965. Notably, petitioners alleged in their complaint that it was only sometime in May, 1965 that some of them conveyed 20,000 sq m of the 76,804 sq m to respondent Damiano which respondents even admitted. Thus, how could petitioners be considered to have been aware that the entire lot was registered in respondent Damiano's name in July, 1965 by virtue of a Deed of Extra-Judicial Settlement and Sale dated June 20, 1962 when Damiano undisputedly bought only 20,000 sq m of the same lot in May, 1965, or two months before the registration of the entire lot in respondent Damiano's name in July 1965. Considering that respondents invoke laches as their affirmative defense against petitioners for the latter's failure to assert their right for a long time, it was incumbent upon respondents to positively show such knowledge on petitioners' part.[26] Such knowledge had not been sufficiently established by respondents.

Moreover, it was further alleged by petitioners that it was only in 1992 when they decided to partition the remaining 56,804 sq m of the lot and learned from Gumabon, the heir to whom the safekeeping of title was entrusted, that the original title which he gave to respondent Damiano in 1965 was still with respondent Damiano; that petitioners then made inquiry from respondent Damiano regarding the title who informed them that the title is in the custody of another person for the transfer of the 20,000 sq m in his name; that it was only after investigating with the Office of the Provincial Assessor that petitioners learned of the transfer of the entire lot in respondent Damiano's name in 1965 through a Deed of Extra-Judicial Settlement and Sale dated June 20, 1962. Thus, petitioners could not have had the opportunity to institute the suit earlier than 1992. Petitioners filed the instant case in the RTC in 1997.

The RTC and the CA uniformly concluded that since the registration of the entire lot in respondent Damiano's name in 1965, he has been in possession and cultivation of the entire lot. As to whether or not the exact nature of possession of respondents is adverse, based on the claim of exclusive ownership, is a factual matter which needs presentation and appreciation of evidence. We will not venture to make any determination thereon for we are not a trier of facts.[27] Moreover, since the trial court had not conducted a hearing on the affirmative defense of laches, its finding was merely based on respondents' allegations in their memorandum in support of their defense of laches. It has been held that laches is evidentiary in nature which could not be established by mere allegations in the pleadings and cannot be resolved in a motion to dismiss.[28]

It bears stressing that the entire lot consists of 76,804 sq m. Thus, it was incumbent upon respondents to positively show that indeed they were in possession of the same since 1965 and that petitioners were indeed aware of such possession. Again, respondents' memorandum submitted in support of their affirmative defense of laches as well as their Answer did not show how their possession was manifested and the actuations of petitioners to show knowledge of respondents' possession of the entire lot.

The third element of laches has not been met by respondents. They have not sufficiently shown that they have no knowledge that petitioners would assert their ownership over the 56,804 sq m, i.e., the excess of the 20,000 sq m they bought in 1965. Respondents failed to satisfactorily explain in their pleadings the fact that despite the alleged sale of the entire lot to respondent Damiano in 1962, they still bought the 20,000 sq m of the same lot in 1965. Respondents' Answer states:

x x x

5. That the allegations contained in paragraphs 6 and 7 of the complaint are admitted regarding the sale of a portion of 20,000 of the above-described parcel of land by some of the legitimate heirs of the late Rosa Dumaliang and Cirila Dumaliang in favor of the defendant, which sale is embodied in an instrument denominated "Extrajudicial Partition of Estate and Deed of Absolute Sale"

x x x

SPECIAL AND AFFIRMATIVE DEFENSES

x x x

8. That long after the instrument embodying the sale of 20,000 square meters in favor of the defendant was executed, a representative of the Heir of Rosa Dumaliang and Cirila Dumaliang informed the defendant that the rest of the heirs who own the remaining portion were offering to also sell to him the said remaining portion of the parcel of land of Rosa and Cirila Dumaliang;

9. That after the defendant expressed willingness to buy the said remaining portion, the said representatives then caused the preparation of the necessary instrument by Atty. Anastacio J. Pascua in his Office at Echague, Isabela, where the transaction took place and where the owner's copy of OCT No. 2524 was given and received by the defendant on June 20, 1962. [29]

As respondents admitted the sale of 20,000 sq m in 1965, and there were talks over the sale of the remaining portion thereafter, how could it be possible that the subsequent Deed of Extrajudicial Settlement and Sale be dated 1962 when the negotiations took place in 1965? Only a full blown trial can settle this discrepancy.

As to the fourth element that irreparable injury would result to respondents if the 56,804 sq m would be returned to petitioners in case they are really entitled thereto, suffice it to state that the doctrine of laches cannot be worked to defeat justice or to perpetrate fraud and injustice.[30] It is the better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result.[31]

Notably, the trial court dismissed the complaint based on laches alone without taking into consideration the main issue raised by petitioners regarding the validity of the 1962 Deed of Extra-Judicial Settlement and Sale. The action filed by petitioners in the trial court is for the declaration of inexistence of contract, reconveyance, cancellation of title and damages. They seek the annulment of the Deed of Extra-Judicial Settlement and Sale dated June 20, 1962 on their claim that the signatures of some of the heirs were falsified and the remaining signatories could not have affixed their signatures to the Deed in 1962 as they were already dead prior thereto.

Without prejudging the issue as it is the trial court which would ultimately determine the same, if it is established that petitioners' consent was not given to the 1962 Deed of Extra-Judicial Settlement and Sale which became the basis for the issuance of the new title over the entire lot in respondent Damiano's name in 1965, the absence of such consent makes the Deed null and void ab initio and subject to attack anytime.[32] It is recognized in our jurisprudence that a forged deed is a nullity and conveys no title.[33] Article 1410 of the Civil Code clearly provides that an action to declare the inexistence of a void contract does not prescribe.

Likewise, we have consistently ruled that when there is a showing of such illegality, the property registered is deemed to be simply held in trust for the real owner by the person in whose name it is registered, and the former then has the right to sue for the reconveyance of the property. The action for the purpose is also imprescriptible, and as long as the land wrongfully registered under the Torrens system is still in the name of the person who caused such registration, an action in personam will lie to compel him to reconvey the property to the real owner.[34]

If indeed petitioners' consent was not given, respondents could not have acquired ownership over the 56,804 sq m lot by virtue of the 1962 Deed of Extra-Judicial Settlement and Sale. While a certificate of title was issued in respondents' favor, such title could not vest upon them ownership of the entire property; neither could it validate a deed which is null and void. Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has.[35]

In *Heirs of Romana Ingjug-Tiro v. Casals*, where we reversed the trial court's dismissal of petitioners' complaint on the ground of prescription and laches, and remanded the case to the trial court for judgment on the merits, we said:

x x x

A cursory reading of the complaint, however, reveals that the action filed by petitioners was for partition, recovery of ownership and possession, declaration of nullity of a deed of sale of unregistered land and extrajudicial settlement and confirmation of sale. Petitioners' causes of action are premised on their claim that: (a) the Deed of Sale of Unregistered Land is void and of no effect since their respective shares in the inheritance were included in the sale without their knowledge and consent, and one of the vendor-signatories therein, Eufemio Ingjug (Eufemio Tiro, husband of Romana Ingjug), was not even a direct and compulsory heir of the decedent; and (b) the Extrajudicial Settlement and Confirmation of Sale is simulated and therefore null and void ab initio, as it was purportedly executed in 1967 by, among others, Eufemio Tiro who was not an heir, and by Francisco Ingjug who died in 1963. Also, the prayer in the same complaint expressly asks that all those transactions be declared null and void. In other words, it is the nullity of the deeds of sale and the extrajudicial settlement and confirmation of the sale which is the basic hypothesis upon which the instant civil action rests. Thus, it appears that we are dealing here not with simple voidable contracts tainted with fraud, but with contracts that are altogether null and void ab initio.

x x x

In actions for reconveyance of property; predicated on the fact that the conveyance complained of was null and void ab initio, a claim of prescription of action would be unavailing. "The action or defense for the declaration of the inexistence of a contract does not prescribe." Neither could laches be invoked in the case at bar. Laches is a doctrine in equity and our courts are basically courts of law and not courts of equity. Equity, which has been aptly described as "justice outside legality," should be applied only in the absence of, and never against, statutory law. *Aeguetas nunguam contravenit legis*. The positive mandate of Art. 1410 of the New Civil Code conferring imprescriptibility to actions for declaration of the inexistence of a contract should pre-empt and prevail over all abstract arguments based only on equity. Certainly, laches cannot be set up to resist the enforcement of an imprescriptible legal right, and petitioners can validly vindicate their inheritance despite the lapse of time.

x x x

Without any evidence on record relating to these points, this Court cannot affix its imprimatur to the peremptory dismissal of the complaint in light of the pleas of petitioners for their just share in the inheritance and for the partition of their common predecessor's estate. Indeed, it is but fair and just that, without prejudging the issues, the parties be allowed to substantiate their respective claims and defenses in a full-blown trial, and secure a ruling on all the issues presented in their respective pleadings.

WHEREFORE, the instant petition is GRANTED. The Decision dated October 17, 2001 and Resolution dated August 26, 2002 of the Court of Appeals are REVERSED and SET ASIDE, and the case is REMANDED to the RTC of Echague, Isabela, Branch 24, for pre-trial, trial and judgment on the merits.

No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Callejo, Sr., Chico-Nazario, and Nachura, JJ., concur.

[1] Spelled as Dumailang in some pleadings.

[2] Sometimes spelled as Gumabun.

[3] Francisco, Rosa, Primo, Rogelio, Bonifacio, Jesusa, and Mateo, all surnamed Maraddag; Letecia, Pantaleon, Josefina, Cezar, Corazon, Juan and Felisa, all surnamed Culang; Nicanor Guiab, Rosario Dumaliang, Pedro Gumabon; Consolacion, Maria, Demetria and Rosalina, all surnamed Samut; Nena Gumabon and Felipe Gumabon substituted by his heirs namely: Veronica, Pelagio, Jessie, Virginia and Nestor, all surnamed Gumabon per Resolution dated January 13, 2002, rollo, pp. 9 and 108.

[4] By virtue of Special Power of Attorney dated October 26, 2002, rollo, pp. 25-27.

[5] Died on January 9, 2002 per Manifestation with Motion for Substitution of Heirs dated October 28, 2002 .

[6] A signatory in the Special Power of Attorney dated October 26, 2002, appointing Guiab as lawful attorney, rollo, pp. 25-27.

[7] Penned by Justice Conrado M. Vasquez, Jr., concurred in by Justices Martin S. Villarama, Jr. and Sergio L. Pestaño (now deceased); rollo, pp. 93-97.

[8] Id., rollo, pp. 106-107.

[9] Pedro Culang, Antonia Culang, Feliciano Gumabon, Juan Gumabon, and Francisco Gumabon; records, pp. 71-72.

[10] Illegible.

[11] Executed by Jose, Pedro and Antonia, all surnamed Culang; Nicanor Guiab; Antonia, Alfonso, Consolacion , Joaquin, Maria, Jose , Rosalina and Demetria, all surnamed Samut; Rosario, Pedro, Maria and Sofio, all surnamed Gumabon.

[12] Granted in an Order dated November 26, 1997 of Judge Henedino P. Eduarte; records, p. 26.

[13] Should be Evaresto per TCT No. 242769; records, p. 78; Evaresto died on March 16, 2004, survived by his children Hermogenes, Jovencio, Teresita and Grace, all surnamed Serban per Manifestation dated March 16, 2004; rollo, p. 111.

[14] Should be Vigilio per TCT No. 242768; records, p. 81.

[15] Executed by Jose, Pedro and Antonia, all surnamed Culang; Nicanor Guiab; Antonia, Alfonso, Consolacion , Joaquin, Maria, Jose , Rosalina and Demetria, all surnamed Samut; Rosario, Pedro, Maria and Sofio, all surnamed Gumabon.

[16] Records, pp. 37-40; also adapted by the other respondents .

[17] Penned by Judge Demetrio D. Calimag, Jr.; records, pp. 123-125; Civil Case No. 24-0479.

[18] Penned by Judge Bonifacio T. Ong; Id. at 139.

[19] CA rollo, p. 107.

[20] 335 Phil. 983 (1997).

[21] Id. at 986.

[22] Felix Gochan and Sons Realty Corporation v. Heirs of Raymundo Baba, 456 Phil. 569, 579 (2003); Biala v. Court of Appeals, G.R. No. 43503, October 31, 1990, 191 SCRA 50, 56.

[23] Felix Gochan and Sons Realty Corporation v. Heirs of Raymundo Baba, supra, citing Santos v. Santos, 418 Phil. 681, 692 (2001).

[24] Bailon-Casilao v. Court of Appeals, No. L-78178, April 15, 1988, 160 SCRA 738, 747.

[25] Id.

[26] RULES OF COURT, Rule 131, Sec. 1.

Section 1. Burden of proof. – Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

[27] España, Sr. v. Court of Appeals, supra note 20 at 987.

[28] Felix Gochan and Sons Realty Corporation v. Heirs of Raymundo Baba, supra at 580; National Irrigation Administration v. Court of Appeals, 376 Phil. 362, 376 (1999).

[29] Records, pp. 37-38.

[30] Santiago v. Court of Appeals, 343 Phil. 612, 627 citing Jimenez v. Fernandez, G.R. No. 46364, April 6, 1990, 184 SCRA 190, 197.

[31] Id. citing Rañeses v. Intermediate Appellate Court, G.R. No. 68747, July 13, 1990, 187 SCRA 397, 404.

[32] Salomon v. Intermediate Appellate Court, G.R. No. 70263, May 14, 1990, 185 SCRA 352, 363 citing Baranda v. Baranda, No. L-73275, May 20, 1987, 150 SCRA 59.

[33] Id., citing Director of Lands v. Addison, 49 Phil 19 (1926).

[34] Id., citing Baranda v. Baranda, supra at 74.

[35] Heirs of Ingjug-Tiro v. Casals, 415 Phil. 665, 672-673 (2001) citing De Guzman v. Court of Appeals, No. L-46935, December 21, 1987, 156 SCRA 701 and Cruz v. Cobana, 214 Phil. 575 (1984).

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