

**HEIRS OF BARTOLOME INFANTE AND JULIANA INFANTE NAMELY:  
MANSUETA M. KESSLER, VICTORIA M. INFANTE, RENATO M.  
INFANTE AND ROMEO M. INFANTE, PETITIONERS, VS. THE  
HONORABLE COURT OF ...**

*G.R. No. 77202. June 22, 1988*

Ponente: CORTES, J.

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**CORTES, J.:**

Once again the Court is confronted with the sad spectacle of close relatives contesting in court, ownership over real property allegedly inherited from a common ancestor.

The antecedent facts are summarized in the decision of the Court of Appeals:

[P]laintiffs (private respondents herein) Teofilo, Inocencia, Emiliana, Rufo and Francisca, all surnamed Infante, are the children of Catalino Infante; x x x Iluminada, Gliceria and Nemesia, all surnamed Infante, are the children of Ponciano Infante; x x x Antonio and Melodita, all surnamed Infante, are the children of Generoso Infante; while defendants (predecessors of petitioners herein) Bartolome and Juliana, all surnamed Infante are the children of Esteban Infante.

The late Ceferino Infante during his lifetime was married twice. In the first marriage he had three (3) children, namely: Esteban, Ramon and Francisco Infante. In the second marriage he had two (2) children, namely: Catalino and Ponciano Infante. During the lifetime of Ceferino Infante he was the owner of a certain parcel of land known as Lot No. 931 located at Daro, Dumaguete City. On September 5, 1925 when Ceferino was already dead his son Esteban Infante filed a cadastral answer to Lot No. 931 in his name and of his wife and his two (2) brothers Ramon and Francisco Infante. Catalino and Ponciano Infante were not included as claimants in the cadastral answer. By excluding Catalino and Ponciano as claimants in the cadastral answer, the plaintiffs alleged in their complaint that Esteban Infante acted in bad faith, deceit, and misrepresentation. In other words, the latter committed fraud.

On November 18, 1925 the Court (Court of First Instance) rendered a decision in Cadastral Case No. 6, G.L.R.O. Record No. 152 adjudicating Lot No. 931 in favor of Esteban Infante and his wife as well as his brother Francisco Infante and the heirs of Ramon Infante. A decree of registration No. 248936 was issued by the Court of First Instance on March 22, 1927 over Lot No. 931. And thereafter Original Title No. 5402-A was issued on June 1, 1927 over Lot No. 931. [Rollo, pp. 32-33].

x x x

x x x

x x x

Plaintiffs Teofilo Infante, Inocencia Infante, Emiliana Infante, Rufo Infante, Francisca Infante, Iluminada

Infante, Gliceria Infante, Nemesia Infante, Antonio Infante and Melodita Infante filed on May 31, 1973 with the then Court of Instance of Negros Oriental a Complaint "Tor: Reconveyance and Damages" against Bartolome Infante and Juliana Infante. Thereafter, the defendants filed a Motion to Dismiss alleging that plaintiffs had no cause of action against defendants and even if they had, the same is barred by the statute of limitations. The then Court of First Instance, instead of resolving

the motion to dismiss, held the same in abeyance after the "complete hearing on the merits." On October 22, 1982, the presiding judge of the then Court of First Instance issued an order stating that on the basis of its findings that the ground relied upon in the motion to dismiss and their supplemental motion to dismiss "do not appear to be indubitable," the court was holding in abeyance resolution of the said motion "until after complete hearing on the merits" and directed the defendants to file their responsive pleading to the complaint within the reglementary period. After defendants had filed their Answer with Counterclaim and the plaintiffs, their Answer to Counterclaim, and the pre-trial had been conducted before the Regional Trial Court of Negros Oriental, Branch XV, which had taken over in the course of the judiciary reorganization under Batas Pambansa Bilang 129, and memoranda had subsequently been submitted thereto, the latter court issued an Order on June 16, 1983 dismissing the case. The court promised said dismissal on the ground that the action of the plaintiffs was already barred by prescription, the present action being, according to said court, an action for reconveyance based on an implied trust which prescribes in 10 years and the complaint in the instant case having been filed 48 years after Esteban Infante, predecessor-in-interest of the defendants, had acquired cadastral title to the land in question. A Motion for Reconsideration of the abovesaid order was filed by the plaintiffs and this was denied in the order of the court dated July 15, 1983. [Rollo, pp. 31-32].

On appeal, the Court of Appeals, in a decision promulgated on October 30, 1986, reversed and set aside the questioned orders and remanded the case to the court of origin for continuation of the proceedings. In a resolution promulgated on December 22, 1986, the motion for reconsideration was denied. Hence, the instant petition to review the decision of the Court of Appeals.

Petitioners contend that the Court of Appeals erred: (1) in holding that the suit instituted by private respondents has not prescribed; (2) in holding that the suit includes partition of property under co-ownership; and (3) in making findings of fact not supported by evidence.

- The Court of Appeals found that Esteban Infante misrepresented in his cadastral answer dated September 5, 1925 that one-half of Lot No. 931 belonged to the conjugal partnership of Esteban Infante and his wife, Melchora Villanueva, and the other half to his brothers Francisco and Ramon, omitting Catalino and Ponciano Infante, private respondents' predecessor-in-interest, as co-owners. As a consequence of said misrepresentation an implied trust over their undivided share in the property was created in favor of Catalino and Ponciano Infante.

The Court of Appeals, however, while recognizing that some forty-six (46) years had already elapsed since a certificate of title was issued in the name of petitioners' predecessors, held that the action for reconveyance on the basis of an implied trust is imprescriptible, citing the cases of *Juan v. Zuniga* [G.R. No. L-17044, April 28, 1962, 4 SCRA 1221], and *Vda. de Jacinto v. Vda. de Jacinto* [G.R. No. L-17957, May 31, 1962, 5 SCRA 372.]

The Court of Appeals held that private respondents' action for reconveyance had not prescribed. The established rule, however, is that actions for reconveyance based on implied trust prescribe in ten (10) years [*Diaz v. Gorricho*, 103 Phil. 261 (1958); *Alzona v. Capunitan*, G.R. No. L-10220, February 28, 1962, 4 SCRA 450; *Cuaycong v. Cuaycong*, G.R. No. L-21616, December 11, 1967, 21 SCRA 1192; *Armamento v. Guerrero*, G.R. No. L-34228, February 21, 1980, 96 SCRA 178; *Heirs of Tanak Pangawaran Patiwayan v. Martinez*, G.R. No. L-49027, June 10, 1986, 142 SCRA 252.]

Thus, from the facts it would appear that private respondents' action for reconveyance had already prescribed.

- However, as will be subsequently shown, the fact that the action for reconveyance had already prescribed, by itself, will not sustain a reversal of the decision of the Court of Appeals.

Petitioners contend that the Court of Appeals erred in considering private respondents' action one for partition of co-owned property, particularly in ruling that:

Now, as to the trial court's view that the action filed by the parties is solely for reconveyance and damages and not one which includes partition of property in co-ownership, We believe, nonetheless, that the mere fact that the prayer in the complaint does not specifically seek partition does not preclude the court from considering partition as a remedy under Article 494 of the Civil Code in view of the fact that the complaint and the evidence show that the relief granted by the said Article is available to the plaintiffs. In fine, on the ground of equity and for the purpose of avoiding multiplicity of suits on the same subject matter, the trial court may just as well now consider the remedy of partition. [Rollo, p. 37].

On this score, the Court agrees with the Court of Appeals that the action instituted by private respondents in the court below may be considered as one for partition even though the Complaint is for "Reconveyance and Damages."

Contrary to petitioners' contention, allegations sufficient to support an action for partition may be found in private respondents' Complaint:

#### XIV

That plaintiffs Teofilo, Inocencia, Emiliana, Rufo, and Francisca, all surnamed INFANTE, being children of Catalino Infante, are entitled to ONE-FIFTH (1/5) share pro-indiviso of Lot No. 931-E, together with all the improvements thereon, including the share of the rentals on these houses derived from the renters (sic) and tenants;

#### XV

That, likewise, plaintiffs Iluminada Infante, Gliceria Infante, Nemesia Infante, as well as their nephew and niece, Antonio Infante and Melodita Infante, being the children and the grandchildren and surviving heirs of the deceased Ponciano Infante, are entitled to inherit ONE-FIFTH (1/5) undivided portion of Lot No. 931-E of the subdivision plan as above-mentioned, together with all the buildings and other improvements thereon, including the shares of the rentals of these houses and apartments derived from the tenants, as well as the proceeds of the coconuts and bananas; [Rollo, pp. 50-51].

Although incomplete as to the relief sought, private respondents' Complaint nevertheless effectively prayed for the partition of the disputed property:

- That the defendants be ordered to execute a document sufficient in form and contents reconveying said TWO-FIFTHS (2/ 5) share pro-indiviso of Lot No. 931-E, together with all the improvements thereon to the plaintiffs, and ordering the City Register of Deeds of Dumaguete City, to cancel Original Certificate of Title No. 4502-A covering Lot No. 931 or 931-E, upon the registration of the said document and issue a new Torrens Transfer Certificate of Title to the plaintiffs as owners of TWO-FIFTHS (2/5) undivided share over this property in question (Lot No. 931-E or 931), together with all the improvements thereon;

x x x

x x x

x x x

- That the defendants be condemned to submit strict accounting of all the proceeds and income of the buildings, apartment houses, derived from rentals, and the proceeds of the 100 coconut fruit-bearing trees and bananas, and other improvements thereon; after which they be ordered to deliver 2/5 share of said income and proceeds to the plaintiffs; and to pay the costs of this suit. [Rollo, pp. 52-53.]

There is therefore substantial compliance with the procedural requirements for a complaint for partition provided in Section 69 of the Revised Rules of Court.

Sec. 1. Complaint in action for partition of real estate. — A person having a right to compel the partition of real estate may do so as in this rule prescribed, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded, and joining as defendants all other persons interested in the property.

Further, the course of action taken by the Court of Appeals is sanctioned by the Revised Rules of Court, which mandates that all pleadings shall be liberally construed so as to do substantial justice [Rule 6, Sec. 15.].

- The rule is that the action for partition does not prescribe so long as the co-ownership is expressly or impliedly recognized [Art. 494, Civil Code.] This being the case it devolves upon the Court to decide whether petitioners' predecessors-in-interest have recognized the co-ownership or have repudiated it.

While- it may be argued that by causing the titling and registration of the property in their name, to the exclusion of private respondents' predecessors, petitioners' predecessors are deemed to have repudiated the co-ownership, it must be noted that the facts point to the opposite conclusion.

In the course of the hearings of the motion to dismiss, private respondent Teofilo Infante testified that he had been in peaceful possession of a portion of the disputed property where he has built his home since after the Second World War and that before his father died during the war, the latter had been in possession thereof and had resided therein with his wife and children [TSN, June 17, 1976, pp. 35-36; August 9, 1976, pp. 214; 18-20.] On the other hand, private respondent Nemesia Infante Cinco testified that her father had been in possession of another portion of the disputed property in his lifetime [TSN, August 9, 1978, pp. 2-8.] As petitioners' predecessors caused the titling and registration of the property in 1929, that private respondents' predecessors and private respondent Teofilo Infante possessed certain portions of the property in the concept of owner with the former's knowledge may be taken as an indication of their recognition of the latter's right to the property as co-owners thereof.

- The action brought by private respondents is one for reconveyance, but in view of their contention that they are pro-indiviso co-owners of Lot No. 931, the action that should lie is one for partition and not for reconveyance. It is unfortunate that their counsel blundered in filing a complaint for reconveyance when what they apparently intended was to cause the partition of Lot No. 931. This being the case, the complaint filed by private respondents ought to be dismissed to give way to a new complaint for partition. However, if this procedure is followed, the result would be an unnecessary duplication of suits between the parties. Thus, the Court has decided against its dismissal and for its consideration as if it were one for partition.

The decision of the Court not to dismiss the complaint is not without precedent. While this Court may not have previously had the occasion to consider an action for reconveyance which had prescribed as one for partition, given similar facts, it had considered actions for reconveyance as suits for quieting of title.

Thus, in *Faja v. Court of Appeals* [G.R. No. L-45045, February 28, 1911, 15 SCRA 441] and *Caragay-Layno v. Court of Appeals* [G.R. No. L-52064, December 26, 1984, 133 SCRA 718], the Court considered actions for

reconveyance which had long prescribed as actions to quiet title. In Faja, the petitioner had been in possession of a parcel of land for some thirty (30) years before she found out that the land she was occupying had been titled to another person. On the other hand, in Caragay-Layno, the petitioner and her father had been in open, continuous and uninterrupted possession of the disputed portion in the concept of owner for about forty-five (45) years until petitioner was informed that the property was registered in the name of another.

Recently, in Balais v. Balais [G.R. No. L-33924, March 18, 1988], the Court ruled that the trial court had jurisdiction to decree a partition of real estate in an action for reconveyance, on the ground that the petitioners therein were already barred by estoppel from impugning said court's jurisdiction.

- Finally, considering that private respondents' Complaint was dismissed upon petitioners' motion on the ground of prescription and, thus, without a full-blown trial on the merits having been conducted, there arises a necessity for a hearing to ascertain the facts relative to the matters of co-ownership and partition. As the Court is not a trier of facts, such matters and the accounting of private respondents' share in the fruits of the property, if they be entitled thereto, would be best resolved by the trial court.

WHEREFORE, the decision of the Court of Appeals is MODIFIED in accordance with this Decision. The case is REMANDED to the court of origin for further proceedings and said court is directed to consider private respondents' Complaint as one for partition of real estate.

**SO ORDERED.**

Fernan (Chairman), Feliciano, and Bidin, JJ., concur.

Gutierrez, Jr., J., on leave.

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