

**SPOUSES FRANCISCO CIMA FRANCA AND VIBESA GURDIEL,
CARIDAD EGUIA, AND FIDELA EGUIA, PETITIONERS, VS. THE HON.
INTERMEDIATE APPELLATE COURT, THE HEIRS OF PERFECTO
JALOSJOS, NAMELY:...**

G.R. No. 68687. January 31, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the Decision of Respondent Appellate Court[1] dated December 29, 1984 in AC-G.R. CV No. 60048 (Rollo, p. 39), affirming in toto the decision of the Court of First Instance of Zamboanga del Norte, dated October 24, 1974 in Civil Case No. 2234 for Partition and Damages (Rollo, p. 65), the dispositive portion of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court is of the opinion and so holds that the preponderance of evidence is in favor of defendants, and against the plaintiffs, wherefore, judgment is hereby rendered as follows:

I. Declaring the defendants as the absolute owners of $\frac{3}{4}$ portion of Lot 86, known as Lot No. 86-B, of the sketch plan (Exh. 3) consisting of 1,109 square meters, including the improvements thereon.

II. Declaring the plaintiffs the absolute owners of $\frac{1}{4}$ undivided share in Lot 86 known as Lot NO. 86-A of the sketch plan (Exh. 3) consisting of 487 square meters, together with the improvements thereon.

III. Declaring Transfer Certificate of Title No. T-4569 (Exh. A & 16) null and void and of no legal effect; and ordering the Register of Deeds of Zamboanga del Norte to issue a new certificate of title in the names of plaintiffs, $\frac{1}{4}$ undivided share of Lot 86, and also in the names of the defendants, $\frac{3}{4}$ share of said lot, at the expense of plaintiffs.

IV. Ordering the plaintiffs to pay attorney's fees in the sum of P700.00 and costs of this action."

and of its Resolution dated July 23, 1984 (Rollo, p. 49), denying petitioners' Motion for Reconsideration dated April 4, 1984.

The facts of the case as found by respondent Appellate Court, are as follows:

"It appears that Lot No. 86 of Cad. Survey of Lubungan, Zamboanga del Norte with an area of 1,589 square meters was originally registered on August 18, 1919 under Original Certificate of Title No. R0-1708 (6515) per Exh. 15 in the names of 'Simplicia Bagsican, a widow; Pedro Gurdriel, married to Simplicia Adrias; Delfina Gurdriel, the wife of Jose Dalman; and Cristeto Gurdriel, single, in the proportion of $\frac{1}{2}$ share to the first named and the remaining $\frac{1}{2}$ in undivided equal shares to the last three x x x ', pursuant to a decree dated March 2, 1917. Sometime in 1917, a portion of said lot 86 was sold by Pedro Gurdriel to Perfecto Jalosjos, defendants' father. After the sale, Perfecto Jalosjos took possession of the portion of Lot 86 sold, and constructed a residential house thereon. Sometime in 1919, Perfecto Jalosjos declared for taxation the portion of Lot 86

occupied by him consisting of 1,023 square meters under Tax Declaration 7030 (Exh. 4). Simplicia Bagsican died in 1934 and was survived by her children, namely: Pedro Gurdiel, Delfina Gurdiel married to Jose Dalman and Cristeto Gurdiel. Delfina Gurdiel died in 1939 and was survived by her children, namely: Iñigo, Jovita, Solomon, Rosario, Celso, Priscila, Publeo and Geronimo, all surnamed Dalman while Cristeto, 'just before the war disappeared and was never heard from up to the present and is therefore presumed dead x x x' per Exhibit 14. On March 13, 1958, Pedro Gurdiel and the heirs of Delfina G. Dalman executed a 'Deed of Extrajudicial partition and confirmation of Previous Sale' (Exh. 14) whereby, the $\frac{1}{2}$ pro-indiviso share of Simplicia Bagsican in Lot Nos. 86 and 9 as well as the interest of Pedro Gurdiel, Delfina G. Dalman and Cristeto Gurdiel were adjudicated to the surviving heirs of Simplicia Bagsican, as follows: Lot 86 to Pedro Gurdiel and Lot 9 to the Dalmans. In the same document (Exh. 14) Pedro Gurdiel further confirmed and ratified the sale made by him 'many years ago' of 'one-fourth (14) interest in Lot No. 86' to Perfecto Jalosjos. Upon the registration of Exh. 14 on October 24, 1958, Original Certificate of Title No. R0-1708 (6515) for Lot No. 86 was cancelled and in lieu thereof, Transfer Certificate of Title No. T-4569 (Exh. A) was issued in the names of 'Pedro Gurdiel married to Simplicia Adrias, $\frac{3}{4}$ share; and Perfecto Jalosjos married to Bonifacia Lorete ¼ share x x x.' Pedro Gurdiel died sometime in 1958 and was survived by his widow Simplicia Adrias and 8 children, namely: Anacorita, Ireneo, Lucrecia, Amparo, Cresencio, Antonio, Vibesa and Dominador, all surnamed Gurdiel. It appears that some of the heirs of Pedro Gurdiel conveyed their $\frac{1}{9}$ share in Lot No. 86 pertaining to the share of the late father. On December 21, 1970, the abovementioned heirs of the deceased Pedro Gurdiel executed an 'Extrajudicial Settlement of Estate of Deceased Person with Simultaneous Deed of Sale and Confirmation of Previous Sales' (Exh. F) whereby the 'three fourth ($\frac{3}{4}$) share over a parcel of land x x x designated as Lot No. 86 x x x covered by Transfer Certificate of Title T-4569 x x x' of the deceased Pedro Gurdiel was first adjudicated to his 8 children in $\frac{1}{9}$ share each, except Dominador Gurdiel who had acquired the $\frac{1}{9}$ share of his mother and was given $\frac{2}{9}$ share; and thereafter, taking cognizance of the various conveyances made by some of the heirs in favor of Vibesa Gurdiel married to Francisco Cimafranca declared the latter the owner of $\frac{7}{9}$ share of $\frac{3}{4}$ of the lot. It appears that the other $\frac{2}{9}$ shares were acquired by the sisters Fidela Eguia and Caridad Eguia, $\frac{1}{9}$ share each, who are co-plaintiffs in this case and owners of an adjoining Lot No. 87" (Rollo, pp. 42-42-A).

When surveyed on June 12, 1971, the portion occupied by plaintiffs (petitioners herein) had an area of 487 square meters while the portion occupied by defendants (private respondents herein) had an area of 1,109 square meters as shown in the Sketch Plan. (Rollo, p. 77 and pp. 44-45).

On December 10, 1971, petitioners filed a Complaint for Partition and Damages seeking the partition of the property in question and the reconveyance by private respondents of the excess portion they had been allegedly illegally occupying, the demolition and transfer of their residential building and fence, as well as damages (Rollo, p. 51). Said complaint was amended on January 26, 1972 to include private respondent Bonifacia Lorete Vda. de Jalosjos (Rollo, p. 55). On January 25, 1972, private respondents filed their answer (Rollo, p. 58), praying for the cancellation of TCT No. T-4569, and for an award of damages by way of counterclaim (Rollo, p. 61).

On February 7, 1972, petitioners filed their answer to the counterclaim, arguing among other things, that TCT No. T-4569 which respondents sought to nullify, is and has always been valid and binding against the whole world, and its validity cannot now be properly raised in the instant suit (Rollo, p. 64).

The trial court decided in favor of the defendants and petitioners appealed to respondent Intermediate Appellate Court which, however, affirmed the decision of the lower court in toto. Thus, this petition for review. A true copy of the Record on Appeal was sent to the Court by registered mail on August 31, 1984.

On September 25, 1984, petitioners filed their petition with this Court (Rollo, p. 9). In a resolution of the Second Division dated January 23, 1985, the Court resolved to require the respondents to comment on the petition (Rollo, p. 126) which comment was filed by respondents on March 8, 1985 (Rollo, p. 130). Petitioners' reply was filed on

March 29, 1985 (Rollo, p. 136).

On September 25, 1985, the Court, through the Second Division, resolved to give due course to the petition and to require the parties to submit their respective memoranda within twenty (20) days from notice (Rollo, p. 141). Petitioners filed their memorandum on December 2, 1985 (Rollo, p. 154); respondents filed theirs on December 23, 1985 (Rollo, p. 171).

Petitioners raised the following points:

- I. THE RESPONDENT COURT'S INFERENCE THAT TCT NO. T-4569 IS A NULLITY HAS NO LEGAL BASIS.
- II. THE RESPONDENT COURT'S FINDING THAT LACHES HAS SUPERVENED IS NOT IN ACCORD WITH APPLICABLE LAW AND JURISPRUDENCE.
- III. THE RESPONDENT COURT'S CONCLUSION THAT THE PORTION ACQUIRED BY PERFECTO JALOSJOS FROM PEDRO GURDIEL IN 1917 CONSISTED OF A DETERMINATE $\frac{3}{4}$ PORTION OF LOT NO. 86 IS MANIFESTLY MISTAKEN.
- IV. THE RESPONDENT COURT'S PRONOUNCEMENT THAT THE ACTUATION OF PRIVATE RESPONDENTS AND THEIR PREDECESSORS-IN-INTEREST OVER A $\frac{3}{4}$ PORTION OF LOT NO. 86 HAD VALIDLY AND EFFECTIVELY PUT AN END TO THE CO-OWNERSHIP OVER SAID LOT IS CONTRARY TO LAW AND APPLICABLE DECISIONS OF THIS HONORABLE TRIBUNAL.

The petition is impressed with merit.

The trial court found that TCT No. T-4569 issued in the names of Pedro Gurdiel, $\frac{3}{4}$ share and Perfecto Jalosjos, $\frac{1}{4}$ share based on the deed of partition executed by Pedro Gurdiel and his co-heirs on October 6, 1958 (Entry No. 7899) which is purely self-serving, is a patent nullity (Rollo, p. 78, par. 20); the deed of extrajudicial partition of Lot 86 was effected without the consent of defendants (Rollo, p. 80). Respondent Court paraphrased the ruling, as follows: "Plaintiffs cannot avail of the extrajudicial partition which was executed in 1958 without the knowledge and participation of the defendants and in fraud of defendants' rights and interest over Lot No. 86 which document became the basis for the issuance of TCT No. T-4569 (Exh. A), as an excuse to avoid the consequences of their own unjustified inaction and as a basis for the assertion of a right on which they have slept for so long" (Rollo, p. 48). In other words, respondent Court is of the view that TCT No. T-4569 is a patent nullity proceeding from the fact that the deed of extrajudicial partition was executed without the participation of defendants, and therefore in fraud of their rights and interests, and after laches could already be invoked against petitioners and their predecessors.

Petitioners question this conclusion of respondent Court as not being based on any clear and distinct statement of the facts and the law, TCT No. T-4569 having become incontrovertible and imprescriptible by virtue of the lapse not only of four (4) but of thirteen (13) long years from its issuance in 1958 before its validity was challenged in private respondents' counterclaim filed in 1972; and that private respondents are in estoppel or are barred by prescription and laches from questioning the validity and binding effect of TCT No. T-4569 or of the deed of partition of 1958 (Rollo, p. 155).

It is undisputed that the questioned deed of extrajudicial partition was executed by Pedro Gurdiel and the heirs of Delfina G. Dalman on March 13, 1958 whereby Lot 86 was adjudicated to Pedro Gurdiel and Lot 9 to the Dalmans. It is equally undisputed that in the same document Pedro Gurdiel confirmed and ratified the sale made by him "many years ago" of one-fourth ($\frac{1}{4}$) interest in Lot 86 to Perfecto Jalosjos and that upon registration of the document on October 24, 1958, Original Certificate of Title No. RO-1708 (6515) for Lot 86

was cancelled and in lieu thereof TCT No. T-4569 was issued in the names of Pedro Gurdriel married to Simplicia Adrias, $\frac{3}{4}$ share and Perfecto Jalosjos married to Bonifacia Lorete, $\frac{1}{4}$ share (Rollo, pp. 41-42).

Until 1972 respondents had not questioned the validity of the deed of extrajudicial partition in 1958, nor the issuance of TCT No. T-4569 but only as a counterclaim to petitioners' complaint for partition (Rollo, p. 62).

The main issue in this case is whether or not after the lapse of fourteen (14) years respondent can still question the validity of the deed of extrajudicial partition and subsequently TCT No. T-4569.

On this issue, the Supreme Court in various cases ruled in the negative, as follows:

"The action to annul a deed of extrajudicial settlement upon the ground of fraud may be filed within four years from the discovery of the fraud. Such discovery is deemed to have taken place when said instrument was filed with the Register of Deeds and new certificates of title were issued in the name of respondents respectively. x x x the registration of the deed of extra-judicial settlement constitute constructive notice to the whole world." (Gerona v. De Guzman, 11 SCRA 154 and 157 [1964] citing Diaz v. Gornicho, L-11229, March 29, 1958; Avecilla v. Yatco, L-11578, May 14, 1958; J.M. Tuason & Co., Inc. v. Magdangal, L-15539, January 30, 1962; Lopez v. Gonzaga, L-18788, January 31, 1964)."

An action for reconveyance of real property on the ground of fraud must be filed within four (4) years from the discovery of the fraud. Such discovery is deemed to have taken place from the issuance of the certificates of title (Baldin v. Medalla, 108 SCRA 666). Respondents had only four years from October, 1958 or until 1962 to bring this action, which respondents failed to do.

Moreover, the records show that respondents and their predecessors can be charged not only with constructive notice but with actual notice of the fraud, if any, in 1958, as well. As pointed out by petitioners, Librado Balbosa, an employee of the Registry of Deeds of Zamboanga, testified that the person who presented the 1958 deed of partition for registration in the Office of the Registry of Deeds was the late Perfecto Jalosjos himself (Rollo, p. 17) and it was respondent Aracelita Jalosjos who received owner's copy of TCT No. T-4569 and delivered the copy to her father who was still alive at that time (Rollo, p. 74).

For laches to attach, the following elements must be present: (1) Conduct on the part of the defendant or one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks remedy; (2) Delay in asserting the complainant's right, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) Lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) Injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred (De Lucas v. Gamponia, 100 Phil. 277; Abraham v. Recto-Kasten, 4 SCRA 298; Nielson & Co., INC. v. Lepanto Consolidated Mining Corp., 18 SCRA 1040; San Miguel Corporation v. Cruz, 31 SCRA 819; Yusingco v. Ong Hing Lian, 42 SCRA 589; Perez v. Ong Chua, 116 SCRA 732; Rafols v. Barba, 119 SCRA 146; Chacon Enterprises v. Court of Appeals, 124 SCRA 784).

Respondents have not taken any step to have the deed of extrajudicial partition corrected, if it is true as they claim it is, that what had been sold to their father is $\frac{3}{4}$ share of Lot 86 instead of $\frac{1}{4}$ share. It is now both too late and bereft of basis to ask for the cancellation of TCT No. T-4569. Inaction and neglect of a party to assert a right can convert a valid claim into a stale demand (Perez v. Ong Chua, 116 SCRA 732 [1982]). An estoppel by laches arises from the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it (Municipality of Carcar v. CFI of Cebu, Barile Branch, 119 SCRA 392 [1982]; Gumpin v. Court of Appeals, 120 SCRA 687 [1983]; Guerrero v. Court of Appeals, 126 SCRA 109 [1983]; De Castro v. Tan, 129 SCRA 85 [1984]; Medija v. Patcho, 132 SCRA

540 [1984]; Burgos v. Chief of Staff of the Phil., 133 SCRA 800 [1984]; Corro v. Lising, 137 SCRA 541 [1985]; Tejido v. Zamacoma, 138 SCRA 78 [1985]).

Unfortunately, as things turned out, the lower court found petitioners guilty of laches as respondents had already been in possession of $\frac{3}{4}$ portion of the lot for the last fifty-four (54) years before they filed their complaint in 1971 (Rollo, p. 80) which conclusion was sustained by respondent Appellate Court (Rollo, p. 46). Such conclusion is untenable even for the sake of argument for Lot 86 is registered land and registered lands are not subject to prescription. Adverse, notorious and continuous possession under a claim of ownership for the period fixed by law is ineffective against a Torrens Title (Bolanos v. J.M. Tuason & Co., Inc., 37 SCRA 223 [1971]; Republic v. Lichauco, 46 SCRA 305 [1972]; Spouses Co v. Serafin, 121 SCRA 61 [1982]; Mendiola v. Court of Appeals, 106 SCRA 130 [1981]; Umbay v. Alecha, 135 SCRA 427 [1985]). Unless there are intervening rights of third persons which may be affected or prejudiced by a decision directing the return of the lot to petitioners, the equitable defense of laches will not apply as against the registered owners (Urbano v. Concepcion, 94 SCRA 212 [1979]).

Respondent Court relied on the case of Arcuino v. Agaris (22 SCRA 407 [1962]) where the Court ruled in favor of defendants and their predecessors-in-interest, they having been in possession of the lot in litigation, for 26 years. Plaintiffs had sought to recover the lot in an action for recovery of possession, damages and legal redemption, alleging their co-ownership over the land to the extent of $\frac{3}{4}$ thereof.

It will be observed, however, that there is hardly any similarity between said case and the case at bar. In the former, the Court ruled that plaintiffs were not registered owners. They merely claimed to have acquired, by succession their alleged title or interest in Lot No. 355. At any rate, plaintiffs therein were guilty of laches.

On the other hand, in the present case, a Torrens Title is involved, and this Title gives petitioners $\frac{3}{4}$, and respondents only $\frac{1}{4}$ of the land. Nor are petitioners guilty of laches, the respondents' claim having been made only after a survey made of the land in 1972.

In fact, petitioners' claim that it is private respondents themselves who are in estoppel or are barred by prescription and laches from questioning the validity and binding effect of TCT No. T-4569 (Rollo, p. 17) is well taken under the circumstances considering particularly the time that has elapsed since the issuance of the pertinent Torrens Title. Besides, a Torrens title cannot be attacked collaterally. The issue on its validity can be raised only in an action expressly instituted for that purpose (Magay v. Estiandan, 69 SCRA 456 [1976]; Barrios v. Court of Appeals, 78 SCRA 427 [1977]). The efficacy and integrity of the Torrens System must be protected (Director of Lands v. Court of Appeals, 102 SCRA 130 [1981]).

PREMISES CONSIDERED, the decision of respondent Court is hereby REVERSED and SET ASIDE, and a new one is hereby rendered, ordering the actual partition of the property in accordance with TCT No. T-4569, $\frac{3}{4}$ share to petitioners and $\frac{1}{4}$ share to respondents.

SO ORDERED.

Fernan, (Chairman), Alampay, Gutierrez, Jr., and Padilla, JJ., concur.
Bidin, J., no part.

[1] Penned by Justice Abdulwahid A. Bidin and concurred in by Justices Porfirio Sison, Marcelino Veloso and Desiderio P. Jurado.

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