

RESURRECCION TAGARAO, BUENAVENTURA TAGARAO AND SERAFIN TAGARAO, PLAINTIFFS AND APPELLEES, VS. MARCOS GARCIA ET AL., DEFENDANTS. MARGARITA GARCIA, ROSARIO GARCIA, DOLORES RUPINO,...*G. R. No. 40064. December 04, 1934*

Ponente: DIAZ, J.

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This action was brought by the brothers and sisters Resurreccion Tagarao, Buenaventura Tagarao, and Serafin Tagarao, children of the deceased Merced Garcia, daughter of the deceased Buenaventura Garcia who was a brother of the defendant Marcos Garcia, against the -latter and the other defendants named Paula Tabifranca, Margarita Garcia, Rosario Garcia, Dolores Rufino and Eleuterio Rufino, praying that judgment be rendered against the defendants ordering them to deliver to the plaintiffs, after executing the necessary deeds of transfer, one-fourth of the land known as lot No. 510 of cadastral case No. 11 of the municipality of Isabela, Occidental Negros (G. L. R. O. Cad. Record No. 100), which was formerly covered, first by original certificate of title No. 10009 (Exhibit M), later by transfer certificate of title No. 3001 (Exhibit 3), and at present by transfer certificate of title No. 8782 (Exhibit 7), all of the office of the register of deeds of said Province of Occidental Negros.

In their amended complaint of July 29, 1931, which was reamended on March 8, 1932, said plaintiffs prayed that should the defendants fail to deliver to them the required portion of the land in question, the latter be ordered to pay them the value thereof based on the assessed value of the whole property, and that they furthermore be indemnified for the value of 1,407 cavans of palay at the rate of P4 a cavan, alleging that said 1,407 cavans represented their share in the products of said land from the time the defendants took exclusive possession thereof.

Before the plaintiffs filed their amended complaint on the date above stated, the defendants Marcos Garcia, Paula Tabifranca, Margarita Garcia, Rosario Garcia and Dolores Rufino filed a demurrer to said plaintiffs' original complaint, alleging that it did not state sufficient facts to constitute a cause of action and was furthermore ambiguous, unintelligible and uncertain. The lower court sustained said demurrer and ordered the plaintiffs to amend their complaint within the reglementary period.

When the plaintiffs amended their complaint in the sense expressed in their pleading of February 13, 1929, said five defendants again filed another demurrer alleging this time that the lower court lack jurisdiction to try the case by reason of the .subject matter involved and the lower court overruled said demurrer ordering them to answer within the reglementary period. In compliance therewith, the defendants on October 28, 1929, filed their answer wherein the first two defendants, or the spouses Marcos Garcia and Paula Tabifranca, alleged that although they formerly were the absolute and exclusive owners of the land in question they already ceased to be so at that time, having sold the half belonging to Paula Tabifranca to the defendants Margarita Garcia, Rosario Garcia and Dolores Rufino, and the other half belonging to Marcos Garcia to Eleuterio Rufino. On June 9, 1931, said two defendants filed a petition of even date stating that they had no more interest in the case, having sold their

respective participations to the two Garcias and two Rufinos and praying in succession that they be absolved from the complaint.

A few days later, or on July 15, 1931, said two defendants Marcos Garcia and Paula Tabifranca filed a motion to include Eleuterio Rufino among the defendants and on the following day the lower court, granting the motion, ordered the inclusion of Eleuterio Rufino in the case as one of the defendants. For this purpose the plaintiffs filed their said amended complaint of July 29, 1931, which they re-amended with a slight addition on March 8, 1932.

The defendants Marcos Garcia and Paula Tabifranca did not answer the plaintiffs' last amended complaint but Margarita Garcia, Rosario Garcia and Dolores Rufino jointly entered a general denial of all the allegations Contained therein, alleging as a special defense (1) that they are the exclusive owners of one-half of the land in question; (2) that the plaintiffs have already lost their right of action because such right, if they ever had any, has already prescribed; and (3), said plaintiffs cannot invoke the decision rendered in civil case No. 4091 because with respect to them it does not constitute *res judicata*.

The defendant Eleuterio Rufino, answering said plaintiffs' last amended complaint, stated in his pleading of November 19, 1931, that he denied each and every allegation contained therein, alleging as a special defense that one half of the land in question was sold by Marcos Garcia and purchased by him in good faith, paying the corresponding price therefor.

After due trial the lower court rendered judgment ordering the defendants to deliver to the plaintiffs one fourth of the land in question after executing the necessary deeds of transfer in favor of said plaintiffs or, in lieu thereof, to indemnify them in the sum of P3,882 plus the value of 1,000 cavans of palay at P3 a cavan, with costs. In said judgment said court "declared the deeds of sale executed by Marcos Garcia in favor of the defendant Eleuterio Kufino and by Paula Tabifranca in favor of the defendants Margarita. Garcia, Rosario Garcia and Dolores Rufino, null and void." The defendants Margarita Garcia, Rosario Garcia, Dolores Rufino and Eleuterio Rufino appealed but Marcos Garcia and Paula Tabifranca did not.

In support of their appeal, the defendants Margarita Garcia, Rosario Garcia, and Dolores Rufino contend that the lower court committed the eight alleged errors assigned in their brief as follows:

"1. The lower court erred in not sustaining the demurrer of the defendants-appellants Margarita Garcia, Rosario Garcia and Dolores Rufino to the second amended complaint of the plaintiffs.

"2. The lower court erred in admitting, under objections of the defendants-appellants, oral and documentary evidence tending to attack original certificate of title No. 10009 in the name of the spouses Marcos Garcia and Paula Tabifranca issued on May 17, 1918.

"3. The lower court erred in holding that the deed of sale made and executed by Paula Tabifranca with respect to her undivided one-half (1/2) share of lot No. 510 of the cadastral survey of Isabela in favor of Margarita Garcia, Rosario Garcia and Dolores Rufino, was made without consideration and declaring same null and void being fictitious.

"4. The lower court erred in holding that the transaction made by Paula Tabifranca in favor of Margarita Garcia, Rosario Garcia and Dolores Rufino had no other purpose than to deprive the plaintiffs of their shares in lot No. 510, as legitimate heirs of Ventura Garcia and Merced Garcia.

"5. The lower court erred in condemning the defendants-appellants Margarita Garcia, Rosario Garcia and Dolores Rufino, jointly and severally with the other defendants to return to the plaintiffs one-fourth (1/4) of lot No. 510 of the cadastral survey of Isabela, or in its place, to indemnify the plaintiffs the sum of P3,882, value of said portion.

"6. The lower court erred in condemning the defendants-appellants Margarita Garcia, Rosario Garcia and Dolores Rufino, jointly and severally with the other defendants, to pay the plaintiffs one thousand cavanos of palay or its value at P3 per cavan.

"7. The lower court erred in holding that the right of the plaintiffs to present this action to recover a portion of lot No. 510 of the cadastral survey of Isabela has not prescribed.

"8. The lower court erred in denying the petition for a new trial of the defendants-appellants Margarita Garcia, Rosario Garcia and Dolores Rufino."

The appellant Eleuterio Rufino also contends that said court in rendering its judgment in question committed the four alleged errors relied upon in his brief, which read as follows:

"1. The lower court erred in admitting over the defendant's objection oral as well as documentary evidence of the plaintiffs tending to attack the stability of original certificate of title No. 10009 (Exhibit 5) in the name of the defendants Marcos Garcia and Paula Tabifranca, relative to alleged facts that took place prior to the issuance of said title.

"2. The lower court erred in ordering the defendant Eleuterio Rufino, jointly with his codefendants, to deliver to the plaintiffs one-fourth (¼) of said lot No. 510, or in lieu thereof to indemnify them in the sum of P3,882 representing: the value of said portion.

"3. The lower court erred in holding in its judgment that the deed (Exhibit 8) is fictitious and fraudulent and declaring it null and void.

"4. The lower court erred in not absolving the defendant and appellant Eleuterio Rufino from the complaint and in denying his motion for a new trial."

Without losing sight of the purpose of the complaint of the plaintiffs and appellees as expressed in the prayer of their pleadings or last amended complaints, it is clear that the first assignment of alleged error attributed to the lower court by the appellants is unfounded on the ground that its purpose is not to attack the validity of the decree by virtue of which original certificate of title No. 10009 was issued in favor of Marcos Garcia and Paula Tabifranca, or that under which transfer certificates of title Nos. 3001 and 8782, were issued later, but to compel the defendants to give them one-fourth of the land described in said certificates and to pay them the indemnity referred to therein.

The facts which have been clearly established at the trial, according to the record and the evidence before us, may be briefly stated as follows:

The land in question has an area of 31 hectares, 3 ares and 65 centares. It was originally purchased with pacto de retro by the defendant Marcos Garcia and his brother Ventura Garcia from Vidal Saravia on July 20, 1900. As the latter failed to exercise his right of repurchase the two brothers became the absolute owners of said land and it was so held by the Court of First Instance of Occidental Negros in case No. 274 which was instituted by Pedro Saravia, as administrator of the intestate estate of Vidal Saravia, against said two brothers to compel the latter to resell it to him (Exhibit L). When the two brothers purchased said land, the defendant Marcos Garcia was yet single because he had not even been married to his former wife, as the defendant Paula Tabifranca is only his wife by a second marriage. Marcos Garcia had by his first wife three children who are the defendants Margarita Garcia, Rosario Garcia and the deceased Catalina Garcia, mother of the defendant Dolores Rufino. Ventura Garcia, now deceased, also had two children: Merced Garcia who was married to Rafael Tagarao, and Claro Garcia.

While Merced Garcia was still living, or at least until June, 1914, the defendant Marcos Garcia had been

delivering to her and her brother Claro Garcia their share of the products harvested from the land in question. Merced Garcia who, as stated, died about the year 1914 and was followed years later by her husband Rafael Tagarao, had three children, the herein plaintiffs Resurreccion Tagarao, Serafin Tagarao and Buenaventura Tagarao. When this action was brought on October 14, 1928, Resurreccion Tagarao was more than 24 years of age; Serafin was then only 23 years, 1 month and 1 day, and Buenaventura, 18 years, 4 months and 3 days.

With the plaintiffs' grandfather, Ventura Garcia, and their mother, Merced Garcia, already dead, the defendant Marcos Garcia claimed the land in question in cadastral case No. 11 of the municipality of Isabela of the Province of Occidental Negros (G. L. R. O. Cadastral Record No. 100), known in said case as lot No. 510, alleging in the pleading presented by him to that effect (Exhibit I) that he had acquired it on July 20, 1904, when he was yet unmarried to his codefendant Paula Tabifranca. Before the original certificate of title acknowledging him to be the owner of the land in question was issued to him, and during the period within which any person could ask for the revision of the decree issued to that effect, Marcos Garcia, fearing that Claro Garcia, brother of the plaintiffs' mother, might frustrate his designs by asking for said revision, executed in favor of Claro Garcia a document binding himself to give to the latter four hectares of said land upon the issuance to him of the corresponding certificate of title. In view thereof, Claro did not ask for the revision of the decree but he later brought an action, case No. 4091 of the Court of First Instance of Occidental Negros, against Marcos Garcia to recover from him four hectares of said land, lot No. 510 of the cadastre of Isabela, basing his claim on the document which Marcos Garcia executed in his favor in order to promise and bind himself to give Claro said four hectares, because after Marcos Garcia had, obtained his certificate of title he refused to comply with his promise; and as a result said court, on October 10, 1927, rendered judgment against Marcos Garcia ordering him to segregate four hectares of said land to be delivered to Claro Garcia and furthermore to pay to the latter as indemnity 90 cavans of palay, or the value thereof in the sum of P360.

In the certificate of title which was issued in favor of Marcos Garcia on May 17, 1918 (original certificate of title No. 10009), by virtue of his claim presented in said cadastral case No. 11 of the municipality of Isabela, Occidental Negros, it was stated, as in the decree ordering the issuance thereof, that one-half of the land therein described belonged to him, and that the other half to his wife by a second marriage, Paula Tabifranca.

A few years after the issuance of said certificate of title, the defendant Paula Tabifranca, second wife of the defendant Marcos Garcia, sold her rights to the defendants Margarita Garcia, Rosario Garcia and Dolores Rufino, her husband's daughters and granddaughter, respectively, by his first marriage, executing the deed Exhibit N dated December 31, 1921, while the alleged purchaser Dolores Rufino was yet a minor. This was agreed upon between her and her husband Marcos Garcia to prevent the land, part of which belonged to her under said certificate of title, from ever passing to her son by her first marriage named Juan Tabigui, as she was already a widow when she contracted marriage with said Marcos Garcia.

In the meantime the plaintiff Resurreccion Tagarao was informed that her uncle Claro Garcia had succeeded in obtaining his share of the land in question and, desiring to protect her rights and those of her brothers and co-plaintiffs, she negotiated with Marcos Garcia so that he might give them their corresponding share. Marcos Garcia at first entertained her with promises that he would see to it that she got what she wanted but later, at her back, he sold his share of the land to the defendant Eleuterio Rufino, brother of his son-in-law Lope Rufino, husband of the defendant Rosario Garcia, executing in favor of Eleuterio Rufino the deed Exhibit 8 wherein it was made to appear that the price -paid to him for only one-half of the land, lot No. 510, was P6,567.

Twelve days after Paula Tabifranca had executed said deed of transfer Exhibit X in favor of her stepdaughters Margarita Garcia and Rosario Garcia and of her husband Marcos Garcia's granddaughter named Dolores Rufino, said three defendants together with Marcos Garcia obtained transfer certificate of title No. 3001, after the

cancellation of original certificate of title No. 10009, and two days after Marcos Garcia had executed in favor of the defendant Eleuterio Rufino the deed of sale Exhibit 8 whereby he sold to the latter his half of the land described in the above stated certificate of title No. 10009 (Exhibit M), he and his daughters and granddaughter jointly with the defendant Eleuterio Rufino succeeded in having said transfer certificate of title No. 3001 (Exhibit 3) cancelled to be substituted, as it was in fact substituted, by transfer certificate of title No. 8782 (Exhibit 7).

The transfer made by Paula Tabifranca in favor of her stepdaughters Margarita and Rosario Garcia and her husband's granddaughter Dolores Rufino, and that made by Marcos Garcia in favor of Eleuterio Rufino, stated in said deeds Exhibits N and 8, are fictitious and feigned in view of the following reasons inferable from the evidence of record:

Notwithstanding the fact that in the original certificate of title No. 10009 Paula Tabifranca's right to one half of the property therein described has been acknowledged, she was conscious that she was not entitled thereto because it belonged exclusively to her husband or, at least, he had acquired it long before he married her. This explains the ease with which she parted with her alleged right for a sum disproportionate to the true value of the land sold by her. The alleged purchasers Margarita Garcia, Rosario Garcia and Dolores Rufino were not in a financial position to pay her the alleged purchase price which, according to Exhibit N, amounted to P1,500; and Dolores Rufino, being then of tender age, could not have taken part in said contract of sale, notwithstanding that it was stated in said document that she was represented by her father Lope Rufino, because it does not appear that the latter was then the guardian of her property and it is a fact that minors can not give consent to any contract.

Neither was Eleuterio Rufino in a financial position to pay what he allegedly paid to the defendant Marcos Garcia for the latter's share in the land in question on the ground that the amount of six thousand five hundred sixty-seven pesos (P6,567) which is the price allegedly paid by him to Marcos Garcia is a fortune greater than the income he could have had for several years, because his means of livelihood, according to his own testimony, consisted simply of extracting tuba from about 200 coconut trees leased from different persons and in retailing fresh fish bought by him for a lump sum in order to obtain a small profit. He is a brother of the defendant Rosario Garcia's husband, and notwithstanding that the deed Exhibit 8 was executed in his favor, the land continues until now to be registered for taxation purposes in the name of Marcos Garcia; and notwithstanding the alleged deed of transfer Exhibit 8 the land in question continues to be under the Isabela Sugar Company Inc., of Occidental Negros, as property of Marcos Garcia, although it is divided into three portions named "three sisters—a," "THREE SISTERS—b," and "HACIENDA GARCIA," the first portion being under the management of Macario Tori Ila, husband of the defendant Margarita Garcia; the second under the management of Lope Rufino, husband of the defendant Rosario Garcia; and the third under that of Claro Garcia, uncle of the plaintiffs (Exhibit D). In addition to these reasons, it may and should be stated that Eleuterio Rufino's testimony explaining how the transaction between him and Marcos Garcia was effected, does not agree with the text of the deed of transfer Exhibit 8. It is expressly stated in said document that the price paid by him for the land in question was P6,567 and that he also assumed the lien in the form of a mortgage constituted on said land to secure the payment to Candido Montilla of a loan in the sum of P4,675 from which it may be inferred that the total price paid by him for said land was really P11,242. Notwithstanding this, he testified that he paid only P1,892 to the defendant Marcos Garcia. It should be stated furthermore that on December 1, 1928, or scarcely two and a half months from the time he bought said land from Marcos Garcia, Eleuterio Rufino leased it, according to Exhibit 9, to Marcos Garcia's sons-in-law and husbands of the defendants Margarita Garcia and Rosario Garcia, when it is natural that as he was poor and his business of tapping tuba and reselling fishes was not lucrative, he should have personally taken charge of the cultivation and exploitation of the land bought by him. Furthermore, on January 10, 1930, long after the alleged transfer of said land, Exhibit 8, Macario Torilla and Lope Rufino, as Marcos Garcia's attorneys-in-fact, the latter having executed in their favor the power of attorney, Exhibit 0-1, by virtue of which they mortgaged the land in question in the

name of their principal to Candido Montilla on July 7, 1928, Exhibit 0, paid to Montilla the sum of P=514.25 as interest on the loan secured by the mortgage above stated (Exhibit 4). This last fact convinces us more that said deed of transfer Exhibit 8 is fictitious because if it were genuine, there being as in fact there is in said document a stipulation that the purchaser Eleuterio Rufino assumed all the lien on said property, Eleuterio Rufino, not Marcos Garcia, personally, nor through his sons-in-law Macario Torilla and Lope Rufino, should have paid said interest.

The foregoing proves to our satisfaction that errors 2, 3 and 4 relied upon by the appellants Margarita Garcia, Rosario Garcia and Dolores Rufino in their brief are absolutely unfounded, and so is alleged error No. 3 attributed to the lower court by the appellant Eleuterio Rufino.

It follows from the foregoing conclusions and considerations that errors 5 and 2 attributed to said court by the defendants Garcia and Eleuterio Rufino, respectively, are likewise unfounded. If the transfers made under the deeds which later made possible the issuance to the interested parties of certificates of title Nos. 3001 and 8782 (Exhibits 3 and 7) are fraudulent, it is but proper, being in accordance with law, that the defendants execute the deeds of transfer prayed for by the plaintiffs in their complaint in order to give them what is theirs; and this is undoubtedly one fourth of the entire land because if one half belonged to the defendants' predecessor in interest, the other half belonged to the plaintiffs' grandfather who, as already stated, had only two children: Claro Garcia, the plaintiffs' uncle, and Merced Garcia, their mother.

But the question now arises whether or not the three plaintiffs are entitled to what they jointly pray for in their complaint. There is no doubt but that the plaintiffs Serafiri Tagarao and Buenaventura Tagarao are entitled thereto on the ground that the former was only 23 years, 1 month and 1 day, when this action was brought, and therefore the three years exception granted by the provisions of section 42 of Act No. 190 had not yet elapsed as to him, and because Buenaventura Tagarao, then being only 18 years, 4 months and 3 days of age, was yet a minor and the period of prescription as to him is extended to three years after he has attained majority.

The plaintiff Resurreccion Tagarao, notwithstanding that she was of legal age when this action was brought, contends that neither has her right to seek the same relief prayed for by her brothers and co-plaintiffs prescribed, and cites in support of her contention the ruling laid down in the case of Velazquez vs. Teodoro (46 Phil., 757). It was truly stated in said case, citing with approval a doctrine laid down by the Supreme Court of the State of Ohio in the case of Sturges and Anderson vs. Longworth and Home (1 Ohio St., 545), that:

"Where the interests of two defendants are joint and inseparable, and the rights of one are saved under the provision of the statute of limitations, on account of his disability, such saving inures to the benefit of the other defendant, although laboring under no disability."

As may be seen, this ruling refers to cases in which the rights of the defendants are joint and inseparable because when they are not so, that is, when they are joint and several at the same time, as is the case of the plaintiffs whose rights are joint and several, the rule according to said court, interpreting the section from which section 42 of Act No. 190 was copied, is different; and said court stated that in said cases the disability which protects an heir from the effects of prescription is no protection to coheirs, or in other words, using the same language of the author of the footnotes on the decision rendered in the case of Moore vs. Armstrong, reported in 36 Am. Dec, 63, 78, wherein the same Supreme Court of the State of Ohio sustained the latter point of view, "where the rights of the parties are not joint, the cases are uniform, and hold that the disability of one will prevent the operation of the statute as to him, but that those who are not under a disability will be barred."

The case of Moore vs. Armstrong, *supra*, has more points in common with the case at bar than those of Sturges and Anderson vs. Longworth and Home, and Wilkins vs. Philips cited in said case of Velazquez vs. Teodoro, *supra*. The question for determination in the former case was whether or not the period of prescription runs not

only against the heir who is laboring under disability but also against his coheirs who are sui juris. The plaintiffs, to all appearances, were the heirs of one Furgus Moore and the heiress who seemed to be laboring under disability was a married woman named Mrs. Fleming. The Supreme Court of Ohio decided the question in the negative with the remark that whatever doubt might once have been entertained on this subject, it was conclusively settled both in Great Britain and in the United States that the statute is saved in favor only of the person laboring under the alleged disability, adding in succession that this is precisely the rule with respect both to coparceners and tenants in common.

It cannot be argued that the separation of rights among the plaintiffs was not practicable in the sense that one of them could not have disposed of or alienate his legal portion of the thing possessed in common without the consent of the others, because the law provides otherwise. It says:

"Every part owner shall have the absolute ownership of his part, and of the fruits and benefits derived therefrom, and he may, therefore, sell, assign, or mortgage it, and even substitute another person in its enjoyment, unless personal rights are involved, but the effect of the sale or mortgage, with respect to the other participants, shall be limited to the share which may be allotted him in the partition upon the dissolution of the community."

Furthermore, whosoever among said plaintiffs should have desired the partition of the property of which he was a co-owner, could have demanded such partition inasmuch as the law then allowed and still allows such act (article 400, Civil Code; and section 181, Act No. 190). What particularly distinguishes the case at bar from that of *Sturges and Anderson vs. Longworth and Home*, supra, and the other cases wherein it was established that when the rights are joint the exception which saves one of the interested parties also inures to the benefit of the others, is that it was assumed in the latter cases that the rights and interests involved therein pertained to joint tenancy, not tenancy in common, which are two distinct relations, each having its own juridical meaning. The distinguishing feature between the one and the other, as stated in the case of *Mette vs. Feltgen* (148 111., 357, 371), is that the surviving co-owner in joint tenancy is subrogated in the rights of the deceased co-owner immediately upon the death of the latter, by the mere fact of said death, but this does not take place in cases of tenancy in common which corresponds to what is known in our law as community of property (articles 392 et seq. of the Civil Code). For this reason, according to American jurisprudence, a co-owner in joint tenancy can not dispose of his share or interest in the property which is the subject matter of the joint tenancy, without the consent of the other co-owner because in so doing he prejudices the other's rights and interests.

That the separation of rights and interests among the plaintiffs was practicable is further evidenced by the fact that Claro Garcia with whom they were entitled to onehalf of the land in question could recover his legal portion thereof from Marcos Garcia, although certainly not in its entirety, having failed to assert his rights. This being so, and it being known as it is in fact known that the purpose of the statute of limitations is no other than to protect the diligent and vigilant, not the person who sleeps on his rights, forgetting them and taking no trouble of exercising them one way or another to show that he truly has such rights, it is logical to conclude that the right of action of the plaintiff Resurreccion Tagarao is barred, and the fact that that of her brothers and coplaintiffs Serafin and Buenaventura Tagarao still subsists does not inure to her benefit.

Although Resurreccion Tagarao could have enforced the right which she exercised in this case on May 17, 1918, when Marcos Garcia and Paula Tabifranca obtained original certificate of title No. 10009 (Exhibit M) or shortly afterwards, or long before, that is, from the death of her mother Merced Garcia in 1914 or 1916, she did nothing to protect her rights. On the contrary, she allowed said spouses to perform acts of ownership on the land covered by said certificate, publicly, peacefully, uninterruptedly and adversely to the whole world including herself, and from that time until the filing of her first complaint more than ten years had elapsed. It is for this reason why it

cannot be sustained that the defendants Marcos Garcia and Paula Tabifranca, after it has been shown that the transfers made by them are null and void, being fictitious and false, hold the land in question in trust, because if they ever held it in said capacity it had been during the lifetime of the plaintiffs' mother to whom said defendants used to give part of the fruits thereof. But after she had died, their possession was under the circumstances above stated and the law provides that in whatever way the occupancy by a person claiming to be the owner of a real property may have commenced, if said occupancy is under claim of title and is furthermore open, continuous for ten years and adverse, it constitutes sufficient title for the occupant thereof (sections 40 and 41 of Act No. 190), and there can be no other exception to this rule than the disability of persons who are entitled to said property, by reason of age, some mental defect, or imprisonment, for whom the same law provides the exceptions contained in its section 42.

It having been established by the evidence for both the plaintiffs and the defendants that Candido Montilla holds a lien on the land in question, which is noted at the back of transfer certificates of title Nos. 3001 and 8782 (Exhibits 3 and 7) for a loan in the sum of P4,675 which he granted to Marcos Garcia in the honest belief that the latter was the true owner of the land described in certificates of title Nos. 10009 (Exhibit M), 3001 (Exhibit 3), and 8782 (Exhibit 7), it is but just that said lien be acknowledged by the plaintiffs Serafin Tagarao and Buenaventura Tagarao, with the necessary reservations in favor of said two plaintiffs.

It should be stated in passing that the land in question, lot No. 510 of cadastral case No. 11 of Isabela, Occidental Negros, is assessed at P15,530, and therefore one-twelfth (1/12) thereof is worth M.,294.17 on that basis.

As to the indemnity which the plaintiffs claim from the defendants, the conclusion arrived at by the lower court in its decision and judgment is supported by the evidence, that is, the plaintiffs' share of the crops from 1918 to 1929, including that of Resurreccion Tagarao, should be 1,000 cavans of palay. However, it being clear that Resurreccion Tagarao's action is barred, it should be understood that only the plaintiffs Serann Tagarao and Buenaventura Tagarao are entitled to compel the defendants to pay to them the value of two-thirds of the 1,000 cavans of palay at the rate of P3 a cavan.

For all the foregoing, the judgment appealed from is affirmed in so far as it favors the plaintiffs Serann Tagarao and Buenaventura Tagarao, and said defendants are hereby ordered to execute in favor of said Tagarao brothers the deed or deeds necessary to transfer to them, by virtue of this judgment, two-twelfths (1/12) of the entire lot No. 510 of the cadastre of Isabela, Occidental Negros, including the portion transferred to Claro Garcia (G. L. R. O. Cad. Record No. 100); to indemnify each of them in a sum equal to what he may pay to the mortgage creditor Candido Montilla to free his said portion from the lien thereon in favor of said Montilla; or likewise to pay to each of them, upon failure of the defendants to deliver said portion and execute the necessary deed of transfer, the sum of P1,294.17; and furthermore to pay, as indemnity, the value of two-thirds of 1,000 cavans of palay, at the rate of P3 a cavan, with costs against the defendants. Said judgment is reversed as to the plaintiff Resurreccion Tagarao. So ordered.

Street, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

MALCOLM, J., concurring in part and dissenting in part:

I concur with the opinion of Justice Villa-Real, but in addition desire to append the following observations: The case at bar is permeated with fraud. To do justice to the parties, all three of the plaintiffs should be permitted to enforce their equitable rights. This can be done if the rule announced in the case of Velazquez vs. Teodoro ([1923], 46 Phil., 757), be accepted as stating a rule of property and practice which should be followed. The judgment of the trial court should be affirmed.

GODDARD, J.:

I concur with this opinion of Justice Malcolm.

VILLA-REAL, J., concurring in part and dissenting in part:

I agree with the majority opinion in so far as it favors the plaintiffs Serafin Tagarao and Buenaventura Tagarao, but I regret having to dissent therefrom in so far as it declares that Resurreccion Tagarao's right of action is barred.

After a lengthy disquisition during which American and English jurisprudence was examined, the majority lays down the general rule that in all actions involving community of property or tenancy in common, the disability of a co-tenant or a co-owner to bring an action does not benefit those who are sui juris.

The rulings in the various supreme courts of the American Union on this point are stated in 37 Corpus Juris, page 1031, paragraph 441, as follows:

"Disability of one of several parties.—The authorities are not in harmony upon the question of the effect of the disability of one or more of several parties when one or more are sui juris. Thus it has been held that if one co-tenant is a minor the disability will save the interests of his co-tenant from the operation of limitations in actions for land, and this rule is extended to tenants in common as well as joint tenants,—the latter being a somewhat anomalous doctrine,—although in personal actions it is held otherwise, and one plaintiff may be barred while another is saved. On the other hand it is held that, where the right is joint so that all must sue, all must have the right to sue when the suit is brought, and if one is barred at that time all are barred, although some may have labored under disability. Perhaps the rule which is best supported by the authorities is that if the right is joint and several the disability of one will save him but will not avail another who is not under disability, and that if the right is joint so that the suit cannot be brought except by the parties jointly then the rights of all are saved if any is under disability; and one of coheirs or tenants in common is saved by his own disability notwithstanding his co-tenant is sui juris and barred, and the saving as to the former will not save the latter, upon the principle that each may sue for his own share severally. This general rule is subject to qualifications, however, and while it is held that if the cause accrues to two jointly who are under disability, the statute will not run until the disability is removed as to both, the application of the rule is confined to cases where all the parties are under disability when the cause accrues and if one is not under disability the statute will run against all; and this latter branch of the rule is confined in some cases to actions other than for the recovery of land in which the rule is applied that as each may sue for his own share, even though all may join, the bar as to one will not operate against the other who is under disability."

It is inferred from the foregoing that one of the best rules laid down by the authorities on the matter is that if the right is joint so that the suit cannot be brought except by the parties jointly, the rights of all are saved if any is under disability. It will be seen that the rule that when a co-tenant or co-owner is sui juris, the fact that his co-tenants or co-owners are laboring under disability does not save him from the prescription of the right of action if it is not exercised in due time, is not absolute. The rule is applicable only when a co-tenant or co-owner may exercise his right of action independently of his co-owners or co-tenants; but not when the action necessarily has to be brought jointly by all the co-owners or co-tenants.

In the case of Palarca vs. Baguisi (38 Phil., 177,180,181), this court through Justice Fisher, interpreting section 114 of the Code of Civil Procedure, stated as follows:

"* * * We hold that a co-owner cannot maintain an action in ejectment without joining all other persons interested. Section 114 of the Code of Civil Procedure requires that every action must be prosecuted in the name of the real party in interest, and that any person who has an interest in this subject matter and who is a necessary party to a complete determination of the questions involved should be made a party to the proceeding. The same article provides, in its last paragraph, that if any person having an interest in the subject

of the action, and in obtaining the relief demanded, refuses to join as plaintiff with those having a like interest, he may be made a defendant, the fact of his interest and refusal to join being stated in the complaint. Were the courts to permit an action in ejectment to be maintained by a person owning merely an undivided interest in any given tract of land, a judgment in favor of the defendant would not be conclusive as against the other co-owners not parties to the suit, and thus the defendant in possession of the property might be harassed by as many succeeding actions of ejectment, as there might be co-owners of the title asserted against him. The evident purpose of section 114 is to prevent the multiplicity of suits by requiring the person asserting a right against the defendant to include with him, either as co-plaintiffs or as co-defendants, all persons standing in the same position, so that the whole matter in dispute may be determined once and for all in one litigation."

We have not examined, nor do we need to do so, the procedural laws of the State of Ohio to the doctrine of the Supreme Court of which the majority unconditionally adheres, inasmuch as we have our own civil procedural law section 114 of which, taken from the Code of Civil Procedure of California, enumerates those who should be joined as plaintiffs as well as those who should be joined as defendants in an action. I agree that American jurisprudence should be followed as persuasive authority in all that which is in accord with our laws, customs and social condition, particularly if the legal provision to be interpreted or construed has been copied from some law of the State the Supreme Court of which has rendered the decision invoked. But in the case at bar we have our own law on civil procedure regulating the form and manner of bringing actions and the persons who should bring them and against whom they should be brought. If section 114 of our Code of Civil Procedure, as interpreted by this court, does not allow the bringing of an action for the recovery of a common property, as the one in question, by any co-tenant or co-owner without the consent of the Others, and if under the American decision on which the majority opinion is based "if the right is joint so that the suit cannot be brought except by the parties jointly then the rights of all are saved if any is under disability," then the appealed judgment should be affirmed in all its parts.

For the foregoing considerations, I am of the humble opinion that inasmuch as Resurreccion Tagarao, independently of her co-owners Buenaventura Tagarao and Serafin Tagarao, could not bring the present action for the recovery of their undivided portion of lot No. 510 of cadastral case No. 11 of Isabela, Occidental Negros, G. L. R. O. Cadastral Record No. 100, in question, which belongs to the plaintiffs and defendants in common and undivided shares, the disability of her minor brothers saves her, and her fate follows theirs.

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