

WILLIAM COLE AND HENRY COLE, PETITIONERS, VS. POTENCIANA CASUGA VDA. DE GREGORIO, JOSEFINA G. HUFANO ASSISTED BY HER HUSBAND, ALFREDO HUFANO AND THE HONORABLE COURT OF APPEALS, ...

G.R. No. 55315. September 21, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for review of the decision of the Court of Appeals in CA-G.R. No. 59702-R, William Cole, et al. vs. Potenciana Casuga Vda . de Gregorio, et al., affirming the judgment of the Court of First Instance of La Union in its Civil Case No. 2606, dismissing the complaint of herein petitioners for "quieting of title" (sic), specific performance and annulment of (subsequent) deed of sale (to another party).

For an adequate background of Our ultimate resolution of the instant controversy as will be made anon, the following portion of the opinion of the decision of the Appellate Court under review should suffice:

"This is an appeal by plaintiffs-appellants from the decision dated March 10, 1976 of the Court of First Instance of La Union, Second Judicial District, San Fernando, Branch I, in Civil Case No. 2606 for quieting of title, specific performance and annulment of deed of sale, the dispositive portion of which reads as follows:

"IN VIEW OF ALL THE FOREGOING, the Court renders judgment dismissing plaintiffs' complaint and ordering the plaintiffs to jointly and severally pay defendants the sum of P3,500.00 as reasonable attorney's fees; and to pay costs.'

"Unhappy over the results of the case, plaintiffs-appellants appealed, invoking as errors the following: (1) in finding and ruling that the agree-ment to buy and sell (Exhibit 'A') between the parents of plaintiffs and the parents of defendant Josefina Hufano was rescinded by the parties; (2) in refusing to consider and to appreciate the 2 letters of the late William Cole, Sr., to Surveyor Luis Salanga as competent evidence for the plaintiffs-appellants that the agreement to buy and sell (Exhibit 'A') was not rescinded; (3) in finding and so ruling that the cause of action of plaintiffs-appellants has prescribed; and (4) in sustaining the legality and validity of the transfer and/or sale between defendant- appellee Potenciana Casuga Vda. de Gregorio and her daughter and co-defendant- appellee Josefina Hufano of the land which is the subject matter of the agreement to buy and sell (Exhibit 'A').

"On August 29, 1963, the parents of plaintiffs-appellants, William Cole, Sr. and Angelina Munar Cole entered into an 'Agreement to Buy and Sell' (Exhibit 'A') a parcel of land located at Bo. Dalumpinas Oeste , San Fernando , La Union (also known as Bo. Urbiztondo, San Juan, La Union) with the owners of the same, namely, Angel Gregorio and Potenciana Casuga . Of the P6,000.00 consideration, P1,000.00 was paid in advance by Angelina M. Cole and the balance of P5,000.00 was 'to be paid in full after the preliminary survey of the land, by a Private Surveyor, for the purpose of verifying whether or not said parcel of land contains the same area as declared in the Tax Declaration.'

"On August 31, 1963, the services of a surveyor, in the person of Luis Salanga was hired (Exhibit 'E') and he

conducted a survey of the property in question on September 24 and October 7, 1963 and submitted his survey plans to the Bureau of Lands on June 22, 1964 for approval. Thereafter he left for the United States and came back to the Philippines on June 6, 1965. Upon arrival he worked for the approval of the survey which he secured on June 29, 1965 (Exhibit 'B' and 'B-1'). The survey plans were then delivered to the children of William Cole, Sr., the plaintiffs-appellants, on May 31, 1966 who paid the balance of his fees (Exhibit 'F').

"Unknown to William Cole, Sr. that Luis Salanga left for the United States and impatient over the delay in the results of the survey as approved by the Bureau of Lands, the former wrote the latter two angry letters, one dated October 20, 1964 (Exhibit C) and the other on April 1, 1965 (Exhibit D), eleven days before William Cole, Sr. died on April 12, 1965.

"After the death of William Cole, Sr. on April 12, 1965, Angel Gregorio died on June 3, 1965 followed by Angelina Munar Cole who died on January 10, 1966.

"On May 31, 1966, plaintiffs came to know that their parents have still an unpaid balance on the land subject matter of the instant case in the amount of P5 ,000.00 after they went over their papers, such as the Agreement to Buy and Sell (Exhibit 'A') and the letters of their father (Exhibits 'C' and 'D') to the surveyor, Mr. Salanga. Thereupon, they tried to raise the amount needed to pay the balance but they discovered that the property was already transferred to the only daughter of defendant- appellee Potenciana Casuga Vda. de Gregorio, namely, defendant- appellee Josefina G. Hufano.

"On the other hand, defendants- appellees contend that when the preliminary survey conducted by surveyor Luis Salanga on October 7, 1963, disclosed that the land subject of the Agreement to Buy and Sell contained only an area of 23,408 square meters instead of 32,976 square meters as stated in Tax Declaration No. 38048, Angelina Cole rescinded the contract and Angel Gregorio returned to her the advance payment of P1 ,000.00. Neither Angelina Cole nor plaintiffs-appellants took possession of the land, nor declared the same for taxation or paid the taxes thereon. The agreement was likewise not registered in the name of Angelina Cole in the Office of the Register of Deeds.

"In the first and second assignment of errors, appellants assail the findings of the trial court that the agreement to buy and sell (Exhibit 'A') between the parents of plaintiffs and that of defendant Josefina Hufano was rescinded by the parties and its failure to consider the significance of the two letters of William Cole, Sr. to surveyor Luis Salanga as competent evidence to show that said agreement was not rescinded. We agree with plaintiffs-appellants.

"There is nothing in the evidence on record showing that plaintiff Henry Cole deliberately admitted that the agreement to buy and sell was rescinded by his late mother, Angelina Cole, during her lifetime. At most, Henry Cole gave a vague answer to a tricky question propounded on cross-examination actually calling for two different answers.

"Attas clarified by the witness in the subsequent answers given by him –

"Q Now, did you come to know that the P1 ,000.00 advance or earnest money delivered by your mother to Angel Gregorio was returned? Did you come to know that?

"A No, Sir.

"Q Did she not tell you that before your mother died?

"A No Sir. (Ibid.)

Not knowing, therefore, whether the P1,000.00 partial payment was ever returned by the Gregorios to Angelina Cole, how can Henry Cole admit that the contract Exhibit 'A' was ever rescinded when the basis of the rescission is the return of the P1,000.00.

"Q Mr. Witness, do you know for a fact whether this receipt which you mentioned was ever rescinded or cancelled?

"A No Sir. (Ibid.)

"Neither could the testimony of surveyor Luis Salanga be corroborative and confirmatory of the testimony of Henry Cole on the alleged rescission of the contract that we have shown the latter did not testify to and because said testimony is predicated on hearsay evidence.

"Q You said you were of the impression that money was already returned to the Cole by Gregorio. Who gave you that impression?

" A It is of public knowledge in Lingsat and the wife of Angel Gregorio told me that the money was returned and also Hipolito (tsn. p. 17 S. Sept. 11, 1975)

"Besides, if the contract was really rescinded and the P1,000.00 returned by the Gregorios to the Coles a few days after a surveyor was hired on August 31, 1963 and had verified the true area of the property in question, on the ground that the area surveyed was much smaller than the area appearing in the Tax Declaration, what could have impelled William Cole, Sr. to write two angry letters on October 20, 1964 and April 1, 1965 (Exhibits C and D) to the surveyor hurrying him to finish the survey and even threatening him with legal action if he fails to do so. The inevitable answer that surfaces with clarity is that there was no return of the partial payments made by the Coles. Defendants-appellants could not present any document to show receipt of the P1 ,000.00 by the Coles if the latter could not then produce the Agreement (Exhibit 'A'). They should have insisted on such a receipt as a precaution to avoid any misunderstanding, unpleasant incidents and expensive court litigations.

"The testimony of defendants-appellants' witnesses, namely Josefa Espinueva and Josefina Hufano are not only evasive and inconsistent but also conflicting.

" Josefa Espinueva's testimony to the effect that after Angel Gregorio returned the P1 ,000.00 to William Cole, Sr. and demanded a receipt, but the latter stated there is no need as he had already torn the receipt Exhibit 'A', and the Gregorios left, she was allegedly told by William Cole, Sr. that he really did not tear the receipt Exhibit 'A' but that it was with him and showed it to the witness. William Cole, Sr. allegedly told the witness that 'they thought they have fooled me. They think they are wise, but I am wiser.'

"If such testimony is true and the incident narrated by Josefa Espinueva actually took place, then it behooves said witness, as a friend of the Gregorios and one of their witnesses, to report such incident to them as to enable the Gregorios to take such action as may be necessary to protect themselves. Her failure to do so renders suspect the credibility of her entire testimony for being unnatural and therefore not true.

"Again, while in one instance Josefa Espinueva claims that there was no document signed to show the return of the P1 ,000.00 by the Gregorios to the Coles, in another he claims there was a receipt which was signed to show the return of the P1,000.00 to William Cole (tsn. pp. 17-18 S. Dec. 4, 1975). If there was such a receipt why was not the receipt presented by defendants- appellees.

"Moreover, Our attention was called to the failure of defendants- appellees to bring to the witness stand defendants- appellee Potenciana Casuga, the surviving spouse of the late Angel Gregorio. She would have been the best witness to testify on the matters at issue, as she was present in all the incidents now being inquired into, from the time of the signing of the agreement to buy and sell up to the time of the alleged rescission of the contract. Her non-presentation raises a presumption that if presented her testimony would be adverse to defendants- appellees (Orfanel vs. People, L-26877, Dec. 26, 1969, 30 SCRA 819).

"As against defendants- appellees' witnesses We have the unshaken testimony of Eduardo Caranay that the Gregorios did offer to return the P1,000.00 to the Coles and to cancel their agreement, Exhibit 'A', but William

Cole, Sr. refused. The non-cancellation of the agreement is corroborated by the two letters written by William Cole, Sr. to surveyor Salanga pressing for the termination of the survey. Had the agreement been cancelled, William Cole, Sr. would not have pressed Salanga for the completion of the survey for then he would have no use for it." (Pp. 25-30, Record.)

In other words, the Court of Appeals sustained and, in Our opinion, rightly the first two errors assigned by petitioners; hence, We can start from the premise that petitioners' action had not prescribed before it was filed. In this connection, We hasten to add that certain factual findings of the Appellate Court in the course of its ratiocination sustaining the above-mentioned assignments of error appear to Us to be supportive of petitioners' pose that the Court of Appeals should have gone full length in overruling the trial court.

According to the Court of Appeals, "Plaintiffs-Appellants' cause (sic, should be causes) of action have (has), however, not only prescribed but (are now) barred by laches." We do not agree. In Our considered view, as hereunder now to be demonstrated, petitioners' two causes of action have not prescribed, much less are they barred by laches, if not on legal grounds, on the basis of strong manifest equitable considerations which the courts of this country have ample power to enforce.

Be it remembered that the case of petitioners is directed against two matters, (1) the non-compliance by the respondent Potenciana Casuga Vda. de Gregorio of hers and her deceased husband's promise to sell the land in question to petitioners, and (2) the annulment of the sale of the said land to her co-respondents mother and son, Josefina G. Hufano and Alfredo Hufano.

True it is that the above second cause of action wherein the Hufanos are co-defendants is subordinate to the result of the action for specific performance against respondent widow, Potenciana. But it may be advanced here that since the transfer of the controverted property was made to the Hufanos in 1966 or 1967, it is obvious that petitioners' action, insofar as the annulment of said transfer is concerned, was filed well within the ten-year period of prescription. And as regards the supposed laches, nothing in the record shows that petitioners were aware of any act of the Hufano's publicly adverse to the right of action of petitioners before the instant action was filed.

Coming now to the pretended prescription and laches relative to the cause of action of petitioners as against the widow, Potenciana, the Court of Appeals rationalized its adverse holding as follows:

"Under the present Agreement to Buy and Sell, Exhibit 'A', the mother of plaintiffs was under obligation to pay the balance of P5,000.00 in full 'after the preliminary survey of the land by a Private Surveyor, for the purpose of verifying whether or not said parcel of land contains the same area as declared in the Tax Declaration.' This portion of the agreement creates a conditional obligation (Article 1181, Civil Code of the Philippines). The accomplishment of the preliminary survey gives rise to the acquisition of rights by the contracting parties and the acquisition of said rights depends upon the results of said survey. As the survey and the result thereof occurred on October 7, 1963 and found to have an area of only 23,406 square meters (Stipulation of Facts, pp. 30-31, R. A.) the period of prescription began to run from said date or on August 23, 1963 when the Agreement to Buy and Sell was executed pursuant to Article 1187 of the Civil Code that the effects of a conditional obligation to give once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. But whatever is the starting date in the computation of the period of prescription, whether from August 29, 1963 or October 7, 1963, the filing of plaintiffs-appellants' complaint on July 25, 1974 was way beyond the period of ten (10) years as provided for in Article 1144 of the Civil Code and consequently barred. The contention of plaintiffs that the period of prescription should be counted from 1966 when they discovered the agreement deserves scant consideration for when their mother, Angelina Cole died in 1965, the period of prescription was already running and continued to run even after her death (Martir, et al. vs. Trinidad, et al., L-12057, May 20, 1959). This is so for the cause of action accrued in favor of their mother and not directly in favor of the children. The plaintiffs-appellants cannot avail themselves of several disabilities,

unless they all existed at the time when the right of action accrued." (Pp. 30-31, Record.)

x x x x

"But even assuming that plaintiffs-appellants' cause of action has not prescribed, the same may be dismissed on the ground of laches. Unreasonable delay in the enforcement of a claim is strongly persuasive of a lack of merit, since it is human nature to assert a right most strongly when first invaded. Time inevitably tends to obliterate occurrences from the memory of witnesses, and even where the recollection appears to be entirely clear, the true clue to the solution of a case may be hopelessly lost. These considerations constitute one of the pillars of the doctrine long familiar in equity jurisprudence to the effect that laches or unreasonable delay on the part of a plaintiff in seeking to enforce a right is not only persuasive of a want of merit but may, according to the circumstances, be destructive of the right itself (*Buenaventura vs. David*, 37 Phil. 435).

"Taking 1966 as a reference point wherein plaintiffs-appellants claim they first discovered the existence of the agreement Exhibit 'A' and wherein the survey plans as approved by the Bureau of Lands were first presented to them by the surveyor, it took them until July 25, 1974 or 9 years after before they filed their complaint for the vindication of their alleged rights, if any. It is hard to believe that, if the plaintiffs had been convinced of the justice of their cause, they would have failed to assert their rights." (Pp. 32-33, Record.)

Stated differently and briefly, the Appellate Court's view is that the computation of the prescriptive period of the cause of action of petitioners was the date of the deed of promise to buy and sell on August 23, 1963 or at the latest when "the survey and the result thereof occurred on October 7, 1963."

In this connection, it has to be underscored that according to the deed of promise to buy and sell, the balance of P5,000 of the purchase price of what petitioners' parents must have believed were more than three hectares of land (32,976 sq. m.) per tax declaration of the Gregorios, but which turned out to be, by actual survey, only more than two hectares (23,408 sq. m.) or 9,568 sq. m. short of what it appeared to be, was "to be paid in full after the preliminary survey of the land by a Private Surveyor, for the purpose of verifying whether or not said parcel of land contains the same area as declared in the Tax Declaration." (p 26, Rec., p. 2, CA Decision). Surely, this particular stipulation removed entirely the possibility of the prescriptive period of petitioners' action having started on the date of deed (August 23, 1963).

Needless to state, prescription of actions run with the mere lapse of time (Art. 1139, Civil Code). But it is elementary that the computation of the period of prescription of any cause of action, which is the same as saying prescription of the action, should start from the date the cause of action accrues or from the day the right of the plaintiff is violated. In the language of Article 1144 of the Civil Code which is the one pertinently applicable to this case, "the action must be brought within ten years from the time the right of action accrues: (1) upon a written contract."

This is as it should be. A cause of action has three elements, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff. It is only when the last element occurs or takes place that it can be said in law that a cause of action has arisen. Translated in terms of a hypothetical situation regarding a written contract, no cause of action arises until there is a breach or violation thereof by either party. It is not, therefore, from the date of the instrument but from the date of the breach that the period of prescription of the action starts.

In the case at bar, although the agreement to buy and sell was executed in 1963 and the survey allegedly was finished on October 7, 1963, the Court of Appeals itself has found that the survey plan approved by the Bureau of Lands came to the knowledge of petitioners only on May 31, 1966 (p. 26, Rec., p. 2, CA Decision). Indeed, there

is no indication at all anywhere in the record that they had any knowledge thereof earlier. In fact, they became aware of the agreement to buy and sell and of the outstanding balance they had to pay only then, that is why they promptly made every effort, even to the extent of borrowing from their own lawyers to be able to pay. To their dismay, however, they discovered that respondent widow Potenciana had already sold the property to her co-respondents herein.

In its resolution of the first two assignments of error of petitioners, as observed above, the Court of Appeals relied heavily on the letters, Exhibits C and D, the letters of the late William Cole, Sr. of October 24, 1964 and April 1, 1965, respectively, as proof that notwithstanding the substantial discrepancy in the area of the land in dispute, as discovered after the survey, from the area stated in the agreement to buy and sell, the respondents' evidence that the Coles had rescinded the said agreement by receiving back the P1,000 they had paid as down payment, cannot be believed. Which finding, We are convinced is correct.

In other words, the above conclusion of the Court of Appeals proves that the Cole couple was in the dark up to their death about the result of the survey. It was not until May, 1966, and importantly, it was already the petitioners (precisely because the Cole couple had already died) who were notified thereof by the surveyor Salanga. Under these circumstances, it is incomprehensible how petitioners could be charged with laches.

On the contrary, We feel it was rather inconsiderate and unkind inconsistent with the compassionate society among our people today – for the Court of Appeals to have failed to appreciate, considering the apparent financial situation of petitioners, their efforts to raise the money they discovered only in 1966 was due private respondent widow, Potenciana Vda. de Gregorio. After all, there is no evidence to which Our attention has been called that a demand had been previously made for such payment, hence petitioners, strictly speaking, could not be considered as in technical default. What, on the other hand, is verily condemnable was the act of said respondent widow to sell the same property to her co-respondents without even notifying petitioners of her intention to do so, taking advantage perhaps of the fact that Cole Sr. had already died in 1965 and Mrs. Cole died in January 1966.

Laches is predicated on inaction, inattention, indifference or apathy or failure to do anything directed towards the assertion of a right. We cannot say any such attitude appears to be attributable to petitioners. Up to eleven days before he died on April 12, 1965, Cole Sr. was still berating Surveyor Salanga about not finishing the awaited survey, upon the completion of which their obligation to pay the balance of the purchase price agreed upon depended. It was only after he and even his wife had died, that Salanga delivered the survey plan to petitioners. Thereafter, petitioners immediately sought legal course and money. To perceive laches in such a milieu of circumstances is to miss the point of that principle of equity altogether.

Considering all the foregoing, We hold that the Court of Appeals erred in finding petitioners guilty of laches and in holding that their causes of action, first, for specific performance, and second, for annulment of the sale to the Hufanos have prescribed. The right of the vendors to collect the balance of the purchase price having arisen only in 1966, their cause of action to recover arose only then. On the other hand, petitioners' right to demand consummation of the sale by an action of specific performance also arose only in 1966, after the survey's completion was brought to their attention. The portion of the stipulation of facts at the pre-trial in the court below to the effect that "the property (in question) was surveyed on October 7, 1963 and found to have an area of 23,406 sq. m." is of no moment, absent any admission or proof that the Coles were informed thereof before 1966 (which would have been included in the stipulations if such indeed were the fact). We hold that the finding of the Court of Appeals that respondent Potenciana's pretense that the deceased Mrs. Cole received back the P1,000 down payment is not supported by the evidence on record, shows that the herein respondent widow lacked candor to the Court. Withal, it appears that said respondent even before the condition precedent, namely the completion of the survey, had hardly materialized, sold without previously demanding from the Coles the payment of the

balance of the purchase price, the property to her co-respondents, the Hufanos.

One last point. In the decision of the trial court, there is a finding that the respondent Josefina Hufano mortgaged the property in question to the Philippine National Bank on November 29, 1967 and to the Rural Bank of Aringay on June 30, 1972. Whether or not the banks acted in bad faith in said mortgages may well be determined in the proceedings for the execution of this judgment. In any event, petitioners are entitled to the specific performance prayed for in their complaint, with the property being delivered to them upon their payment of the purchase price or P5 ,000 without interest because it is evident respondent Vda. de Gregorio acted in bad faith in double selling said property, hence the said respondent is under obligation to pay the banks the loans covered by said mortgages. The sale to the Hufanos for obvious reasons is hereby declared null and void.

PREMISES CONSIDERED, judgment is hereby rendered reversing the decision of the Court of Appeals in the sense that the action of petitioners is hereby declared as not having yet prescribed when they filed the same, that they are not guilty of laches, that the sale by respondent Potenciana Casuga Vda. de Gregorio of the property in issue to her co-respondents, the Hufanos, is null and void and that, the respondent should pay to the banks the loans covered by the mortgages aforementioned and all private respondents are to deliver possession of the said property to petitioners free from all liens and encumbrances.

Costs against private respondent Potenciana Casuga Vda . de Gregorio.

Aquino, Concepcion, Jr., De Castro, and Escolin, JJ., concur.

Guerrero and Abad Santos, JJ., no part.

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