

APOLONIA CALMA ET AL., PLAINTIFFS AND APPELLANTS, VS. EULALIO CALMA, DEFENDANT AND APPELLANT.

G R. No. 34004. September 12, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

Under three causes of action the plaintiffs pray that the defendant be ordered to liquidate the yearly crops of the plantation described in paragraph II of the complaint, from the year 1903, delivering to the plaintiffs their share, or its value; that said property be divided equally into two parts and the half which, in justice and equity, belongs to the plaintiffs be adjudicated to them; that the defendant be compelled to restore to the plaintiffs the property described in paragraph VIII of the complaint, or its value, which is P56,300, and to pay them P66,000 damages, and the costs.

After entering a general and specific denial of the complaint, the defendant set up a number of special defenses and a counterclaim, praying that he be absolved from the complaint and the plaintiffs be sentenced to pay him P13,660.40 on several counterclaims, besides the costs.

After hearing the evidence, the Court of First Instance of Tarlac found that both the complaint and the counterclaim had prescribed, and dismissed both, without pronouncement of costs.

Both parties appealed from that decision, the plaintiffs assigning the following errors:

- In finding that the plaintiffs' cause of action petitioning for the liquidation of the rents or profits from lot No. 283, cadastral survey of Gerona, Tarlac, has prescribed.
- In not holding that the plaintiffs, as undivided co-owners of one-half of said lot are entitled to one-half of the annual income of 450 cavanos, i. e., 225 cavanos of palay a year, or their cash value, according to the current prices during the period from 1903 to 1927;
- In not finding that the total value of the one-half belonging to the plaintiffs of said rental is P17,554; and
- In dismissing the plaintiffs' action and in not sentencing the defendant to pay said plaintiffs the aforesaid sum of P17,554, with legal interest from the date of the complaint, and the costs of the trial."

The defendant, in turn, assigned the following errors to the court below, to wit:

- The court a quo erred in applying the statute of limitations to the counterclaims of the appellant.
- The court a quo erred in refusing to order Facundo Salazar, official stenographer thereof, to transcribe his notes on the testimony of Ernesto Quirino."

The question raised by the plaintiffs on appeal is summed up in their first cause of action, with reference to the crops grown on lot No. 283 from the year 1903, contending that the statute of limitations invoked by the defendant in his amended answer is not in point because the latter has been in possession only as a joint owner,

and because even if he were in possession as the exclusive owner, the running of the prescriptive period was interrupted by the decision of the competent court in 1927 declaring that the defendant was only a co-owner, and not the sole owner of the lot in question.

The record shows that the defendant was in possession of all the land from 1903 until 1927 not as a mere administrator, as the complaint alleges, nor even as a mere co-owner, but as the sole and absolute owner, in good faith, and adversely to the plaintiffs. He is therefore protected by subsection 3 of section 43 of the Code of Civil Procedure. The interruption of his possession in 1927 did not deprive him of the right which, as a possessor in good faith, he had to take for himself the products of the land up to that year, according to article 451 of the Civil Code.

The plaintiffs appeal, then, is not well taken.

As to that for the defendant, similarly confined to item? (a), (/) and (h) of his counterclaim, with reference to certain sums alleged to have been disbursed by the defendant for the benefit of Gabino Calma, the predecessor in interest of the plaintiffs, for P3,995 paid to creditors, P500 paid to attorney Pedro Liongson, and for P750 or P500 paid to Paulo Macasaquit, which comprise the one-half which the plaintiff's predecessor had to pay; it is contended that the trial court should not have applied the statute of limitations in favor of the plaintiffs, inasmuch as they had not set it up as a defense. We have indeed failed to find among the plaintiffs' pleadings any allegation of prescription against the defendant's counterclaim. The statute of limitations must be pleaded in the answer and cannot be set up by a demurrer or proved under a general denial. (*Domingo vs. Osorio*, 7 Phil., 405; *Pelaez vs. Abreu*, 26 Phil., 415; *Karagdag vs. Barado*, 33 Phil., 529.) The plaintiffs should have replied to the counterclaim if they had desired to set up such an affirmative defense as the statute of limitations, because silence meant only that they generally denied the allegations of the defendant's answer. (Sec. 104, Code of Civil Procedure; *Herranz & Garriz vs. Barbudo*, 12 Phil., 5; *Yu Chin Piao vs. him Tuaco*, 33 Phil., 92.)

It happens, however, that the plaintiffs are not under obligation to pay the debts of their late father, such as items (a), (f), and (h) of the counterclaim. It does not appear that they personally bound themselves to pay them, and the mere fact that they are the deceased's heirs does not make them answerable for such credits against their predecessor in interest, inasmuch as article 1003 of the Civil Code is no longer in force, having been abrogated by certain provisions of the Code of Civil Procedure (*Pavia vs. De la Rosa*, 8 Phil., 70).

With respect to the transcript of attorney Quirino's testimony, which is dealt with in the second assignment of error in the defendant's brief, it is of no importance, for whether or not this claim of the defendant's is proved, the plaintiffs are not responsible therefor, as we have just stated.

Finding no error in the dispositive part of the judgment appealed from, it is hereby affirmed, without pronouncement as to costs in this instance. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Villa-Real, and Imperial, JJ., concur.

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