

SECOND DIVISION

[G.R. No. 125861, September 09, 1998]

**ROSITA G. TAN, EUSEBIO V. TAN, REMIGIO V. TAN, JR.,
EUFRSINA V. TAN, VIRGILIO V. TAN AND EDUARDO V. TAN,
PETITIONERS, VS. COURT OF APPEALS AND FERNANDO TAN
KIAT, RESPONDENT.**

D E C I S I O N

MARTINEZ, J.:

This petition assails the Decision of public respondent Court of Appeals dated May 28, 1996^[1] reversing the Order of the Manila Regional Trial Court, Branch 2, dated December 15, 1993,^[2] dismissing the complaint for recovery of property filed by private respondent Fernando Tan Kiat against petitioners.

The controversy centers on two (2) parcels of land (hereafter, subject properties) situated at 970 M.H. del Pilar Street, Malate, Manila previously owned by one Alejandro Tan Keh and which were then covered by Transfer Certificate of Title No. 35656 of the Registry of Deeds of Manila.

Private respondent, in his complaint filed on October 18, 1993,^[3] claimed that he bought the subject properties from Mr. Tan Keh in 1954 for P98,065.35, built his house thereon, but was unable to effect immediate transfer of title in his favor in view of his foreign nationality at the time of the sale. Nonetheless, as an assurance in good faith of the sales agreement, Mr. Tan Keh turned over to private respondent the owner's duplicate copy of TCT No. 35656 and, in addition, executed a lease contract in favor of private respondent for a duration of forty (40) years. However, in 1958, Mr. Tan Keh sold the subject properties to Remigio Tan, his brother and father of petitioners, with the understanding that the subject properties are to be held in trust by Remigio for the benefit of private respondent and that Remigio would execute the proper documents of transfer in favor of private respondent should the latter at anytime demand recovery of the subject properties. TCT No. 35656 was thus cancelled and in lieu thereof TCT No. 53284 was issued in the name of Remigio. Another contract of lease was executed by Mr. Tan Keh and Remigio in favor of private respondent to further safeguard the latter's interest on the subject properties, but private respondent never paid any rental and no demand whatsoever for the payment thereof had been made on him. Remigio was killed in 1968. At his wake, petitioners were reminded of private respondent's ownership of the subject properties and they promised to transfer the subject properties to private respondent who by then had already acquired Filipino citizenship by naturalization. Petitioners, however, never made good their promise to convey the subject properties despite repeated demands by private respondent. In fact, petitioners had the subject properties fraudulently transferred to their names under TCT No. 117898. Thus, the filing of the complaint for recovery of property.

On November 10, 1993, petitioners filed a Motion To Dismiss^[4] the complaint, claiming that: (1) the complaint stated no cause of action; (2) the cause of action has long prescribed; (3) the cause of action has long been barred by a prior judgment; and, (4) the claim has been waived, abandoned and/or extinguished by laches and estoppel. An Opposition to Motion To Dismiss with Memorandum^[5] was filed by private respondent on November 29, 1993. In turn, petitioners on December 1, 1993 filed their Memorandum of Authorities.^[6]

Thereafter, the trial court on December 15, 1993 issued an order dismissing private respondent's complaint, acceding to all the grounds set forth by petitioners in their motion to dismiss. Dissatisfied, private respondent appealed to public respondent CA which set aside the dismissal and ordered the remand of the case for further proceedings. Petitioners' motion for reconsideration was denied by respondent CA in its Resolution dated July 31, 1996.^[7]

Now before us via this petition for review, petitioners insist on the propriety of the trial court's order of dismissal, and reiterate, by way of assignment of errors, the same grounds contained in their motion to dismiss, to wit:

I.

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION.

II.

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT'S CAUSE OF ACTION HAS PRESCRIBED.

III.

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT'S CAUSE OF ACTION IS BARRED BY PRIOR JUDGMENT.

IV.

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT'S CLAIM HAS BEEN WAIVED, ABANDONED OR OTHERWISE EXTINGUISHED.

There is merit in the petition.

There are three (3) reasons which warrant the reversal of the assailed decision of respondent court.

Respondent court's reading of the complaint is that it stated a cause of action, saying that:

"x x x x x x x x

"The legal right of the appellant as stated in his complaint, is his right to demand transfer of title to him the property which is held in trust for him

by the appellees. The correlative obligation of the appellees, on the other hand, is to deliver title over the property to the appellant which they are holding in trust for the former, upon the termination of the trust relationship, that is, when the appellant finally demanded that the title of the property be transferred in his name. The act or omission on the part of the appellees which constitutes the violation of the appellant's right to secure title to the properties he owns and possesses, is their refusal to transfer the title of the property in the appellant's name. All these averments the appellees hypothetically admit when they filed a motion to dismiss on the ground that the complaint does not state a cause of action. The trial court could have rendered a valid judgment upon these hypothetically admitted averments in accordance with the prayer in the complaint which is to have the title to the property held in trust by the appellee transferred in the appellant's name."

The flaw in this conclusion is that, while conveniently echoing the general rule that averments in the complaint are deemed hypothetically admitted upon the filing of a motion to dismiss grounded on the failure to state a cause of action, it did not take into account the equally established limitations to such rule, i.e., that a motion to dismiss does not admit the truth of mere epithets of fraud; nor allegations of legal conclusions; nor an erroneous statement of law; nor mere inferences or conclusions from facts not stated; nor mere conclusions of law; nor allegations of fact the falsity of which is subject to judicial notice; nor matters of evidence; nor surplusage and irrelevant matter; nor scandalous matter inserted merely to insert the opposing party; nor to legally impossible facts; nor to facts which appear unfounded by a record incorporated in the pleading, or by a document referred to; and, nor to general averments contradicted by more specific averments.^[8] A more judicious resolution of a motion to dismiss, therefore, necessitates that the court be not restricted to the consideration of the facts alleged in the complaint and inferences fairly deducible therefrom. Courts may consider other facts within the range of judicial notice as well as relevant laws and jurisprudence which the courts are bound to take into account,^[9] and they are also fairly entitled to examine records/documents duly incorporated into the complaint by the pleader himself in ruling on the demurrer to the complaint.^[10]

Guided by these crucial limitations on hypothetical admissions, the "trust theory" being espoused by private respondent in his complaint, and upon which his claim over the subject properties is principally anchored, cannot hold water for the following reasons:

First: The execution of a lease contract between Remigio Tan as lessor and private respondent as lessee over the subject properties, the existence of which is established not only by a copy thereof attached to petitioners' motion to dismiss as Annex "1"^[11] but by private respondent's own admission reflected in paragraph 6 of the complaint, already belies private respondent's claim of ownership. This is so because Article 1436 of the Civil Code,^[12] Section 2, Rule 131 of the Rules of Court^[13] and settled jurisprudence^[14] consistently instruct that a lessee is estopped or prevented from disputing the title of his landlord.

Second: In the Memorandum of Encumbrances found at the back of TCT No. 53284 issued in the name of Remigio Tan in 1958 attached as Annex "B"^[15] to the

complaint, there appears a mortgage constituted by Remigio Tan over the subject properties in favor of Philippine Commercial and Industrial Bank in 1963 to guarantee a principal obligation in the sum of P245,000.00. Remigio could not have mortgaged the subject properties had he not been the true owner thereof, inasmuch as under Article 2085 of the New Civil Code, one of the essential requisites for the validity of a mortgage contract is that the mortgagor be the **absolute owner** of the thing mortgaged. There is thus no denying that Remigio Tan's successful acquisition of a transfer certificate of title (TCT No. 53284) over the subject properties in his name after having his brother's (Alejandro Tan Keh) title thereto cancelled, and execution of a mortgage over the same properties in favor of Philippine Commercial and Industrial Bank, undoubtedly, are acts of strict dominion which are anathema to the concept of a continuing and subsisting trust^[16] private respondent relies upon.

Third: There being no trust, express or implied, established in favor of private respondent, the only transaction that can be gleaned from the allegations in the complaint is a double sale, the controlling provision for which is Article 1544 of the Civil Code, to wit:

"Article 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

"Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

"Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith."

Private respondent alleged that he bought the subject properties from Alejandro Tan Keh in 1954 but nonetheless failed to present any document evidencing the same, while Remigio Tan, as the other buyer, had in his name TCT No. 53284 duly registered in the Registry of Deeds of Manila on October 13, 1958.^[17] Remigio Tan, beyond doubt, was the buyer entitled to the subject properties since the prevailing rule is that in the double sale of real property, the buyer who is in possession of a Torrens title and had the deed of sale registered must prevail.^[18]

Fourth: Petitioners are in possession of TCT No. 117898 which evidences their ownership of the subject properties. On the other hand, private respondent relies simply on the allegation that he is entitled to the properties by virtue of a sale between him and Alejandro Tan Keh who is now dead. Obviously, private respondent will rely on parol evidence which, under the circumstances obtaining, cannot be allowed without violating the "Dead Man's Statute" found in Section 23, Rule 130 of the Rules of Court, viz:

"Sec. 23. Disqualification by reason of death or insanity of adverse party. - Parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound