

**MODESTA QUIJANO, AS GUARDIAN OF HER SON AMADO FRANCIA,
AND THE HEIRS OF JOSEFA FRANCIA, PLAINTIFFS AND APPELLEES,
VS. EUGENIO GOMEZ CABALE, DEFENDANT AND APPELLANT.**

G. R. No. 25558. August 25, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Laguna, declaring the plaintiffs owners of a parcel of land situated in the municipality of Magdalena of said province, and ordering the defendant-appellant to deliver possession thereof to said plaintiffs.

The appellant maintains that he acquired title to the land through purchase from one Isabela Macaraya and her son-in-law Lorenzo Abordo, who in turn had purchased the land from the plaintiff's ancestor Juana Acejo. In his answer he also pleaded the statute of limitations and alleged that he had been in the actual, open, public and continuous possession of the land under claim of ownership for over twenty-four years.

There may possibly be some merit in the appellant's assertion that he purchased the land from Macaraya and Abordo, but the evidence upon that point is not very clear and need not here be discussed in view of the fact that he in our opinion has fully established his claim to title by prescription or adverse possession.

The complaint in the present action was filed on January 5, 1920, and it is conceded that the appellant had then been in uninterrupted possession of the land in question since the year 1896. In addition thereto, the following facts are shown by the plaintiffs' own evidence: Ceferina de la Torre inherited the land from her mother Juana Acejo. Upon the death of Ceferina her surviving husband, Antonio Francia, on March 2, 1896, executed a deed of sale of the property to the appellant. Ceferina left two minor children, Vicente Francia born on April 2, 1884, and Josefa Francia born on April 28, 1892. Vicente Francia died on November 19, 1906, leaving a son, the plaintiff Amado Francia, born in the year 1904. As under the laws in force at that time the age of majority was 23 years, Vicente Francia was still a minor at the time of his death. Josefa Francia attained her majority in 1913, seven years before this action was brought.

The court below held that as Vicente Francia died before attaining his majority and as his son, the plaintiff Amado Francia, was less than 16 years old when this action was instituted, the statute of limitations had not begun to run against either of them and that therefore the appellant could not have acquired title as against them by prescription. As we shall presently see, this view is erroneous.

In his brief counsel for plaintiffs argues that the cause of action in this case accrued before the enactment of the Code of Civil Procedure, and that therefore the rules relating to prescription established by the Civil Code govern in the present case; that the defendant must have known that Antonio Francia was not the owner of the land and can therefore not be said to have possessed the land in good faith; that not having held possession in good faith, he is not entitled to the benefit of the ten years' prescription provided for in article 1957 of the Civil Code and can only invoke the extraordinary prescription of thirty years provided for in, article 1959 of the Civil Code; and that

this action, having been brought before the expiration of the thirty years, is not barred.

This argument leaves out of consideration section 38 of the Code of Civil Procedure, which reads as follows:

"SEC. 38. To What this Chapter does not Apply.—This chapter shall not apply to actions already commenced, or to cases wherein the right of action has already accrued; but the statutes in force when the action or right of action accrued shall be applicable to such cases according to the subject of the action and without regard to the form; nor shall this chapter apply in the case of a continuing and subsisting trust, nor to an action by the vendee of real property in possession thereof to obtain the conveyance of it: Provided, nevertheless, That all rights of action which have already accrued, except those named in the last preceding paragraph, must be vindicated by the commencement of an action or proceeding to enforce the same within ten years after this Act comes into effect"

The Code of Civil Procedure went into effect on October 1, 1901, and under the section just quoted the time for vindicating rights of action accruing while the limitations provided for in the Civil Code were in effect, consequently expired on October 1, 1911, subject only to the saving clause contained in section 42 of the Code of Civil Procedure, which reads as follows:

"SEC. 42. Exceptions in Favor of Persons under Disability.—If a person entitled to bring the action mentioned in the preceding sections of this chapter is, at the time the cause of action accrues, within the age of minority, of unsound mind or in prison, such person may, after the expiration of ten years from the time the cause of action accrues, bring such action within three years after such disability is removed."

It will be noted that the saving clause only applies to persons who are under disability at the time the cause of action accrues, and that therefore in the present case only Vicente Francia and the plaintiff Josef a Francia could have taken advantage of the clause. The death of Vicente on November 19* 1906, terminated his disability, and under the saving clause his heirs or legal representatives had three years from that date within which to bring action for the recovery of the land. (37 C. J., 1037, and authorities there cited.) His right of action was therefore extinguished on November 19, 1909, nearly eleven years before this action was brought. If we regard the case as one of extraordinary prescription under the Civil Code as modified by section 38 of the Code of Civil Procedure, the time for bringing the action expired on October 1, 1911. Josefa became of age on April 2, 1913, and her right of action consequently prescribed on April 2, 1916, nearly four years before the present action was instituted.

But it is argued—and the court below in effect so held—that the disability of Vicente must be tacked to that of his infant son and heir, the plaintiff Amado Francia, and that as the latter did not attain his majority until the year 1925, his action was brought in time. Upon this point the authorities are uniformly to the effect that in the absence of statutory provisions to the contrary different disabilities cannot be tacked to each other. From the numerous authorities on the subject we quote the following:

"Except where the statute otherwise so provides, one disability cannot be tacked to another, nor the disabilities of an ancestor to those of the heir, to protect a party from the operation of the statute; nor can a party avail himself of several disabilities, unless they all existed at the time when the right of action accrued * * * This is in obedience to the universal rule, before stated, that when the statute once begins to run no subsequent disability can stop its operation, unless specially so provided in the statute." (Wood on Limitations, 3d edition, pp. 554, 557.)

"Disability cannot be added to disability. If that were, permitted a right might travel through minorities for an indefinite time—for two centuries, Lord Eldon said. *Demarest vs. Wynkoop*, 3 Johns. Ch., 129, 139; 8 Am. Dec, 467." (*Messinger vs. Foster*, 101 N. Y. Supp., 387.)

"The construction referred to is, that some or one of the disabilities mentioned in the proviso, must exist at the time the action accrues, in order to prevent the statute from running; and that after it has once commenced to

run, no subsequent disability will interrupt it. This was the rule adopted in the exposition of the statute of 21 Jac. 1. ch. 16, the English Statute of Limitations in force at the time of the first settlement of most of the American Colonies. It is provided by the 7th section of that Statute, "That if any person entitled to bring any of the personal actions therein mentioned, shall be "at the time of any such, cause of action given or accrued," within the age of twenty-one years, feme covert, non compos mentis, imprisoned or beyond the seas, such person shall be at liberty to bring the same actions within the times limited by the statute, after his disability has terminated. Arig. Lim., ch. XIX. It is true that the express words of this statute refer to disabilities existing at the time the cause of action accrues, and do not literally include disabilities arising afterwards. The courts, however, held that such was not only the literal but the true and sensible meaning of the Act; and that to allow successive disabilities to protract the right to sue would, in many cases, defeat its salutary object and keep actions alive perhaps for a hundred years or more; that the object of the statute was to put an end to litigation, and to secure peace and repose; which would be greatly interfered with and often wholly subverted, if its operation were to be suspended by every subsequently accruing disability." (McDonald vs. Hovey, 110 U. S., 619.)

"The tacking of disabilities in different persons has been rejected by us since our earliest history; was even rejected in England before our day, is rejected by all our sister states, so far as I know, and must of course be rejected in this instance." (Guion's vs. Bradley Academy, 4 Yerg. [Tenn.], 231, 255.)

"In Ashbrook vs. Quarles' Heirs (54 Ky., 20), the court said: 'It has been repeatedly decided under the general statute, that one disability cannot be added to another in any case, so as to prevent the statute from running. (Floyd's Heirs vs. Johnson, 2 Litt., 114.) There can be no accumulation of disabilities by adding one to another. Whenever the ancestor would have to rely upon his own disability to preserve his right of entry, his heirs cannot avail themselves of their disability for the same purpose, upon his death. " (Clay's Heirs vs. Miller, 3 Mon., 148.)

See also Thorp vs. Raymond (16 How., 247); Smith vs. Burtis (9 Johns, 174); Jackson vs. Johnson (5 Cow., 74); Walden vs. Heirs of Gratz (1 Wheat, 292); Hogan vs. Kurtz (94 U. S., 773); Mercer's Lessee vs. Selden (1 How., 37) ; McDonald vs. Hovey (110 U. S., 619) ; Chicago, Rock Islands, & Pacific R. Co. vs. David Campbell (174 U. S., 1149; 43 Law. ed., 722); Gordon vs. Lewis (88 Mo., 378) ; Mitchell vs. Berry (58 Ky., 602); Dowell vs. Tucker (46 Ark., 438) ; Griswold vs. Butler (3 Conn., 227); South's Heirs vs. Thomas Heirs (23 Ky., 59) ; Best vs. Nix & Storey (6 Tex. Civ. App., 349).

The rule stated is in complete harmony with the Civil Law on the subject; the heir or successor acquires the rights of the predecessor and no more. "The heir represents the person of the deceased, and both are even considered as one same person: Haec est cuncta cum de-functo UNA eademque persona; 'according to law,' says law 13, tit. 9, Part. 7, 'the person of the heir and that of him from whom he inherits is considered as one,' (Escriche's Dictionary, title "Heredero.")

" * * * the following are general rules as to successors : He who succeeds to the right or property of another must use the same right as he: Qui in jus dominumve alterius SUCCEDIT, JURE EJUS UTI DEBET. The successor cannot be in a better condition than his predecessor: Non DEBEO MELIORIS ESSE CONDITIONS QUAM AUCTOR MEUS, A QUO JUS ad ME transit" (Ibid., title "Successor")

Counsel for the plaintiffs suggests that the sale by Antonio Francia to the defendant was fraudulent; that the fraud was not discovered by the plaintiffs until after Antonio Francia's death in 1916; and that the limitation of the action did not begin to run until the discovery of the fraud. There is no merit in this suggestion. Assuming that fraud existed, it was the fraud of the vendor and not of the vendee, and did not prevent the running of the statute in favor of the latter. (17 R. C. L., 867.)

So far we have treated the matter as a question of limitation or prescription of actions, but the result will be the

same if we regard it as one of acquisitive prescription under section 41 of the Code of Civil Procedure, which reads as follows:

"SEC. 41. Title to Land by Prescription.—Ten years actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the persons under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants. But failure to occupy or cultivate land solely by reason of war shall not be deemed to constitute an interruption of possession of the claimant, and his title by prescription shall be complete, if in other respects perfect, notwithstanding such failure to occupy or cultivate the land during the continuance of war."

The evidence shows that the defendant's possession was of the character required by the section quoted. The fact that the plaintiffs may not have been familiar with the circumstances of the possession does not deprive it of its character as public; the defendant enjoyed the fruits of the land, declared it for taxation in his own name as early as 1902 and has paid taxes on it ever since. The prescription under section 41 began to run October 1, 1901, when the Code of Civil Procedure went into effect and the rules as to disability are exactly the same with respect to this prescription as they are in regard to limitations of actions.

For the reasons stated, the appealed judgment is reversed and the defendant is absolved from the complaint, without costs. So ordered.

Avanceña, C. J., Street, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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