

**PRIMA G. CARRILLO AND LORENZO LICUP,
PLAINTIFFS-APPELLANTS, VS. FRANCISCA SALAK DE PAZ AND
ERNESTO BAUTISTA, DEFENDANTS-APPELLEES.**

G. R. No. 22601. October 28, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

This is an appeal from an order of the Court of First Instance of Tarlac dismissing a suit to recover ownership and possession of 2/3 of 1/2 of Lot No. 221 of the Cadastral Survey of Tarlac.

Severino Salak and Petra Garcia were the owners of Lot No. 221 of the Cadastral Survey of Tarlac, covered by Original Certificate of Title No. 41543, with an area of 1,334 square meters. Petra Garcia died on September 21, 1941. On August 16, 1943, Severino Salak sold to Honoria Salak for P812.00 his 1/2 portion of said lot. A year later, on December 5, 1944, Severino Salak died. Sometime in January 1945, Honoria Salak and other members of her family died - massacred by the Japanese.

As a result, two settlement proceedings were Instituted in the Court of First Instance of Tarlac: (1) Special Proceeding No. 3, to settle the estates of Severino Salak and Petra Garcia and (2) Special Proceeding No. 23, to settle the estates of the Salak family (parents Simeon Salak and Isabel Carrillo; and children Adolfo, Honoria, Consuelo and Ligaya).

On September 4, 1946, a Project of Partition was submitted in Special Proceeding No. 3, which the court approved on November 19, 1946. Said project adjudicated inter alia Lot No. 221, which was given thereunder to Francisca Salak de Paz (1/4 of it in her capacity as heir, and the other 3/4 by purchase and/or exchange with her co-heirs, Rita Sahagun, Aurea Sahagun and Ernesto Bautista). From 1946 up to the present Francisca Salak has possessed all of Lot No. 221.

On the other hand, in Special Proceeding No. 23, on February 26, 1948, the court a quo held that the heirs entitled to the estates of the Salak family were Agustina de Guzman Vda. de Carrillo (3/4 share) and Ernesto Bautista (1/4 share), applying the survivorship presumption [Rule 123, Sec. 69(ii), now Rule 131, Sec. 5(jj) of the Rules of Court], thus: (1) Simeon Salak died first - his properties went to the children Adolfo, Honoria, Consuelo and Ligaya (1/4 each); (2) Honoria, Consuelo and Ligaya died next – Honorias's and Consuelo's properties went to their mother, Isabel; those of Ligaya went to her son, Ernesto Bautista;[1] (3) Isabel died next - her properties went to her son Adolfo; and (4) Adolfo died last - his properties went to his maternal grandmother, Agustina. Agustina thereby succeeded to the properties that came by intestate succession from Honoria Salak and Isabel Carrillo, Including 1/2 of Lot No. 221.

On November 9, 1948, Agustina de Guzman Vda. de Carrillo filed an action in the Court of First Instance of Tarlac (docketed therein as Case No. 351) against the heirs in Special Proceeding No. 3 to recover 1/2 of Lot No. 221 which as aforementioned has been possessed by Francisca Salak de Paz.

On April 24, 1950, Agustina died.

On June 8, 1950 the Court of Appeals affirmed the decision of the Court of First Instance of Tarlac in Special Proceeding No. 23, and further decreed that the properties inherited by Agustina de Guzman Vda. de Carrillo were subject to reserva troncal.

On November 6, 1950, Ernesto Bautista filed a petition in Special Proceeding No. 23 for the execution of the judgment therein. Said petition was heard on November 10, 1959, after a copy was served on the lawyer of Prima Carrillo, the latter being a party thereto as administratrix of the estate of her deceased mother Agustina. Acting on said petition, the lower court issued its order of November 14, 1950, which reads in part:

"x x x the Court, in view of the death of the reservista, Doña Agustina de Guzman Vda. de Carrillo, declares all the interest of the said reservista Doña Agustina de Guzman Vda. de Carrillo as well as that of her heirs in the three-fourths share adjudged to the reservista, definitely terminated, and that the reservee, the minor Ernesto Bautista, is entitled to the immediate delivery to him of the said three-fourths share declared reserved to him in the decision of the Court of Appeals of June 8, 1950. x x x" (Record on Appeal, pp. 213-214)

On December 20, 1960, the lower court dismissed Civil Case No. 351.' The order of dismissal reads in part:

"By virtue of the existence of third-degree relatives of Adolfo Salak, the portion of Lot No. 221, inherited by Agustina de Guzman was never released from the reserva, so as to convert the ownership of Agustina de Guzman into an absolute one. Upon her death on April 24, 1950, therefore, the property did not pass by inheritance to her legal heirs, but rather reverted to the family trunk of the Isabel-Adolfo line. Such being the case, the estate of Agustina de Guzman, the present plaintiff in this case, has no cause of action against the defendants.

"In resume, the adjudication in Special Proceeding No. 23, Intestate Estate of the late Simeon Salak and Isabel Carrillo, which included Lot No. 221, has become res judicata which cannot be disturbed in this case." (Record on Appeal, p. 209)

On April 22, 1963, Prima Carrillo and Lorenzo Licup filed the present suit for recovery of 2/3 of 1/2 of Lot No. 221 against Francisca Salak de Paz and Ernesto Bautista. [[2]]

On June 20, 1963, defendants Francisca Salak de Paz and Ernesto Bautista filed a motion to dismiss upon the grounds that the cause of action is barred by prior judgment and by the statute of limitations.

On November 19, 1963, the court a quo dismissed the complaint on the ground of res judicata, finding the suit barred by the order of delivery dated November 14, 1950 in Special Proceeding No. 23.

Plaintiffs Prima Carrillo and Lorenzo Licup thereupon appealed to Us upon questions of law.

Several grounds were advanced to support the motion to dismiss: that the cause of action is barred by prior judgment and by the statute of limitations. Although the action was dismissed by the lower court expressly upon the ground of res judicata, it did not totally disregard the defense of prescription. Thus, said court pointed out that:

"Prima Carrillo being then the administratrix of the estate of her mother, she is also deemed to have been notified of the petition for execution of judgment in Special Proceeding No. 23, and of the order of November 14, 1950. As of then, therefore, Prima Carrillo (even though as administratrix) personally knew that Ernesto Bautista claimed to be the sole reservee of all the properties inherited "by Da Agustina from the Salak Family, among which was Lot No. 221 in question, but she did not file any opposition thereto. It was her opportunity to assert her right as reservee by opposing the petition or, failing in this, to contest or to ask to be relieved from the order of November 14, 1950. Instead, she allowed about thirteen (13) years before she commenced the present action." (Decision, Record on Appeal, pp. 214-215; emphasis supplied)

At any rate, this Court can resolve this appeal on the issue of prescription. As ruled in the cases of *Garcia Valdez v. Soterana Tuazon*, 40 Phil. 943 and *Relativo v. Castro*, 76 Phil. 563, when the trial judge decides a case in favor of a party on a certain ground, the appellate court may uphold the decision below upon some other point which was ignored or erroneously decided in favor of the appellant by the trial court.

Reserva troncal in this jurisdiction is treated in Article 891 of the new Civil Code and Article 811 of the old Civil Code, which state:

"The ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came."

The reserva troncal arose - as had been finally decided by the Court of Appeals in Special Proceeding No. 23 - when Agustina acquired by operation of law all the properties of her descendant Adolfo (grandson), who acquired them by gratuitous title from another ascendant, Isabel (Adolfo's mother).

According to Manresa, the reserva is extinguished upon the death of the reservista, as it then becomes a right of full ownership on the part of the reservatarios, who can bring a reivindicatory suit therefor. Nonetheless, this right, if not exercised within the time for recovering real properties, can be lost by prescription:

"Pero extinguida la reserva por la muerte del reservista, cambian por completo las relaciones y condiciones juridicas de las personas y de las cosas, como ya se ha indicado. La obligacion de reservar se convierte en la de entregar los bienes a quien correspondan, obligacion que pasa a la herencia del reservista fallecido y deben cumplir sus herederos, Y el derecho a la reserva se convierte en el derecho al dominio pleno de esos bienes. Si a la muerte del reservista se cumple la condicion resolutoria de existir parientes dentro del tercer grado que pertenezcan a la linea de donde los bienes proceden, a estos parientes pasa desde aquel momento por ministerio de la ley el dominio absoluto de aquellos bienes, y, por consiguiente, el derecho para reclamarlos, pudiendo disponer libremente de aquellos o de este, y transmitirlos a sus herederos, puesto que la ley no lo prohíbe. Y si no sobrevive al reservista ninguno de dichos parientes, queda extinguida la obligacion de reservar, por no haberse cumplido aquella condicion resolutoria impuesta por la ley, y en su virtud vuelven los bienes al-pleno dominio del ascendiente, y pertenecen a su herencia conforme al art. 651. Y como nada ordena la ley en sentido contrario, tenemos por indudable que no tiene el caracter de personalisimo ninguno de esos derechos, que nacen con la extincion de la reserva, pertenecen a la herencia y se transmiten a los herederos, aunque el causante no los hubiere ejercitado por si mismo, salvo los casos de renuncia, incapacidad o prescription." x x x x x

"C) Extincion de la reserva. - Las mismas condiciones exigidas para el nacimiento de la reserva son necesarias para su existencia. Al faltar una de ellas, la reserva muere. Tres son, por tanto, las principales causas de extincion:

"1.a Muerte del ascendiente. - Sea el que quiera el destino definitivo de los bienes, en virtud de la naturaleza condicional de los derechos que crea el art. 811, es lo cierto que la reserva, como tal, una vez nacida, acompaña al ascendiente obligado a ella hasta su muerte. Muerto el ascendiente, cesa toda obligacion de reservar; falta el sujeto pasivo de la reserva. x x x x x

"Ademas de las tres causas expresadas, pueden señalarse otras que expondremos a continuacion. x x x x x

"Y 5.a La prescripcion, si se disfrutan como libres los bienes por los herederos del ascendiente durante el tiempo y con las condiciones marcadas por la ley." (Manresa, Comentarios Al Código Civil Español, Vol. 6, 1911 Ed., pp. 288-289, 316-318)

Scaevola also states the view that prescription can apply against the reservatarios to cut off their right to the reservable property:

"f) Prescripcion. - Este modo extintivo de los derechos tiene solo aplicacion a los parientes del tercer grado del descendiente, porque no habiendo reserva si no acepta el ascendiente, no hay que hablar de prescripcion extintiva respecto de el.

"Tocante a los parientes con derecho a la reserva, es aplicable la doctrina, porque pueden no ejercer su derecho por ignorar la rauerde del descendiente o por otra causa.

"Dada esta posibilidad, entendemos que, tratandose de un derecho real sobre bienes inmuebles, prescribira a los treinta años (art. 1.693; (1), contados desde la aceptacion de la herencia por el ascendiente, momento deterrainante del derecho al ejercicio de la reserva (art. 1.969); transcurridos, pues, treinta años desde la aceptacion sin que los parientes favorecidos por la ley hayan solicitado la constitucion de la reserva, se extinguira esta, y el ascendiente o sus derecho-habientes adquiriran el pleno dominio de los bienes reservables por su naturaleza, pero que no fueron objeto, de reserva." (Scaevola, Codlgo Civil Comentado, Vol. 14, 1944 Ed., p.360).

Plaintiffs-appellants herein, as reservatarios, had the right to claim the property - 2/3 of 1/2 of Lot No. 221 - from Francisca Salak de Paz, who has been possessing it in the concept of an owner, from April 24, 1950 when Agustina died. And the Court of Appeals' decision affirming the existence of reserva troncal, promulgated on June 8, 1950, rendered it all the more doubtless that such right had accrued in their favor from the time Agustina died. It is clear, therefore, that the right or cause of action accrued in favor of the plaintiffs-reservatarios herein on April 24, 1950.

Section 40 of the Code of Civil Procedure fixes 10 years as the period of prescription for actions to recover real property, counted from the time the cause of action accrued. This is the applicable law because Article 1116 of the new Civil Code provides that "Prescription already running before the effectivity of this Code [August 30, 1950] shall be governed by laws previously in force."

Plaintiffs-appellants' suit herein, having been filed only on April 22, 1963, or more than 10 years from April 24, 1950, has prescribed.

And having reached such conclusion, We deem it unnecessary to pass upon the question of whether the suit is also barred on the ground of res judicata.

WHEREFORE, the order of dismissal appealed from is hereby affirmed on the ground of prescription, with costs against appellants.

SO ORDERED.

Concepcion, C.J., Reyes, J. B. L., Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Barrera, J., on leave.

[1] Thus, Ernesto Bautista was an heir- in both Special Proceeding No. 3 and Special Proceeding No. 23.

[2] Plaintiff Prima Carrillo claims to be a reservatario (as sister of Isabel Carrillo and aunt of propositus Adolfo), while plaintiff Lorenzo Licup is the surviving husband of Luz Carrillo (likewise a sister of Isabel Carrillo and aunt of propositus Adolfo) Prima and Lorenzo claim to be heirs of Luz.

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