

SECOND DIVISION

[G.R. NO. 144773, May 16, 2005]

**AZNAR BROTHERS REALTY COMPANY, PETITIONER, VS.
LAURENCIO AYING, IN HIS OWN BEHALF AND IN BEHALF OF
THE OTHER HEIRS OF EMILIANO AYING, PAULINO AYING, IN
HIS OWN BEHALF AND IN BEHALF OF THE OTHER HEIRS OF
SIMEON AYING, AND WENCESLAO SUMALINOG, IN HIS OWN
BEHALF AND IN BEHALF OF THE OTHER HEIRS OF ROBERTA
AYING, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

This resolves the petition for review on *certiorari* seeking the modification of the Decision^[1] of the Court of Appeals (CA) dated March 7, 2000 which affirmed with modification the Decision of the Regional Trial Court (RTC) of Lapu-Lapu City, Branch 27 in Civil Case No. 2930-L; and the Resolution dated August 2, 2000 denying petitioner's motion for reconsideration of the aforementioned decision.

The antecedent facts are as follows:

The disputed property is Lot No. 4399 with an area of 34,325 square meters located at Dapdap, Lapu-Lapu City. Crisanta Maloloy-on petitioned for the issuance of a cadastral decree in her favor over said parcel of land. After her death in 1930, the Cadastral Court issued a Decision directing the issuance of a decree in the name of Crisanta Maloloy-on's eight children, namely: Juan, Celedonio, Emiliano, Francisco, Simeon, Bernabe, Roberta and Fausta, all surnamed Aying. The certificate of title was, however, lost during the war.

Subsequently, all the heirs of the Aying siblings executed an Extra-Judicial Partition of Real Estate with Deed of Absolute Sale dated March 3, 1964, conveying the subject parcel of land to herein petitioner Aznar Brothers Realty Company. Said deed was registered with the Register of Deeds of Lapu-Lapu City on March 6, 1964 under Act No. 3344 (the law governing registration for unregistered land), and since then, petitioner had been religiously paying real property taxes on said property.

In 1988, herein petitioner filed a Petition for Reconstitution of the Original Title as the original title over the subject property had been lost during the war. On April 12, 1988, the court granted said petition, thereby directing the Register of Deeds of Lapu-Lapu City to issue a reconstituted title in the name of the abovementioned Aying siblings. Thus, Original Certificate of Title (OCT) No. RO-2856 was issued.

In 1991, petitioner, claiming to be the rightful owner of the subject property, sent out notices to vacate, addressed to persons occupying the property. Unheeded, petitioner then filed a complaint for ejectment against the occupants before the

Metropolitan Trial Court (MTC), Lapu-Lapu City.

On February 1, 1994, the MTC ordered the occupants to vacate the property. The case eventually reached this Court, docketed as G.R. No. 128102, entitled *Aznar Brothers Realty Company vs. Court of Appeals, Luis Aying, Demetrio Sida, Felomino Augusto, Federico Abing, and Romeo Augusto*.^[2] On March 7, 2000, a Decision was promulgated in favor of herein petitioner, declaring it as the rightful possessor of the parcel of land in question.

Meanwhile, herein respondents, along with other persons claiming to be descendants of the eight Aying siblings, all in all numbering around 220 persons, had filed a complaint for cancellation of the Extra-Judicial Partition with Absolute Sale, recovery of ownership, injunction and damages with the RTC of Lapu-Lapu City. The complaint was dismissed twice without prejudice. Said complaint was re-filed on August 19, 1993, docketed as Civil Case No. 2930-L.

In their amended complaint, herein respondents (plaintiffs before the RTC) alleged that: they are co-owners of subject property, being descendants of the registered owners thereof under OCT No. RO-2856; they had been in actual, peaceful, physical, open, adverse, continuous and uninterrupted possession in concept of owner of subject parcel of land since time immemorial; their possession was disturbed only in the last quarter of 1991 when some of them received notices to vacate from petitioner and several weeks thereafter, earthmoving equipment entered the disputed land, bulldozing the same and destroying plants, trees and concrete monuments ("mohon"); respondents discovered that such activities were being undertaken by petitioner together with Sta. Lucia Realty and Development, Inc.; petitioner claimed to be the owner of subject property by virtue of an extra-judicial partition of real estate with deed of absolute sale executed in petitioner's favor by the alleged heirs of Crisanta Maloloy-on; the aforementioned extra-judicial partition of real estate with deed of absolute sale is a fraud and is null and void *ab initio* because not all the co-owners of subject property affixed their signature on said document and some of the co-owners who supposedly signed said document had been dead at the time of the execution thereof; petitioner entered subject land in bad faith, knowing fully well that it did not have any right to the land and used force, threat and intimidation against respondents; and they suffered moral damages.^[3]

Petitioner (defendant before the RTC) filed its Answer, denying that respondents are the lawful owners of subject parcel of land by virtue of their being descendants or heirs of the registered owners of subject property. Instead, petitioner alleged that it had been in actual possession of subject land as owner thereof by virtue of the extra-judicial partition of real property and deed of absolute sale executed in its favor; that in fact, it had been paying taxes thereon religiously; that it tolerated about 6 persons to live on said land but said persons were eventually ejected by court order. Petitioner then raised the affirmative defenses of failure to state cause of action and prescription, as it took respondents 27 years, 10 months and 27 days to file the action to recover subject property, when an action to recover property based on an implied trust should be instituted within 4 years from discovery of the fraud.^[4]

In the Pre-Trial Order dated January 30, 1995 of the RTC, the issues were narrowed down to the following:

1. Whether or not the plaintiffs [herein respondents] are the heirs of the registered owners of Lot No. 4399.
2. Whether or not plaintiffs are the owners of Lot No. 4399.
3. Whether or not the defendant Aznar [herein petitioner] is estopped to make any claim on Lot No. 4399.
4. Whether or not the defendant Aznar is a builder in bad faith.
5. Whether or not the defendants are liable for damages and attorney's fees in favor of the plaintiffs.
6. Whether or not the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale is valid and had, in effect, validly conveyed to defendant Aznar Lot No. 4399.
7. Whether or not the plaintiffs' action has prescribed.^[5]

After trial, the RTC rendered a Decision dated July 4, 1997, ruling that respondents' evidence failed to prove that the extra-judicial partition with deed of absolute sale was a totally simulated or fictitious contract and concluded that said document is valid, thus, effectively conveying to petitioner the property in question. It further held that respondents' action had prescribed in that the action is considered as one for reconveyance based on implied or constructive trust, it prescribed in 10 years from the registration of the deed on March 6, 1964; and if the action is considered as one for annulment of contract on the ground of fraud, it should have been filed within 4 years from discovery of the fraud. The trial court also ruled that respondents failed to present any admissible proof of filiation, hence, they were not able to prove that they are indeed heirs of the eight Aying siblings who appear as the registered owners under OCT No. RO-2856.

The dispositive portion of the RTC Decision reads as follows:

WHEREFORE, judgment is hereby rendered dismissing the amended complaint on the ground of prescription, and declaring the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale dated March 3, 1964 as valid and binding, adjudging that Lot 4399 with an area of 34,325 square meters located at Dapdap, Mactan, Lapu-Lapu City had been validly conveyed to and in favor of Aznar Brothers Realty Company, and directing the Register of Deeds of Lapu-Lapu City to register the above-mentioned deed in accordance with law and to cancel Original Certificate of Title No. RO-2856, and to issue a transfer certificate of title in the name of Aznar Brothers Realty Company upon payment of the necessary registration fees pursuant thereto.

The Writ of Preliminary Injunction issued in this case is hereby ordered dissolved.

The Motion for Contempt filed by the plaintiffs against defendants is dismissed for want of factual and legal basis.

Costs against the plaintiffs.

SO ORDERED.^[6]

Herein respondents appealed the foregoing decision to the CA and on March 7, 2000, said court promulgated its Decision, the dispositive portion of which is reproduced hereunder:

THE FOREGOING CONSIDERED, the contested Decision while AFFIRMED is hereby MODIFIED. The heirs of Emiliano Aying, Simeon Aying and Roberta Aying are hereby declared as the lawful owners of the contested property but equivalent only to 3/8.

SO ORDERED.

In modifying the RTC judgment, the CA ratiocinated that "an action for recovery of possession of registered land never prescribes in view of the provision of Section 44, Act No. 496 (now Sec. 47, PD 1520), to the effect that no title to registered land in derogation to that of a registered owner shall be acquired by prescription." The CA further ruled that even if the action is deemed to be based on implied trust, prescription did not begin to run since there is no evidence that positive acts of repudiation were made known to the heirs who did not participate in the execution of the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale. Thus, striking down the RTC's ruling that the respondents' complaint is dismissible on the ground of prescription, the CA held instead that herein respondents' action had not prescribed but upheld the validity of the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale, except as to the shares of the heirs of Emiliano, Simeon and Roberta, who did not participate in the execution of said document.

Herein petitioner's motion for reconsideration of the CA decision was denied per Resolution dated August 2, 2000.

Hence, the present petition for review on *certiorari* assailing the CA decision on the following grounds:

I

THE COURT OF APPEALS ERRED IN FAILING TO APPLY THE RULE THAT AN HEIR OF THE ORIGINAL REGISTERED OWNER MAY LOSE HIS RIGHT TO RECOVER A TITLED PROPERTY BY REASON OF LACHES;

II

THE COURT OF APPEALS ERRED IN FAILING TO APPLY THE RULE THAT THE ACT OF REGISTRATION OF THE DEED OF PARTITION WITH SALE MAY BE CONSIDERED AN UNEQUIVOCAL REPUDIATION OF THE TRUST GIVING RISE TO PRESCRIPTION;

III

THE COURT OF APPEALS ERRED IN FAILING TO APPLY THE PROVISIONS OF ARTICLE 1104 OF THE CIVIL CODE TO THE EFFECT THAT IN THE ABSENCE OF BAD FAITH OR FRAUD, THE PARTITION WITH PRETERITION OF ANY COMPULSORY HEIR SHALL NOT BE RESCINDED.^[7]

In their Comment, respondents argue that this case is an action to declare as null and void the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale, hence, under Article 1410 of the Civil Code, an action for declaration of an inexistent contract does not prescribe. Respondents further posit that the principle of laches should be applied against petitioner and not against them, as they (respondents) had been in actual possession of the subject property, while petitioner merely brought action to eject them more than 29 years after the alleged execution of the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale. They also refuted petitioner's arguments regarding the application of the principles of implied and constructive trusts in this case.

At the outset, it should be stressed that not all the plaintiffs who filed the amended complaint before the trial court had been impleaded as respondents in the present petition. The only parties impleaded are the heirs of Emiliano, Simeon and Roberta Aying, whom the CA adjudged as owners of a 3/8 portion of the land in dispute for not having participated in the execution of the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale.

It is significant to note that herein petitioner does not question the CA conclusion that respondents are heirs of the aforementioned three Aying siblings. Hence, the trial court and appellate court's findings that the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale was not forged nor simulated and that the heirs of Emiliano, Simeon and Roberta Aying did not participate in the execution thereof, are now beyond cavil.

The issues raised by petitioner for the Court's resolution are (1) whether or not respondents' cause of action is imprescriptible; and (2) if their right to bring action is indeed imprescriptible, may the principle of laches apply.

Respondents alleged in their amended complaint that not all the co-owners of the land in question signed or executed the document conveying ownership thereof to petitioner and made the conclusion that said document is null and void. We agree with the ruling of the RTC and the CA that the Extra-Judicial Partition of Real Estate with Deed of Absolute Sale is valid and binding only as to the heirs who participated in the execution thereof, hence, the heirs of Emiliano, Simeon and Roberta Aying, who undisputedly did not participate therein, cannot be bound by said document.

However, the facts on record show that petitioner acquired the entire parcel of land with the mistaken belief that all the heirs have executed the subject document. Thus, the trial court is correct that the provision of law applicable to this case is Article 1456 of the Civil Code which states:

ART. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.