

**DIVINA J. VICTORIANO, PETITIONER, VS. HON. COURT OF APPEALS
AND HEIRS OF CRISPIN ARCILLA, REPRESENTED BY LADISLAWA A.
MASIGLA, RESPONDENTS.**

G.R. No. 87550, February 11, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition seeks the review on certiorari of the decision of the Court of Appeals dated January 10, 1989, which reversed the ruling of the trial court declaring petitioner Divina J. Victoriano (hereafter "Victoriano") as owner of Lot 897, and instead, declaring the heirs of Crispin Arcilla, herein represented by Ladislawa A. Masigla (hereafter "Masigla") as true owners thereof. The dispositive portion of the Court of Appeals' decision provides as follows:

"WHEREFORE, in view of the foregoing, the judgment appealed from is hereby reversed and set aside. In lieu thereof, judgment is hereby rendered:

"1. Declaring plaintiffs-appellants as the owners of Lot #897 located in Barangay Santol, Tanza, Cavite;

"2. Ordering defendant-appellee to execute the proper deed of sale to enable plaintiffs-appellants to transfer the title to the property in their name and in case of failure of defendant-appellee to do so within 30 days from finality hereof, the Register of Deeds of Cavite is hereby directed to cancel Transfer Certificate of Title No. T-124731 in the name of defendant-appellant and issue a new one in the name of plaintiffs-appellants.

"SO ORDERED." (pp. 21-22, Rollo)

The facts of the case, as obtained from the Court of Appeals' decision, are as follows:

Masigla was in possession of Lot 897 which is situated in Barangay Santol, Tanza, Cavite. In 1987, her son, Domingo Masigla entered the adjoining property, Lot 898, owned by Victoriano, and prohibited her and her tenants from cultivating the land. Victoriano filed a criminal case for theft, malicious mischief, usurpation and squatting against Domingo. In the process, Victoriano discovered that title to Lot No. 897 was registered in the name of her grandfather, Cirilo Tamio (TCT No. 1648). She secured an extrajudicial partition from all the heirs of Cirilo Tamio, who thus waived their shares in the lot in her favor. Victoriano thereafter secured a title (TCT No. 124731) to said lot in her name.

The heirs of Crispin Arcilla, represented by Masigla, filed a complaint in court (RTC-Cavite, Trece Martires, Br. 23) for reconveyance of Lot No. 897, claiming that their father, Crispin Arcilla, had bought the lot from Cirilo Tamio, and that they had been in possession thereof since 1927. Masigla could not, however, present a deed of sale evidencing the transfer of the property from Cirilo Tamio to Crispin Arcilla. All that she and her heirs could present were a "Sinumpaang Salaysay" dated January 20, 1927, wherein the children of Cirilo Tamio authorized their mother to sell Lot 897 to Crispin Arcilla; the owner's duplicate of the title to the property in the name of Cirilo Tamio and real property tax receipts and tax declarations, the earliest of which is 1944. Masigla claimed that taxes were being paid since 1927 but the receipt had been lost or destroyed.

Victoriano on the other hand, presented the Transfer Certificate of Title in her name (TCT 124731), a tax declaration and a receipt dated March 30, 1983 (p. 18, Rollo).

In a decision dated October 5, 1987 (p. 61, Rollo), the trial court ruled in favor of Victoriano, declaring her the lawful and absolute owner of Lot No. 897.

Masigla appealed, assigning as errors, the failure of the trial court to consider Masigla's evidence submitted in support of her claim for reconveyance and rendering instead a decision allowing recovery of possession in favor of Victoriano, based on the allegation and evidence in her counterclaim.

The Court of Appeals reversed the decision of the trial court and declared Masigla and her co-heirs as true owners of the property. In the resolution dated March 17, 1989, it denied Victoriano's motion for reconsideration.

Victoriano filed this petition on the following grounds:

"1. The respondent Court of Appeals abused its discretion by deciding this case based on the principles of the 'Statute of Frauds' and then on the principle of 'laches' which principles were never raised in the lower court.

"2. The respondent Court of Appeals decided questions of substance in a way not in accord with law or with the applicable decisions of the Supreme Court." (p. 9, Rollo)

We uphold the Court of Appeals' decision.

The trial court's ruling was anchored solely on the failure of Masigla to prove transfer of ownership from Cirilo Tamio to their predecessor-in-interest, Crispin Arcilla, because of the absence of a deed of sale.

Apparently, the trial court relied on the Statute of Frauds principle which requires "an agreement for the sale x x x" of real property or an interest therein (Art. 1403(e)) to be in writing. It overlooked the fact that this principle applies only to executory contracts. As correctly observed by the Court of Appeals:

'The Statute of Frauds is applicable only to executory contracts, not to contracts either totally or partially performed. Thus, where a contract of sale is alleged to be consummated, it matters not that neither the receipt for the consideration nor the sale itself was in writing, because oral evidence of the alleged consummated sale is not forbidden by the Statute of Frauds and may not be excluded in court. (Iñigo vs. Estate of Maloto, 21 SCRA (1901) 246)'

"Thus, the testimony of plaintiffs-appellants on this point is admissible to prove the existence of the sale, it being of record that the land has been in their possession since 1927." (CA Decision, pp. 19-20, Rollo)

Performance of the contract, whether total or partial, takes it out of the operation of the statute (Gomez v. Salcedo, 26 Phil. 485; Hernandez v. Andal, 78 Phil. 196). This performance, necessarily must be duly proved. And it is in this light that Masigla pointed out the circumstances to show performance on the contract or transfer of ownership, as follows:

"1. Plaintiffs-appellants are in possession of the owner's copy of the title;

"2. They have been undisturbed in their possession of the land for more than fifty years;

"3. They are in possession of a 'Sinumpaang Salaysay' wherein the children of Cirilo Tamio authorized their mother to sell, Lot 897 specifically to Crispin Arcilla, the predecessor of plaintiffs-appellants;

"4. They introduced improvements on the land;

"5. They incurred expenses for the resurvey of the land when they had the title in the name of Cirilo Tamio reconstituted (TSN p. 30, Nov. 29, 1983);

"6. The tax declarations over the property were in the name of plaintiff's father;

"7. Plaintiffs-appellants have been religious in paying taxes over the property;

"8. The immediate heirs of Cirilo Tamio, that is, his wife and children, never contested plaintiffs-appellants' possession of the land, nor did they set up any claim over the property. This behavior negates any pretense that there was no sale in favor of Crispin Arcilla." (ibid., p. 20, Rollo)

In ruling in favor of Masigla, the Court of Appeals mentioned the principle of the Statute of Frauds merely to point out the trial court's improper reliance thereon. It was not raised as a new issue. Precisely, the inapplicability of the Statute of Frauds allows the filing of Masigla's complaint seeking the reconveyance of property, which was erroneously registered in Victoriano's name.

Likewise, We agree with the Court of Appeals when it barred Victoriano's action to recover possession of Lot No. 897, premised on the principle of laches. Defined as "such neglect or omission to assert a right taken in conjunction with the lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity," (Heirs of Batiog Lacamen v. Heirs of Laruan, G.R. No.L-27088, July 31, 1975, 65 SCRA 125) the Court of Appeals observed:

"However, defendant-appellee disregards the fact that plaintiffs-appellants have been in continuous possession of the land since 1927 and they were not ousted therefrom by the grandfather of defendant-appellee who sold the property to them, nor by the immediate successors of the seller. It was only after decades had passed that it was discovered that the sale was never registered or the title cancelled and transferred in the name of plaintiffs-appellants. True, titled lands cannot be acquired by prescription, however, defendant-appellee's inaction for more than 50 years now bars her from acquiring possession of the land on the ground of laches." (p. 25, Rollo)

Again, the principle of laches was mentioned to refute Victoriano's claims that "no title to registered land, in derogation to that of the registered owner shall be acquired by prescription or adverse possession (Sec. 46, Act No. 496, now Sec. 47 of PD No. 1529). Thus, the Court of Appeals stated:

"At this state, therefore, respondents-appellants' claim of absolute ownership over the land cannot be countenanced. It has been held that while a person may not acquire title to the registered property through continuous adverse possession, in derogation of the title of the original registered owner, the heir of the latter, however, may lose his right to recover back the possession of such property and the title thereto, by reason of laches." (p. 25, Rollo)

ACCORDINGLY, the petition is DENIED and the decision of the Court of Appeals dated January 10, 1989 as well as its Resolution dated March 17, 1989 declaring the heirs of Crispin Arcilla, represented by Ladislawa A. Masigla as the owners of Lot No. 897 are AFFIRMED.

SO ORDERED.

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

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