

## FIRST DIVISION

[ G.R. No. 128576, August 13, 2002 ]

**MARIANO A. VELEZ, SR. (DECEASED), ATTY. PURO M. VELEZ, ATTY. ALEJANDRO M. VELEZ, ENGR. PLUTARCO M. VELEZ AND SARAH VDA. DE VELEZ (FOR HERSELF AND HER CHILDREN BY THE LATE HOMER M. VELEZ, NAMELY PATRICIA, HAYDEE, HOMER, JR., RUBY, FE VAL AND HANAH, ALL SURNAMED VELEZ), PETITIONERS, VS. REV. FRANCISCO DEMETRIO (DECEASED), CELERINA DEMETRIO FIANZA, TARCILLO DEMETRIO, LEVITA FERNANDEZ DEMETRIO JUAN (FOR HERSELF AND HER CHILDREN), ANGELA, VALDEHUEZA RADAZA, FELECITO RADAZA AND JOSE RADAZA, JR., RESPONDENTS.**

### DECISION

**YNARES-SANTIAGO, J.:**

This is a petition for review of decision of the Court of Appeals dated March 22, 1996 in CA-G.R. CV No. 30381, reversing and setting aside the decision of the then Court of First instance of Cagayan de Oro City, Branch 17.

The spouses Felix Radaza and Estefania Abrogar were the owners of a ten-hectare agricultural land situated in Puntod, Macasandig, Cagayan de Oro City. Upon their death, ownership of the land passed by intestate succession to their surviving children namely - Ramona, Severo, Filomeno and Jacoba, - and grandchildren by their son, Jose, Sr. namely - Vicente, Felicito, Rosario and Jose, Jr. On March 12, 1938, the land was registered under Original Certificate of Title No. 7678<sup>[1]</sup> in the names of: Severo Radaza, 1/5 share; Filomeno Radaza, 1/5 share; Jacoba Radaza, 1/5 share; Ramona Radaza, 1/5 share; Vicente Radaza, 1/20 share; Felicito Radaza, 1/20 share; Rosario Radaza, 1/20 share; and Jose Radaza, Jr., 1/20 share.

On April 14, 1975, respondents, the surviving children of Ramona Radaza-Demetrio and Jose Radaza, Sr., instituted a complaint for Partition of Real Estate with Damages against petitioners, the heirs of the late Mariano Velez, Sr., docketed as Civil Case No. 4686 of the Court of First Instance of Cagayan de Oro City, Branch 17. They alleged that sometime in 1947, they discovered that the property had been claimed and fenced in by Mariano Velez, Sr., and that they were denied entry thereto. Due to financial reasons, it took them several years before instituting the complaint. In the meantime, they tried earnestly to recover ownership and possession of the land through extra-legal means.<sup>[2]</sup>

On the other hand, petitioners averred that the property had been partitioned among the heirs of Felix Radaza and Estefania Abrogar; that Mariano Velez, Sr. purchased the shares of Severo Radaza and Jacoba Radaza in 1936; that on May 30, 1947, Filomeno sold his share as well as Ramona's share to Mariano Velez, Sr.; that the share of Jose was likewise sold to Mariano Velez, Sr. by his wife Ciriaca Bacarro Radaza; and that since his acquisition of the property, Mariano Velez, Sr., by himself

and through his heirs, has been in open, notorious, public and uninterrupted possession of the same in the concept of owners, and have exercised fully the attributes of its ownership.<sup>[3]</sup>

After trial, the court a quo rendered judgment as follows:

WHEREFORE, for all the foregoing considerations, judgment is hereby rendered in favor of the defendants and against the plaintiffs and the Court hereby:

1. Orders the dismissal of the complaint filed by the plaintiffs;
2. Declares the defendants as the absolute owners of the property in litigation;
3. Declares the plaintiffs never again to molest nor disturb the defendants in their lawful, peaceful and rightful ownership, possession and enjoyment of the property in litigation;
4. On the counterclaim, orders the plaintiffs, jointly and severally, to pay the defendants the amount of P20,000.00 as moral damages and P5,000.00 as attorney's fee; and
5. Orders the plaintiffs to pay the costs.

SO ORDERED.<sup>[4]</sup>

Respondents appealed to the Court of Appeals, which reversed and set aside the lower court's decision, to wit:

WHEREFORE, the judgment appealed from is hereby REVERSED and SET ASIDE, and a new one entered directing the partition of the property covered by OCT No. 7678 in the portion of 2/5 to the plaintiffs-appellants and 3/5 to the defendants-appellees. Costs against the appellees.<sup>[5]</sup>

The motion for reconsideration filed by petitioner was denied by the appellate court.<sup>[6]</sup>

Hence, the instant petition for review.

The issues raised by petitioners are: whether the shares of Ramona Radaza and Jose Radaza were sold to Mariano Velez, Sr. and whether respondents are guilty of laches.

As regards the first issue, the findings of facts by the trial court conflict with those of the Court of Appeals. The trial court was morally convinced that the shares of Ramona Radaza and Jose Radaza, Sr. were sold to Mariano Velez, Sr. on two different transactions and occasions. On the other hand, the Court of Appeals held that the alleged sale made by Ramona Radaza to Filomeno of her 1/5 share and the subsequent sale made by Filomeno to Mariano Velez, Sr. of his share and that of Ramona's and the sale made by Ciriaca Radaza to Mariano Velez of the shares of the heirs of Jose Radaza, Sr., were of no force and effect<sup>[7]</sup> for there was no evidence presented in support thereof. The testimonies offered by petitioners to establish the alleged transactions were pure hearsay.

To prove the alleged sale of Ramona's share to Filomeno, petitioners capitalized on the affidavit and testimony of Francisco, who stated that in the middle 1930s, Ramona sold her share to his father, Filomeno, who paid Ramona three cows in consideration thereof; and that since then they had been in exclusive possession of