

WILFREDO T. VAGILIDAD AND LOLITA A. VAGILIDAD, PETITIONERS, VS. GABINO VAGILIDAD, JR. AND DOROTHY VAGILIDAD, RESPONDENTS.

G.R. NO. 161136. November 16, 2006

Ponente: PUNO, J.

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PUNO, J.:

This is a Petition for Review on Certiorari of the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. No. CV-68318 dated March 19, 2003 and November 13, 2003, respectively, reversing and setting aside the decision of the Regional Trial Court of Antique, Sixth Judicial Region, Branch II, in Civil Case No. 2825 dated January 26, 1999.

The facts are stated in the assailed Decision[3] of the appellate court, viz.:

A parcel of land, Lot No. 1253, situated in Atabay, San Jose, Antique, measuring 4,280 square meters, was owned by Zoilo [Labiao] (hereafter ZOILO) as per Original Certificate of Title No. RO-2301 issued on March 3, 1931. Sometime in 1931, ZOILO died. Subsequently, on May 12, 1986, Loreto Labiao (hereafter LORETO), son of ZOILO, sold to Gabino Vagilidad Jr. (hereafter GABINO JR.) a portion of Lot No. 1253 (hereafter Lot 1253-B), measuring 1,604 square meters as evidenced by the Deed of Absolute Sale executed by LORETO.

In view of the death of ZOILO, his children, LORETO, Efren Labiao (hereafter EFREN) and Priscilla Espanueva (hereafter PRISCILLA) executed an Extrajudicial x x x Settlement of Estate dated January 20, 1987, adjudicating the entire Lot No. 1253, covering 4,280 square meters, to LORETO. On January 29, 1987, Transfer Certificate of Title (TCT) No. T-16693 was issued in favor of LORETO, EFREN and PRISCILLA, but on even date, TCT No. T-16693 was cancelled and TCT No. T-16694, covering the said property, was issued in the name of LORETO alone.

On July 31, 1987, GABINO JR., as petitioner, filed a Petition for the Surrender of TCT No. T-16694, covering Lot No. 1253, with the Regional Trial Court of San Jose City, Sixth Judicial Region, against LORETO, docketed as Cadastral Case No. 87-731-A. The plaintiff alleged that, being the owner of x x x Lot No. 1253-B, under TCT No. T-16694, by virtue of the sale that took place on May 12, 1986, he is entitled to ask for the surrender of the owner's copy of TCT No. T-16694 to the Register of Deeds of Antique in order to effect the transfer of title to the name of the petitioner. However, as per motion of both counsels[,] since the parties seemed to have already reached an amicable settlement without the knowledge of their counsels, the trial court issued an Order dated March 21, 1994 sending the case to the archives.

On September 21, 1988, [GABINO JR.] paid real estate taxes on the land he bought from LORETO as per Tax Declaration No. 1038 where the property was specified as Lot No. 1253-B. GABINO JR. thereafter sold the same lot to Wilfredo Vagilidad (hereafter WILFREDO) as per Deed of Absolute Sale dated December 7, 1989. On even date, Deed of Absolute Sale of a Portion of Land involving the opt-described property was also executed by LORETO in favor of WILFREDO. The aforementioned deeds, which were both executed on December 7, 1989 [and] notarized by Atty. Warloo Cardenal[,] [appear] to have been given the same entry

number in his notarial books as both contained the designation "Document No. 236, Page No. 49, Book No. XI, Series of 1989[.]"

Corollarily, on February 14, 1990, the sale of Lot No. 1253-B to WILFREDO was registered with the Registry of Deeds of the Province of Antique under Entry No. 180425. Consequently, TCT No. T-18023, cancelling TCT No. 16694, was issued in favor of WILFREDO pursuant to the Deed of Absolute Sale dated December 7, 1989.

On October 24, 1991, spouses WILFREDO and LOLITA obtained a loan from the Philippine National Bank (PNB for brevity) in the amount of P150,000.00 and mortgaged Lot No. 1253-B as collateral of the said loan and the transaction was inscribed at the back of TCT No. 18023 as Entry No. 186876. Subsequently, the xxx real estate mortgage was cancelled under Entry No. 191053 as per inscription dated November 17, 1992 in xxx TCT No. 18023.

Subsequently, WILFREDO obtained another loan from Development Bank of the Philippines (DBP for brevity) in the amount of P200,000.00 and mortgaged Lot No. 1253-B as collateral of the xxx loan and the transaction was inscribed at the back of TCT No. 18023 as Entry No. 196268. The said loan was paid and, consequently, the mortgage was cancelled as Entry No. 202500.

On September 29, 1995, spouses GABINO and Ma. Dorothy Vagilidad (hereafter DOROTHY), as plaintiffs, filed a Complaint for Annulment of Document, Reconveyance and Damages, with the Regional Trial Court of Antique, Sixth Judicial Region, Branch 11, against spouses WILFREDO and Lolita Vagilidad (hereafter LOLITA), docketed as Civil Case No. 2825. The plaintiffs claimed that they are the lawful owners of Lot No. 1253-B which was sold to him by LORETO in 1986. They alleged that [GABINO JR.] is a nephew of defendant WILFREDO. They likewise raised that when GABINO SR. died, defendant WILFREDO requested GABINO JR. to transfer the ownership of Lot No. 1253-B in defendant WILFREDO's name for loaning purposes with the agreement that the land will be returned when the plaintiffs need the same. They added that, pursuant to the mentioned agreement, plaintiff GABINO JR., without the knowledge and consent of his spouse, DOROTHY, executed the Deed of Sale dated December 7, 1989 in favor of defendant WILFREDO receiving nothing as payment therefor. They pointed out that after defendant WILFREDO was able to mortgage the property, plaintiffs demanded the return of the property but the defendants refused to return the same. The plaintiffs claimed that the same document is null and void for want of consideration and the same does not bind the non-consenting spouse. They likewise prayed that the defendant be ordered to pay the plaintiffs not less than P100,000.00 as actual and moral damages, P10,000.00 as attorney's fees and P5,000.00 as litigation expenses.

For their part, the defendants, on January 15, 1996, filed their Answer, denying the material allegations of the plaintiffs. Defendants claimed that they are the lawful owners of Lot No. 1253-B. They alleged that LORETO, with conformity of his wife, sold to them Lot No. 1253 on December 7, 1989 for P5,000.00 and the transaction was registered with the Register of Deeds of the Province of Antique under Entry No. 180425. They added that, subsequently, TCT No. T-18023, covering Lot No. 1253-B, was issued in favor of the defendants. Hence, they claimed that the plaintiffs be directed to pay the defendants P200,000.00 as moral damages, P50,000.00 as exemplary damages, P20,000.00 as attorney's fees and P30,000.00 for litigation expenses.[4]

The trial court ruled in favor of petitioners WILFREDO and LOLITA and held that LORETO did not validly convey Lot No. 1253-B to GABINO, JR. on May 12, 1986 since at that time, the heirs of ZOILO had not partitioned Lot No. 1253.[5] It ruled that LORETO could only sell at that time his aliquot share in the inheritance. He could not have sold a divided part thereof designated by metes and bounds. Thus, it held that LORETO remained the owner of the subject lot when he sold it to WILFREDO on December 7, 1989. It further found that there was no proof that WILFREDO knew of the sale that took place between LORETO and GABINO, JR. on May 12, 1986. The dispositive portion of the decision states:

WHEREFORE, in view of the foregoing pronouncements and a preponderance of evidence, judgment is hereby rendered:

- FINDING the defendants WILFREDO VAGILIDAD and LOLITA VAGILIDAD to have duly acquired ownership of Lot No. 1253-B containing an area of 1,604 square meters, more or less, situated in San Jose, Antique;
- SUSTAINING the validity of Transfer Certificate of Title No. T-18023 covering the subject Lot No. 1253-B and issued in the name of the defendant WILFREDO VAGILIDAD, married to the defendant LOLITA VAGILIDAD;
- DISMISSING the complaint of the plaintiffs GABINO VAGILIDAD, JR. and MA. DOROTHY VAGILIDAD, as well as the counterclaims of the defendants WILFREDO VAGILIDAD and LOLITA VAGILIDAD and of the defendants LORETO LABIAO and FRANCISCA LABIAO; and
- PRONOUNCING no cost.[6]

GABINO, JR. and DOROTHY filed an appeal with the Court of Appeals. The appellate court reversed and set aside the decision of the court a quo, viz.:

WHEREFORE, premises considered, the Decision dated January 26, 1999 of the Regional Trial Court of Antique, Sixth Judicial Region, Branch 11, in Civil Case No. 2825, is hereby REVERSED and SET ASIDE and a new one is entered: (1) declaring the Deed of Absolute Sale [of Portion of Land] dated December 7, 1989 executed by appellee LORETO in favor of appellee WILFREDO null and void; (2) ordering the defendants-appellees WILFREDO and LOLITA to reconvey Lot No. 1253-B to plaintiffs-appellants GABINO, JR. and DOROTHY; and (3) ordering the defendants-appellees to pay the plaintiffs-appellants P100,000.00 as moral damages, P10,000.00 as attorney's fees and P5,000.00 as litigation expenses.[7]

The appellate court ruled that the sale made by LORETO in favor of GABINO, JR. on May 12, 1986 is valid. The rights of LORETO to succession are transmitted from the moment of ZOILO's death in 1931. Thus, when LORETO sold the 1,604-square meter portion of Lot No. 1253 to GABINO JR., he already had the right as co-owner to his share to Lot No. 1253, even if at that time the property had not yet been partitioned. Consequently, the sale made by LORETO in favor of WILFREDO on December 7, 1989 is void because LORETO and FRANCISCA were no longer the owners of Lot No. 1253-B as of that time. The appellate court also held WILFREDO and LOLITA liable for moral damages for falsifying the fictitious deeds of sale on December 7, 1989.

WILFREDO and LOLITA moved for reconsideration but the motion was denied in the questioned Resolution dated November 13, 2003. Hence, this petition for review on certiorari raising the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING ARTICLE 1349 AND ARTICLE 1460 OF THE NEW CIVIL CODE IN THE CASE AT BAR.

II

THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING THE PROVISION OF ARTICLE 1544 OF THE NEW CIVIL CODE AND THE DOCTRINE OF DOUBLE SALE THAT THE BUYER WHO IS IN POSSESSION OF THE TORRENS TITLE AND HAD THE DEED OF SALE REGISTERED MUST PREVAIL.

III

THE HONORABLE COURT OF APPEALS ERRED IN NOT APPLYING ARTICLE 1391 OF THE NEW CIVIL CODE AND THE DOCTRINE THAT IN CASE OF FRAUD, ACTION FOR RECONVEYANCE MUST BE BROUGHT WITHIN FOUR (4) YEARS FROM THE DISCOVERY OF THE FRAUD.

IV

THE HONORABLE COURT OF APPEALS ERRED IN AWARDING PRIVATE RESPONDENT MORAL DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES.[8]

We deny the petition.

I

First, petitioners contend that the Deed of Absolute Sale between LORETO and GABINO, JR. does not have a determinate object. They anchor their claim on the following discrepancies: (1) the object of the Deed of Absolute Sale between LORETO and GABINO, JR. is Lot No. 1253 with an area of 1,604 square meters; (2) the object of the Deed of Absolute Sale of Portion of Land between LORETO and WILFREDO is a portion of Lot No. 1253, known as Lot No. 1253-B, also with an area of 1,604 square meters;[9] (3) the Deed of Absolute Sale between LORETO and GABINO, JR. shows that its object, Lot No. 1253, is not registered under the Land Registration Act nor under the Spanish Mortgage Law; and (4) the property subject of this action, Lot No. 1253-B, was taken from Lot No. 1253 containing an area of 4,280 square meters previously registered in the name of ZOILO under Original Certificate of Title (OCT) No. RO-2301.[10] With these discrepancies, petitioners contend that either the Deed of Absolute Sale between LORETO and GABINO, JR. does not have a determinate object or that Lot No. 1253-B, the subject parcel, is not the object thereof. Hence, absent a determinate object, the contract is void. They rely on Articles 1349 and 1460 of the Civil Code, viz.:

Art. 1349. The object of every contract must be determinate, as to its kind. The fact that the quantity is not determinate shall not be an obstacle to the existence of the contract, provided it is possible to determine the same, without the need of a new contract between the parties.

Art. 1460. A thing is determinate when it is particularly designated or physically segregated from all others of the same class.

The requisite that a thing be determinate is satisfied if at the time the contract is entered into, the thing is capable of being made determinate without the necessity of a new or further agreement between the parties.

Petitioners err. The evidence on record shows that Lot No. 1253-B, the subject parcel, and the lot described as Lot No. 1253 in the Deed of Absolute Sale of May 12, 1986 between LORETO and GABINO, JR., are the same. In the Deed of Absolute Sale, Lot No. 1253 is described, viz.:

A parcel of land (Lot No. 1253 of the Cadastral Survey of San Jose), with the improvements thereon. Bounded on the North [by] 1254 and 1255; on the South by road; on the East by 1253 and road on the West by 1240-Angel Salazar; containing an area of 1,604 square meters more or less declared under Tax Declaration No. 4159.[11]

In the Deed of Absolute Sale of Portion of Land of December 7, 1989 between LORETO and WILFREDO, the subject parcel is described, viz.:

A parcel of land (Lot No. 1253. Ap-06-00271) of the Cadastral Survey of San Jose, LRC Cad. Rec. No. 936), situated at Atabay, San Jose, Antique. Bounded on the N. and E. along lines 1-2-3 by lot 1255; San Jose Cadastre; on the S. along line 3-4 by Road; on the W. along line 4-5 by Lot 1240; San Jose Cadastre; and on the N. along line 5-1 by Lot 1254, San Jose Cadastre containing an area of [Four] Thousand Two Hundred Eighty (4,280) square meters, more or less.

of which a portion of land subject of this sale is hereinbelow (sic) particularly described as follows, to wit:

A portion of Lot No. 1253-B of the Cadastral Survey of San Jose, situated at Atabay, San Jose, Antique. Bounded on the North by Lot No. 1254; South by Road; West by Lot 1253-A; and on the East by Lot No. 1253-C; containing an area of 1,604 square meters, more or less.[12]

The description of Lot No. 1253, the object of the Deed of Absolute Sale, as "not registered under Act No. 196[,] otherwise known as the Land Registration Act, nor under the Spanish Mortgage Law"[13] is a stray description of the subject parcel. It is uncorroborated by any evidence in the records. This description solely appears on the Deed of Absolute Sale and the discrepancy was not explained by LORETO who signed the Deed of Absolute Sale as vendor. LORETO does not, in fact, deny the existence of the Deed of Absolute Sale. He merely counters that the Deed of Absolute Sale was purportedly a mortgage. However, LORETO's claim that it was one of mortgage is clearly negated by a Certification[14] issued by the Bureau of Internal Revenue dated May 12, 1986. It certified that LORETO was not required to pay the capital gains tax on the transfer of Lot No. 1253 to GABINO, JR. because the property was classified as an ordinary asset.

To be sure, petitioners could have easily shown that LORETO owned properties other than Lot No. 1253 to bolster their claim that the object of the Deed of Absolute Sale was different from Lot No. 1253-B which is the object described in the Deed of Absolute Sale of Portion of Land. They did not proffer any evidence.

The trial court itself comprehensively traced the origin of Lot No. 1253-B. It clearly demonstrated that the subject parcel was originally part of the registered lot of ZOILO. It also showed how the subject parcel was eventually bounded by Lot No. 1253-A on the West and by Lot No. 1253-C on the East, as the lot would be later described in the Deed of Absolute Sale of Portion of Land.

The trial court found that ZOILO previously owned Lot No. 1253 under OCT No. RO-2301 issued on March 3, 1931. On November 14, 1986, Entry No. 167922 was inscribed in the certificate of title, per Order dated March 30, 1978 of Judge Noli Ma. Cortes of the then Court of First Instance of Antique, stating that it was a reconstituted certificate of title.[15] Lot No. 1253 was subdivided by virtue of a subdivision plan dated June 19, 1987. On January 20, 1987, an Extrajudicial Settlement of Estate executed by LORETO, EFREN and PRISCILLA was entered as Entry No. 170722. The OCT of ZOILO was cancelled by TCT No. T-16693 in the names of LORETO, EFREN and PRISCILLA on January 29, 1987. TCT No. T-16693 was cancelled on the same day by TCT No. T-16694 in the name of LORETO alone. The TCT was partially cancelled by the issuance of TCTs covering Lot Nos. 1253-A, 1253-C and 1253-D. The TCT of Lot No. 1253-B was issued in the name of WILFREDO married to LOLITA on February 15, 1990. WILFREDO's TCT No. T-18023 appears to be a transfer from LORETO's TCT No. T-16694.

II

Next, petitioners contend that the appellate court should have upheld the title of WILFREDO under Article 1544 of the Civil Code and the doctrine of double sale where the buyer who is in possession of the Torrens Title must prevail.[16] First, petitioners' title was issued pursuant to the purported Deed of Absolute Sale of Portion of Land dated December 7, 1989. Second, WILFREDO did not see any encumbrance at the back of the title of the subject lot when he purchased it from LORETO on December 7, 1989. Thus, since he is not bound to go beyond the certificate of title, he has acquired the subject property in due course and in good faith.

We disagree. Article 1544 of the Civil Code states, viz.:

Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

Petitioners' reliance on Article 1544 is misplaced. While title to the property was issued in WILFREDO's name on February 15, 1990, the following circumstances show that he registered the subject parcel with evident bad faith.

First, the Deed of Absolute Sale of Portion of Land dated December 7, 1989 between LORETO and WILFREDO is tainted with blatant irregularities. It is a fact that the Deed of Absolute Sale of Portion of Land and the Deed of Absolute Sale between GABINO, JR. and WILFREDO are of even date. Both Deeds had the same object – Lot No. 1253-B. Both deeds were notarized by Atty. Warloo Cardenal and bear the same entry in his notarial register: Document No. 236, Page No. 49, Book No. XI, Series of 1989.

Second, the testimony of a disinterested witness, Febe Mabuhay, established the irregularity. Mabuhay used to work as secretary for Atty. Cardenal and co-signed as witness in both Deeds. She stated that Atty. Cardenal instructed her to prepare the two documents in the last week of November 1989. She was present when GABINO, JR. signed the Deed of Absolute Sale. She testified that after GABINO, JR. left, LORETO and his wife FRANCISCA arrived and signed the Deed of Absolute Sale of Portion of Land.[17] The Decision of the court a quo further states, viz.:

[Mabuhay testified that when she prepared the two documents, she] noticed the similarity of Lot No. 1253 as technically described in both documents but she did not call the attention of Atty. Warlo[o] Cardenal. [She likewise stated that Atty. Cardenal] specifically instructed her to assign the same document number to the two documents notarized on December 7, 1989.[18]

Third, the testimony of Atty. Ernesto Estoya, then Clerk of Court of the Regional Trial Court of Antique, supports the claim that there was bad faith in the execution of the Deed of Absolute Sale of Portion of Land. Atty. Estoya brought the notarial record of Atty. Cardenal for the year 1989 pursuant to a subpoena. He stated that he had not brought both Deeds as required in the subpoena because "Doc. No. 236; Page No. 49; Book No. XI; Series of 1989" as entered in the notarial register of Atty. Cardenal could not be found in the files. He further explained that the last document on page 48 of the notarial register of Atty. Cardenal is Document No. 235, while the first document on page 49 is Document No. 239, leaving three unexplained gaps for document numbers 236, 237 and 238. Atty. Estoya stated that he was not the one who received the 1989 notarial register of Atty. Cardenal when the latter surrendered it since he assumed office only in 1994.[19]

Fourth, we give credence to the testimony of GABINO, JR. that LORETO and WILFREDO had employed the scheme to deprive him and his wife of their lawful title to the subject property. The facts speak for themselves. WILFREDO knew that he could not use the Deed of Absolute Sale executed in his favor by GABINO, JR. because the latter had no title to transfer. Without a title, WILFREDO could not use the subject property as collateral for a bank loan. Hence, LORETO, who had refused to surrender the title to GABINO, JR. and in whose name the land remained registered, had to execute the Deed of Absolute Sale of Portion of Land in favor of WILFREDO. Hence, it was convenient for WILFREDO to deny the existence of the Deed of Absolute Sale of December 7, 1989 between him and GABINO, JR. But the evidence on record shows that after he was able to register the subject property in his name on February 15, 1990, WILFREDO used the title as collateral in the loans that he contracted with the Philippine National Bank on October 24, 1991 and the Development Bank of the Philippines on December 1, 1993. This supports the claim of GABINO, JR. that WILFREDO needed the lot for loaning purposes.

With these corroborating circumstances and the following irrefragable documents on record, the evidence preponderates in favor of GABINO, JR. One, he acquired Lot No.1253-B from LORETO on May 12, 1986[20] by virtue of the Deed of Absolute Sale. Two, the Bureau of Internal Revenue issued a Certification, also on May 12, 1986, for the exemption from the payment of capital gains tax when LORETO sold to him the subject parcel. Three, GABINO, JR. paid the real estate tax on the subject parcel in 1987. Four, he filed a Petition for the Surrender of LORETO's title on July 31, 1987 so he could transfer the title of the property in his name.

Petitioners likewise err in their argument that the contract of sale between LORETO and GABINO, JR. is void on the ground that at the time of the sale on May 12, 1986, LORETO had a right to dispose only an aliquot part of the yet undivided property of ZOILO. The subject parcel, being an inherited property, is subject to the rules of co-ownership under the Civil Code.

Co-ownership is the right of common dominion which two or more persons have in a spiritual part of a thing, not materially or physically divided.[21] Before the partition of the property held in common, no individual or co-owner can claim title to any definite portion thereof. All that the co-owner has is an ideal or abstract quota or proportionate share in the entire property.[22]

LORETO sold the subject property to GABINO, JR. on May 12, 1986 as a co-owner. LORETO had a right, even before the partition of the property on January 19, 1987,[23] to transfer in whole or in part his undivided interest in the lot even without the consent of his co-heirs. This right is absolute in accordance with the well-settled doctrine that a co-owner has full ownership of his pro-indiviso share and has the right to alienate, assign or mortgage it, and substitute another person for its enjoyment.[24] Thus, what GABINO, JR. obtained by virtue of the sale on May 12, 1986 were the same rights as the vendor LORETO had as co-owner, in an ideal share equivalent to the consideration given under their transaction.[25]

LORETO sold some 1,604 square meters of Lot No. 1253 to GABINO, JR. Consequently, when LORETO purportedly sold to WILFREDO on December 7, 1989 the same portion of the lot, he was no longer the owner of Lot No. 1253-B. Based on the principle that "no one can give what he does not have,"[26] LORETO could not have validly sold to WILFREDO on December 7, 1989 what he no longer had. As correctly pointed out by the appellate court, the sale made by LORETO in favor of WILFREDO is void as LORETO did not have the right to transfer the ownership of the subject property at the time of sale.

III

Petitioners contend that since the subdivision plan of Lot No. 1253 was only approved on January 19, 1987, the appellate court can not presume

that the aliquot part of LORETO was the parcel designated as Lot 1253-B.[27]

Petitioners err. The mere fact that LORETO sold a definite portion of the co-owned lot by metes and bounds before partition does not, per se, render the sale a nullity. We held in *Lopez v. Vda. De Cuaycong*[28] that the fact that an agreement purported to sell a concrete portion of a co-owned property does not render the sale void, for it is well-established that the binding force of a contract must be recognized as far as it is legally possible to do so.[29]

In the case at bar, the contract of sale between LORETO and GABINO, JR. on May 12, 1986 could be legally recognized. At the time of sale, LORETO had an aliquot share of one-third of the 4,280-square meter property or some 1,426[30] square meters but sold some 1,604 square meters to GABINO, JR. We have ruled that if a co-owner sells more than his aliquot share in the property, the sale will affect only his share but not those of the other co-owners who did not consent to the sale.[31] Be that as it may, the co-heirs of LORETO waived all their

rights and interests over Lot No. 1253 in favor of LORETO in an Extrajudicial Settlement of Estate dated January 20, 1987. They declared that they have previously received their respective shares from the other estate of their parents ZOILO and PURIFICACION.[32] The rights of GABINO, JR. as owner over Lot No. 1253-B are thus preserved. These rights were not effectively transferred by LORETO to WILFREDO in the Deed of Absolute Sale of Portion of Land. Nor were these rights alienated from GABINO, JR. upon the issuance of the title to the subject property in the name of WILFREDO. Registration of property is not a means of acquiring ownership.[33] Its alleged incontrovertibility cannot be successfully invoked by WILFREDO because certificates of title cannot be used to protect a usurper from the true owner or be used as a shield for the commission of fraud.[34]

IV

On the issue of prescription, petitioners contend that the appellate court failed to apply the rule that an action for reconveyance based on fraud prescribes after the lapse of four years.[35] They cite Article 1391[36] of the Civil Code and the case of *Gerona v. De Guzman*. [37]

We disagree. This Court explained in *Salvatierra v. Court of Appeals*, [38] viz.:

An action for reconveyance based on an implied or constructive trust must perforce prescribe in ten years and not otherwise. A long line of decisions of this Court, and of very recent vintage at that, illustrates this rule. Undoubtedly, it is now well-settled that an action for reconveyance based on an implied or constructive trust prescribes in ten years from the issuance of the Torrens title over the property. The only discordant note, it seems, is *Balbin v. Medalla*, which states that the prescriptive period for a reconveyance action is four years. However, this variance can be explained by the erroneous reliance on *Gerona v. de Guzman*. But in *Gerona*, the fraud was discovered on June 25, 1948, hence Section 43(3) of Act No. 190 was applied, the New Civil Code not coming into effect until August 30, 1950 xxx. It must be stressed, at this juncture, that Article 1144 and Article 1456 are new provisions. They have no counterparts in the old Civil Code or in the old Code of Civil Procedure, the latter being then resorted to as legal basis of the four-year prescriptive period for an action for reconveyance of title of real property acquired under false pretenses.[39]

[Thus,] under the present Civil Code, xxx just as an implied or constructive trust is an offspring of xxx Art. 1456, xxx so is the corresponding obligation to reconvey the property and the title thereto in favor of the true owner. In this context, and vis-à-vis prescription, Article 1144 of the Civil Code is applicable[, viz.:]

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.[40] (emphases supplied)

Thus, in the case at bar, although the TCT of WILFREDO became indefeasible after the lapse of one year from the date of registration, the attendance of fraud in its issuance created an implied trust in favor of GABINO, JR. under Article 1456[41] of the Civil Code. Being an implied trust, the action for reconveyance of the subject property therefore prescribes within a period of ten years from February 15, 1990. Thus, when respondents filed the instant case with the court a quo on September 26, 1995, it was well within the prescriptive period.

V

On the issue of damages, petitioners contend that the grant is erroneous and the alleged connivance between Atty. Cardenal and WILFREDO lacks basis.

We disagree. The evidence on record is clear that petitioners committed bad faith in the execution of the purported Deed of Absolute Sale of Portion of Land dated December 7, 1989 between LORETO and

WILFREDO. As stated by the appellate court, viz.:

xxxx From the series of events, it can be reasonably inferred that appellees WILFREDO, LORETO and Atty. Cardenal connived in attempting to deprive appellants of Lot No. 1253-B, hence, the appellants' entitlement to moral damages. Further, it is a well-settled rule that attorney's fees are allowed to be awarded if the claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party for whom it is sought. xxxx To protect themselves, the appellants engaged the services of counsel and incurred expenses in the course of litigation. Hence, we deem it equitable to award attorney's fees to the appellant xxx.[42]

IN VIEW WHEREOF, the petition is DENIED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. No. CV-68318 dated March 19, 2003 and November 13, 2003, respectively, are AFFIRMED in toto. Costs against petitioners.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and Garcia, JJ., concur.

[1] CA Decision, 1-11; rollo, 43-53.

[2] Resolution; CA rollo, 179.

[3] See CA Decision, 1-11; rollo, 43-53.

[4] Citations omitted.

[5] RTC Decision, 25; CA rollo, 79.

[6] RTC Decision, 40; CA rollo, 94.

[7] CA Decision, 11; rollo, 53.

[8] Petition for Review on Certiorari, 8; rollo, 21.

[9] Petition for Review on Certiorari, 10; rollo, 23.

[10] See Exhibit E; OR, 148.

[11] See Exhibit B; OR, 145.

[12] See Exhibit L; OR, 160.

[13] See Exhibit B; OR, 145.

[14] See Exhibit D; OR, 147.

[15] See Exhibit E-2; OR, 148.

[16] Petition for Review on Certiorari, 14; rollo, 27.

[17] RTC Decision, 19-20; CA rollo, 73-74.

[18] RTC Decision, 20; CA rollo, 74.

[19] RTC Decision, 21; CA rollo, 75.

[20] See Exhibit C; OR, 146.

[21] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines II (1994) at 161, citing 3 Sanchez Roman 162.

[22] Oliveras v. Lopez, No. L-29727, December 14, 1988, 168 SCRA 431.

[23] See Exhibit H-2; OR, 152.

[24] Nufable v. Nufable, G.R. No. 126950, July 2, 1999, 309 SCRA 692, 700.

[25] Spouses Manuel and Salvacion del Campo v. CA, G.R. No. 108228, February 1, 2001, 351 SCRA 1.

[26] Mercado v. Court of Appeals, G.R. No. 108592, January 26, 1995, 240 SCRA 616.

[27] Petition for Review on Certiorari, 4; rollo, 17.

[28] 74 Phil. 601 (1944).

[29] Ibid.

[30] 1,426.66 square meters.

[31] Bailon-Casilao v. Court of Appeals, 160 SCRA 738, 745 (1988); Punsalan v. Boon Liat, 44 Phil. 320, 324 (1923).

[32] See Exhibit F; OR, 149.

[33] Adille v. Court of Appeals, 157 SCRA 455 (1988).

[34] Ibid.

[35] Petition for Review on Certiorari, 2; rollo, 15.

[36] Art. 391. The action for annulment shall be brought within four years.

This period shall begin: In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases.

In case of mistake or fraud, from the time of the discovery of the same.

And when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases.

[37] No. L-19060, May 29, 1964, 11 SCRA 153.

[38] G.R. No. 107797, August 26, 1996, 261 SCRA 45.

[39] Id. at 53.

[40] Id. at 52.

[41] Art. 1456. If 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.

[42] CA Decision, 10; rollo, 52.

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