

SECOND DIVISION

[G.R. No. 133895, October 02, 2001]

ZENAIDA M. SANTOS, PETITIONER, VS. CALIXTO SANTOS, ALBERTO SANTOS, ROSA SANTOS-CARREON AND ANTONIO SANTOS, RESPONDENTS.

DECISION

QUISUMBING, J.:

This petition for review^[1] seeks to annul and set aside the decision dated March 10, 1998 of the Court of Appeals that affirmed the decision of the Regional Trial Court of Manila, Branch 48, dated March 17, 1993. Petitioner also seeks to annul the resolution that denied her motion for reconsideration.

Petitioner Zenaida M. Santos is the widow of Salvador Santos, a brother of private respondents Calixto, Alberto, Antonio, all surnamed Santos and Rosa Santos-Carreon.

The spouses Jesus and Rosalia Santos owned a parcel of land registered under TCT No. 27571 with an area of 154 square meters, located at Sta. Cruz Manila. On it was a four-door apartment administered by Rosalia who rented them out. The spouses had five children, Salvador, Calixto, Alberto, Antonio and Rosa.

On January 19, 1959, Jesus and Rosalia executed a deed of sale of the properties in favor of their children Salvador and Rosa. TCT No. 27571 became TCT No. 60819. Rosa in turn sold her share to Salvador on November 20, 1973 which resulted in the issuance of a new TCT No. 113221. Despite the transfer of the property to Salvador, Rosalia continued to lease and receive rentals from the apartment units.

On November 1, 1979, Jesus died. Six years after or on January 9, 1985, Salvador died, followed by Rosalia who died the following month. Shortly after, petitioner Zenaida, claiming to be Salvador's heir, demanded the rent from Antonio Hombrebueno,^[2] a tenant of Rosalia. When the latter refused to pay, Zenaida filed an ejectment suit against him with the Metropolitan Trial Court of Manila, Branch 24, which eventually decided in Zenaida's favor.

On January 5, 1989, private respondents instituted an action for reconveyance of property with preliminary injunction against petitioner in the Regional Trial Court of Manila, where they alleged that the two deeds of sale executed on January 19, 1959 and November 20, 1973 were simulated for lack of consideration. They were executed to accommodate Salvador in generating funds for his business ventures and providing him with greater business flexibility.

In her Answer, Zenaida denied the material allegations in the complaint and as special and affirmative defenses, argued that Salvador was the registered owner of

the property, which could only be subjected to encumbrances or liens annotated on the title; that the respondents' right to reconveyance was already barred by prescription and laches; and that the complaint stated no cause of action.

On March 17, 1993, the trial court decided in private respondents' favor, thus:

WHEREFORE, viewed from all the foregoing considerations, judgment is hereby made in favor of the plaintiffs and against the defendants:

a) Declaring Exh. "B", the deed of sale executed by Rosalia Santos and Jesus Santos on January 19, 1959, as entirely null and void for being fictitious or simulated and inexistent and without any legal force and effect;

b) Declaring Exh. "D", the deed of sale executed by Rosa Santos in favor of Salvador Santos on November 20, 1973, also as entirely null and void for being likewise fictitious or simulated and inexistent and without any legal force and effect;

c) Directing the Register of Deeds of Manila to cancel Transfer Certificate of Title No. T-113221 registered in the name of Salvador Santos, as well as, Transfer Certificate of Title No. 60819 in the names of Salvador Santos, Rosa Santos, and consequently thereafter, reinstating with the same legal force and effect as if the same was not cancelled, and which shall in all respects be entitled to like faith and credit; Transfer Certificate of Title No. T-27571 registered in the name of Rosalia A. Santos, married to Jesus Santos, the same to be partitioned by the heirs of the said registered owners in accordance with law; and

d) Making the injunction issued in this case permanent.

Without pronouncement as to costs.

SO ORDERED.^[3]

The trial court reasoned that notwithstanding the deeds of sale transferring the property to Salvador, the spouses Rosalia and Jesus continued to possess the property and to exercise rights of ownership not only by receiving the monthly rentals, but also by paying the realty taxes. Also, Rosalia kept the owner's duplicate copy of the title even after it was already in the name of Salvador. Further, the spouses had no compelling reason in 1959 to sell the property and Salvador was not financially capable to purchase it. The deeds of sale were therefore fictitious. Hence, the action to assail the same does not prescribe.^[4]

Upon appeal, the Court of Appeals affirmed the trial court's decision dated March 10, 1998. It held that in order for the execution of a public instrument to effect tradition, as provided in Article 1498 of the Civil Code,^[5] the vendor shall have had control over the thing sold, at the moment of sale. It was not enough to confer upon the purchaser the ownership and the right of possession. The thing sold must be placed in his control. The subject deeds of sale did not confer upon Salvador the

ownership over the subject property, because even after the sale, the original vendors remained in dominion, control, and possession thereof. The appellate court further said that if the reason for Salvador's failure to control and possess the property was due to his acquiescence to his mother, in deference to Filipino custom, petitioner, at least, should have shown evidence to prove that her husband declared the property for tax purposes in his name or paid the land taxes, acts which strongly indicate control and possession. The appellate court disposed:

WHEREFORE, finding no reversible error in the decision appealed from, the same is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.^[6]

Hence, this petition where petitioner avers that the Court of Appeals erred in:

I.

...HOLDING THAT THE OWNERSHIP OVER THE LITIGATED PROPERTY BY THE LATE HUSBAND OF DEFENDANT-APPELLANT WAS AFFECTED BY HIS FAILURE TO EXERCISE CERTAIN ATTRIBUTES OF OWNERSHIP.

II

...HOLDING THAT DUE EXECUTION OF A PUBLIC INSTRUMENT IS NOT EQUIVALENT TO DELIVERY OF THE LAND IN DISPUTE.

III

...NOT FINDING THAT THE CAUSE OF ACTION OF ROSALIA SANTOS HAD PRESCRIBED AND/OR BARRED BY LACHES.

IV

...IGNORING PETITIONER'S ALLEGATION TO THE EFFECT THAT PLAINTIFF DR. ROSA [S.] CARREON IS NOT DISQUALIFIED TO TESTIFY AS TO THE QUESTIONED DEEDS OF SALE CONSIDERING THAT SALVADOR SANTOS HAS LONG BEEN DEAD.^[7]

In this petition, we are asked to resolve the following:

1. Are payments of realty taxes and retention of possession indications of continued ownership by the original owners?
2. Is a sale through a public instrument tantamount to delivery of the thing sold?
3. Did the cause of action of Rosalia Santos and her heirs prescribe?