

SECOND DIVISION

[G.R. No. 127797, January 31, 2000]

**ALEJANDRO MILLENA, PETITIONER, VS. COURT OF APPEALS
AND FELISA JACOB, REPRESENTED HEREIN BY HER ATTORNEY-
IN-FACT JAIME LLAGUNO, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

This case involves a 3,934-square meter parcel of land in far-flung Bgy. Balinad, Daraga, Albay. It was originally a part of Lot 1874, a 14,284-square meter land that was subject of a cadastral proceeding during the 1920's before the Court of First Instance of Albay. Among the claimants in the cadastral case were Gregoria Listana and her sister-in-law Potenciana Maramba, together with the latter's seven (7) children, namely, Felix, Marcela, Ruperta, Emeteria, Florencio, Gaspar and Nicomedes, all surnamed Listana.

On 17 August 1926 the claimants reached a compromise agreement to divide Lot 1874 among themselves. Approximately one-fourth (1/4) of the lot went to Gregoria Listana while the remaining three-fourths (3/4) portion, to Potenciana Maramba and her seven (7) children.^[1] The compromise agreement was submitted to the cadastral court on 17 August 1926 and on even date adjudication was rendered in accordance with the terms of the agreement.^[2] Thus the northern portion of Lot 1874 with an area of approximately 3,934 square meters was awarded to Gregoria Listana.

Gregoria Listana was at that time seriously ill of tuberculosis. To her death was inevitable. Gregoria executed on 9 October 1926 a power of attorney in favor of her cousin Antonio Lipato which authorized the attorney-in-fact to sell the portion of Lot 1874 belonging to his principal. Conformably with Gregoria's instruction, the proceeds of the sale would be used for her interment.

On 23 October 1926 Antonio Lipato in his capacity as attorney-in-fact sold the portion of Gregoria Listana to Gaudencio Jacob. Incidentally, Gregoria died on the same day the land was sold. Thereafter Gaudencio entered the portion of Lot 1874 that was sold to him and started harvesting the coconuts found therein. When Potenciana Maramba learned about Gaudencio's entering the land and harvesting the coconuts she confronted him. But Gaudencio explained that he had every right to do whatever he pleased with the land since he had lawfully bought it from Gregoria Listana.

Potenciana Maramba filed an ejectment case against Gaudencio Jacob before the Justice of the Peace in Legazpi, Albay. However, on 31 December 1926 the court ruled that Gaudencio entered the land in question without force and intimidation since he had with him a document of sale over the land which authorized him to

take possession thereof.^[3] Thus, the Justice of the Peace dismissed the case.

After the dismissal of the case, Gaudencio Jacob continued with his possession of the one-fourth (1/4) portion of Lot 1874. His continuous, actual and peaceful possession lasted for almost forty (40) years until 4 April 1966, when he and his children executed an extrajudicial settlement of the estate of his deceased wife Brigida Jacob. The extrajudicial settlement adjudicated to respondent Felisa Jacob, daughter of Gaudencio Jacob, the 3,934-square meter portion of Lot 1874.^[4] Thereafter, respondent Felisa Jacob had the land annually declared as her property and paid the corresponding real property taxes.

However, sometime in November 1981 respondent Felisa Jacob discovered that Florencio Listana, son of Potenciana Maramba, acquired from the Bureau of Lands in Legazpi City Free Patent Certificate of Title No. VH-23536 dated 28 August 1980 covering the entire 14,284-square meter area of Lot 1874 which included the portion adjudicated to Felisa Jacob in 1966.^[5]

On 6 November 1981 respondent Felisa Jacob immediately filed a protest before the Bureau of Lands in Legazpi City alleging that she was the absolute owner of a one-fourth (1/4) portion of Lot 1874 having acquired it through an extrajudicial partition in 1966, and that through misrepresentation and deceit Florencio Listana was able to secure title for the whole of Lot 1874. Felisa Jacob prayed that an investigation be conducted and that the Free Patent issued in the name of Florencio Listana covering Lot 1874 be annulled and set aside.

After the death of Florencio Listana and notwithstanding the protest filed by Felisa Jacob, the heirs of Florencio Listana sold the entire Lot 1874 including the portion sold by Gregoria Listana to Gaudencio Jacob to petitioner Alejandro Millena on 30 September 1986 for ₱6,000.00. Alejandro Millena, a nephew of Florencio Listana and grandson of Potenciana Maramba, was eventually issued Transfer Certificate of Title No. T-71657 covering the whole of Lot 1874.

Thus on 17 March 1992 respondent Felisa Jacob through her attorney-in-fact Jaime Llaguno filed a complaint against petitioner Alejandro Millena for annulment of title with preliminary injunction and damages before the Regional Trial Court of Legazpi City which she subsequently amended on 19 March 1992 by including a claim for reconveyance with preliminary injunction and damages. She prayed for judgment (a) declaring her the lawful and absolute owner of the one-fourth (1/4) northern portion of Lot 1874; (b) ordering Alejandro Millena to reconvey the aforesaid portion of Lot 1874 to her; (c) enjoining the construction of a house on said lot by Alejandro Millena and, after trial, making the injunction permanent; and, (d) ordering Alejandro Millena to pay damages in the amount of ₱50,000.00.

On 3 October 1994 Judge Wenceslao R. Villanueva Jr. of the Regional Trial Court of Legazpi City, Br. 3, rendered a decision ordering petitioner Alejandro Millena to reconvey by proper document the portion of 3,934 square meters in question from Lot 1874 to respondent Felisa Jacob and awarded to her ₱10,000.00 for attorney's fees.

Petitioner Alejandro Millena appealed to the Court of Appeals which on 12 August 1996 affirmed the trial court but deleted the award of ₱10,000.00 for attorney's

fees.^[6] After the appellate court denied petitioner's motion for reconsideration, he filed with this Court a Petition for Review on Certiorari under Rule 45 of the Rules of Court.

Petitioner raises the following issues: (a) whether prescription has now barred the action for reconveyance; (b) whether the documents and pieces of evidence used by respondent Court of Appeals as basis in its assailed Decision were duly authenticated and proved by private respondent, Felisa Jacob; and, (c) whether respondent appellate court correctly affirmed the order of reconveyance by the trial court.

We resolve.

First. An action for reconveyance can indeed be barred by prescription. When an action for reconveyance is based on fraud, it must be filed within four (4) years from discovery of the fraud, and such discovery is deemed to have taken place from the issuance of the original certificate of title.^[7] On the other hand, an action for reconveyance based on an implied or constructive trust prescribes in ten (10) years from the date of the issuance of the original certificate of title or transfer certificate of title. For the rule is that the registration of an instrument in the Office of the Register of Deeds constitutes constructive notice to the whole world and therefore the discovery of the fraud is deemed to have taken place at the time of registration.^[8]

In his petition Alejandro Millena argues that both the Regional Trial Court and the Court of Appeals failed to pass upon the issue of prescription. According to him, the issue of prescription is pivotal considering that title to the property was procured in 1980 while the action for reconveyance was filed only in 1992. This interim period, he submits, had a span of more than twelve (12) years; thus, the action for reconveyance had clearly prescribed.

But, nonetheless, it must be stressed that prescription cannot be invoked in an action for reconveyance when the plaintiff is in possession of the land to be reconveyed.^[9] In view of this, can it be said that Felisa Jacob was in possession of the contested portion of Lot 1874? Article 523 of the Civil Code states that possession is the holding of a thing or the enjoyment of a right. In order to possess, one must first have control of the thing and, second, a deliberate intention to possess it. These are the elements of possession.

The records of the case show that respondent Felisa Jacob had exercised dominion over the contested parcel of land. Immediately after acquiring the property through an extrajudicial settlement in 1966, she instructed her nephew Jaime Llaguno to continue working as caretaker of the land. Felisa made improvements on the land and paid its property taxes. In fact the municipal treasurer of Daraga, Albay, issued a certification dated 10 March 1992 that respondent Felisa Jacob was the declared owner of Lot 1874-P - the litigated portion - and that she had been paying its real property taxes since 1967.^[10]

Apparently Felisa Jacob met the requisite elements of possession. She exercised control over the parcel of land in litigation through her caretaker, her nephew, Jaime Llaguno. Moreover, her declaration that the land was her property and the payment

of real property taxes manifested clearly that she was in possession of the land. Consequently, petitioner may not validly invoke prescription as defense against respondent Feliza Jacob.

Second. Petitioner Alejandro Millena questioned the very existence and authenticity of several documents which according to him the Court of Appeals used as basis for its assailed Decision. These documents were (a) the compromise agreement dated 17 August 1926 between Gregoria Listana and Potenciana Maramba over Lot 1874; (b) the Justice of the Peace decision dated 31 December 1926 dismissing the ejectment suit filed by Potenciana Maramba against Gaudencio Jacob; (c) the power of attorney executed by Gregoria Listana authorizing her cousin Antonio Lipato to sell her one-fourth portion of Lot 1874; and, (d) the deed of sale executed by Antonio Lipato in favor of Gaudencio Jacob.

Alejandro Millena assailed the authenticity and even the existence of the decision of the Justice of the Peace of Legazpi dated 31 December 1926 in which the court dismissed the suit filed by Potenciana Maramba against Gaudencio Jacob, predecessor-in-interest of Felisa Jacob. The court decided in favor of Gaudencio Jacob and held that he had the right to possess the contested one-fourth (1/4) portion of Lot 1874.

Likewise, Alejandro Millena questioned the genuineness of the compromise agreement dated 17 August 1926 among the claimants of Lot 1874. Petitioner Millena averred that the alleged compromise agreement did not bear the signatures of the contracting parties except for the thumb mark of Gregoria Listana from whom Gaudencio Jacob bought the property.

As to the special power of attorney and the deed of sale, Alejandro Millena insisted that respondent Felisa Jacob never proved the existence of these documents. Thus, according to petitioner, the Court of Appeals erred in assuming their existence and using them to support its assailed Decision.

Questions of authenticity of documents being one of fact, this Court will not ordinarily disturb the conclusions of the Court of Appeals on this matter.^[11] However for the sake of substantial justice we shall thoroughly discuss the points raised by petitioner.

The focal issue that needs to be answered and which would ultimately resolve the other issues raised by petitioner is the genuineness of the decision of the Justice of the Peace dated 31 December 1926. Being a public document the decision is admissible in evidence without further proof of its due execution or genuineness. Such decision may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record or by his deputy.^[12]

We have examined the copy of the decision and found it to be genuine.^[13] The decision, which was penned in Spanish, was duly signed by Justice of the Peace Manuel M. Calleja. It also bore the seal of the court and an attestation that such was a true copy.^[14] Moreover, petitioner Alejandro Millena failed to adduce any evidence demonstrating the spurious character of the decision.

Having resolved the issue of genuineness, it can therefore be said that the facts