

MARCIANA DE MORALES, PETITIONER, VS. THE HONORABLE COURT OF FIRST INSTANCE OF MISAMIS OCCIDENTAL, BRANCH II – -OZAMIS CITY, FELICIDAD BUSARANG AND FORTUNATO GONZAGA, RESPONDENTS.

G.R. No. 52278. May 29, 1980

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review and set aside the Order, dated October 10, 1979, of the respondent judge which dismissed the petitioner's complaint on ground of prescription. It has been filed pursuant to the provisions of Republic Act No. 5440 for only a question of law is involved.

The antecedent facts are: On September 26, 1957, Rosario Morales-Terez and Santiago Terez, petitioner's predecessors-in-interest, filed Civil Case No. 2031 in the Court of First Instance of Misamis Occidental, Branch II at Ozamis City, against Felicidad Busarang and Fortunato Gonzaga, private respondents herein, for the recovery of possession, ownership, unpaid rentals and damages of one-half of a piece of land and one-half of the house built thereon situated at the poblacion of Ozamis City. After issues had been joined, the trial court issued an Order, dated January 24, 1963, dismissing the complaint, third-party complaint and counter-claim for failure to prosecute. A motion for reconsideration was filed by the Terez spouses based on reasons which need not be stated here so the court issued another Order, dated August 12, 1963, modifying the dismissal to be without prejudice.

On May 7, 1978, petitioner as plaintiff and as successor-in-interest of Rosario Morales-Terez filed Civil Case No. OZ-704 in the court presided by the respondent judge, against Felicidad Busarang and Fortunato Gonzaga with allegations and reliefs substantially similar to those stated in Civil Case No. 2031 which had been pre-viously dismissed without prejudice.

On May 31, 1978, private respondents filed their answer, denying the allegations of the complaint and setting up, among others, the affirmative defense that plaintiff's cause of action was barred by prescription. On October 10, 1979, the respondent judge issued an Order which is the subject of the present petition and which reads:

"During the hearing of the special affirmative defense of prescription, the defendants presented as evidence the Order of the Court dated August 12, 1963 dismissing without prejudice Civil Case No. 2031 entitled Rosauro Terez, et al., versus Felicidad Busarang, et al., and that after the lapse of fifteen years, the right of the plaintiffs to recover possession and ownership of the real property had already prescribed and/or that the plain-tiffs had been guilty of laches by sleeping on their rights during this period.

"It appears that Civil Case No. 2031, involved the same parties and subject-matter with the same relief prayed for in this case. After the former case was dismissed on August 12, 1963 without prejudice, the herein plaintiffs shall have refiled the case within ten (10) years, otherwise their right to recover possession and ownership of the real property shall prescribed. Ultimately, during this period the nature of the possession of the defendants had been good faith, public and with the belief that there has been no flaw in the title after the

first case was dismissed.

"WHEREFORE, the complaint is hereby dismissed on the ground of prescription with-out pronouncement as to costs."

The questioned Order has to be set aside as prayed by the petitioner.

There are two kinds of prescription provided in the Civil Code. One is acquisitive, i.e. the acquisition of a right by the lapse of time. (Art. 1106, par. 1.) Other names for acquisitive prescription are adverse possession and usucapcion. The other kind is extinctive prescription whereby rights and actions are lost by the lapse of time. (Arts. 1106, par. 2 and 1139.) Another name for extinctive prescription is limitation of action.

The differences between acquisitive and extinctive prescriptions are well-stated as follows:

"Prescription was a statute of limitations. Whereas usucaption expressly 'vests the pro-property' and raised a new title in the occupant, prescription did nothing more than bar the right of action. The concept most fundamental to a system of title by possession is that the relationship between the occupant and the land in terms of possession is capable of producing legal consequences. In other words, it is the possessor who is the actor. Under a statute of limitations, however, one does not look to the act of the possessor but to the neglect of the owner. In the former the important feature is the claimant in possession, and in the latter it is the owner out of possession which controls." (Montgomery, Prescriptive Acquisition of Land Titles, XXVI, Philippine Law Journal, 353, 356--357 [1951].)

In the present case, it is extinctive prescription which is involved and the subject matter being real or immovable property, the relevant provision of the Civil Code is Art. 1141 which reads:

"Art. 1141. Real actions over immovables prescribe after thirty years.

"This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription."

Indubitably, from August 12, 1963, to May 7, 1978, less than thirty (30) years had elapsed. Hence the action had not yet prescribed. However, the respondent judge apparently relying on paragraph 2 of the above-quoted article has ruled in effect that the action is barred because the defendants have acquired the subject matter of the action by acquisitive prescription of ten (10) years. (See Art. 1136, Civil Code.) This is manifest error for the defendants have not claimed acquisitive prescription in their answer and even if they did, it cannot be given judicial sanction on mere allegations. The law requires one who asserts ownership by adverse possession to prove the presence of the essential elements which in ordinary acquisitive prescription of real estate are good faith, a just title (which according to Art. 1131 is never presumed but must be proved), and the lapse of time fixed by law. (Art. 1117, par. 2, Civil Code.) This was not done by the defendants before the respondent judge dismissed the complaint against them.

WHEREFORE, the Order, dated October 10, 1979, of the respondent judge is hereby set aside and he is ordered to reinstate Civil Case No. OZ-704. Costs against the private respondents.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., and De Castro, JJ., concur.
Aquino, J., concurs in the result.

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