

**MARCELINA SAPU-AN, ESTER ABIERA, FULGENCIO SOLAMILLO,
ROGELIO ABIERA, CARMELITA ABIERA AND ESLIE ABIERA,
PETITIONERS, VS. THE HON. COURT OF APPEALS, CALIXTO
TINGCAY, EUFRONIA EN...**

G.R. No. 91869. October 19, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

The subject of this dispute is a 786 sq. m. lot situated in Valencia, Negros Oriental. It has been occupied since the last World War by both the petitioners and the private respondents, who now mutually assert adverse claims of exclusive ownership over the property.

The petitioners built their house near the center of the lot while the private respondents built their house near the western boundary. Both parties made tax payments on the lot in the name of Alfonsa Ohoy and caused separate surveys to be made on the land.

The petitioners claim the land by virtue of separate sales made by the original owners, namely, Alfonsa Ohoy, Luciana Ohoy, Porfirio Ohoy and Maria Ohoy, to Candida Favor, Ceriaco Abiera, Josefa Abiera, and Roberto (or Edilberto) Abiera, the petitioners' predecessors-in-interest.

For their part, the private respondents claim the same land by inheritance from their mother, Alfonsa Ohoy, who had in turn acquired it from her mother after the land had been partitioned among her children.

Both the petitioners and the private respondents say they have occupied and farmed the disputed land without objection from each other. The petitioners aver that it was they who gave permission to Calixto Tingcay to build his house on the land after World War II. The private respondents contend that it was they who gave permission to petitioner Marcelina Sapu-an to build her house on the land, also after World War II.

In 1962, the petitioners allegedly demolished their old house and began constructing a bigger one over the private respondent's objections. When their protests were ignored, the private respondents sued the petitioners for the recovery of the land, with damages.

At the trial, the plaintiffs presented four witnesses, among them Zacarias Villegas, who testified that his mother, Maria Ohoy, did not own any share in the disputed lot and that it belonged exclusively to Alfonsa. He also said that he lived with the Tingcays for some time and that it was really Marcelina Sapu-an who requested permission to live on the land.[1]

They also submitted in evidence (1) tax declarations in the name of Alfonsa Ohoy from 1906 to 1949 and in the name of Calixto Tingcay for 1962; (2) receipts of tax payments made by them for the period from 1953 to 1979; (3) two private documents dated December 15, 1964, and March 18, 1947, respectively, evidencing the sale of coconut trees planted thereon, to third persons; (4) a sworn statement on the current and fair value of the real

property; and (5) a survey of the land made by a geodetic engineer.[2]

The defendants, for their part, presented two witnesses, Josefa Abiera, sister-in-law of Marcelina Sapu-an, and Ester Abiera Solamillo, one of the petitioners.

Josefa Abiera testified that she witnessed the execution and signing of the deed of sale disposing of Alfonsa's and Porfirio's shares in the land, on April 2, 1943, for a consideration of P25.00. Luciana Ohoy also sold her shares in the land to Josefa's parents before the war broke out. Josefa was already thirty years old at the time this earlier sale took place. She further declared that Atilano sold Maria Ohoy's share to her and Edilberto Abiera for P5.00 during the evacuation of Valencia.[3]

Ester Solamillo testified that her grandparents, Candida Favor and Ceriaco Abiera, her father Roberto, and her aunt Josefa, purchased the disputed land in separate transactions with Luciana, Alfonsa and Porfirio Ohoy, and Maria Ohoy, through her son Atilano. She also said that the defendants were the ones who introduced the improvements on the land and enjoyed its fruits. Sometime in 1950, her father, Roberto Abiera, sought the cancellation of the name of Alfonsa Ohoy in the tax declaration and the entry of their names therein, but the treasurer's office deferred action, pending the submission of supporting papers.[4]

The defendants also presented (1) two private deeds of sale in their favor; (2) receipts of tax payments on the land by Teopista and Ester Abiera; and (3) a survey contract of the land prepared by a surveyor.[5]

After considering the testimonial and documentary evidence of the parties, the trial court[6] disposed as follows:

WHEREFORE, and in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants, declaring the plaintiffs as the absolute owners of the land in question described in paragraph 4 of the Complaint, original and amended, and ordering the defendants to leave and vacate the property in question within thirty days upon the finality of this decision.

On appeal, the decision was affirmed by the respondent court.[7] The petitioners then filed a motion for reconsideration, raising therein the sole issue of prescription of the private respondents' cause of action. This motion was denied by the appellate court, prompting this petition.

The petitioners now invoke three grounds for the allowance of the petition.

First, they contend that the respondent court failed or refused to apply to this case the "equipoinderance of evidence" rule, which states:

When the scale shall stand upon an equipoise and there is nothing in the evidence which shall incline it to one side or the other, the court will find for the defendant.[8]

Under this principle, the plaintiff must rely on the strength of his evidence and not on the weakness of the defendant's claim. Even if the evidence of the plaintiff may be stronger than that of the defendant, there is no preponderance of evidence on his side if such evidence is insufficient in itself to establish his cause of action.[9]

The petitioners' point is that on the whole, their evidence should be given more credence than that of the respondents.

The general rule in civil cases is that the party having the burden of proof must establish his case by a preponderance of evidence. By "preponderance of evidence" is meant that the evidence as a whole adduced by one side is superior to that of the other.[10]

In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their

means and opportunity of knowing the facts on which they are testifying, the nature of such facts, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility as far as the same may legitimately appear at the trial. The court may also consider the number of witnesses, although the preponderance is not necessarily with the greatest number.[11]

It is settled that matters of credibility are addressed basically to the trial judge who is in a better position than the appellate court to appreciate the weight and evidentiary value of the testimonies of witnesses who have personally appeared before him.

Significantly, both the trial court and the respondent court found the credibility of Josefa Abiera to be highly questionable. As the respondent court observed:

Appellants argue that the nullity of the said deed was not sufficiently established by the appellees nor had the testimony of Josefa Abiera as to the due execution of the same been properly impeached. A re-examination of the records of this case strengthens the opinion of this Court that the testimony of Josefa Abiera as to the fact of sale of the alleged shares of Porfirio and Alfonsa Ohoy over the subject lot and the due execution of the purported document evidencing the said sale cannot be given full credence. Not only had the testimony of the said witness been successfully impeached by the appellees as regards the alleged sale of the shares of Luciana and Maria Ohoy over the subject lot by a proper showing that Luciana could not have sold her alleged share in 1936 as testified to by Josefa Abiera (pp. 41-42; t.s.n., May 13, 1982, hearing) because Luciana died in 1921 as evidenced by her death certificate and that Josefa's testimony to the effect that Maria Ohoy's son, Atilano Villegas sold Maria's share over the said lot during the war was belied by the uncontroverted evidence for the appellees that Atilano migrated to Dipolog, Mindanao, during the war and that the circumstances under which the sale was allegedly perfected rendered Josefa's testimony highly improbable; e.g. she never met Atilano before the alleged sale took place, no written authority to sell from Maria Ohoy was presented by the man who introduced himself as Atilano Villegas and most importantly, all their neighbors evacuated to another place in the morning of the day when the alleged sale took place for fear of the Japanese forces who were headed their place but Josefa and Roberto Abiera, the only ones left in the place, still found time in the afternoon of that day to perfect a contract of sale with a complete stranger; the unquestionable and substantial interest of Josefa Abiera over the subject lot as co-owner thereof had also been shown by the appellees as follows:

"ATTY. BRIONES:

Q. Mrs. Abiera, when you last declared in this case on July 25, 1977, and in the latter part of your testimony, you told the Honorable Court that the property in question is owned in common between you and your brothers Roberto, Teopisto and Pablo, all surnamed Abiera. Now, how much of the entire property is owned between you and your aforesaid brother Roberto, Pablo and Teopisto?

WITNESS:

A. 778 square meters.

Q. I am not asking you on specific figures. I am asking you on the proportion how much of the entire property is owned by you only including your brothers Roberto, Teopisto and Pablo?

A. Three-fourths for the four of us.

Q. All right, now, the remaining one-fourth (1/4), who owns the same?

A. Maria Ohoy.

Q. How about ... What happened to that share of Maria Ohoy?

A. It was sold.

Q. Sold to whom?

A. It was sold to me and with my brother Roberto.

Q. Which sale was evidenced by Exhibit "5" of this case, the document executed by Atilano Villegas?

A. Yes, sir."

In view of Josefa Abiera's dubious credibility and her inclination in favor of the cause for the appellants, the uncorroborated testimony of Josefa Abiera cannot lend validity to the purported deed of sale. (p. 13, t.s.n., May 13, 1982, hearing)

It is true that the genuineness and due execution of the two deeds of sale presented in evidence by the petitioners were not denied by the private respondents under oath, and that under Rule 8, Section 8, of the Rules of Court, the "genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them." However, this rule applies only to the parties to the document and not, in the case at bar, to the private respondents. The reason is that they were not parties to the deeds of sale but merely the heirs of the alleged vendors.

It follows that the unauthenticated deeds of sale cannot serve as valid bases for the petitioners' claim of ownership over the land in question.

This Court has held that a mere tax declaration or a tax assessment, such as the one presented by the respondents, does not by itself give title and is of little value in proving one's ownership.[12] It must be noted, nevertheless, that the conclusion of the respondent court was not premised on such declarations alone for, as it correctly held:

Moreover, the acts of ownership exercised by the appellees over the subject lot such as the selling of a number of trees to third parties with right of repurchase without objection from the appellants is very strong evidence in appellee's favor that they indeed are the owners of the subject lot and possessed it as such.

The petitioners also submit, as their second and third grounds, that the complaint is bound by the principle of acquisitive prescription and the statute of limitations.

Their contention is that their evidence shows they possessed the subject land in good faith and with just title and they consequently validly acquired the disputed lot pursuant to Article 1134 of the Civil Code, providing as follows:

Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

The said period of ten years must, so they maintain, be counted at the earliest from April 2, 1943, when Exh. "4" was executed, or at the latest from the year 1946, when they commenced possession of the lot in question. Since then and up to the filing of the complaint by the private respondents on November 20, 1964, a period of at least eighteen years had elapsed, making the action definitely tardy under the statute of limitations.

The respondent court held that the petitioners' failure to raise the defense of prescription of the respondents' cause of action precluded them from raising it for the first time on appeal. Demurring, the petitioners agree that this issue was raised in their answer to the complaint when they alleged:

2. That from the time this parcel of land was acquired by the predecessors-in-interest of the defendants, their possession over the same which was continued by the latter, was continuous, public, peaceful, and in the concept of owner, until this unwarranted civil action by plaintiffs disturbed their lawful possession.

They also invoke *Gicano v. Gegato*,[13] where the Court observed that:

What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record; either in the averments of the plaintiff's complaint, or otherwise established by the evidence.

The petitioners seem to have confused the terms "acquisitive prescription" and "extinctive prescription." These concepts are distinguishable as follows:

Adverse possession of real property for the requisite period confers title as effectually as any paper title, with the exception that such a title cannot be acquired as against a title registered under the provisions of the Land Registration Act. The statute of limitations is merely a bar to a right of action and does not operate as a transfer of title at all. The statute of limitations is, therefore, new matter, which must be specially pleaded.[14]

Ordinary acquisitive prescription is governed by Article 1134 of the Civil Code, quoted above. It requires possession of things in good faith and with just title during the time fixed by law. The good faith of the possessor consists in the reasonable belief that the person from whom he received the thing was the owner thereof and could transmit his ownership. For the purpose of prescription, there is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right. It is well-settled that possession, to constitute the foundation of a prescriptive right, must be adverse and under a claim of title. Possession by license or mere tolerance does not give rise to acquisitive prescription.

The above requirements have not been satisfactorily met by the petitioners. They could not have possessed the land in good faith and with just title because as aptly observed by the respondent court:

A scrupulous examination of the evidence presented by the parties would show that the plaintiffs and their mother Alfonsa Ohoy have actually resided in the land in question in the house of Alfonsa Ohoy. That Alfonsa Ohoy had a house in the land in question as early as 1906 is shown by Tax Declaration No. 2824 (Exh. "A" and "16"). At the back side or page 2 of the said tax declaration under the heading "Building and Other Structures" the entry, "Una casa caña y nipa" valued at P5.00. Plaintiffs' evidence shows that plaintiffs lived with their mother in the land in question since birth until they evacuated to the mountains during the Second World War; that after the war they returned to the land in question. The fact that plaintiffs have a house in the land in question is admitted by defendant Ester Abiera. Thus, in her testimony on direct examination by their counsel, Ester Abiera unguardedly blurted out that the plaintiffs have a house in the lot in question even if the question asked was with respect to the defendants' having a house in the said lot.

The petitioners' contention that the private respondents' cause of action has already prescribed is also untenable. Actions for the recovery of land are real actions. Extinctive prescription of such kind of actions is governed by Article 1141 which provides that:

Art. 1141. - Real actions over immovables prescribe after thirty years. (Emphasis supplied)

The private respondents' submission that their cause of action arose in 1960, when they objected to the expansion being made by the petitioners, is immaterial. As of now, the 30-year prescriptive period has not yet expired.

Moreover, what the petitioners alleged, in their answer was not prescription of the plaintiffs' cause of action but their own alleged ownership over the lot in question by virtue of acquisitive prescription. That claim was rejected by the respondent court when it recognized the private respondents as the real owners of the land.

We find that this case turns mainly on questions of fact, which have been correctly appreciated by both the trial court and respondent court. Their conclusions in favor of the private respondents are based on the evidence of record and there is no reason for this Court to reverse or modify them. Absent a convincing showing that the challenged decision was reached arbitrarily or in disregard of such evidence, our clear and only duty on appeal is

to uphold the courts below. We so affirm.

WHEREFORE, the petition is DENIED, with costs against the petitioners. It is so ordered.

Griño-Aquino and Bellosillo, JJ., concur.

Padilla and Medialdea, JJ., on leave.

[1] TSN, March 4, 1966, pp. 29-30; TSN, March 3, 1966, pp. 5-7.

[2] Exhibits "B" - "L."

[3] TSN, March 3, 1980, pp. 3-4, 9; TSN, May 13, 1982, pp. 38-40; Exh. "5"; TSN, May 13, 1982, pp. 41-43.

[4] TSN, November 17, 1983, pp. 181-182, 186-187; TSN, December 7, 1983, p. 204.

[5] Exhibits "4" - "15."

[6] Decision, penned by Judge Temistocles B. Diez, Regional Trial Court, 7th Judicial Region, Br. 37, Dumaguete City; Records, pp. 350-374.

[7] Gonzaga-Reyes, Minerva P., J., ponente; Kapunan, Santiago M. and Francisco, Ricardo J., JJ., concurring; promulgated on June 29, 1989; rollo, pp. 21-42.

[8] Moran, Comments on the Rules of Court, 1980 ed., Vol. 6, p. 134.

[9] Ibid., p. 135.

[10] Id., p. 134.

[11] Section 1, Rule 133, Revised Rules of Court.

[12] Casimiro v. Fernandez, 9 Phil. 562; Province of Camarines Sur v. Director of Lands, 64 Phil. 600.

[13] 157, SCRA 140.

[14] Recoletos v. Crisostomo, 32 Phil. 427.

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