

CELERINO E. MERCADO, PETITIONER, VS. BELEN ESPINOCILLA AND FERDINAND ESPINOCILLA, RESPONDENTS.*G.R. No. 184109. February 01, 2012*

Ponente: VILLARAMA, JR., J.

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Petitioner Celerino E. Mercado appeals the Decision[1] dated April 28, 2008 and Resolution[2] dated July 22, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 87480. The CA dismissed petitioner's complaint[3] for recovery of possession, quieting of title, partial declaration of nullity of deeds and documents, and damages, on the ground of prescription.

The antecedent facts

Doroteo Espinocilla owned a parcel of land, Lot No. 552, with an area of 570 sq. m., located at Magsaysay Avenue, Zone 5, Bulan, Sorsogon. After he died, his five children, Salvacion, Aspren, Isabel, Macario, and Dionisia divided Lot No. 552 equally among themselves. Later, Dionisia died without issue ahead of her four siblings, and Macario took possession of Dionisia's share. In an affidavit of transfer of real property[4] dated November 1, 1948, Macario claimed that Dionisia had donated her share to him in May 1945.

Thereafter, on August 9, 1977, Macario and his daughters Betty Gullaba and Saida Gabelo sold[5] 225 sq. m. to his son Roger Espinocilla, husband of respondent Belen Espinocilla and father of respondent Ferdinand Espinocilla. On March 8, 1985, Roger Espinocilla sold[6] 114 sq. m. to Caridad Atienza. Per actual survey of Lot No. 552, respondent Belen Espinocilla occupies 109 sq. m., Caridad Atienza occupies 120 sq. m., Caroline Yu occupies 209 sq. m., and petitioner, Salvacion's son, occupies 132 sq. m.[7]

The case for petitioner

Petitioner sued the respondents to recover two portions: an area of 28.5[8] sq. m. which he bought from Aspren and another 28.5 sq. m. which allegedly belonged to him but was occupied by Macario's house.[9] His claim has since been modified to an alleged encroachment of only 39 sq. m. that he claims must be returned to him. He avers that he is entitled to own and possess 171 sq. m. of Lot No. 552, having inherited 142.5 sq. m. from his mother Salvacion and bought 28.5 sq. m. from his aunt Aspren. According to him, his mother's inheritance is 142.5 sq. m., that is, 114 sq. m. from Doroteo plus 28.5 sq. m. from Dionisia. Since the area he occupies is only 132 sq. m.,[10] he claims that respondents encroach on his share by 39 sq. m.[11]

The case for respondents

Respondents agree that Doroteo's five children each inherited 114 sq. m. of Lot No. 552. However, Macario's share increased when he received Dionisia's share. Macario's increased share was then sold to his son Roger, respondents' husband and father. Respondents claim that they rightfully possess the land they occupy by virtue of acquisitive prescription and that there is no basis for petitioner's claim of encroachment.[12]

The trial court's decision

On May 15, 2006, the Regional Trial Court (RTC) ruled in favor of petitioner and held that he is entitled to 171 sq. m. The RTC found that petitioner inherited 142.5 sq. m. from his mother Salvacion and bought 28.5 sq. m. from his aunt Aspren. The RTC computed that Salvacion, Aspren, Isabel and Macario each inherited 142.5 sq. m. of Lot No. 552. Each inherited 114 sq. m. from Doroteo and 28.5 sq. m. from Dionisia. The RTC further ruled that Macario was not entitled to 228 sq. m. Thus, respondents must return 39 sq. m. to petitioner who occupies only 132 sq. m.[13]

There being no public document to prove Dionisia's donation, the RTC also held that Macario's 1948 affidavit is void and is an invalid repudiation of the shares of his sisters Salvacion, Aspren, and Isabel in Dionisia's share. Accordingly, Macario cannot acquire said shares by prescription. The RTC further held that the oral partition of Lot No. 552 by Doroteo's heirs did not include Dionisia's share and that partition should have been the main action. Thus, the RTC ordered partition and deferred the transfer of possession of the 39 sq. m. pending partition.[14] The dispositive portion of the RTC decision reads:

WHEREFORE, in view of the foregoing premises, the court issues the following ORDER, thus -

a)

Partially declaring the nullity of the Deed of Absolute Sale of Property dated August 9, 1977 x x x executed by Macario Espinocilla, Betty E. Gullaba and Saida E. Gabelo in favor of Roger Espinocilla, insofar as it affects the portion or the share belonging to Salvacion Espinocilla, mother of [petitioner,] relative to the property left by Dionisia Espinocilla, including [Tax Declaration] No. 13667 and other documents of the same nature and character which emanated from the said sale;

b)

To leave as is the Deeds of Absolute Sale of May 11, 1983 and March 8, 1985, it having been determined that they did not involve the portion belonging to [petitioner] x x x.

c)

To effect an effective and real partition among the heirs for purposes of determining the exact location of the share (114 sq. m.) of the late Dionisia Espinocilla together with the 28.5 sq. m. belonging to [petitioner's] mother Salvacion, as well as, the exact location of the 39 sq. m. portion belonging to the [petitioner] being encroached by the [respondents], with the assistance of the Commissioner (Engr. Fundano) appointed by this court.

d)

To hold in abeyance the transfer of possession of the 39 sq. m. portion to the [petitioner] pending the completion of the real partition above-mentioned.[15]

The CA decision

On appeal, the CA reversed the RTC decision and dismissed petitioner's complaint on the ground that extraordinary acquisitive prescription has already set in in favor of respondents. The CA found that Doroteo's four remaining children made an oral partition of Lot No. 552 after Dionisia's death in 1945 and occupied specific portions. The oral partition terminated the co-ownership of Lot No. 552 in 1945. Said partition also included Dionisia's share because the lot was divided into four parts only. And since petitioner's complaint was filed only on July 13, 2000, the CA concluded that prescription has set in.[16] The CA disposed the appeal as follows:

WHEREFORE, the appeal is GRANTED. The assailed May 15, 2006 Decision of the Regional Trial Court

(RTC) of Bulan, Sorsogon is hereby REVERSED and SET ASIDE. The Complaint of the [petitioner] is hereby DISMISSED. No costs.[17]

The instant petition

The core issue to be resolved is whether petitioner's action to recover the subject portion is barred by prescription.

Petitioner confirms oral partition of Lot No. 552 by Doroteo's heirs, but claims that his share increased from 114 sq. m. to 171 sq. m. and that respondents encroached on his share by 39 sq. m. Since an oral partition is valid, the corresponding survey ordered by the RTC to identify the 39 sq. m. that must be returned to him could be made.[18] Petitioner also alleges that Macario committed fraud in acquiring his share; hence, any evidence adduced by him to justify such acquisition is inadmissible. Petitioner concludes that 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.[19]

The Court's ruling

We affirm the CA ruling dismissing petitioner's complaint on the ground of prescription.

Prescription, as a mode of acquiring ownership and other real rights over immovable property, is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted, and adverse. Acquisitive prescription of real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession in good faith and with just title for 10 years. In extraordinary prescription, ownership and other real rights over immovable property are acquired through uninterrupted adverse possession for 30 years without need of title or of good faith.[20]

Here, petitioner himself admits the adverse nature of respondents' possession with his assertion that Macario's fraudulent acquisition of Dionisia's share created a constructive trust. In a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee (Macario) neither accepts any trust nor intends holding the property for the beneficiary (Salvacion, Aspren, Isabel). The relation of trustee and cestui que trust does not in fact exist, and the holding of a constructive trust is for the trustee himself, and therefore, at all times adverse.[21] Prescription may supervene even if the trustee does not repudiate the relationship.[22]

Then, too, respondents' uninterrupted adverse possession for 55 years of 109 sq. m. of Lot No. 552 was established. Macario occupied Dionisia's share in 1945 although his claim that Dionisia donated it to him in 1945 was only made in a 1948 affidavit. We also agree with the CA that Macario's possession of Dionisia's share was public and adverse since his other co-owners, his three other sisters, also occupied portions of Lot No. 552. Indeed, the 1977 sale made by Macario and his two daughters in favor of his son Roger confirms the adverse nature of Macario's possession because said sale of 225 sq. m.[23] was an act of ownership over Macario's original share and Dionisia's share. In 1985, Roger also exercised an act of ownership when he sold 114 sq. m. to Caridad Atienza. It was only in the year 2000, upon receipt of the summons to answer petitioner's complaint, that respondents' peaceful possession of the remaining portion (109 sq. m.) was interrupted. By then, however, extraordinary acquisitive prescription has already set in in favor of respondents. That the RTC found Macario's 1948 affidavit void is of no moment. Extraordinary prescription is unconcerned with Macario's title or good faith. Accordingly, the RTC erred in ruling that Macario cannot acquire by prescription the shares of Salvacion, Aspren, and Isabel, in Dionisia's 114-sq. m. share from Lot No. 552.

Moreover, the CA correctly dismissed petitioner's complaint as an action for reconveyance based on an implied or constructive trust prescribes in 10 years from the time the right of action accrues.[24] This is the other kind of prescription under the Civil Code, called extinctive prescription, where rights and actions are lost by the lapse of

time.[25] Petitioner's action for recovery of possession having been filed 55 years after Macario occupied Dionisia's share, it is also barred by extinctive prescription. The CA while condemning Macario's fraudulent act of depriving his three sisters of their shares in Dionisia's share, equally emphasized the fact that Macario's sisters wasted their opportunity to question his acts.

WHEREFORE, we DENY the petition for review on certiorari for lack of merit and AFFIRM the assailed Decision dated April 28, 2008 and Resolution dated July 22, 2008 of the Court of Appeals in CA-G.R. CV No. 87480.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Del Castillo, JJ., concur.

[*] Avelina in some parts of the records.

[**] This surname is spelled Espenocilla in some parts of the records.

[1] Rollo, pp. 17-28. Penned by Associate Justice Ramon M. Bato, Jr. with the concurrence of Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

[2] Id. at 70-71.

[3] Records, pp. 1-7.

[4] Exhibit "4".

[5] Records, p. 10.

[6] Exhibit "8".

[7] Exhibit "I-3".

[8] 28.3 sq. m. in other parts of the records.

[9] Records, pp. 2-3.

[10] Rollo, p. 155.

[11] Id. at 160.

[12] Id. at 142, 144-145.

[13] Records, pp. 243-244.

[14] Id. at 244-247.

[15] Id. at 246-247.

[16] Rollo, pp. 23-24.

[17] Id. at 28.

[18] Id. at 155-160.

[19] Id. at 162-163.

[20] Tan v. Ramirez, G.R. No. 158929, August 3, 2010, 626 SCRA 327, 335-336; Heirs of Marcelina Arzadon-Crisologo v. Rañon, G.R. No. 171068, September 5, 2007, 532 SCRA 391, 404-405; Calicdan v. Cendaña, G.R. No. 155080, February 5, 2004, 422 SCRA 272, 279.

[21] Cañez v. Rojas, G.R. No. 148788, November 23, 2007, 538 SCRA 242, 258.

[22] Id.

[23] Should have been 228 sq. m. since 114 sq. m. (Macario's share) + 114 sq. m. (Dionisia's share) = 228 sq. m.

[24] See Aznar Brothers Realty Company v. Aying, G.R. No. 144773, May 16, 2005, 458 SCRA 496, 509-510.

[25] Morales v. Court of First Instance (Misamis Occidental), No. L-52278, May 29, 1980, 97 SCRA 872, 874.

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