

## FIRST DIVISION

[ G.R. NO. 152572, October 05, 2007 ]

**SPOUSES ABELARDO BORBE AND ROSITA LAJARCA-BORBE,  
PETITIONERS, VS. VIOLETA CALALO, RESPONDENT.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

For our resolution is the instant Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision<sup>[1]</sup> and Resolution of the Court of Appeals dated December 21, 2001 and March 13, 2002, respectively, in CA-G.R. CV No. 66359.

Records show that the late Jose Palo, during his lifetime, inherited from his parents a 400-square meter portion of Lot 8, Pcs-4A-0000101 situated in San Carlos, Lipa City.

On September 28, 1981, Rosita Lajarca-Borbe, petitioner, and Violeta Calalo, the surviving spouse of Jose Palo, respondent, executed an agreement or "*Kasunduan*." The agreement provides that petitioner has purchased the 400-square meter lot inherited by respondent from her late husband, covered by Transfer Certificate of Title (TCT) No. 24370 of the Registry of Deeds of Lipa City; that petitioner shall pay respondent P3,000.00 as down payment; and that she shall pay the balance of P3,000.00 the moment a new TCT shall have been issued in the name of respondent.

The *Kasunduan* was also signed by respondent's children, namely: Mercedes, Aguida and Vivencio, all surnamed Palo. On the same day, petitioner paid respondent the agreed down payment of P3,000.00. Petitioner later paid respondent in various amounts totaling P2,500.00, leaving an unpaid balance of P500.00.

On September 22, 1982, or one year after the parties executed the *Kasunduan*, TCT No. T-51153 was issued by the Register of Deeds of Lipa City in respondent's name.

After 13 years or in April 1995, petitioner spouses presented a prepared deed of sale in Filipino indicating that respondent is selling to petitioners the subject lot covered by TCT No. T-51153 in her name. However, respondent and her children refused to sign the document, asking a higher price for the lot.

Despite demand, respondent and her children still refused to execute a new deed of absolute sale.

As efforts to settle the dispute before the *barangay* authorities failed, petitioners, on August 15, 1995, filed with the Regional Trial Court, Branch 13, Lipa City, a complaint for specific performance against respondent, docketed as Civil Case No.

95-556.

In its Decision dated October 22, 1999, the trial court ruled in favor of petitioners, thus:

WHEREFORE, in view of the foregoing, the Court finds for the plaintiffs as against the defendant and hereby orders the latter as follows:

1. to execute a deed of sale over the property covered by TCT No. T-51153 in favor of the plaintiffs upon payment by the latter of the amount of P500.00 to the defendant;
2. to pay plaintiff attorney's fees and appearance fees in the fixed amount of P25, 000.00; and
3. to pay the costs of the suit.

SO ORDERED.<sup>[2]</sup>

On appeal by respondent, the Court of Appeals rendered its Decision dated December 21, 2001, reversing the trial court's judgment and dismissing the complaint, thus:

WHEREFORE, premises considered, the present appeal is hereby GRANTED. The decision appealed from in Civil Case No. 95-556 is hereby REVERSED and SET ASIDE and a new judgment is hereby rendered DISMISSING the complaint as well as defendant-appellant's counterclaim.

No pronouncement as to costs.

SO ORDERED.<sup>[3]</sup>

In reversing the Decision of the trial court, the appellate court held:

However, despite the validity and enforceability of the "KASUNDUAN," the trial court erred in not considering that the present action was filed beyond the ten-year prescriptive period under Art. 1144(1) of the Civil Code, a ground which has been raised and invoked by the appellant in her Answer. Art. 1144 provides that an action upon a written contract must be brought within ten (10) years from the time the right of action accrues. In cases where there is no special provision for such computation, recourse must be had to the rule that the period must be counted from the day on which the corresponding action could have been instituted, or the *legal possibility* of bringing the action. In the present case, that period should be computed from the date of the issuance of the certificate of title covering the subject property in the name of appellant which was on September 22, 1982. This is consistent with the agreement of the parties under the "KASUNDUAN" that the balance of P3, 000.00 of the purchase price will be paid by the buyers (appellees) once the land sold will be separately titled. As the complaint was filed only on August 15, 1995, or almost thirteen (13) years later, it is clear that appellees' action had already prescribed.