

ROSA GICANO AND NENITA GEOLLEGUE, PETITIONERS, VS. ROSA GEGATO, RESURRECCION GEGATO AND CATALINA GEGATO, RESPONDENTS.

G.R. No. 63575. January 20, 1988

Ponente: NARVASA, J.

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NARVASA, J.:

An action to recover an immovable from a defendant allegedly holding it under a constructive trust prescribes in ten (10) years, counted from the issuance of title to said defendant: so we have ruled in a number of cases;^[1] and so we rule in this case.

This case concerns a rather large tract of land, with an area of 225,322 square meters, situated in Hinigaran, Negros Occidental. The land, known as Lot 818, was originally owned, at least as far as this case is concerned, by two co-owners in equal shares: (1) Maximo Juanico, married to Rosa Gegato, and (2) Matilde Geolingo, married to Dionisio Mongcal. Their co-ownership was so set out in their certificate of title, TCT No. 30009.^[2]

Maximo Juanico died on May 21, 1942, survived by his wife, the aforementioned Rosa Gegato, and three (3) minor children: Presentacion, Resurreccion, and Catalina.^[3]

The other co-owner, Matilde Geolingo, and her husband, Dionisio Mongcal, also died; and their only child, Loreto Mongcal, executed an affidavit adjudicating to herself, as sole heir, her mother's one-half (1/2) share in Lot 818.^[4] That share she sold on December 14, 1951 to Rosa Gicano. In virtue thereof, TCT No. 30009 of the original co-owners was cancelled and a new one, TCT No. 8878, was issued in the names of (1) Maximo Juanico, married to Rosa Gegato (1/2share) and (2) Rosa Gicano, married to Gorgonio Geollegue (1/2 share).^[5]

On August 23, 1952, a document was executed which gave rise to the controversy at bar. That document purported to be a Deed of Sale, or more properly, a deed of dacion en pago de deuda, intended to satisfy a debt of 92,333.33 of the late Maximo Juanico to Rosa Gicano by the conveyance, according to the express terms of the document, of said Maximo Juanico's one-half (1/2) share in Lot 818. It was signed by Rosa Gegato and her second husband, Raymundo Pundon. The latter took part in the transaction as judicial guardian of two (2) of Rosa's surviving minor children, Resurreccion and Catalina — the third, Presentacion, having earlier died without issue. It was acknowledged by them before Notary Public Vicente T. Remitio. The sale was registered, TCT No. 8878 was cancelled, and on September 8, 1952 the Register of Deeds issued TCT No. 10189, covering the entirety of Lot 818, solely in the name of Rosa Gicano, married to Gorgonio Geollegue.^[6]

Twenty-three (23) years afterwards, or on February 13, 1976, Rosa Gegato and her daughters, Resurreccion and Catalina, brought an action in the Court of First Instance of Negros Occidental against Rosa Gicano and her husband, Gorgonio Geollegue, to compel the latter to reconvey Lot No. 818 to them and/or pay damages.⁷ Rosa Gegato and her daughters alleged that it had never been their intention to transfer the entire one-half (1/2) share in Lot No. 818 to Rosa Gicano in payment of Maximo Juanico's debt in the sum of P2,333.33, but only one-third of the share of the minors in said undivided half of the property; that they were deceived into believing that it was

only this one-third interest which was really being conveyed by the Deed of Sale of August 23, 1952, and it was on that understanding that Rosa Gegato and her minor children's judicial guardian, Raymundo Pundon, had signed the deed, both of them being unable to read and write English; that they discovered the fraud perpetrated on them only in 1975, when they hired a surveyor to partition the property and the latter informed them that title to Lot No. 818 had long since issued solely in the name of Nenita Geollegue, who had purchased it from her mother, Rosa Gegato Geollegue and had in due course obtained title in her name, TCT 3 1543, on June 23, 1964; and that on October 17, 1974, said Nenita Geollegue had mortgaged the lot to the Philippine Commercial and Industrial Bank as security for a loan of P156,000.00.[8]

Rosa Gicano and her co-defendants filed a motion to dismiss the complaint alleging as grounds therefor, plaintiffs' lack of cause of action, laches, estoppel, and prescription.⁹ The Trial Court denied the motion in so far as it was based on the first ground, lack of cause of action.¹⁰ It deferred resolution thereon as regards the other grounds until after trial on the merits.¹¹ Subsequently, however, after considering the pre-trial briefs and memoranda submitted by the parties in connection with the pre-trial, and without scheduling the case for trial on the merits any longer, the Trial Court promulgated an Order dismissing the complaint on the ground of prescription and laches. ¹²It opined that the action, being one for reconveyance predicated on an implied trust, prescribed in 10 years, commencing from the date that the initial document of transfer was registered and title issued; and since 23 years had already elapsed on the day of the institution of the action at bar, reckoned from the registration of the deed of sale and issuance of title, the suit was time-barred.

The Trial Court's Order was however reversed by the Court of Appeals, on an appeal taken by Rosa Gegato, et al., and the case was remanded with instructions that a full dress trial on the merits be conducted. In its Decision promulgated on May 26, 1982,[13] the Appellate Court declared that the outright dismissal of complaint on the ground of prescription was premature and violative of due process because it denied the parties the opportunity to prove their claims and defenses. It also held that the action was not in truth time-barred. The Appellate Court's reasoning does not however appear persuasive. It said that absent any proof to the contrary, the one-half (1/2) share of the deceased Maximo Juanico in Lot 818, originally owned in common by him with Matilde Geolingo, must be presumed to be conjugal in character; hence, only one-half (1/2) of said half constituted the estate of Maximo Juanico upon his death, the other half pertaining in ownership to his widow, Rosa Gegato, as her conjugal share; hence, Rosa Gegato's conjugal share could not have been meant to be included in the Deed of Sale of August 23, 1952, there being nothing in its language in fact to show this, and that deed was valid only in so far as concerned the transfer of 1/3 of her children's inheritance, but void as regards the remaining 2/3 for lack of cause or object in accordance with Article 1409 of the Civil Code, the action to declare its illegality being imprescriptible under Article 1410 of the same Code.

But the action instituted by the plaintiffs Rosa Gegato, et al. was not one to declare the deed of sale of August 23, 1952 void ab initio, for lack of cause or object in accordance with Article 1409 of the Civil Code, which is really imprescriptible, but to annul it on account of fraud, on the theory of constructive trust, which prescribes in ten (10) years. In the case at bar, Rosa Gegato and her minor children by her deceased husband, Maximo Juanico (said children being represented by their judicial guardian, Raymundo Pundon) had executed a deed of sale and acknowledged it before a notary public which, upon its face, transferred the entirety of Maximo Juanico's right, share and interest in Lot 181 to Rosa Gicano. Now, if it be true that they were deceived into executing that deed of sale by Rosa Gicano, who taking advantage of their ignorance had made them believe that the deed conveyed only 1/3 of the children's share in their inheritance from their father, they certainly had the right to sue Rosa Gicano, and after presenting evidence of the fraud perpetrated upon them, recover so much of the property as they had never intended to transfer, and recover the damages thereby suffered by them. But they certainly did not have all the time in the world to bring that suit. They had to do it within ten (10) years from the issuance to Rosa Gicano

of title to the property on the strength of the supposedly fraudulent deed of sale.[14] They did not file their action within this statutory period. They filed it only after twenty-three (23) years. When filed, their action had already been extinguished by prescription. They had slept on their rights. Time eroded their right of action and ultimately erased it, as a sand castle on a shore is slowly and inexorably obliterated by the rising tide.

Their action was therefore correctly dismissed, even without a trial on the merits being first had. We have ruled that trial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred; (Francisco v. Robles, Feb. 15, 1954; Sison v. McQuaid, 50 O.G. 97; Bambao v. Lednicky, Jan. 28, 1961; Cordova v. Cordova, Jan. 14, 1958; Convets, Inc. v. NDC, Feb. 28, 1958; 32 SCRA 529; Sinaon v. Sorongan, 136 SCRA 408); and It may do so on the basis of a motion to dismiss,¹⁵ or an answer which sets up such ground as an affirmative defense;¹⁶ or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration;¹⁷ or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings,¹⁸ or where a defendant has been declared in default.¹⁹ What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record: either in the averments of the plaintiffs complaint, or otherwise established by the evidence.

WHEREFORE, the Decision of the Court of Appeals promulgated on May 26, 1982 is REVERSED, and the Order of the Trial Court dated October 29, 1976 dismissing the action for reconveyance and damages instituted by respondents Rosa Gegato, et al., on the ground of prescription is REINSTATED and AFFIRMED as being in accord with the relevant facts and the law. Costs against respondents.

Teehankee, C.J., Cruz, Paras,* and Gancayco, JJ., concur.

[1] Sinaon v. Sorongan, 136 SCRA 40, Amerol, et al. v. Bagumbaran, G.R. No. L-33621, Sept. 30, 1987; Guerrero v. C.A., 126 SCRA 109; Vda. de Pama v. Pama, 124 SCRA 377, citing Diaz v. Gorricho, 103 Phil. 261, Candelana v. Romero, 109 Phil. 500 and J.M. Tuason v. Magdangal. 114 Phil. 42; Tongoy v. C.A., 123 SCRA 99, citing Tongoy v. C.A. supra; J.M. Tuason v. Magdangal. supra, Escay v. C.A., 61 SCRA 370. and Bonaga v. Soler, 2 SCRA 755.

[2] Rollo, p. 25.

[3] Id., p. 26.

[4] Sec. 1. Rule 74 of the Rules of Court.

[5] Id., pp. 25-26.

[6] Id., pp. 26-27.

[7] Id., p. 19.

[8] Id., p. 27.

[9] Id., p. 25.

[10] The proper ground, of course, is not that plaintiffs have no cause of action, but that their complaint fails to state a cause of action. Sec. 1, g, Rule 16. Rules of Court.

[11] Rollo, p. 25, N.B. Sec. 3, Rule 16. states that "After hearing, the Court may deny or grant the motion to allow amendment of pleading or may defer the hearing and determination of the motion until the trial if the ground

alleged therein does not appear to be indubitable."

[12] Rollo, p. 25.

[13] Sison, P., J., ponente.

[14] See cases collated at footnote I, at page 1, *supra*.

[15] Sec. 1, f. Rule 16, Rules of Court.

[16] Sec. 5, Rule 16.

[17] *Ferrer v. Ericta*, 84 SCRA 705.

[18] *Garcia v. Mathis*, 100 SCRA 250; *PNB v. Pacific Commission House*, 27 SCRA 766; *Chua Lamco v. Dioso, et al.*, 97 Phil. 821.

[19] *PNB v. Perez*, 16 SCRA 270.

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