

**FELIPE PALENCIA, AS ADMINISTRATOR OF THE ESTATE OF MARIA PALENCIA, PLAINTIFF AND APPELLANT, VS. IRENE JAUCIAN DE DEL ROSARIO ET AL., DEFENDANTS AND APPELLEES.**

*G.R. No. 29522. January 23, 1929*

Ponente: OSTRAND, J.

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**OSTRAND, J.:**

This is an action in ejectment brought on January 19, 1926, by Felipe Palencia, in his capacity as administrator the estate of the deceased Maria Palencia, against Irene Jaucian de Del Rosario and her husband, Jose del Rosario, a complaint was subsequently amended by including the minor Remedios Lopez as a party defendant.

In their answer, the defendants allege that Irene Jaucian Del Rosario is the owner of an undivided one-half share the land, the other half belonging to Remedios Lopez, who acquired it through a donation made by her father, Ricardo Lopez, the first husband of the defendant Irene Jaucian, the donation being evidenced by a public document executed on September 9, 1913. As a special defense, the defendants allege that said Ricardo Lopez, then the legitimate husband of Irene Jaucian, acquired the land in good by a deed executed on April 22, 1913, by Bernabea Orzales, in her capacity as the then administratrix of the estate of the deceased Maria Palencia, for the sum of P6,000; that the sale was authorized by an order of the Court of First Instance of the Province of Albay; and; the defendants, since the sale, have been in actual, open, public, and continuous possession of the land under aim of title exclusive of any right to all other claimants.

Upon trial, the court below found that the defendants Irene Jaucian and Remedios Lopez had acquired title to the property by prescription under section 41 of the Code of Civil Procedure and rendered judgment accordingly with the costs against the plaintiff. From this judgment the plaintiff appealed.

There is no dispute as to the facts. It is conceded that at the time the sale to Ricardo Lopez was made, Bernabea Orzales was the judicially appointed administratrix of the estate of the deceased Maria Palencia and that the sale was authorized by the court below in an order dated September 17, 1910, though it does not appear that the sale was afterwards approved by said court.

The main contention of counsel for the appellant is that the administration of the estate was in the nature of a continuous and subsisting trust against which the statute of limitations did not run (sec. 38, Code of Civil Procedure). In this, counsel is mistaken; the administration is not a "continuous and subsisting trust" within the meaning of the statute. In the case of *In re Hawley* (104 N. Y., 250), the court said:

"Every executor and every guardian is, in a general sense, a trustee, for he deals with the property of others confided to his care. But he is not a trustee in the sense in which that term is used in courts of equity and in the statutes."

And in *Conway vs. Armington* (11 R. I., 116), it was said:

"An administrator is sometimes spoken of as holding the estate in his hands in trust \* \* \*. But we apprehend

that an administrator cannot be considered a trustee in the sense in which the words are ordinarily used. (Hunt vs. Sneed, 64 N. C., 180, 181; Jones vs. Lee [Tex. 1893], 22 S. W., 1092, 1094.)"

It is also well settled that in the absence of special statutes, an attack on an administrator's sale falls within the provisions of a general statute of limitations and that the purchaser will be protected by his adverse possession for the statutory period. (Pierce vs. Vansel, 35 Ind. A., 525; Kerlec vs. New Orleans Land Co., 130 La., 111; Kleinecke vs. Woodward, 42 Tex., 311.)

In the present case the land was purchased in good faith, and the defendants, by themselves and through their predecessor in interest, have been in adverse possession of the land in question for more than the statutory period. They have therefore acquired title by prescription under section 41 of the Code of Civil Procedure. It is consequently unnecessary to discuss the other questions raised by the appellant.

The appealed judgment is affirmed with the costs against the appellant: So ordered.

Johnson, Street, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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