

**TEODORA, MARTA, JOSE, SIXTO, RICARDO, ROBERTO, PILAR,
VIRGILIO, ALL SUR-NAMED MARIANO AND AURORA EUGENIO,
PETITIONERS, VS. THE HON. JUDGE JESUS R. DE VEGA, PRESIDING
JUDGE, COUR...**

G.R. No. 59974. March 09, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the order of the then Court of First Instance of Bulacan in Civil Case No. 6200-M[*] for partition and delivery of possession of certain shares in the conjugal assets. The dispositive portion of the order which herein petitioners assail states:

"Upon due research and study, the Court finds sustainable the position of the defendants that the settled prevailing rule at present as laid down in latest decisions of the Supreme Court is that the right or action to enforce an implied or constructive trust (which is the situation indicated in the case at bar) in one's favor prescribes in ten (10) years. The citation of authorities made by defendants appears to be correct. (*Carontes vs. C.A.*, 76 SCRA 514; *Dela Cerna vs. Dela Cerna*, 72 SCRA 514). In other words, the rule of imprescriptibility of actions based on constructive trust invoked by plaintiffs has been reversed and abandoned.

For the foregoing premises, this case has to be resolved for defendants - movants. Case is accordingly dismissed. No costs."

The records show that spouses Urbano Panganiban and Roberta Espino owned, as conjugal property, during their lifetime 29 parcels of unregistered land with improvements thereon, all situated in Dampol 1st, Pulilan, Bulacan. On February 18, 1903, Roberta Espino died intestate and without debts in Pulilan, Bulacan, where she was a resident before and at the time of her death. She left her husband, Urbano Panganiban, and their two legitimate children, Mercedes and Gaudencia as her only forced heirs. On September 18, 1952, Urbano Panganiban died also intestate and without debts in Pulilan, Bulacan, leaving as his only compulsory heirs the children of Gaudencia (who together with her sister Mercedes, had predeceased their father) who are now petitioners herein and his legitimate children with his second wife, Atanacia Agustin, who are the private respondents herein.

The records also disclose that on June 19, 1981, or 28 years, 9 months and 1 day after Urbano's death, petitioners instituted an action with the then CFI of Bulacan for partition and delivery of possession of their corresponding shares in the conjugal estate of decedents-spouses Urbano and Roberta consisting of subject 29 parcels of unregistered land. Petitioners filed the case because since the death of Urbano, their grandfather, in 1952, private respondents (his children by the second marriage) had taken possession of the whole conjugal property and appropriated to themselves to the exclusion of petitioners the products coming from the 29 parcels of land.

On September 30, 1981 or around three (3) months from the filing of the civil case, respondent judge issued the questioned order. Petitioners' motion for reconsideration of the same was denied on January 12, 1982.

Hence, this petition which petitioners filed on April 5, 1982 praying for the revocation of the questioned order and the reinstatement of this case in the trial court.

Petitioners anchor their petition on the following grounds:

- The subject parcels of land being unregistered lands do not come within the applicability of the decisions invoked which involve registered lands;
- Assuming that the ten-year prescriptive period applies even in cases of unregistered lands, the prescriptive period did not commence to run against petitioners since there is no allegation, much less evidence, that private respondents had openly and effectively repudiated the co-ownership or constructive trust over the subject property;
- There can be no constructive notice of an adverse claim of ownership in favor of private respondents by placing the subject lands in their names in the office of the Provincial Assessor; and
- Petitioners' action for partition is still timely despite the lapse of almost 29 years during which private respondents had been in possession of the property.

Private respondents, on the other hand, contend that the order appealed from has already become final and no longer appealable; and, that the petition is not meritorious because of the following:

- The theory of constructive trust was brought out by petitioners themselves;
- Petitioners cannot contradict their own admissions in the pleadings;
- Petitioners slept on their alleged rights; and
- Contrary to petitioners' claim, the jurisprudence cited by private respondents apply to unregistered lands.

The resolution of this case hinges on the focal issue of prescription.

We find the order of the trial court dismissing petitioners' complaint on the ground of prescription under Section 40 of Public Act No. 190 to be inaccurate.

As We see it this case is governed by the rules on co-ownership, since both parties are clearly co-owners of the disputed properties, having inherited the same from a common ancestor.

Now then, Art. 494 (last paragraph) of the Civil Code provides:

"x x x

xxx

xxx"

"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."

In view of their lack of a clear repudiation of the co-ownership, duly communicated to the petitioners (the other co-owners), private respondents cannot acquire the shares of the petitioners by prescription. The record in the Office of the Assessor is not the sufficient repudiation and communication contemplated by the law. Neither may the private respondents' possession of the premises militate against petitioners' claim. After all, co-owners are entitled to be in possession of the premises.

The existence of the co-ownership here argues against the theory of implied trust, for then a co-owner possesses

co-owned property not in behalf of the other co-owners but in his own behalf.

Anent the contention that the judgment of the trial court has already become final and executory, the records reveal the contrary. The appeal was filed on time on April 5, 1982 or before April 28, 1982, the last day granted by this Court for the filing of the appeal.

WHEREFORE, the assailed Order is SET ASIDE, and a new one is rendered remanding this case to the lower court for adjudication on the merits.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

Alampay, J., on leave.

[*] Penned by Judge Jesus R. De Vega

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