

DELIA BAILON-CASILAO, LUZ PAULINO-ANG, EMMA PAULINO-YBANEZ, NILDA PAULINO-TOLENTINO, AND SABINA BAILON, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND CELESTINO AFABLE, RES...

G.R. No. 78178. April 15, 1988

Ponente: CORTES, J.

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CORTES, J.:

The fate of petitioners' claim over a parcel of land rests ultimately on a determination of whether or not said petitioners are chargeable with such laches as may effectively bar their present action.

The petitioners herein filed a case for recovery of property and damages with notice of lis pendens on March 13, 1981 against the defendant and herein private respondent, Celestino Afable. The parcel of land involved in this case, with an area of 48,849 square meters, is covered by Original Certificate of Title No. 1771 issued on June 12, 1931, in the names of Rosalie, Gaudencio, Sabina, Bernabe, Nenita and Delia, all surnamed Bailon, as co-owners, each with a 1/6 share. Gaudencio and Nenita are now dead, the latter being represented in this case by her children, Luz, Emma and Nilda. Bernabe went to China in 1931 and had not been heard from since then [Decision of the Court of Appeals, Rollo, p. 39].

It appears that on August 23, 1948, Rosalia Bailon and Gaudencio Bailon sold a portion of the said land consisting of 16,283 square meters to Donato Delgado. On May 13, 1949, Rosalia Bailon alone sold the remainder of the land consisting of 32,566 square meters to Ponciana V. Aresgado de Lanuza. On the same date, Lanuza acquired from Delgado the 16,283 square meters of land which the latter had earlier acquired from Rosalia and Gaudencio. On December 3, 1975, John Lanuza, acting under a special power of attorney given by his wife, Ponciana V. Aresgado de Lanuza, sold the two parcels of land to Celestino Afable, Sr.

In all these transfers, it was stated in the deeds of sale that the land was not registered under the provisions of Act No. 496 when the fact is that it is. It appears that said land had been successively declared for taxation first, in the name of Ciriaca Dellamas, mother of the registered co-owners, then in the name of Rosalia Bailon in 1924, then in that of Donato Delgado in 1936, then in Ponciana de Lanuza's name in 1962 and finally in the name of Celestino Afable, Sr. in 1983.

In his answer to the complaint filed by the herein petitioners, Afable claimed that he had acquired the land in question through prescription and contended that the petitioners were guilty of laches. He later filed a third-party complaint against Rosalia Bailon for damages allegedly suffered as a result of the sale to him of the land.

After trial, the lower court rendered a decision

- Finding and declaring Celestino Afable, a co-owner of the land described in paragraph III of the complaint having validly bought the two-sixth (2/6) respective undivided shares of Rosalia Bailon and Gaudencio Bailon;

- Finding and declaring the following as pro-indiviso co-owners, having 1/6 share each, of the property described in paragraph III of the complaint, to wit:
 - Sabina Bailon
 - Bernabe Bailon
 - Heirs of Nenita Bailon-Paulino
 - Delia Bailon-Casilao;
- Ordering the segregation of the undivided interests in the property in order to terminate co-ownership to be conducted by any Geodetic Engineer selected by the parties to delineate the specific part of each of the co-owners.
- Ordering the defendant to restore the possession of the plaintiff's respective shares as well as all attributes of absolute dominion;
- Ordering the defendant to pay the following:
 - P5,000.00 as damages;
 - P2,000.00 as attorney's fees and;
 - to pay the costs.

[Decision of the Trial Court, Rollo, p. 37-38.]

On appeal, the respondent Court of Appeals affirmed the decision of the lower court insofar as it hold that prescription does not lie against plaintiffs-appellees because they are co-owners of the original vendors. However, the appellate court declared that, although registered property cannot be lost by prescription, nevertheless, an action to recover it may be barred by laches, citing the ruling in *Mejia de Lucaz v. Gamponia* [100 Phil. 277 (1956)]. Accordingly, it hold the petitioners guilty of laches and dismissed their complaint. Hence, this petition for review on certiorari of the decision of the Court of Appeals.

The principal issue to be resolved in this case concerns the applicability of the equitable doctrine of laches. Initially though, a determination of the effect of a sale by one or more co-owners of the entire property held in common without the consent of all the co-owners and of the appropriate remedy of the aggrieved co-owners is required.

The rights of a co-owner of a certain property are clearly specified in Article 493 of the Civil Code. Thus:

Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. [Underscoring supplied.]

As early as 1923, this Court has ruled that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale [*Punsalan v. Boon Liat*, 44 Phil. 320 (1923)]. This is because under the aforementioned codal provision, the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common [*Ramirez v. Bautista*, 14 Phil. 528 (1909)]. Consequently, by virtue of the sales made by Rosalia and Gaudencio Bailon which are valid with respect to their proportionate shares, and the subsequent

transfers which culminated in the sale to private respondent Celestino Afable, the said Afable thereby became a co-owner of the disputed parcel of land as correctly held by the lower court since the sales produced the effect of substituting the buyers in the enjoyment thereof [Mainit v. Bandy, 14 Phil. 730 (1910)].

From the foregoing, it may be deduced that since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void. However, only the rights of the co-owner-seller are transferred, thereby making the buyer a co-owner of the property.

The proper action in cases like this is not for the nullification of the sale or for the recovery of possession of the thing owned in common from the third person who substituted the co-owner or co-owners who alienated their shares, but the DIVISION of the common property as if it continued to remain in the possession of the co-owners who possessed and administered it [Mainit v. Bandy, supra.].

Thus, it is now settled that the appropriate recourse of co-owners in cases where their consent were not secured in a sale of the entire property as well as in a sale merely of the undivided shares of some of the co-owners is an action for PARTITION under Rule 69 of the Revised Rules of Court. Neither recovery of possession nor restitution can be granted since the defendant buyers are legitimate proprietors and possessors in joint ownership of the common property claimed [Ramirez v. Bautista, supra.].

As to the action for partition, neither prescription nor laches can be invoked.

In the light of the attendant circumstances, defendant-appellee's defense of prescription is a vain proposition. Pursuant to Article 494 of the Civil Code, "(n)o co-owner shall be obliged to remain in the co-ownership. Such co-owner may demand at anytime the partition of the thing owned in common, insofar as his share is concerned." [Underscoring supplied.] In Budlong v. Bondoc [G.R. No. L-27702, September 9, 1977, 79 SCRA 24], this Court has interpreted said provision of law to mean that the action for partition is imprescriptible or cannot be barred by prescription. For Article 494 of the Civil Code explicitly declares: "No prescription shall lie in favor of a co-owner or co-heir so long as he expressly or impliedly recognizes the co-ownership".

Furthermore, the disputed parcel of land being registered under the Torrens System, the express provision of Act No. 496 that "(n)o title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession" is squarely applicable. Consequently, prescription will not lie in favor of Afable as against the petitioners who remain the registered owners of the disputed parcel of land.

It is argued however, that as to the petitioners Emma, Luz and Nelda who are not the registered co-owners but merely represented their deceased mother, the late Nenita Bailon, prescription lies. Respondents bolster their argument by citing a decision of this Court in Pasion v. Pasion [G.R. No. L-15757, May 31, 1961, 2 SCRA 486, 489] holding that "the imprescriptibility of a Torrens title can only be invoked by the person in whose name the title is registered" and that "one who is not the registered owner of a parcel of land cannot invoke imprescriptibility of action to claim the same".

Reliance on the aforesaid Pasion case is futile. The ruling therein applies only against transferees other than direct issues or heirs or to complete strangers. The rationale is clear:

If prescription is unavailing against the registered owner, it must be equally unavailing against the latter's hereditary successors, because they merely step into the shoes of the decedent by operation of law (New Civil Code, Article 777; Old Civil Code, Article 657), the title or right undergoing no change by its transmission mortis causa. [Atus, et al., v. Nunez, et al., 97 Phil. 762, 764].

The latest pronouncement of this Court in Umbay v. Alecha [G.R. No. 67284, March 18, 1985, 135 SCRA 427,

429], which was promulgated subsequent to the Pasion case reiterated the Atus doctrine. Thus:

Prescription is unavailing not only against the registered owner but also against his hereditary successors, because they merely step into the shoes of the decedent by operation of law and are merely the continuation of the personality of their predecessor-in-interest. [Barcelona v. Barcelona, 100 Phil. 251, 257].

Laches is likewise unavailing as a shield against the action of herein petitioners.

Well-settled in this jurisdiction are the four basic elements of laches, namely: (1) conduct on the part of the defendant or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute 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 [Go Chi Gun, et al. v. Co Cho, et al., 96 Phil. 622 (1955)].

While the first and last elements are present in this case, the second and third elements are missing.

The second element speaks of delay in asserting the complainant's rights. However, the mere fact of delay is insufficient to constitute laches. It is required that (1) complainant must have had knowledge of the conduct of defendant or of one under whom he claims and (2) he must have been afforded an opportunity to institute suit. This court has pointed out that laches is not concerned with the mere lapse of time. Thus:

Laches has been defined as the failure or neglect, for an unreasonable length of time to do that which by exercising due diligence could or should have been done earlier; it is 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. [Tijam, et al., v. Sibonghanoy, G.R. No. L-21450, April 25, 1968, 23 SCRA 29, 35; Tejido v. Zamacoma, G.R. No. L-63048, August 7, 1985, 138 SCRA 78, 90].

The doctrine of 'laches' or of 'stale demands' is based upon grounds of public policy which requires for the peace of society, the discouragement of stale claims and unlike the statute of limitations, is not a mere question of time but is principally a question of inequity or unfairness of permitting a right or claim to be enforced or asserted". [Tijam v. Sibonghanoy, supra. p. 35]. [Underscoring supplied.]

It must be noted that while there was delay in asserting petitioners' rights, such delay was not attended with any knowledge of the sale nor with any opportunity to bring suit. In the first place, petitioners had no notice of the sale made by their eldest sister. It is undisputed that the petitioner co-owners had entrusted the care and management of the parcel of land to Rosalia Bailon who was the oldest among them [TSN, July 27, 1983, p. 14]. In fact, Nicanor Lee, a son of Rosalia, who was presented as a witness by the plaintiffs-petitioners, testified on cross-examination that his mother was only the administrator of the land as she is the eldest and her brothers and sisters were away [TSN, October 5, 1983, p. 15]. Indeed, when Delia Bailon-Casilao left Sorsogon in 1942 after she got married, it was only in 1981 that she returned. Sabina, on the other hand, is said to be living in Zamboanga while Bernabe who left for China in 1931 has not been heard from since then. Consequently, when Rosalia, from whom the private respondent derived his title, made the disputed sales covering the entire property, the herein petitioners were unaware thereof.

In the second place, they were not afforded an opportunity to bring suit inasmuch as until 1981, they were kept in the dark about the transactions entered into by their sister. It was only when Delia Bailon-Casilao returned to Sorsogon in 1981 that she found out about the sales and immediately, she and her co-petitioners filed the present action for recovery of property. The appellate court thus erred in holding that "the petitioners did nothing to show

interest in the land". For the administration of the parcel of land was entrusted to the oldest co-owner who was then in possession thereof precisely because the other co-owners cannot attend to such a task as they reside outside of Sorsogon where the land is situated. Her co-owners also allowed her to appropriate the entire produce for herself because it was not even enough for her daily consumption. [TSN, October 5, 1983, pp. 17-18]. And since petitioner was the one receiving the produce, it is but natural that she was the one to take charge of paying the real estate taxes. Now, if knowledge of the sale by Rosalia was conveyed to the petitioners only later, they cannot be faulted for the acts of their co-owner who failed to live up to the trust and confidence expected of her. In view of the lack of knowledge by the petitioners of the conduct of Rosalia in selling the land without their consent in 1975 and the absence of any opportunity to institute the proper action until 1981, laches may not be asserted against the petitioners.

The third element of laches is likewise absent. There was no lack of knowledge or notice on the part of the defendant that the complainants would assert the right on which they base the suit. On the contrary, private respondent is guilty of bad faith in purchasing the property as he knew that the property was co-owned by six persons and yet, there were only two signatories to the deeds of sale and no special authorization to sell was granted to the two sellers by the other co-owners.

Even as the land here was misrepresented in the deeds of sale as "unregistered", the truth was that Afable already had notice that the land was titled in the name of six persons by virtue of the Certificate of Title which was already in his possession even before the sale. Such fact is apparent from his testimony before the court a quo:

COURT:

Q: From whom did you get the certificate of Title?

A: When it was mortgaged by Ponciana Aresgado.

Q: It was mortgaged to you before you bought it?

A: Yes, Your Honor. (TSN, March 5, 1984, p. 12) When cross-examined, he stated:

Q: Mr. Witness, the original Certificate of Title was given to you in the year 1974, was it not?

A: 1975.

Q: In 1975, you already discovered that the title was in the name of several persons, is it not?

A: Yes, sir.

Q: When you discovered that it is in the name of several persons, you filed a case in court for authority to cancel the title to be transferred in your name, is it not?

A: Yes, sir.

Q: And that was denied by the Court of First Instance of Sorsogon because there was only one signatory to the deed of sale instead of six, was it not?

A: Not one but two signatories.

[Decision of the Regional Trial Court of Sorsogon, Rollo, p. 35]

Such actual knowledge of the existence of other co-owners in whose names the lot subject of the sale was registered should have prompted a searching inquiry by Afable considering the well-known rule in this jurisdiction that:

. . . a person dealing with a registered land has a right to rely upon the face of the Torrens certificate of title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry. [Gonzales v. IAC and Rural Bank of Pavia, Inc., G.R. No. 69622, January 29, 1988].

Moreover, the undisputed fact is that petitioners are relatives of his wife. As a genuine gesture of good faith, he should have contacted the petitioners who were still listed as co-owners in the certificate of title which was already in his possession even before the sale. In failing to exercise even a minimum degree of ordinary prudence required by the situation, he is deemed to have bought the lot at his own risk. Hence any prejudice or injury that may be occasioned to him by such sale must be borne by him.

Indeed, aware of the flaws impairing his title, Afable went to the herein petitioner Delia Bailon-Casilao, asking the latter to sign a document obviously to cure the flaw (TSN, July 27, 1983, p. 6). Later, he even filed a petition in the Court of First Instance to register the title in his name which was denied as aforesaid.

It may be gleaned from the foregoing examination of the facts that Celestino Afable is not a buyer in good faith. Laches being an equitable defense, he who invokes it must come to the court with clean hands.

WHEREFORE, the petition for certiorari is hereby GRANTED, the challenged decision of the Court of Appeals is SET ASIDE, and the decision of the trial court is REINSTATED.

SO ORDERED.

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

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