

**CALIXTO GOLFELO, IN HIS CAPACITY AS JUDICIAL ADMINISTRATOR
OF THE INTESTATE OF THE DECEASED, RUFINO GERONA,
PETITIONER, VS. THE COURT OF APPEALS; AND SO CHU BEE,
RESPONDENTS.**

G.R. No. 15841. October 30, 1964

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

For the second time, a 28-hectare land in Bulan, Sorsogon, occupies the attention of the Court.

Way back in 1954, we examined and practically affirmed the judgment of the Court of Appeals, CA-GR 8063-R, holding that 2 and 1/2 hectares of such land belonged to Esperanza Golfeo, and that So Chu Bee was in possession of the whole parcel in trust for the heirs of Rufino Gerona. That was a suit filed by So Chu Bee to quiet his title to the land.

Then in 1955, Calixto Golfeo as administrator of Rufino Gerona sued So Chu Bee to recover the same land. Yet the court of first instance and the Court of Appeals (on appeal) dismissed the complaint, holding that So Chu Bee had acquired ownership of the land thru adverse possession for over ten years.

It being a principle that a trustee may not generally acquire, thru adverse possession, realty held by him in trust, we gave due course to this petition for review, what with the contention of the administrator that being a Chinese, So Chu Bee could not acquire this real estate.

From the two decisions of the Court of Appeals, it appears that Rufino Gerona, who died in August, 1940, was the owner of this 28-hectare lot; that since 1926, it had been in possession of So Chu Bee, allegedly thru a contract of purchase from Rufino Gerona; that in its decision in CA-GR 8063-R, *supra*, in a suit filed by So Chu Bee against Esperanza Golfeo, daughter of Rufino Gerona to quiet his title to it, the courts declared: (1) that the alleged contract of purchase was fictitious; (2) that So Chu Bee possessed the land in trust for the heirs of Rufino Gerona; and (3) that Esperanza Golfeo was the owner of 2-1/2 hectares of said land, inasmuch as it had been given to her as advance inheritance by Rufino Gerona.

In this case, the appellate court rendered judgment for So Chu Bee principally for these reasons:

"We agree with the court below that appellee's adverse possession from 1940 has been satisfactorily established. In that year, Rufino Gerona died and So Chu Bee transferred the tax declaration for the property in his own name. In 1946, plaintiff's witnesses disclosed that So Chu Bee refused to share the products with the heirs of Gerona. In his answer in Civil Case No. 458, dated January 3, 1950, Armando Gigantone, witness for the appellant in this case, recognized So Chu Bee as a co-owner of the whole property together with his mother, Esperanza Golfeo. In her own answer in that case, Esperanza Golfeo merely laid claim to 2½ hectares of the entire property claimed by So Chu Bee as plaintiff therein, prayed for the dismissal of So Chu Bee's complaint, and did not ask that the entire land described in the complaint, except a portion of 2½ hectares thereof exclusively claimed by her, be declared a part of the estate of her father, Rufino Gerona."

The instant petition for review and the brief for petitioner, have emphasized the issue whether, being a Chinaman, So Chu Bee may be allowed to hold land thru prescription, considering the constitutional provision barring aliens from acquiring agricultural lands.

We deem it unnecessary to pass on the effects of the said fundamental inhibition. It is enough to decide on the matter of trusteeship.

In CA-GR 8063-R, the courts declared that So Chu Bee held the land as trustee for the heirs of Rufino Gerona. That declaration naturally applied to the time when he presented the suit—1949. So if in 1949, he was trustee, the ten-year period of adverse possession had not yet elapsed when in 1955, the present suit for "reivindicacion" was filed in the court of Sorsogon.

On the other hand, it was a mistake to compute the ten-year period from the year 1940 simply because in that year, So Chu Bee "transferred the tax declaration for the property in his own name". There is no finding that this transfer was known at that time by the heirs of Rufino Gerona. And considering that So Chu Bee was possessing the land as trustee, the transfer could have been made surreptitiously. As was held in *Laguna vs. Leventino*, 71 Phil. 566,

"The only instance in which the possession of a trustee may be deemed adverse to the cestui que trust is when the former makes an open repudiation of the trust by unequivocal acts made known to the latter. It has been held that the trustee may claim title by prescription founded on adverse possession, where it appears (a) that he has performed unequivocal acts of repudiation amounting to an ouster of the cestui que trust; (b) that such positive acts of repudiation have been made known to the cestui que trust; and * * * in the instant case, the sole fact of Bonifacio's having declared the lands in his name for tax purposes, constitutes no such unequivocal act of repudiation amounting to an ouster of his father, Justo Laguna, and cannot thus constitute adverse possession as basis for title by prescription." (*Italics Ours.*)

The only proof of adverse possession which could be considered is the refusal of So Chu Bee to share the products with the heirs of Gerona. But that was in 1946 and this suit was filed in October 1955, i. e., well within the ten-year limitation.

The decision under review adverts to the fact that in the previous case herein referred to, Esperanza Golfeo merely laid claim to 2-1/2 hectares of this land and did not ask that the whole land be declared a part of the estate of her father, Rufino Gerona. It is a fact that she merely wanted to retain the 2-1/2 hectares as her own. Nevertheless, she alleged that her father, Rufino Gerona owned the land which So Chu Bee was merely holding as trustee; and the Court of Appeals so declared.[1] This finding must be deemed conclusive as to the character of So Chu Bee's possession—he being the plaintiff, who demanded a declaration of his ownership.

For these reasons, this Court is constrained to conclude that So Chu Bee has not acquired ownership through prescription. And so the judgment should be reversed, and one should be entered requiring So Chu Bee to deliver the land to the administrator of Rufino Gerona. In addition, he should pay damages in the form of products undelivered to the owners.

The printed brief filed by Calixto Golfeo in the Court of Appeals, gave a detailed statement of the amount of damages totalling P32,532.00 up to the year 1957. Yet the brief of So Chu Bee did not dispute the figures. In addition, Golfeo claimed for yearly share of P2,000.00 from 1957, which we find to be reasonable in view of the previous yearly production record.

Wherefore, the judgment under review is reversed. The land is adjudged to belong to the intestate of Rufino Gerona, and So Chu Bee is directed to turn it over to Calixto Golfeo as administrator. He is further directed to pay as damages, the sum specified in the preceding paragraph to said administrator. Lastly, he shall defray the costs.

So ordered.

Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Bengzon, J.P., and Zaldivar, JJ.,
concur.

[1] Furthermore, she was not representing the heirs of Rufino Gerona.

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