

PEDRO SESUYA ET AL., PLAINTIFFS AND APPELLEES, VS. PAULA LACOPIA ET AL., DEFENDANTS AND APPELLANTS.*G. R. No. 31813. March 06, 1930*

Ponente: MALCOLM, J.

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This action has been brought to secure damages pursuant to the provisions of the Land Registration Law. In the Court of First Instance of Tayabas, fourteen plaintiffs were successful in their attempt for there a judgment was handed down which awarded them an aggregate total of P42,942. On appeal from this judgment, various questions are submitted, but we will confine discussion to the basic preliminary question presented relating to the applicability of section 107 of the Land Registration Law (Act No. 496).

Without going into all the minutiae of the facts, it is sufficient to note, as to the defendants, that they possess a Torrens title to the land decreed in their favor in regular registration proceedings and later confirmed in the cadastre case. As against this incontestable title, the plaintiffs offer a weak case. The contracts on which they rely to protect their alleged interests in the coconut trees on the land are attempted to be proved by oral testimony in possible contravention of the Statute of Frauds. The man with whom those alleged contracts were made is dead and cannot speak to rebut any of the testimony offered to prove the existence of the agreements. The plaintiffs moreover stood calmly by and permitted a certificate of title to be issued in the name of the defendants without entering opposition and without asking for the revision of the decree on the ground of fraud. Now after the passage of all these years, and relying on a further alleged oral promise to the effect that the defendants would not jeopardize the property rights of the plaintiffs when title was obtained, they bring this action to secure damages. To say the least, the plaintiffs have been negligent in the vindication of their rights.

The prerequisites to the successful maintenance of an action for damages for the wrongful deprivation of land or of any estate or interest therein, were pointed out in the case of *Estrellado and Alcantara vs. Martinez* ([1925], 48 Phil., 256). It was there announced that in cases of this character it must be established, first, that the person is in reality wrongfully deprived of his land by the registration in the name of another of the land by actual or constructive fraud; second, that there was no negligence on his part; third, that he is barred or in any way precluded from bringing an action for the recovery of the land or interest therein; and, fourth, that the action for compensation has not prescribed. In amplification of these rules, there should be taken into view section 107 of the Land Registration Law providing "All actions for compensation under this Act by reason of any loss or damage or deprivation of land or any estate or interest therein shall be begun within the period of six years from the time when the right to bring or take such action or proceeding first accrued, and not afterwards: * * *" Now placing the admitted facts before this provision of law, we have the following: Decision rendered in the regular registration proceedings on May 27, 1920; decree issued on August 25, 1920; certificate of title issued on August 30, 1920; writ of possession granted on June 15, 1923; decision in the cadastre rendered on March 30, 1925; and the complaint in this case filed on September 24, 1926.

The above outline of the law and the facts suggests two questions. The first is whether the fulfillment of the

provisions of section 107 of the Land Registration Law is a condition precedent to the action, or whether the section names a mere prescriptive period, which must be pleaded. The second question relates to the starting point for the computation of the period of time.

Concerning the first question, counsel for the appellees brings to our attention the fact that the defense of prescription was not pleaded. He then says that there applies the well-known principle that the defense of prescription is not available unless specially pleaded by answer. There are numerous cases to this effect, but these cases concern the Code of Civil Procedure. That Code, in speaking of prescription, makes use of the phraseology "can only be brought within" (Code of Civil Procedure, sees. 40, 43, 44). In contrast, the Land Registration Law makes use of the phrase "shall be begun within," and then reinforces it by the negative expression "and not afterwards." It would require legislation, judicial or otherwise, to enable the courts to disregard the phrase last quoted. The burden is upon him who attacks a Torrens title to show that he comes within one or more of the cases which exempt him from being bound by its collusiveness. The law refers to the right and not to the remedy.

As to the second question, it will be recalled that the law deems the period of six years to commence "from the time when the right to bring or take such action or proceeding first accrued." In the only available authority discoverable on this point, we find the New Zealand court holding that the date of the deprivation of the land is the date of the issue of the certificate of title, and the action must be brought within the period of limitation from that time (*Rutu Peehi vs. Davy* [1890], 9 N. Z. L. R., 134; *Niblack, Analysis of the Torrens System*, pp. 318, 319). We see no good reason for disregarding this precedent, particularly as the plaintiffs were aware of the pendency of the land registration proceedings and have not proved actual fraud.

The result will be to hold that this action for damages was not begun within the period of six years from the time when the right to bring or take such action or proceeding first accrued. Hence without further discussion of the other questions submitted, the complaint must be dismissed.

For the foregoing reasons, the judgment appealed from will be reversed and the complaint dismissed, without special pronouncement as to the costs.

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

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