

MARIA BICARME ASSISTED BY HER HUSBAND JOSE BALUBAR, PETITIONER, VS. COURT OF APPEALS AND CRISTINA BICARME, RESPONDENTS.

G.R. No. 51914. June 06, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition seeks to set aside the appealed decision of the lower court[1] as affirmed by the appellate court on August 28, 1979, directing the amicable partition of two parcels of land between Cristina Bicarme (private respondent) and her aunt Maria Bicarme (petitioner), as well as the Resolution, dated October 5, 1979, denying petitioner's motion for reconsideration.

The affirmed decision of the lower court, rendered on December 22, 1975, disposes as follows:

"(a) That Maria Bicarme and Cristina Bicarme are the only surviving co-heirs and co-owners and entitled in equal shares over the parcel of land in litigation and described under paragraph 3 of the complaint;

"(b) That the alleged deeds of Sale executed by Maria Bicarme covering and affecting the two parcels of land in suit are declared null and void in so far (sic) as they affect and/or cover the one-half undivided share and inheritance of plaintiff Cristina Bicarme;

"(c) Maria Bicarme is ordered to account and/or pay the value corresponding to the one-half (1/2) undivided shares of Cristina Bicarme in the yearly fruits of the land and to commence from the filing of this complaint; that is seventy five bundles of palay valued at P375.00 with legal interest fully paid;

"(d) That the parties are hereby ordered within (15) days from receipt of this decision to amicably agree upon a written partition and to submit the same for approval, parties shall appoint a Commissioner to effect and carry out effectively the partition of the 2 parcels of land in equal parts between the plaintiff and the defendant;

"(e) Defendant and her hirelings and representatives are forever ordered to refrain from molesting the Commissioner in the discharge of his duty to partition said two (2) parcels of land in suit;

"(f) And, Defendant to pay Attorney's fee and the cost of this suit.

"SO ORDERED." (pp. 40-41, Record on Appeal)

Petitioner-defendant Maria Bicarme appealed.

The Court of Appeals affirmed the decision; hence, this petition.

The main issue in this case dwells on ownership rights over the litigated parcels of land.

As established by the trial court, Sps. Juan Bicarme and Florencia Bidaya were the original co-owners of two parcels of land described as follows:

"1. Cornland in Palao, Bangued, Abra, bounded on the North - Hill, on the East - Brono Barbero, on the South

- Casimiro Palos, and on the West - Clemente Baldozan, of about 8,721 sq. m., assessed at P400.00 under Tax Dec. No. 7764;

"2. Riceland in Palao, Bangued, Abra, bounded on the North--Macario Bolos, East--Roberto Bicarme, South--Juliana Baldozan, and West--Telesporo, about 1,539 sq. m., assessed at P60.00, under Tax Dec. No. 7765;

"x x x." (p. 10, Record on Appeal)

The spouses died intestate and were survived by three children - Victorina Bicarme, Sebastian Bicarme and Maria Bicarme. Sebastian Bicarme died when he was a little boy and without any issue. Later, Victorina Bicarme died intestate, survived by her only daughter, Cristina Bicarme.

Cristina claims that upon the death of her grandparents, Sps. Juan and Florencia, her mother Victorina and her aunt, Maria, became co-owners or co--heirs of the litigated parcels of land. Upon the death of her mother, Victorina, Cristina became co-heirs with Maria, having inherited the share and interest of her mother corresponding to one-half of the two parcels of land.

Cristina instituted this action for partition, because her aunt, Maria, refused to share with her the yearly fruits of the disputed parcels of land. Maria, however, maintains that "she acquired these two parcels of land in 1925 (cornland) and 1926 (riceland) from the deceased spouses Placida Bidaya and Margarita Bose and since then until the present, had been in open, public, peaceful, continuous, adverse possession and enjoyment and in the concept of absolute owner thereof. Maria further claims that Cristina, her niece, never shared or contributed to the payment of taxes of said two parcels of land; and, finally, that Cristina Bicarme was presumed already dead" (p. 35, Record on Appeal).

In ruling Maria and Cristina to be co-heirs, the trial court relied on a provision separately stated in three deeds of sale executed by Maria as follows:

"That I am the sole and absolute owner over the above described cornland having acquired the same by inheritance from my late father Juan Bicarme;" (See Exhibits '4,' '5,' '6,' and '7,' or Exhibits 'A-1,' 'B-1,' 'C-1,' and 'D-1;'" (p. 37, Record on Appeal, emphasis ours)

The trial court stated that the provision was in the nature of a trust provision in favor of Cristina as a co-owner/co-heir.

We agree. By admitting that the cornland is inherited property, Maria, in effect, recognized Cristina's rights thereto as a co-heir/co-owner. As the trial court theorized:

"x x x

"(6) That Victorina Bicarme and Maria Bicarme never partitioned even orally the two parcels of lands which were then owned in common by them;

"(7) That even after the death of Victorina Bicarme, the land in suit remained undivided and were therefore in the possession of Maria Bicarme because her niece Cristina Bicarme went to Manila and now married and presently residing at No. 22, 11th Avenue, Grace Park, Caloocan City.

"(8) That without the knowledge and consent of Cristina Bicarme who was then of legal age, her aunt Maria Bicarme executed on April 27, 1973 a Deed of absolute Sale (Exhibit 'A') in favor of Marina Pizarro who acquired portion No. 3 of the cornland; on the same date she also executed another Deed of Sale (Exhibit 'B') in favor of Saturnino Pacopia, who acquired portion No. 2 of the cornland; and, on June 16, 1965 again Maria Bicarme executed a third Deed of Sale (Exhibit 'C') in favor of Casimira Pacopia, who acquired portion No. 1

of the cornland;

“(9) That these three (3) separated (sic) Deeds of Sale all executed by Maria Bicarme over the cornland have a respective total area of 740 square meters, more or less, for portion No. 3; 1,836 square meters, more or less for portion No. 2; and 1,265 square meters, more or less for portion No. 1, or a total area of 3,481 square meters more or less;

“(10) That in these three separate Deeds of Sale, Maria Bicarme expressly provided the aforesaid trust provision.” (pp. 36-37, Record on Appeal, emphasis ours)

Despite admission during the hearing on the identity of the lands in question (see p. 21, Record on Appeal), Maria's counsel, on appeal, re-emphasized her original claim that the two parcels of land in her possession were acquired from the Sps. Placido Biduya and Margarita Bose. However, the private document relative to the purchase, was not produced at the trial, allegedly because "they were placed in a trunk in their house which were burned during the Japanese Occupation." In 1945, Maria sold the riceland. No written evidence was submitted. For all legal intents therefore, the riceland remained inherited property. The identity of the cornland as inherited property can no longer be disputed, in view of Maria's admission in the deeds of sale she had executed, containing the trust provisions.

Having established Cristina's co-ownership rights, Maria nonetheless insists that Cristina's rights are barred by prescription under Secs. 40 and 41 of Act 190 (Code of Civil Procedure, Article 1116, Civil Code) then the applicable law, where the longest period of both acquisitive and extinctive prescription was only ten years (*Diaz v. Garricho*, 103 Phil. 261, 266). In the present case, Cristina, it is alleged, asserted her claims 34 years after her right of action accrued, as follows:

"x x x After Cristina left barrio Palao at the age of eleven (11), she never returned until she was twenty two (22) years old and married (pp. 32-34, tsn., Nov. 4, 1974). Upon her return her grandmother Florencia Bidaya was already dead (p. 33, id). At that time, Cristina claimed her hereditary share in the lands in question but her demands were ignored and repudiated by her aunt Maria, Cristina admitted that ever since the Japanese occupation when she was already of age, her aunt Maria refused to recognize her rights to said lands (pp. 41-42, id.). From that moment when Maria ignored and repudiated Cristina's hereditary rights, Cristina's right of action already accrued and the period of prescription began to run.

"The instant action was filed only in 1974 (p. 1, Record on Appeal), or some 34 years after it accrued. If she had any rights at all, Cristina slept on her rights. The present action is unquestionably barred by prescription." (pp. 27-28, Appellants' Brief)

Against Maria's claims of acquisitive prescription, the lower court ruled that Maria was a trustee with respect to Cristina's share. As such, prescription, as a mode of acquiring title, could not apply:

"A co-owner is a trustee for the other co-owner. No one of the co-owners may acquire exclusive ownership of the common property thru prescription for possession by one trustee alone is not deemed adverse to the rest (*Castrillo vs. Court of Appeals*, 10 SCRA 549; *Custodio vs. Casiano*, 9 SCRA 841 and, *Pascual vs. Meneses*, 20 SCRA 219)." (p. 6, Rollo)

While We agree with the trial court that Maria and Cristina are co-heirs, and that with respect to them prescription, as a mode of acquisition, cannot apply, We hasten to elaborate on certain aspects, which need clarification.

It is correct to say that possession by one co-owner (trustee) is not deemed adverse to the others. In this sense, an action to compel partition will lie at any time and does not prescribe. It is, however, not legally correct to say that by virtue of the imprescriptibility of an action for partition, prescription as a mode of acquiring title, can never be

invoked, or in the present case, that Maria, as a co-owner can never acquire the property by prescription.

An action for partition implies that the thing is still owned in common. If a co-owner or co-heir holds the property in exclusive adverse possession as owner, asserting sole and exclusive dominion for the required period, he can acquire sole title to it as against the co-heirs or co-owners. The imprescriptibility of an action for partition cannot thus be invoked when one of the co-owners has possessed the property as exclusive owner, and for a period sufficient to acquire it by prescription. From the moment one of the co-owners claims that he is the absolute and exclusive owner of the properties and denies the others any share therein, the question involved is no longer one of partition, but of ownership. (A. Tolentino, Civil Code of the Phil., Ann., Vol. II, pp. 192-193; *Bargayo v. Comumot*, 40 Phil. 856, at p. 870). In this sense, the trial court erred in saying that there can be no prescription (as a mode of acquiring title) in favor of a co-owner/trustee.

Having clarified this issue, the main question to be resolved is whether or not Maria has been in possession of the lands in question under the conditions required by Section 41 of the Code of Civil Procedure, as to uphold acquisitive prescription in her favor.

One of the conditions imposed by said section is that the possession must be adverse against the whole world. In order that a possession may be deemed adverse to the cestui que trust, or the other co-owner the following must concur:

"x x x (1) that he has performed unequivocal acts of repudiation amounting to an ouster of the cestui que trust or other co-owner, (2) that such positive acts of repudiation have been made known to the cestui que trust or other co-owners, and (3) that the evidence thereon must be clear and convincing." (A. Tolentino, Civil Code of the Phils., Ann., Vol. II, p. 193)

In the present case, Maria Bicarme disclaims the co-ownership by denying that subject properties are the inherited properties. Other than the tax declarations in her name, there is no written evidence that these were acquired/purchased from Sps. Placido Biduya and Margarita Bose. Payment of land taxes does not constitute sufficient repudiation of the co-ownership, as it is not an act adverse to Cristina's rights. Moreover, Cristina, being a minor, until she claimed her rights, was not even aware thereof. Neither did Maria make known her repudiation to Cristina, because all along, Maria presumed her to be dead. Her refusal to share with Cristina the yearly profits stemmed from Cristina's failure to share in the yearly taxes. Acquisitive prescription cannot therefore apply in this case:

"Acts which are adverse to strangers may not be sufficiently adverse to the co-owners. A mere silent possession by a co-owner, his receipt of rents, fruits or profits from the property, the erection of buildings and fences and the planting of trees thereon, and the payment of land taxes, cannot serve as proof of exclusive ownership, if it is not borne out by clear, complete and conclusive evidence that he exercised acts of possession which unequivocally constituted an ouster or deprivation of the rights of the other co-owners." (*Mangyan v. Ilan*, 28 O.G. 62; *Laguna v. Levantino*, 40 O.G. (14th Suppl.) 136, cited in A. Tolentino, Civil Code of the Philippines, Ann., Vol. II, pp. 193-194)

Additionally, it follows that neither can the doctrine on laches apply, for absent acquisitive prescription, (i.e., where it has not been shown that the possession of the claimant has been adverse and exclusive and opposed to the right of the others) the case is not one of ownership, in which case, the doctrine on imprescriptibility of an action for partition will apply. Cristina's right to partition will therefore prosper.

Finally, We eliminate the award on attorney's fees in the absence of any specific allegation thereon in her complaint, or that the same is covered by any of the eleven (11) exceptions enumerated in Art. 2208 of the New Civil Code. Even if We were to concede exercise of judicial discretion in the award of attorney's fees under Art.

2208, par. 11, this provision "demands a factual, legal or equitable justification. Without such justification, the award is a conclusion without a premise, its basis being improperly left to speculation and conjecture." (Mirasol v. De la Cruz, G.R. L-32552, July 31, 1978; 84 SCRA 337.) Likewise, "the matter of attorney's fees cannot be touched once and only in the dispositive portion of the decision. The text itself must expressly state the reason why attorney's fees are being awarded" (ibid). In the present case, the matter of such fees was touched but once and appears only in the dispositive portion of the decision.

ACCORDINGLY, the petition for review is DENIED and the appealed decision as affirmed by the Court of Appeals is hereby AFFIRMED with the modification that the award on attorney's fees is eliminated. Costs against petitioner. This decision is immediately executory.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Gancayco, JJ., concur.
Grino-Aquino, J., on leave.

[1] CFI, Abra, Branch I, CC No. 786.

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