

HEIRS OF CATALINO JARDIN, NAMELY, RUSTICA, CEFERINA, VICTORINA, REMEDIOS, LSIE, CIRILA, PURIFICACION, AND VIRGINIA, ALL SURNAMED JARDIN, AND WALDERICO Z. JARDIN, AS HEIR OF GALO...

G.R. No. 55225. September 30, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the enforcement in 1973 of a 1920 partition of certain unregistered lands. The following is a summary of the allegations in the complaint filed in 1973 by the heirs of Catalino Jardin and Galo Jardin against the heirs of Sixto Hallasgo in the Court of First Instance of Misamis Oriental in Civil Case No. 4234:

The spouses Braulio Jardin and Maura Hallasgo were survived by their two children named Catalino and Galo and by Sixto Hallasgo, apparently Maura's child by her first husband.

In 1920, Catalino, Galo and Sixto partitioned in a private document the following properties inherited from the Jardin spouses:

- (1) A residential lot in the poblacion of Jasaan, now Lower Jasaan, Misamis Oriental, with an assessed value of P1,000. Catalino and Galo each received as their share 495 square meters and seven coconut trees. The remainder of the lot and seven coconut trees were allotted to Sixto.
- (2) A parcel of cornland located at Barrio Campo-santo planted to 7-1/2 gantas with an assessed value of P500. An area planted to five gantas was given to Sixto while the remainder was adjudicated to Galo and Catalino.
- (3) A parcel of land located at Barrio Cabagtucan planted to 2-1/2 gantas with an assessed value of P200 was assigned to Galo and Catalino.
- (4) A parcel of cornland located at Barrio Canajawan planted to fourteen gantas was assigned to Sixto.
- (5) A parcel of land also located at Barrio Canajawan planted to thirteen gantas with an assessed value of P500 was assigned to Galo and Catalino.
- (6) A parcel of riceland located at Barrio Sagpolon planted to ten gantas was assigned to Galo and Catalino.
- (7) A parcel of riceland located at Barrio Mandagisiao planted to five gantas was assigned to Sixto.
- (8) A parcel of riceland located at Barrio Calabugon planted to six gantas was divided equally among the three heirs.
- (9) A parcel of land located at Barrio Mingomon, Claveria, Bukidnon, plus one cow, was assigned to Sixto in exchange for a house of strong materials located at the poblacion.

Galo later ceded to Catalino his share of 495 square meters in the lot at the poblacion of Jasaan in exchange for

Catalino's one-half share of the riceland in Barrio Sagpolon (No. 6). Catalino became the owner of 990 square meters of the poblacion lot. Galo became the sole owner of the riceland at Sagpolon.

In 1963, Sixto was allowed by Catalino's children to use as a garden an area of 350 square meters which is a part of the 990 square meters owned by them. However, in 1964 Sixto fraudulently and without the knowledge of Catalino's children (Sixto's nephews and nieces) included said portion in the cadastral survey of his share of the poblacion lot. Sixto and his children refused to reconvey the said 350-square-meter portion to Catalino's children.

Allegedly taking advantage of the minority of the children of Catalino and Galo, who both died after the war, Sixto occupied the parcels of land adjudicated to Galo and Catalino in the 1920 deed of partition including the house of strong materials. Sixto used those lands after the death of Galo and Catalino and did not give to their heirs any share of the harvests.

It was only in the early part of 1973 that the children of Galo and Catalino came to know of the 1920 deed of partition which was shown to them by Corazon Hallasgo during a confrontation in the provincial commander's office at Camp Alagar when they sought to recover the said portion of 350 square meters from the Hallasgos.

On that occasion, the children of Galo and Catalino came to know that the shares of Galo and Catalino in that partition allegedly had been in the possession of Sixto and his children "for a long time". In spite of earnest efforts, Sixto's heirs refused to settle the case amicably with the heirs of Galo and Catalino.

The heirs of Galo and Catalino prayed in their 1973 complaint that Sixto's heirs be ordered to reconvey to them the lands allocated to their parents in the 1920 partition and the portion of 350 square meters in the poblacion lot appropriated by Sixto. The plaintiffs also prayed for damages.

Defendants Hallasgo filed a motion to dismiss. The trial court in a minute order dismissed the complaint on the ground of prescription, citing *Bargayo vs. Camumot*, 40 Phil. 857. The plaintiffs appealed. They contend that their action had not prescribed and that its dismissal had no factual basis. The defendants did not file any brief.

Incidentally, plaintiffs-appellants also contend for the first time that defendants' motion to dismiss, which was filed on August 22, 1973 and set for hearing on September 27, 1973, was a mere scrap of paper. That contention is devoid of merit. The plaintiffs interposed a written opposition to that motion. They were heard before it was granted by the trial court.

The appellants invoke the rule that the action for partition among co-heirs does not prescribe and that a co-owner's possession of the community property is not deemed adverse to the other co-owners. They argue that the 1920 handwritten partition signifies that Sixto recognized the existence of the co-ownership.

We find these contentions to be flimsy and untenable. The poorly drafted complaint is vitiated by grave deficiencies and loose ends. Its draftsman had not thoroughly studied the facts and the law involved in the action.

There are no allegations as to the specific dates when Galo and Catalino died (it was merely alleged that they died "after the war") and when Sixto died; when the heirs of Galo and Catalino became of age; the date when Sixto allegedly usurped the lands allocated to Galo and Catalino; what lands are in the possession of Galo and Catalino's heirs and why they did not sue Sixto during his lifetime to recover what pertained to them.

The document of partition itself shows that it was already implemented in 1920. Under that partition, the land located at Barrio Cabagtucan planted to 2-1/2 gantas, the land located at Barrio Canajawan and the land located at Barrio- Sagpolon planted to ten gantas (Nos. 3, 5 and 6) were definitely adjudicated to Galo and Catalino. Sixto could not have usurped those lands for if he did so his uterine brothers Galo and Catalino would have resisted the usurpation. There was no co-ownership as to these lands.

That the 1920 partition among the three heirs was implemented is shown in the allegations of the complaint with respect to the poblacion lot. As already stated, Galo and Catalino were each given 495 square meters and seven coconut trees out of the poblacion lot. The re-mainder of the lot and seven coconut trees were given to Sixto.

That partition of the poblacion lot shows that the 1920 agreement was actually enforced. There was no co-ownership as to the poblacion lot. If the 1920 partition was enforced as to the poblacion lot, there would be no reason why it would not have been implemented with respect to the other lands.

The only lands held in co-ownership under the 1920 partition were the Camposanto cornland planted to 7-1/2 gantas and the Calabugon riceland planted to six gantas (Nos. 2 and 8). But it was not alleged with particularity when Sixto repudiated the co-ownership as to those lands and claimed them as his own.

Article 494 of the Civil Code provides that "no co-owner shall be obliged to remain in the co-ownership" and that "each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned". It also provides that "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."

While the action for the partition of the thing owned in common (*actio communi dividendo* or *actio familiae erciscundae*) does not prescribe, the co-ownership does not last forever since it may be repudiated by a co-owner. In such a case, the action for partition does not lie. What may be brought by the aggrieved co-owner is an *accion reivindicatoria* or action for recovery of title and possession. That action may be barred by prescription.

"If the co-heir or co-owner, having possession of the hereditary or community property, holds the same in his own name, that is, under claim of exclusive ownership, he may acquire the property by prescription if his possession meets all the other requirements of the law, and after the expiration of the prescriptive period, his co-heir or co-owner may lose their right to demand partition, and their action may then be held to have prescribed." (De los Santos vs. Santa Teresa, 44 Phil. 811).

In the instant case, as the partition was made in 1920 and the plaintiffs did not specify when Sixto Hallasgo repudiated the co-ownership of the lands in Camposanto and Calabugon, the trial court assumed that prescription started to run even before the Civil Code took effect.

Under the Code of Civil Procedure, a period of ten years was the maximum period for acquisitive and extinctive prescription. Hence, the trial court concluded that the 1973 action was barred by prescription.

With respect to the portion of 350 square meters of the poblacion lot, the same is governed by other legal rules. That portion was loaned to Sixto by his nephews and nieces by way of commodatum or precarium (Art. 1947, Civil Code). In grievous violation of the trust, he allegedly included it in the cadastral survey of his share of the poblacion lot. (Whether he obtained a Torrens title for it is not specified.)

The action of Catalino's children for the recovery of that 350-square-meter portion from Sixto's heirs has not yet prescribed. The trial court erred in dismissing that part of plaintiffs' complaint.

WHEREFORE, the trial court's judgment is affirmed with the modification that the plaintiffs' action for the recovery of the 350-square-meter portion of the poblacion lot may be maintained. The defendants- appellees should answer that part of the complaint referring to that lot. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

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