

EMILIA O'LACO AND HUGO LUNA, PETITIONERS, VS. VALENTIN CO CHO CHIT, O LAY KIA AND COURT OF APPEALS, RESPONDENTS.*G.R. No. 58010. March 31, 1993*

Ponente: BELLOSILLO, J.

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History is replete with cases of erstwhile close family relations put asunder by property disputes. This is one of them. It involves half-sisters each claiming ownership over a parcel of land. While petitioner Emilia O'Laco asserts that she merely left the certificate of title covering the property with private respondent O Lay Kia for safekeeping, the latter who is the former's older sister insists that the title was in her possession because she and her husband bought the property from their conjugal funds. To be resolved therefore is the issue of whether a resulting trust was intended by them in the acquisition of the property. The trial court declared that there was no trust relation of any sort between the sisters.[1] The Court of Appeals ruled otherwise.[2] Hence, the instant petition for review on certiorari of the decision of the appellate court together with its resolution denying reconsideration.[3]

It appears that on 31 May 1943, the Philippine Sugar Estate Development Company, Ltd., sold a parcel of land, Lot No. 5, Block No. 10, Plan Psu-10038, situated at Oroquieta St., Sta. Cruz, Manila, with the Deed of Absolute Sale naming Emilia O'Laco as vendee; thereafter, Transfer Certificate of Title No. 66456 was issued in her name.

On 17 May 1960, private respondent-spouses Valentin Co Cho Chit and O Lay Kia learned from the newspapers that Emilia O'Laco sold the same property to the Roman Catholic Archbishop of Manila for P230,000.00, with assumption of the real estate mortgage constituted thereon.[4]

On 22 June 1960, respondent-spouses Valentin Co Cho Chit and O Lay Kia sued petitioner-spouses Emilia O'Laco and Hugo Luna to recover the purchase price of the land before the then Court of First Instance of Rizal, respondent-spouses asserting that petitioner Emilia O'Laco knew that they were the real vendees of the Oroquieta property sold in 1943 by Philippine Sugar Estate Development Company, Ltd., and that the legal title thereto was merely placed in her name. They contend that Emilia O'Laco breached the trust when she sold the land to the Roman Catholic Archbishop of Manila. Meanwhile, they asked the trial court to garnish all the amounts still due and payable to petitioner-spouses arising from the sale, which was granted on 30 June 1960.[5]

Petitioner-spouses deny the existence of any form of trust relation. They aver that Emilia O'Laco actually bought the property with her own money; that she left the Deed of Absolute Sale and the corresponding title with respondent-spouses merely for safekeeping; that when she asked for the return of the documents evidencing her ownership, respondent-spouses told her that these were misplaced or lost; and, that in view of the loss, she filed a petition for issuance of a new title, and on 18 August 1944 the then Court of First Instance of Manila granted her petition.

On 20 September 1976, finding no trust relation between the parties, the trial court dismissed the complaint together with the counterclaim. Petitioners and respondents appealed.

On 9 April 1981, the Court of Appeals set aside the decision of the trial court thus -

"x x x We set aside the decision of the lower court dated September 20, 1976 and the order of January 5, 1977 and another one is hereby entered ordering the defendants-appellees to pay plaintiffs-appellants jointly and severally the sum of P230,000.00 representing the value of the property subject of the sale with assumption of mortgage to the Roman Catholic Archbishop of Manila with legal interest from the filing of the complaint until fully paid, the sum of P10,000.00 as attorney's fees, plus costs."

On 7 August 1981, the Court of Appeals denied reconsideration of its decision, prompting petitioners to come to this Court for relief.

Petitioners contend that the present action should have been dismissed. They argue that the complaint fails to allege that earnest efforts toward a compromise were exerted considering that the suit is between members of the same family, and no trust relation exists between them. Even assuming *ex argumenti* that there is such a relation, petitioners further argue, respondents are already barred by laches.

We are not persuaded. Admittedly, the present action is between members of the same family since petitioner Emilia O'Laco and respondent O Lay Kia are half-sisters. Consequently, there should be an averment in the complaint that earnest efforts toward a compromise have been made, pursuant to Art. 222 of the New Civil Code,[6] or a motion to dismiss could have been filed under Sec. 1, par. (j), Rule 16, of the Rules of Court.[7] For, it is well-settled that the attempt to compromise as well as the inability to succeed is a condition precedent to the filing of a suit between members of the same family.[8] Hence, the defect in the complaint is assailable at any stage of the proceedings, even on appeal, for lack of cause of action.[9]

But, plaintiff may be allowed to amend his complaint to correct the defect if the amendment does not actually confer jurisdiction on the court in which the action is filed, i.e., if the cause of action was originally within that court's jurisdiction.[10] In such case, the amendment is only to cure the perceived defect in the complaint, thus may be allowed.

In the case before Us, while respondent-spouses did not formally amend their complaint, they were nonetheless allowed to introduce evidence purporting to show that earnest efforts toward a compromise had been made, that is, respondent O Lay Kia importuned Emilia O'Laco and pressed her for the transfer of the title of the Oroquieta property in the name of spouses O Lay Kia and Valentin Co Cho Chit, just before Emilia's marriage to Hugo Luna.[11] But, instead of transferring the title as requested, Emilia sold the property to the Roman Catholic Archbishop of Manila. This testimony was not objected to by petitioner-spouses. Hence, the complaint was deemed accordingly amended to conform to the evidence,[12] pursuant to Sec. 5, Rule 10, of the Rules of Court which reads -

"Sec. 5. Amendment to conform to or authorize presentation of evidence. -- When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings x x x x" (underscoring supplied).

Indeed, if the defendant permits evidence to be introduced without objection and which supplies the necessary allegations of a defective complaint, then the evidence is deemed to have the effect of curing the defects of the complaint.[13] The insufficiency of the allegations in the complaint is deemed *ipso facto* rectified.[14]

But the more crucial issue before Us is whether there is a trust relation between the parties in contemplation of law.

We find that there is. By definition, trust relations between parties may either be express or implied.[15] Express trusts are those which are created by the direct and positive acts of the parties, by some writing or deed, or will, or

by words evincing an intention to create a trust.[16] Implied trusts are those which, without being express, are deducible from the nature of the transaction as matters of intent, or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties.[17] Implied trusts may either be resulting or constructive trusts, both coming into being by operation of law.[18]

Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest[19] and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another.[20] On the other hand, constructive trusts are created by the construction of equity in order to satisfy the demands of justice[21] and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.[22]

Specific examples of resulting trusts may be found in the Civil Code, particularly Arts. 1448, 1449, 1451, 1452 and 1453,[23] while constructive trusts are illustrated in Arts. 1450, 1454, 1455 and 1456.[24]

Unlike express trusts concerning immovables or any interest therein which cannot be proved by parol evidence,[25] implied trusts may be established by oral evidence.[26] However, in order to establish an implied trust in real property by parol evidence, the proof should be as fully convincing as if the acts giving rise to the trust obligation were proven by an authentic document.[27] It cannot be established upon vague and inconclusive proof.[28]

After a thorough review of the evidence on record, We hold that a resulting trust was indeed intended by the parties under Art. 1448 of the New Civil Code which states -

"Art. 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary x x x x" (underscoring supplied).

First. As stipulated by the parties, the document of sale, the owner's duplicate copy of the certificate of title, insurance policies, receipt of initial premium of insurance coverage and real estate tax receipts were all in the possession of respondent-spouses which they offered in evidence. As emphatically asserted by respondent O Lay Kia, the reason why these documents of ownership remained with her is that the land in question belonged to her.[29]

Indeed, there can be no persuasive rationalization for the possession of these documents of ownership by respondent-spouses for seventeen (17) years after the Oroquieta property was purchased in 1943 than that of precluding its possible sale, alienation or conveyance by Emilia O'Laco, absent any machination or fraud. This continued possession of the documents, together with other corroborating evidence spread on record, strongly suggests that Emilia O'Laco merely held the Oroquieta property in trust for respondent-spouses.

Second. It may be worth to mention that before buying the Oroquieta property, respondent-spouses purchased another property situated in Kusang-Loob, Sta. Cruz, Manila, where the certificate of title was placed in the name of Ambrosio O'Laco, older brother of Emilia, under similar or identical circumstances. The testimony of former counsel for respondent-spouses, then Associate Justice Antonio G. Lucero of the Court of Appeals, is enlightening -

"Q - In the same conversation he told you how he would buy the property (referring to the Oroquieta property), he and his wife?

"A - Yes, Sir, he did.

"Q - What did he say?

xxxx

"A - He said he and his wife has (sic) already acquired by purchase a certain property located at Kusang-Loob, Sta. Cruz, Manila. He told me he would like to place the Oroquieta Maternity Hospital in case the negotiation materialize(s) in the name of a sister of his wife (O'Laco)" (underscoring supplied).[30]

On the part of respondent-spouses, they explained that the reason why they did not place these Oroquieta and Kusang-Loob properties in their name was that being Chinese nationals at the time of the purchase they did not want to execute the required affidavit to the effect that they were allies of the Japanese.[31] Since O Lay Kia took care of Emilia who was still young when her mother died,[32] respondent-spouses did not hesitate to place the title of the Oroquieta property in Emilia's name.

Quite significantly, respondent-spouses also instituted an action for reconveyance against Ambrosio O'Laco when the latter claimed the Kusang-Loob property as his own. A similar stipulation of facts was likewise entered, i.e., respondent-spouses had in their possession documents showing ownership of the Kusang-Loob property which they offered in evidence. In that case, the decision of the trial court, now final and executory, declared respondent-spouses as owners of the Kusang-Loob property and ordered Ambrosio O'Laco to reconvey it to them.[33]

Incidentally, Ambrosio O'Laco thus charged respondent-spouses Valentin Co Cho Chit and O Lay Kia before the Anti-Dummy Board, docketed as Case No. 2424, for their acquisition of the Kusang-Loob and Oroquieta properties.[34] He claimed that respondent-spouses utilized his name in buying the Kusang-Loob property while that of petitioner O'Laco was used in the purchase of the Oroquieta property. In effect, there was an implied admission by Ambrosio that his sister Emilia, like him, was merely used as a dummy. However, the Anti-Dummy Board exonerated respondent-spouses since the purchases were made in 1943, or during World War II, when the Anti-Dummy Law was not enforceable.

Third. The circumstances by which Emilia O'Laco obtained a new title by reason of the alleged loss of the old title then in the possession of respondent-spouses cast serious doubt on the veracity of her ownership. The petitions respectively filed by Emilia O'Laco and Ambrosio O'Laco for the Oroquieta and the Kusang-Loob properties were both granted on the same day, 18 August 1944, by the then Court of First Instance of Manila. These orders were recorded in the Primary Entry Book of the Register of Deeds of Manila at the same time, 2:35 o'clock in the afternoon of 1 September 1944, in consecutive entries, Entries Nos. 246117-18.[35] This coincidence lends credence to the position of respondent-spouses that there was in fact a conspiracy between the siblings Ambrosio and Emilia to defraud and deprive respondents of their title to the Oroquieta and Kusang-Loob properties.

Fourth. Until the sale of the Oroquieta property to the Roman Catholic Archbishop of Manila, petitioner Emilia O'Laco actually recognized the trust. Specifically, when respondent-spouses learned that Emilia was getting married to Hugo, O Lay Kia asked her to have the title to the property already transferred to her and her husband Valentin, and Emilia assured her that "would be arranged (maaayos na)" after her wedding.[36] Her answer was an express recognition of the trust, otherwise, she would have refused the request outright. Petitioners never objected to this evidence; nor did they attempt to controvert it.

Fifth. The trial court itself determined that "Valentin Co Cho Chit and O Lay Kia had some money with which they could buy the property." [37] In fact, Valentin was the Chief Mechanic of the Paniqui Sugar Mills, was engaged in the buy and sell business, operated a gasoline station, and owned an auto supply store as well as a

ten-door apartment in Caloocan City.[38] In contrast, Emilia O'Laco failed to convince the Court that she was financially capable of purchasing the Oroquieta property. In fact, she opened a bank account only in 1946 and likewise began filing income tax returns that same year,[39] while the property in question was bought in 1943. Respondent-spouses even helped Emilia and her brothers in their expenses and livelihood. Emilia could only give a vague account on how she raised the money for the purchase of the property. Her narration of the transaction of sale abounds with "I don't know" and "I don't remember." [40]

Having established a resulting trust between the parties, the next question is whether prescription has set in.

As differentiated from constructive trusts, where the settled rule is that prescription may supervene, in resulting trust, the rule of imprescriptibility may apply for as long as the trustee has not repudiated the trust.[41] Once the resulting trust is repudiated, however, it is converted into a constructive trust and is subject to prescription.

A resulting trust is repudiated if the following requisites concur: (a) the trustee has performed unequivocal acts of repudiation amounting to an ouster of the cestui qui trust; (b) such positive acts of repudiation have been made known to the cestui qui trust; and, (c) the evidence thereon is clear and convincing.[42]

In *Tale v. Court of Appeals* [43] the Court categorically ruled that an action for reconveyance based on an implied or constructive trust must perform prescribe in ten (10) years, and not otherwise, thereby modifying previous decisions holding that the prescriptive period was four (4) years.

Neither the registration of the Oroquieta property in the name of petitioner Emilia O'Laco nor the issuance of a new Torrens title in 1944 in her name in lieu of the alleged loss of the original may be made the basis for the commencement of the prescriptive period. For, the issuance of the Torrens title in the name of Emilia O'Laco could not be considered adverse, much less fraudulent. Precisely, although the property was bought by respondent-spouses, the legal title was placed in the name of Emilia O'Laco. The transfer of the Torrens title in her name was only in consonance with the deed of sale in her favor. Consequently, there was no cause for any alarm on the part of respondent-spouses. As late as 1959, or just before she got married, Emilia continued to recognize the ownership of respondent-spouses over the Oroquieta property. Thus, until that point, respondent-spouses were not aware of any act of Emilia which would convey to them the idea that she was repudiating the resulting trust. The second requisite is therefore absent. Hence, prescription did not begin to run until the sale of the Oroquieta property, which was clearly an act of repudiation.

But immediately after Emilia sold the Oroquieta property which is obviously a disavowal of the resulting trust, respondent-spouses instituted the present suit for breach of trust. Correspondingly, laches cannot lie against them.

After all, so long as the trustee recognizes the trust, the beneficiary may rely upon the recognition, and ordinarily will not be in fault for omitting to bring an action to enforce his rights.[44] There is no running of the prescriptive period if the trustee expressly recognizes the resulting trust.[45] Since the complaint for breach of trust was filed by respondent-spouses two (2) months after acquiring knowledge of the sale, the action therefore has not yet prescribed.

WHEREFORE, the Petition for Review on Certiorari is DENIED. The Decision of the Court of Appeals of 9 April 1981, which reversed the trial court, is AFFIRMED. Costs against petitioners.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Quiason, JJ., concur.

[1] Penned by Judge Guardson R. Lood, Court of First Instance of Rizal, Br. VI, stationed in Pasig.

[2] Penned by Justice Mariano A. Zosa, concurred in by Justices Venicio Escolin and Edgardo L. Paras; Annex "A", Petition; Rollo, pp. 53-72.

[3] Annex "B", Petition; Rollo, pp. 73-75.

[4] Record on Appeal of Defendant-Appellee, p. 15.

[5] Id., pp. 12-18.

[6] Art. 222. No suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in article 2035.

[7] The Family Code took effect on 4 August 1988 and does not apply to the present petition. Nonetheless, Art. 151 of the Family Code provides that suits between members of the same family must be dismissed if it is not shown that earnest efforts toward a compromise have been made.

[8] *Mendoza v. Court of Appeals*, No. L-23102, 24 April 1967, 19 SCRA 756.

[9] Id, p. 759.

[10] *Versoza v. Versoza*, No. L-25609, 27 November 1968, 26 SCRA 78.

[11] TSN, 15 January 1968, pp. 12-14.

[12] *Metropolitan Waterworks and Sewerage System v. Court of Appeals*, No. L-54526, 26 August 1986, 143 SCRA 623.

[13] *Pascua v. Court of Appeals*, G.R. No. 76851, 19 March 1990, 183 SCRA 262.

[14] See *City of Manila v. Bucay*, Nos. L-19358-60, 31 March 1964, 10 SCRA 629.

[15] Art. 1441, New Civil Code.

[16] *Ramos v. Ramos*, No. L-19872, 3 December 1974, 61 SCRA 284, citing 89 C.J.S. 722.

[17] 89 C.J.S. 724.

[18] *Salao v. Salao*, No. L-26699, 16 March 1976, 70 SCRA 65.

[19] *Tolle v. Sawtelle*, Civ. App., 246 S.W. 2d 916.

[20] 76 Am Jur 2d 429.

[21] 89 C.J.S. 726-27.

[22] 76 Am Jur 2d 446.

[23] Art. 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

Art. 1449. There is also an implied trust when a donation is made to a person but it appears that although the legal estate is transmitted to the donee, he nevertheless is either to have no beneficial interest or only a part thereof.

Art. 1451. When land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner.

Art. 1452. If two or more persons agree to purchase property and by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each.

Art. 1453. When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated.

[24] Art. 1450. If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the person to whom the money is loaned or for whom it is paid. The latter may redeem the property and compel a conveyance thereof to him.

Art. 1454. If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him.

Art. 1455. When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong.

Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

[25] Art. 1443, New Civil Code.

[26] Art. 1457, *id.*

[27] *Santa Juana v. Del Rosario*, 50 Phil 110 (1927).

[28] *Suarez v. Tirambulo*, 59 Phil 303 (1933).

[29] Motion for New Trial, p. 4, citing TSN, 29 June 1967, pp. 22-25.

[30] TSN, 23 April 1971, pp. 12-13.

[31] TSN, 15 January 1968, pp. 4-8.

[32] Motion for New Trial, p. 20, citing TSN, 29 June 1967, pp. 7-9.

[33] Exhibit "S", Memorandum of Exhibits for Plaintiff.

[34] Exhibit "R", *id.*

[35] Exhibit "L", *id.*

[36] See Note 11.

[37] Decision, Court of First Instance of Pasig, p. 9; Record on Appeal, p. 270.

[38] TSN, 29 September 1970, p. 50; TSN, 29 April 1975, pp. 13-15.

[39] Exhibits "13" and "15", Memorandum of Exhibits for Defendants.

[40] TSN, 13 October 1971, pp. 71-82.

[41] Heirs of Candelaria v. Romero, 109 Phil 500 (1960).

[42] Ramos v. Ramos, *supra*.

[43] G.R. No. 101028, 23 April 1992, 208 SCRA 266.

[44] Crawley v. Crawley, 72 N.H. 241; Lufkin v. Jakeman, 188 Mass 528, 74 N.E. 933.

[45] Miller v. Saxton, 75 S.C. 237, 55 S.E. 310; Kohl v. Noble, 63 Tex 432; Segura v. Segura, No. L--29320, 19 September 1988, 165 SCRA 369.

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