

**FLORENCIA DE LA CALZADA--CIERRAS, ANIANA DE LA CALZADA,
FAUSTINA DE LA CALZADA, POR-FERIA DE LA CALZADA,
CONCORDIA DE LA CALZADA-DELANTAN, APOLINARIO DE LA
CALZADA, FELISA DE LA...**

G.R. No. 95431. August 07, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is a petition for review on certiorari of the decision promulgated on June 26, 1990 by the Court of Appeals in CA-G.R. No. 21130, reversing the decision of the Regional Trial Court of Cebu, 7th Judicial Region, Branch X, in Civil Case No. 20748, which declared petitioners' predecessor-in-interest, the late Ireneo De la Calzada, the lawful owner of the disputed property, and ordered the restoration of the title in his name.

As culled from the decision of the Court of Appeals, the antecedent facts are as follows:

The subject of the controversy is a parcel of land situated in Pakingi, Minglanilla, Cebu, known as Lot 4362 registered and owned under TCT No. 3111 (Exh. A) by Ireneo De la Calzada who died single and without issue on November 27, 1930 but left a Last Will and Testament dated June 14, 1930 instituting his brothers, Vicente and Miguel, and sister Sivera, all surnamed De la Calzada, predecessors of the plaintiffs (now petitioners), as the sole heirs to his estate (Exhs. J & J-1).

The disputed land appears to have been sold to Rosendo De la Calzada for P2,000.00 on March 23, 1930 or three months earlier (Exh. 1-D-2. p, 157, Records). After the sale, Rosendo took possession of the lot and had been enjoying it since then.

On September 5, 1938, Rosendo De la Calzada executed a Declaration of Heirs and Sale, adjudicating unto himself Lot No. 4362 as sole and only heir of Ireneo De la Calzada, and selling at the same time one-half (1/2) of the property to Felix Sasan as evidenced by an Entry at the back of TCT No. 3111. As a result thereof, TCT No. 21530 was issued on September 2, 1969 (p. 158, Records) in favor of Rosendo De la Calzada (Exh. 1).

On September 3, 1969, the defendants (now respondents) as heirs of Rosendo De la Calzada executed a Deed confirming the sale executed by their parents in favor of Felix Sasan (Exh. 3).

Upon letter-request dated October 26, 1976 (Exh. B-2), the Register of Deeds of Cebu issued separate titles for Lot 4362 - TCTs Nos. 39625 and 39626 in the names of Aventino Sasan and Rosendo De la Calzada, respectively (Exhs. C and D). A deed of exchange was however executed between them resulting in the issuance of Certificates of Title Nos. 43955 in the name of Aventino C. Sasan and 43954 in the name of Rosendo De la Calzada (Exhs. E and F).

The foregoing transaction allegedly became known to the plaintiffs as heirs of Ireneo De la Calzada's instituted heirs (his brothers and sister – Vicente, Miguel and Sivera De la Calzada) when they were furnished by the Register of Deeds on June 1, 1981 with a copy of Certificate of Title No. RT-3111 (T-3671) and the other related documents. On July 21, 1981, they commenced the present action for the declaration of the inexistence

of the allegedly fraudulent contracts and damages.

The defendants denied the allegation of fraud. They maintained that Lot No. 4362 was not included in the will of Ireneo De la Calzada, because prior to its execution on June 11, 1930, he had already sold the property to Rosendo De la Calzada on March 23, 1930, as evidenced by a Deed of Sale of the same date (Exh. 1-D-2).

Defendants further maintained that the document executed by Rosendo De la Calzada on September 5, 1938 was not a Declaration of Heirs and Sale but only a Deed of Sale affecting a one-half (1/2) portion of Lot No. 4362 (Exh. 1-D) and that since then up to the present, the defendants and their predecessors have been in possession of the land, publicly, notoriously, continuously, peacefully and in the concept of owners, having declared the same for taxation and religiously paying the taxes up to the present time. Rosendo De la Calzada died on January 3, 1958 (Exh. 4).

Defendants further alleged that the plaintiffs are living near the land in question and had known for a fact that: (1) it had been sold by Ireneo De la Calzada to Rosendo De la Calzada; (2) it has been in the possession of the defendants and their predecessor-in-interest for the last 50 years; and (3) some of the predecessors of plaintiffs had been tenants of the land, giving shares of the produce to the defendants' predecessors-in-interest even before the last World War, so that the plaintiffs are barred by all kinds of estoppel from filing their unmeritorious and malicious complaint.

On May 8, 1985, the trial court rendered judgment, the dispositive portion of which reads:

"WHEREFORE, and in view of the foregoing, judgment is hereby rendered in favor of the plaintiffs and against the defendants by --

"1. Declaring as non-existent, null and void ab initio, the documents of alleged Declaration of Heirs and Sale (Exhibits '1-C,' '1-D,' '1-D-1,' '1-D-2,' and Exhibit '3' for the defendants), the same being patently fictitious and simulated:

"2. Ordering the Register of Deeds of the Province of Cebu to reinstate and/or restore Transfer Certificate of Title No. RT-3111 (T--3671) in the name of Ireneo De la Calzada, marked as Exhibit 'A' for the plaintiffs;

"3. Ordering the Register of Deeds of Cebu Province to cancel Certificates of Title Nos. 43954 and 43955. Exhibits 'C' and 'F,' respectively, for the plaintiffs:

"4. Ordering the defendants to deliver and restore possession to the plaintiffs of the land in question;

"5. Ordering the defendants to pay plaintiffs the sum of P2,400.00 per year from possession thereof up to the time of delivery and/or restoration of the property to the plaintiffs as uncollected income of the property:

"6. Sentencing the defendants to pay the plaintiffs jointly and severally the sum of P20,000 as moral and exemplary damages: the sum of P15,000.00 as attorney's fees: the sum of P2,000.00 as litigation expenses, plus costs.

"Defendants' counterclaim is hereby DISMISSED." (pp. 21-22, Rollo.)

The defendants (now private respondents) appealed. On June 26, 1990, the Court of Appeals reversed and set aside the trial court's decision mainly on the ground that the plaintiffs were guilty of laches in failing to prosecute their claim earlier. The dispositive portion of the judgment reads:

"WHEREFORE, the judgment appealed from is hereby REVERSED. Plaintiffs' [petitioners'] complaint is ordered DISMISSED with costs against the plaintiffs." (p. 30, Rollo.)

The appellate court relied on this Court's pronouncement in the case of *Tambot vs. Court of Appeals*, 181 SCRA 202, 208, that:

"x x x while a person may not acquire title to 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. Much more should it be in the instant case where the possession of nearly 30 years or almost half a century now is in pursuance of sale which regrettably did not bear the approval of the executive authority but which the vendor never questioned during his lifetime. x x x." (Underscoring supplied.)

Their motion for reconsideration having been denied on September 10, 1990, the petitioners seek a review under Rule 45 of the Rules of Court, raising the following issues:

1. Whether or not the Spanish document Escritura de Venta Absoluta y Perpetua, Exhibit 1-D, not having been inscribed or annotated on the Certificate of Title. Exhibit 'A,' binds the land under our Torrens System of Registration under Act 496, as amended by Presidential Decree No. 1529: and
2. Whether or not petitioners' right or cause of action is defeated by laches, regardless of their relationship as being close or near relatives.

The issue in this case is whether or not the Court of Appeals erred in dismissing the petitioners' complaint for recovery of the disputed land for laches on their part.

The answer is no.

Petitioners contend that as the deed of sale of the registered land in question which Ireneo De la Calzada made in favor of Rosendo De la Calzada was unregistered, it was binding only as a contract between the parties. Section 50 of the Land Registration Act (Act No. 496) provides:

"Sec. 50. x x x But no deed, mortgage, lease or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act the registration shall be made in the office of register of deeds for the province or provinces or city where the land lies."

The Court of Appeals noted that:

"x x x. While there appears at the back of the title [TCT RT-3111 (T-3671)] an Entry No. 7529-V?7.D.B of a 'Declaration of Heirs and Sale' executed by Rosendo F. De la Calzada for having declared themselves as the heirs of the deceased Ireneo De la Calzada and sold the same in favor of Felix Sasan married to Maria De la Calzada for the parcel of land herein described with all the existing improvements thereon in the amount of P1,000.00, as per document on file and acknowledged before Notary Public Gregorio Besalo of Minglanilla, Cebu, and entered into his Notarial Register as Doc. No. 181: Page 87: Book No. IV: Series of 1938: Date of Instrument, September 5, 1938 (Exh. A-1), the document on file is NOT a 'Declaration of Heirs' but an ESCRITURA de Venta Absoluta y Perpetua drawn in Spanish whereby Rosendo De la Calzada sold one-half of Lot 4362 of the Talisay-Minglanilla Friar Lands Estate Subdivision to Felix Sasan for P1,000.00 (Exh. 1-D).

"xxx xxx xxx.

"The conveyance of Lot No. 4362 by Ireneo De la Calzada is tangentially confirmed by his Last Will and Testament which did not include among his estate Lot No. 4362 (Exh. J), even as Rosendo De la Calzada and his successors-in-interest declared the lot for tax purposes in their names (Exhs. 16, 16-A to 16-H), paid the taxes thereon (Exhs. 17, 17-A to 17-V), and publicly and continuously remained in possession thereof for a period of almost fifty (50) years, to the exclusion of the whole world, in the concept of owners, until the filing of the present complaint on July 21, 1981.

"The Entry of the document as a 'Declaration of Heirs and Sale' was obviously an erroneous conclusion drawn by the entry clerk (who apparently does not understand Spanish) from the Spanish text of the document which admittedly is a deed of sale (Exh. 1-D) (pp. 2-8, TSN, 27 May 82)." (pp. 26-27, Rollo.)

While it is true that under the law it is the act of registration of the deed of conveyance that serves as the operative act to convey the land registered under the Torrens System (*Davao Grains, Inc. vs. Intermediate Appellate Court*, 171 SCRA 612), the petitioners cannot invoke said dictum because their action to recover Lot 4362 is barred by the equitable doctrine of laches.

The act of registering the conveyance to Rosendo was constructive notice to the whole world of the fact of such conveyance (*Heirs of Maria Marasigan vs. Intermediate Appellate Court*, 152 SCRA 253).

But the petitioners' complaint to recover the title and possession of Lot 4362 was filed only on July 21, 1981, twelve (12) years after the registration of the sale to Rosendo. The petitioners failed and neglected for an unreasonably long time to assert their right, if any, to the property in Rosendo's possession.

"The principle of laches is a creation of equity. It is applied, not really to penalize neglect or sleeping upon one's right, but rather to avoid recognizing a right when to do so would result in a clearly inequitable situation. (*Asuncion vs. Court of Appeals, et al.*, 150 SCRA 353.)" (*Arradaza vs. Court of Appeals*, 170 SCRA 12, 20).

WHEREFORE, the petition for review is DENIED for lack of merit. The assailed decision of the Court of Appeals is AFFIRMED in toto.

SO ORDERED.

Cruz, (Chairman), Medialdea, and Bellosillo, JJ., concur.

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