

**FELIX TERO, JOSE TERO, ARCADIA TERO, MARGARITO TERO AND BONIFACIO TERO, PETITIONERS, VS. SANTIAGO TERO AND THE HON. COURT OF APPEALS, RESPONDENTS.***G.R. No. 55087. July 31, 1984*

Ponente: MELENCIO-HERRERA, J.

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The controversy in this case is between an uncle, respondent SANTIAGO Tero, and his nephews and niece, petitioners FELIX Tero, et al, the children of his brother SIMEON Tero. It would appear that the parents of SANTIAGO and SIMEON were FAUSTO Tero and Gabriela Pacaldo. The subject of the litigation is the ownership of a parcel of land of about 1.3610 hectares (hereinafter referred to as the PROPERTY) situated in Isabel (formerly Merida), Leyte. It is in this town that the Government has recently established the country's first and only copper smelter.

The contending parties are agreed that the PROPERTY was originally owned by Felipe Juegos. The claim of FELIX (the name includes his brothers and sister as the context may indicate) is based on Exhibit "D", an official AFFIDAVIT OF TRANSFER OF REAL PROPERTY (Provincial Form No. 9), dated March 15, 1917, which contains a BUYER'S AFFIDAVIT, subscribed by SIMEON to the effect that he had bought the PROPERTY from Felipe Juegos, and a SELLER'S AFFIDAVIT, subscribed by the said Felipe Juegos to the effect that he had sold the PROPERTY to SIMEON. Said Exhibit "D" is the only solid evidence in this case. SIMEON, in 1917, declared the PROPERTY as his in Tax Declaration No. 1423. When SIMEON died in 1944, the PROPERTY became owned in common by his children; that is by FELIX and his brothers and sister.

The claim, of SANTIAGO is based on Exhibit "2", an unsigned affidavit of Magdalena Tero, then a widow, dated November 6, 1953. In that affidavit, it was stated that in 1927 Magdalena and her husband, Pedro Amodia, became the mortgagees of the PROPERTY for the sum of P40.00, through a verbal contract in their favor made by FAUSTO and his wife who had purchased said PROPERTY from Felipe Juegos; that, after the death of FAUSTO, SANTIAGO, in representation of his brothers and sisters, as heirs of FAUSTO, had wanted to redeem the PROPERTY now (that is, in November, 1953); that the mortgage right had already been transferred to Cristeta Amodia, the daughter of Magdalena, who had subsequently sold the PROPERTY to Benjamin Amodia; and that SANTIAGO could still redeem the PROPERTY by paying the mortgage debt of P40.00, presumably to her or to Cristeta, but not to Benjamin.

On the basis of the above-stated facts alone, there can be no question but that FELIX and his brothers and sister should be declared the owners of the PROPERTY. The affidavit of Magdalena Tero, even if confirmed by her oral testimony (but which was not given on the witness stand), cannot defeat the AFFIDAVIT OF TRANSFER OF REAL PROPERTY, Exhibit "D". For one thing, FAUSTO, not being the owner, could not have mortgaged the PROPERTY to Magdalena and her husband. In 1927, as now, there could not be an oral mortgage.

What has to be determined is whether or not after FELIX became the owner of the property in 1944, events

transpired such that dominion over the PROPERTY has to be deemed to have vested in SANTIAGO. Those events, which can be taken into account, are as follows:

1. On January 18, 1953, even before the alleged execution of the affidavit of Magdalena Tero on November 6, 1953, SANTIAGO declared the PROPERTY as belonging to him through Tax Declaration No. 4301 (Exhibit "1"). In said Tax Declaration, it was stated by the assessor that he inspected the PROPERTY on November 18, 1953 and found that it had not been previously declared for taxation, thus ignoring Tax Declaration 1423 in the name of SIMEON.
2. As previously stated, SANTIAGO has based his claim to ownership of the PROPERTY on the execution on November 6, 1953 of the alleged affidavit of Magdalena Tero (Exhibit "2"). What may be pointed out is that, according to the affidavit itself, SANTIAGO had approached Magdalena Tero "in representation of his brothers and sisters", "the heirs or legitimate children of FAUSTO". FELIX has to be included among those heirs.
3. On August 6, 1957, Felipe Amodia and Benjamin Amodia, claiming to be owners of the PROPERTY, filed suit against SANTIAGO and FELIX and prayed that they, Felipe Amodia and Benjamin Amodia, be declared the absolute owners of the PROPERTY (hereinafter referred to as the AMODIA SUIT). This case was apparently instituted because, as stated in the affidavit of Magdalena Tero, her daughter Cristeta Amodia had sold the PROPERTY to Benjamin Amodia.
4. On August 18, 1958, Hermogenes Bazarte and Leodegario Denoy declared the PROPERTY as belonging to them in Tax Declaration No. 4642 (Exhibit "P").
5. On January 22, 1959, the AMODIA SUIT was decided on a compromise agreement wherein it was stated that SANTIAGO and FELIX "are now the absolute and true owners and possessors of the land" (Exhibit "5").
6. On November 13, 1973, FELIX commenced a suit for forcible entry against SANTIAGO before the Municipal Court of Isabel (the FORCIBLE ENTRY CASE). On January 31, 1974, the Municipal Court dismissed the case after finding that SANTIAGO "is in actual, continuous and physical possession of the subject matter of this litigation prior to January 22, 1959 up to the present time".
7. FELIX appealed from the decision of the Municipal Court to the Court of First Instance of Leyte. On March 25, 1974, FELIX filed a Complaint before the Court of First Instance of Leyte against SANTIAGO for quieting of title with the principal prayer that FELIX be declared the owner of the PROPERTY (the TITLE CASE).
8. Three (3) days after March 25, 1974, or on March 28, 1974, the Court of First Instance dismissed the appeal in the FORCIBLE ENTRY CASE, disregarding a plea that the said case be considered jointly with the TITLE CASE previously filed on March 25, 1974.
9. On July 24, 1974, the TITLE CASE was decided against FELIX, with the Trial Court stating that "as early as 1950, defendant has declared the land for taxation purposes".
10. The decision of the Trial Court in the TITLE CASE was appealed to the then Court of Appeals which, in 1980, affirmed the decision of the Trial Court, stating, inter alia, that:

"On the other hand, ordinary acquisitive prescription of immovables and other real rights thru adverse possession of ten years requires possession 'in good faith and with just title for the time fixed by law' (Negrete vs. Court of First Instance of Marinduque, L-31267, Nov. 24, 1972, 48 SCRA 113). The parcel of land in question was possessed by appellee in the concept of owner, openly, publicly and adversely against the whole world since he acquired the same from Benjamin Amodia who in turn bought it from Cristeta Amodia. The latter also got the property as her share in the inheritance from her mother Magdalena Tero, who was in possession thereof as owner, openly and adversely. It is clear, therefore, that appellee acquired possession and

ownership of the property in question through acquisitive prescription."

It is our opinion that the events which had transpired after 1944 as mentioned above have not vested title to the PROPERTY in SANTIAGO. Article 712 of the Civil Code provides:

"ART. 712. Ownership is acquired by occupation and by intellectual creation.

"Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition.

They may also be acquired by means of prescription."

The only way SANTIAGO could have acquired title to the PROPERTY is through prescription, the mode sustained by the Appellate Court. We find its conclusion untenable.

Under Article 117 of the Civil Code, SANTIAGO's possession of the PROPERTY, if he was indeed ever in possession, was not in good faith and with just title. On January 18, 1953, he had already claimed that he was the owner of the PROPERTY, that is, before he had allegedly redeemed the PROPERTY from Magdalena Tero or Cristeta Amodia after November 6, 1953. Further, it cannot be assumed, under Article 1127, that SANTIAGO had "reasonable belief that the person from whom he received the thing was the owner thereof, and could transmit his ownership". On the very face of the alleged affidavit of Magdalena Tero, it appears that she was only a mortgagee and, hence, was not the owner and could not transmit the ownership of the PROPERTY. Lastly, Magdalena's affidavit, Exhibit "2", not having been signed, and Magdalena not having confirmed the affidavit in testimony before the Trial Court, it could not even be presumed that there was a grantor to SANTIAGO under Article 1129.[1]

SANTIAGO's possession was not peaceful and continuous. Not peaceful because it was questioned in the AMODIA SUIT during the period August 6, 1957 to January 22, 1959. Then, in his Motion of September 17, 1974 for execution of judgment pending appeal, SANTIAGO said, he "has been deprived of the possession and enjoyment of the property" "for quite a considerable length of time". We have also looked at the pictures Exhibits "D", "E" and "F", taken on June 4, 1974, of three (3) houses standing on the PROPERTY, and have found them to be houses apparently constructed long before the mentioned date of June 4, 1974. Verily, it is not clear that SANTIAGO had been in possession of the PROPERTY for the total prescriptive period of ten (10) years.

The lower Courts have not viewed SANTIAGO's claim to title over the PROPERTY as a claim of one co-owner against the other co-owners. When SANTIAGO redeemed the property from Cristeta Amodia or from Benjamin Amodia, he did so in representation of the heirs of FAUSTO, FELIX among them. Even giving substance to the claim of SANTIAGO, it has to be held that, through the redemption, he became only a co-owner. In the compromise agreement in the AMODIA SUIT, SANTIAGO also acknowledged that he and FELIX were co-owners of the PROPERTY. "No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership".[2] The only time it can be assumed that SANTIAGO had denounced the co-ownership was when he filed an Answer on November 16, 1973 in the FORCIBLE ENTRY CASE (Exhibit "8").

WHEREFORE, the judgment of respondent Appellate Court is hereby REVERSED and SET ASIDE and petitioners are hereby declared as the actual possessors and the rightful owners of the parcel of land herein questioned. Tax Declaration No. 4301 issued in the name of private respondent SANTIAGO TERO is hereby ordered cancelled.

Costs against private respondent SANTIAGO TERO. SO ORDERED.

Plana, Relova, Gutierrez, Jr., and De La Fuente, JJ., concur.

Teehankee, J., (Chairman), no part.

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[1] "ART. 1129. For the purposes of prescription, there is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right."

[2] Article 494, Civil Code.

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