

**TEODOSIA C. LEBRILLA AND FERNANDO C. LEBRILLA,
PETITIONERS, VS. INTERMEDIATE APPELLATE COURT, (FOURTH
CIVIL CASES DIVISION) AND HEIRS OF THE DECEASED SPOUSES
PABLO DE CASTRO AND...**

G.R. No. 72623. December 18, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the decision of the then Intermediate Appellate Court in AC-G.R. CV No. 02901 entitled "Teodosia Lebrilla, et al., plaintiffs-appellees v. The Heirs of the Deceased Spouses Pedro de Castro and Francisca Barron, et al., defendants-appellants." Penned by the Hon. Abdulwahid A. Bidin, now a distinguished member of this Court, the decision reversed that of the Regional Trial Court of Bacoor, Cavite which had earlier decreed that the petitioners still have a participation in the three lots under dispute. The petitioners had inherited an undivided portion of the realties with respondents and although they had sold their interest therein to the latter the lower court pronounced the sale to be void. The decision under review upheld the validity of the sale and denied partition of the lots and its reconveyance to the petitioners.

The three lots under consideration were owned either by Pablo de Castro as his exclusive properties or by him and his wife, Romana Lopez, as their conjugal property. The spouses had a daughter, Maria de Castro who bore them two grandchildren, Teodosia and Fernando Lebrilla, the herein petitioners. After Romana Lopez' demise Pablo de Castro re-married. From his second wife, Francisca Barron, he had five children, three of whom are now the respondents while the others, now deceased, are represented by their children also as respondents.

In 1943 Maria de Castro died. She was followed by her father, Pablo, about three months thereafter, and the administration of the three parcels of land, which remained undistributed up to that time, was passed to Francisca Barron, who together with respondents, possessed the lots, to the exclusion of the petitioners, up to the present time.

On September 8, 1945, the petitioners sold to Francisca Barron for one thousand eight hundred (P1,800.00) pesos "the portion corresponding to [their] deceased mother, Maria de Castro of the three (3) parcels of land described therein." The document was never registered with the Register of Deeds. After Francisca Barron's death sometime in 1950, her heirs, alleging succession and adverse possession, caused the registration of the lands and consequently, Original Certificates of Title Nos. (3154) 0-S-172, 0-273 and 106753 were issued in 1962, 1963 and 1966, respectively, in the names of the respondents.

On June 18, 1978, respondents sold the lot covered by OCT (3154) 0-S-172 to Casimiro Development Corporation. The corporation paid half of the purchase price to the vendors while the balance is now deposited with the Philippine National Bank. It should be noted that the corporation was not named as party respondent in this petition. Recovery of the land bought by that entity, therefore, is not the issue but rather the petitioners' share in the purchase price.

On October 18, 1978 the petitioners filed an action for "Partition, Reconveyance and Damages" against the respondents where they claimed, among other things, that the deed of sale they had executed in favor of Francisca Barron was null and void. The complaint was twice amended. During the proceeding, Fernando Lebrilla manifested his disinterest in pursuing the case by filing a verified "Motion to Dismiss" praying that the case be dismissed as far as he is concerned. The trial court denied the motion and ruled, as aforementioned, that the sale Teodosia and Fernando Lebrilla entered into with Francisca Barron was void on the grounds of minority, vitiated consent and lack of consideration.

The appellate court, in reversing the decision of the trial court, reasoned that the defects of the sale between the petitioners and respondents' predecessor-in-interest, rendered the transaction merely voidable and not void. Then it decreed that Fernando Lebrilla could not now defeat the validity of the sale on the ground of his minority during its execution because he failed to contest it within 4 years after reaching majority in 1950, having filed the complaint only in 1978.

Also, it rejected the trial court's finding that the petitioners were victims of fraud. The trial court had accepted the allegation of Teodosia Lebrilla that she and her brother, Fernando, were misled into believing that the document they were signing was for them to receive their share in the fruits of the disputed properties, and that in fact no consideration was given them. Unable to read English, they signed the deed not knowing that it was in fact a sale. But the appellate court pointed to the testimonies of the attorney who notarized the document and that of one of the subscribing witnesses, who both stated that the contents of the deed of sale were explained to the petitioners, and that the latter were in fact paid the purchase price. Coupled with the presumption of the regularity of a public document, the appellate court rejected any notion of fraud. At any rate, the court argued, more than ten years had elapsed from the dates of the registration of the lots before the petitioners filed their complaint, and thus, an action for reconveyance based on constructive trust is no longer available.

For preliminary consideration is petitioners' argument that the appellate court erred in not taking note of the fact that the action they had filed with the lower court was not one for annulment of the sale but for partition which kind of action does not prescribe. We believe the appellate court was correct in identifying the crucial issue as to whether or not the petitioners are still co-owners of the disputed lands, and to resolve the question, in passing on the validity of the sale under consideration. There is no controversy on the point that an action for partition is imprescriptible. However, "an action for partition among co-heirs ceases to be such, and becomes one for title where the defendants allege exclusive ownership" (Moran, Comments on the Rules of Court, Vol. 3 pp. 294--95, 1980 ed., citing *Rodriguez v. Ravilan*, 17 Phil. 63, etc.) as in this case. Then it becomes necessary to determine if a state of co-ownership still exists which brings Us to the question of whether the sale between petitioners and Francisca Barron is valid.

There can be no doubt as to the correctness of the pronouncement of the appellate court that Fernando Lebrilla forfeited his opportunity to question the sale on the ground of his minority. It is supported by the last paragraph of Art. 1391 of the New Civil Code. There is no need to elaborate on this point since the statement of the appellate court summarized earlier is sufficient.

Neither may petitioners now have the sale annulled on the ground of vitiated consent. The four-year period within which an action for annulment must be brought begins to run, in case of mistake or fraud, from the time of the discovery of the same (See Article 1391, New Civil Code). In the case at bar, the discovery of the fraud, if indeed there was any, is deemed to have occurred at the time the subject properties were registered in respondents' names because then petitioners would have been constructively notified of the adverse position taken by the respondents which was contrary to the petitioners' belief that they were supposed to be co-owners of the realties. It is to be remembered that the lots were registered separately in 1962, 1963 and 1966 while petitioners' complaint was filed

only in 1978.

In view of the foregoing, petitioners cannot even say that there was any defect in their consent regarding the object and the cause of the contract. As for them, the object is the disputed parcels of land and the cause is the amount of one thousand eight hundred (P1,800.00) pesos. They cannot now allege that the amount represents their share in the fruits of the realties. Thus, for all legal purposes the amount mentioned is the purchase price for the lots.

The petitioners insist, however, that the contract is not voidable but void because they were never paid the purchase price. They cite the case of *Ladanga v. Court of Appeals*, No. L-55999, August 24, 1984, 131 SCRA 361, where We reiterated Our pronouncement in *Mapalo v. Mapalo*, 123 Phil 979, that:

"A contract of purchase and sale is null and void and produces no effect whatsoever where the same is without cost or consideration in that the purchase price, which appears thereon as paid, has in fact never been paid by the purchaser to the vendor."

But as mentioned earlier, this case does not involve a contract without consideration as to render the agreement void under Articles 1352 and 1409 (3) of the New Civil Code. If indeed petitioners were not paid the purchase price then that merely entitled them to the remedies of an unpaid seller. But even those remedies, unfortunately, are no longer available to petitioners because an action based on a written contract prescribes in ten (10) years (Art. 1144 [1], New Civil Code). Even if We were to count the period from 1945, the date of the execution of the document, or from 1950, the year Fernando Lebrilla became of age, the conclusion would remain the same.

One last point on the matter of prescription. Petitioners invoke Article 1456 of the New Civil Code which imposes on a person who acquires property through fraud to convey the property to the defrauded. Assuming the law's applicability, the equitable remedy it provides is no longer available to the petitioners. The obligation of the trustee ex maleficio, being created by law, prescribes in ten (10) years (Art. 1144 [2]), the period counted from the date of the registration of the disputed lands (See *Villagonzalo v. Intermediate Appellate Court*, G.R. No. 71110, November 22, 1988).

We agree with the appellate court that the document of sale was not tainted with any irregularity at all. As against the self-serving statements of Teodosia Lebrilla, We give more credence to that of the notary public and the subscribing witness. Indeed, it is highly inconsistent of Teodosia Lebrilla to say that what she thought she signed was for her to receive her share in the income of the disputed lots yet, she did not assert her right from that time in 1945 up to the filing of the instant case in 1978. It was only in the latter year when respondents sold to Casimiro Development Corporation one of the lots for a little less than a million pesos did Teodosia Lebrilla suddenly wake up claiming her interest on the realties.

Having arrived at the conclusion that the petitioners had already sold their interest on the disputed lots to the respondents, it is no longer necessary to discuss their other assignment of errors which primarily asserts their right as co-heirs.

ACCORDINGLY, this petition is DENIED and the decision of the respondent appellate court which reversed and set aside the decision of the trial court is hereby AFFIRMED.

SO ORDERED.

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

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