

**HEIRS OF MARIANO LAGUTAN, NAMELY: FRANCISCA ICAO,
AMADOR LAGUTAN, FEDERICO LAGUTAN, RICARDO LAGUTAN,
GODOFREDO LAGUTAN, NEMIA LAGUTAN, SALVADOR LAGUTAN,
ALBERTO LAGUTAN, AND HE...**

G.R. No. 58057. June 30, 1993

Ponente: MELO, J.

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MELO, J.:

This case was certified to us by the Court of Appeals on a question of law pursuant to Section 17 of the Judiciary Act of 1948, as amended, involved as there is the legality of the dismissal of petitioners' Amended Complaint by the trial court based on respondents' Motion to Dismiss.

On May 23, 1972, herein petitioners, Heirs of Mariano Lagutan, filed a Complaint (Civil Case No. 2293, CFI, Zamboanga del Norte, Br. I) against respondents Severina Icao, et al. for "Specific Performance and/or Payment of Improvements" in regard to two parcels of land, namely, Lot No. 475, located at Talon, Potangon, Dapitan City, covered by Original Certificate of Title No. D-9372, alleging in part as follows:

10. That Felix Icao and spouses Mariano Lagutan and Francisca Icao entered into a contract wherein it was agreed that spouses Mariano Lagutan and Francisca Icao would cultivate Lot No. 475 above-described on condition that the spouses would cultivate and plant coconuts on the land, and the improvements would be divided equally into two: one-half (1/2) would go to the spouses and the other one-half (1/2) would go to Felix Icao;

11. That as agreed, spouses Mariano Lagutan and Francisca Icao with the help of their children, the herein co-plaintiffs, cultivated and improved Parcel I, and planted thereon coconuts which are now fruit-bearing. (pp. 2-3; p. 14, Record on Appeal following p. 12, Rollo.)

and Lot No. 9005, located at Talawas, Dapitan City, covered by Transfer Certificate of Title No. T-6013, alleging thus:

20. That plaintiff Amador Lagutan and the defendants and/or their predecessor-in-interest entered into contract to the effect that PARCEL II would be cultivated and improved by said Amador Lagutan and to plant thereon coconuts on condition that as consideration thereof, Amador Lagutan would be given another parcel of land commensurate to the labor or services rendered as mentioned above;

21. That by virtue of and pursuant to the contract above-mentioned, Amador Lagutan cultivated and improved Parcel II and planted thereon 300 coconut trees by himself and thru hired laborers, which coconuts are now fruit bearing. (pp. 4 and 16, Rollo.)

Respondents filed their Answer on May 20, 1977. Subsequently, they filed a Motion for Leave to File an Amended Answer, which, aside from reiterating previous defenses of absence of cause of action, prescription, and non-compliance with the Statute of Frauds, sought to introduce additional defenses of laches and estoppel aside

from averring that both lots were the capital and paraphernal property of Felix Icao and Francisca Jaralve (predecessors-in-interest of respondents), respectively (pp. 27-28, Rollo).

On October 21, 1977, the trial court issued an Order admitting respondents' Amended Answer (p. 38, Rollo). Three months thereafter, on January 16, 1978, respondents filed a Motion to Dismiss which petitioners opposed, specifically questioning respondents' belated issues on laches and estoppel raised in the Amended Answer.

On February 10, 1978, the trial court issued a Resolution dismissing petitioners' Amended Complaint (pp. 69-74, Rollo), pertinently observing:

Going over the amended complaint particularly the above quoted averments, the Court in its order, dated October 19, 1977 counselled the plaintiff, through their lawyer:

X X X

"May the Court remind Atty. Mejorada that in a proper pleading, he should state with definiteness and clarity (1) whether the agreement or contract alleged in the complaint was verbal or written; and (2) the date the same was entered." (Order, dated October 19, 1977, pp. 102-103, Record)

The plaintiffs admit the agreement or contract was not in writing:

"While it is true that the agreement was not made in writing (and this was unqualifiedly admitted by the plaintiffs in their complaint), the fact remains that the agreement has already been performed by the plaintiffs herein by planting coconuts and other improvements on the land in question." (Opposition to the Motion to Dismiss, dated January 24, 1978, pp. 139-153, Record)

Similarly, plaintiffs cannot state with definiteness as to the date the alleged agreement or contract was entered into, viz:

"While it is true that the complaint does not state when the agreement was entered into and/or made between the plaintiffs and the defendants and their predecessor--in-interest, by the absence of the date is not the determining factor as to the basis of plaintiff cause of action." (Opposition to the Motion to Dismiss, dated January 24, 1978, pp. 139-153, Record).

It is ... settled that plaintiffs admit that the alleged agreement was not in writing, and they cannot tell the date when same agreement was made.

The Court now asks: What was the agreement? And, who were the parties thereto?

As to PARCEL I, the alleged agreement was recited in par. X of the amended complaint (quoted on page 1, bottom, of the Resolution); the parties were Felix Icao (landowner), and the spouses Mariano Lagutan and Francisca Icao (the tillers).

As to PARCEL II, another agreement was stated in the same amended complaint in its par. XX (quoted on page 2, top of this Resolution); the parties were plaintiff Amador Lagutan (the tiller) on the one hand, and the defendant "and/or" their predecessor-in-interest on the other hand (as the landowners).

The land owner (party) of PARCEL I has been mentioned to be Felix Icao. -According to a death certificate issued by the parish priest of Dapitan City (Annex A, Motion to Dismiss, p. 124, of Record), Felix Icao died on August 22, 1940, at the age of 40. Again, PARCEL I, is now a registered property under Original Certificate of Title No. P--9372, issued under Free Patent No. V-99662, on July 9, 1959 (Annex G, Motion to Dismiss, page 130, Record), with "Hrs. of Felix Icao" as the registered owners.

The supposed "tillers" of PARCEL I were the spouses Mariano Lagutan and Francisca Icao. Due to the death of the former, i.e., Mariano Lagutan, the amended complaint placed the names of his heirs as the plaintiffs. Likewise, due to the demise of land owner Felix Icao in 1940, the amended complaint sued his successor-in-interest as the defendants. And, as stated, the plaintiffs admitted that the alleged agreement was not in writing and they cannot state with certainty when the alleged agreement was entered into between the land owner (Felix Icao) and the tillers (spouses Mariano Lagutan and Francisca Icao).

NOW, on PARCEL II. It has been established that the land owner of this property is Francisca Jaralve (wife of land owner Felix Icao of Parcel I). According to a death certificate issued by the parish priest of Dapitan City, Francisca Jaralve died on July 29, 1939 at the age of 31. (Please see Annex D, Motion to Dismiss, page 27, Record). PARCEL II is a registered property now under Original Certificate of Title No. 93737 issued under Free Patent No. V--107258, on May 10, 1959 (see Annex H, Motion to Dismiss, page 133, Record), with "Hrs. of Francisca Jaralve" as the registered owners.

The supposed "tiller" of PARCEL II, according to par. XX of the amended complaint (quoted on top, page 2, this Resolution) – was Amador Lagutan, while the supposed "land owners" of said PARCEL II were the defendants and/or their predecessor-in-interest. The conjunctive-disjunctive "AND/OR" is, to the mind of the Court, a badge of uncertainty, a revelation of a very weak cause on the part of "tiller"–plaintiff Amador Lagutan and the other co-plaintiffs. They can't pin-point with definiteness the person or persons with whom they entered into, such alleged "un-dated" and "unwritten" agreement.

(pp. 70-72, Rollo.)

Thereupon, the trial court held:

The court is of the opinion, as it hereby HOLDS,

1. That the titles for Parcels I & II, are absolutely indefeasible;
2. That plaintiffs have no sufficient cause of action;
3. That the "un-dated" and "unwritten" agreement, granting that it did exist is, unenforceable under the Statute of Frauds;
4. That same agreement, also granting it did exist, has long prescribed; and
5. The plaintiffs' cause of action has to fail, due to laches on their part.

FOREGOING CONSIDERED, the Court has to dismiss, as it hereby DISMISSES the amended complaint of the plaintiffs.

This resolves the Motion to Dismiss filed by the defendants, January 16, 1978. (p. 74, Rollo.)

Considering the circumstance that the case at bar started 21 years ago, the Court issued a Resolution on March 1, 1993 requiring the parties to "move in the premises". Only petitioners responded, urging us to decide the case at the earliest possible time (p. 75, Rollo).

We rule against the dismissal.

The motion to dismiss was filed long after respondents' Amended Answer had been filed. Under Rule 16, the motion to dismiss must be filed within the time for pleading, that is, within the period to answer (*Tuason v. Rafor*, 5 SCRA 478 [1962], at p. 483). Respondents filed their motion to dismiss almost three months after they filed their Amended Answer, which is a violation of the first requirement on motions to dismiss.

Additionally, assuming the propriety of the motion to dismiss, the Court does not agree that the Amended Complaint could have been dismissed on the ground of lack of cause of action. Petitioners' allegations of facts relative to Parcels I and II, sufficiently establish a cause of action.

It is also unfortunate that the trial court had to elicit an admission from petitioners' counsel on the absence of a written agreement (p. 70, Record on Appeal) because the Statute of Frauds is not applicable here. What is at issue is respondents' alleged failure to pay 1/2 of the improvements on Parcels I and II to petitioners. Or, alternatively, the corresponding delivery of 1/2 of said Parcels I and II, respectively. This situation is not covered by the Statute of Frauds, specifically, No. 2 of Article 1403 of the new Civil Code since the agreement had partially been executed which removes the case from the coverage of the Statute of Frauds.

The trial judge also erred when he relied on the defenses of laches and estoppel, which were raised both in respondents' Amended Answer and Motion to Dismiss thus --

1. The principal parties concerning the improvement and cultivation of PARCEL I were Mariano Lagutan (the tiller), and Felix Icao (the land owner). In the herein alternative action for specific performance and/or payment of improvements, the ones suing are the Heirs of Mariano Lagutan; those being sued are the Heirs of Felix Icao. If, according to the death certificate of Felix Icao died in 1940 (See Annex A, Motion to Dismiss), why was the original complaint only filed on May 23, 1972?
2. Both PARCELS I & II subject of a Free Patent application, and, as a matter of fact both parcels are now registered properties the titles of which were respectively issued on July 9, 1959 and May 19, 1959. Since, admittedly, the plaintiffs on one hand, and the defendant on the other hand, live and resides in the same community (in Dapitan City), why didn't plaintiffs register their opposition to the issuance of a Free Patent in favor of the defendants or their predecessor-in-interest?
3. There was a certain Special Case No. 55 involving the estates of the deceased Pedro Jaralve sometime in 1949. Why didn't plaintiffs register their claim over PARCEL II which under said case was part of the estate of the said Pedro Jaralve?
4. And on the matter of PARCEL I, plaintiffs could have conveniently filed their claim in an intestacy proceedings in the estate of the deceased Felix Icao. (pp. 73-74, Record on Appeal.)

We have ruled in this regard that:

When the complaint was dismissed not because of any evidence presented by the parties, as a result of the trial on the merits, but merely on a motion to dismiss filed by the defendants, the sufficiency of the motion should be tested on the strength of the allegations of facts contained in the complaint and no other. (De Jesus, et al. v. Belarmino, et al., 95 Phil. 366 [1954].)

- and -

... the issue must be passed upon on the basis of the allegations assuming them to be true and the court cannot inquire into the truth of the allegations and declare them to be false; otherwise, it would be a procedural error and a denial of due process to the plaintiff. (Ventura v. Bernabe, 38 SCRA 587 [1971], at p. 598; Galeon vs. Galeon, 49 SCRA 516 [1973]; emphasis ours.)

WHEREFORE, the order dismissing the complaint is SET ASIDE and the case is REMANDED to the court a quo for further proceedings. No special pronouncement is made as to costs.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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