Supreme Court E-Library

FIRST DIVISION

[G.R. No. L-39047. April 30, 1985]

ALBERTO PASCUA, CRISPINA PASCUA, SOTERA PASCUA, and EDUARDO MOLINA, *petitioners, vs.* HON. ALFREDO C. FLORENDO, CFI of Cagayan, CLEMENTE CASTRO, and JULIANA O. CASTRO, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PREVIOUS DENIAL OF MOTION TO DISMISS; TRIAL COURT NOT ESTOPPED FROM PASSING UPON ISSUE OF PRESCRIPTION.**— The trial court denied the motion to dismiss because the grounds relied upon by the respondents for their motion *did not appear on the face of the complaint.* There was no finding that the allegation of prescription had no merit. It cannot be said, therefore, that the trial court was already estopped from passing upon the issue of prescription. The issue was not adjudicated on its merits and the doctrine of *res judicata* had not set in yet.

2. **ID.; ID.; ACTION; BARRED BY STATUTE OF LIMITATIONS; CASE AT BAR.**— We likewise find the petitioners' contention, that they came to know of the deed of sale by Martin Pascua in favor of the respondents only in 1973, highly improbable. As the trial court correctly observed, it is inconceivable that the petitioners did not come to know about the purchase by the respondents of the property from Martin Pascua. They admitted that they have been neighbors of the respondents since before the war or for a period of about 30 years and that the latter had deprived them of the fruits of the land in question for more than 20 years. Alberto Pascua, one of the petitioners testified that his parents from whom they inherited the property died more than 25 years ago yet the children never exerted any effort to have the property partitioned. This fact indicates that petitioners had knowledge of the sale, which explains why they had no interest at all in any project of partition. More important is the fact that after the respondents purchased the land they worked to secure an Original Certificate of Title

Supreme Court E-Library

on the basis of a free patent application. This was way back in 1958, 15 years before the petitioners decided to file the action below. Clearly, the petitioners' action is now barred by the statute of limitations.

3. **CIVIL LAW; ACTION FOR RELIEF BASED ON FRAUD; ACTION BROUGHT WITHIN FOUR YEARS FROM DISCOVERY OF FRAUD.**— Even if we add the lower court's finding that there was fraud on the part of Martin Pascua when he effected the sale of the disputed lot in favor of the respondents, the petitioners are still barred from recovering the lot because their action should have been filed within four (4) years from their discovery of the fraud, which in turn, is deemed at the latest to have taken place in 1958, when the respondents were issued an original certificate of title.

4. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT BY DEFAULT PREVAILING PARTY NOT AUTOMATICALLY ENTITLED TO RELIEF; CASE AT BAR.**— Nowhere in the provision under Rule 18, Sec. 1 nor in the summons issued by the respondent court is it stated that the petitioners are automatically entitled to the relief prayed for, once the respondents are declared in default. Favorable relief can be granted only after the court has ascertained that the evidence offered and the facts proven by the presenting party, petitioners in this case, warrant the grant of the same. Otherwise, it would be meaningless to require presentation of evidence if everytime the other party is declared in default, a decision would automatically be rendered in favor of the non-defaulting party and exactly according to the tenor of his prayer. This is not contemplated by the Rules nor is it sanctioned by the due process clause. In the instant case, from the evidence presented ex-parte by the petitioners and from their very own allegations, the only judgment that is warranted is the dismissal of the complaint. It is barred by the statute of limitations.

APPEARANCES OF COUNSEL

Hermenigildo G. Rapanan for petitioner.

Supreme Court E-Library

DECISION

GUTIERREZ, JR., *J.:*

This is a petition for review on certiorari, seeking to annul the decision of the Court of First Instance of Cagayan which dismissed the petitioners' action for reconveyance with damages on the ground that the period within which to file the same had already prescribed.

Petitioners, as plaintiffs, filed a complaint for reconveyance with damages against the private respondents, spouses Clemente and Juliana Castro. The latter, as defendants, in lieu of filing an answer, filed a motion to dismiss the complaint on the grounds that the complaint states no cause of action and that the same is already barred by the statute of limitations.

The trial court denied the respondents' motion after finding that the grounds relied upon by them did not appear on the face of the complaint. The court subsequently declared the respondents in default for their having failed to file an answer within the reglementary period. Thus, the petitioners proceeded to present their evidence ex-parte.

After receiving the petitioners' evidence, the trial court made the following findings:

"From the evidence adduced during the presentation of evidence by plaintiffs, it was shown that Alberto Pascua is one of the plaintiffs in this case; that he knows his co-plaintiffs Crispina, Sotera, surnamed Pascua, and Eduardo Molina, the first two being his sisters while the last is his nephew being the son of his sister Alejandra; that his father is Jordan Pascua while his mother is Magdalena Dumadag; that both his parents are already dead (Exhibits A, B, and C); that Alejandra Pascua is also dead; that during the lifetime of Jordan and Magdalena Dumadag, they begot five children, namely Alberto, Alejandra, Crispina, Martin and Sotera; that Jordan Pascua and Magdalena Dumadag acquired a parcel of land located at Dacalafugo, Camalaniugan, Cagayan, consisting of 1.02.20 hectares and described in paragraph 3 of the complaint; that lately they came to know that their brother Martin Pascua sold the property to Clemente Castro, a resident of Camalaniugan, Cagayan; that when

Supreme Court E-Library

they went to complain to the Agrarian office in Tuguegarao. Clemente Castro showed them the deed of sale which they xerox copied (Exhibit D); that the signature Alberto Pascua appearing in Exhibit D is not his signature; that the genuine signature of Alberto Pascua appears in Exhibit E; that he and his co-plaintiffs did not give consent to the sale of the land subject matter of this case; that the signature Sotera Pascua, appearing in Exhibit D is not also the signature of Sotera Pascua; that he and his co-plaintiffs did not appear before the Notary Public; that the land subject matter of this case was never given to Martin Pascua by their deceased father; that Martin Pascua is already dead; that the land is now titled in the name of the defendant Juliana O. Castro (Exhibits F and F-1) while the deed of sale was executed in favor of Clemente Castro (Exhibit D); that the land is declared for taxation purposes under Tax Declaration No. 157 (Exhibit G) in the name of Juliana Castro; that plaintiffs and the defendants have been neighbors since before the war and defendants know that the land sold to them and subject matter of this suit was inherited by the plaintiffs from their deceased father; that they (plaintiffs) have been deprived of the fruits of the land for more than 20 years; that the land yields from thirty to forty sacks of palay valued at P30.00 each; and that plaintiffs agreed to pay their counsel the amount of P1,200.00 out of which they have already paid P200.00.

"From Exhibit D of the plaintiffs, it appears that the deed of sale was executed in favor of the defendant Clemente Castro married to Juliana Orteza by Martin Pascua on May 8, 1951. Alberto Pascua and Sotera Pascua testified that lately they came to know that this land was conveyed by Martin Pascua to the defendants and that said defendants have been in possession of the land in question for more than 20 years. They testified further, however, that they have been deprived of the fruits of the land for more than twenty years. If such is the case, it is clear that the defendants have entered and occupied the property for more than twenty years and it is inconceivable that the plaintiffs did not come to know that the defendants bought the property from their brother Martin Pascua when they admitted that they have suffered damages by virtue of the dispossession for more than twenty years. The conclusion is obvious that the plaintiffs had knowledge of the transaction made by their brother about twenty years ago.

"From the evidence of the plaintiffs, the Court finds that there was really fraud committed by Martin Pascua in selling the entire property

Supreme Court E-Library

which said Martin Pascua and plaintiffs inherited from their parents thus excluding the shares of the plaintiffs. Certainly, Martin Pascua could only sell one-fifth of the property and that the four-fifths were fraudulently conveyed by him. It is clear that there was fraud on the part of Martin Pascua in selling the shares of his brother and sisters. The action for relief on the ground of fraud, however, may be brought only within four years from the discovery of the fraud. (Article 1391, New Civil Code; Section 43(c) Act 190).

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"In view of the fact that the deed of sale was executed on May 8, 1951, or over twenty years before the filing of the complaint on May 31, 1973, it is hard to believe that plaintiffs did not come to know of this deed of sale executed by their brother. The Court, therefore, comes to the inevitable conclusion that this action, having been filed 22 years after the execution of the deed of sale, has long prescribed."

Not satisfied with the trial court's decision, petitioners elevated the case to this Court through this petition. The petitioners ask us to examine the following alleged errors of the respondent court:

1. THE TRIAL COURT ERRED IN DISMISSING THE CASE ON GROUND OF PRESCRIPTION ALTHOUGH IT HAS PREVIOUSLY DENIED A MOTION TO DISMISS BASED ON THE SAME GROUND.

2. THE TRIAL COURT ERRED IN NOT GRANTING RELIEF TO PLAINTIFFS ALTHOUGH THE DEFENDANTS WERE DECLARED IN DEFAULT.

The petitioners contend that the trial court acted with grave abuse of discretion when, after hearing their evidence presented ex-parte, the respondents having been declared in default, it dismissed the case on the ground that the action had already prescribed. When the same ground was earlier raised, the court denied the motion to dismiss filed by the respondents. The petitioners argue that because of its denying the motion to dismiss, the trial court is estopped from dismissing the case on the same ground. Petitioners further contend that the court's

Supreme Court E-Library

conclusion that they had knowledge of the sale executed by their deceased brother, Martin Pascua about twenty years ago is based merely on surmises and conjectures because, in reality, it was only in 1973 when they came to learn of the deed of sale executed by their deceased brother in 1951. In 1973, the deed was shown to them by respondent Clemente Castro at the Agrarian Office. Therefore, the period of prescription should be counted from the knowledge of the petitioners of the deed of sale and not from the date it was executed.

Petitioners' contentions are without merit.

The trial court denied the motion to dismiss because the grounds relied upon by the respondents for their motion *did not appear on the face of the complaint.* There was no finding that the allegation of prescription had no merit. It cannot be said, therefore, that the trial court was already estopped from passing upon the issue of prescription. The issue was not adjudicated on its merits and the doctrine of *res judicata* had not set in yet.

We likewise find the petitioners' contention, that they came to know of the deed of sale by Martin Pascua in favor of the respondents only in 1973, highly improbable. As the trial court correctly observed, it is inconceivable that the petitioners did not come to know about the purchase by the respondents of the property from Martin Pascua. They admitted that they have been neighbors of the respondents since before the war or for a period of about 30 years and that the latter had deprived them of the fruits of the land in question for more than 20 years. Alberto Pascua, one of the petitioners testified that his parents from whom they inherited the property died more than 25 years ago yet the children never exerted any effort to have the property partitioned. This fact indicates that petitioners had knowledge of the sale, which explains why they had no interest at all in any project of partition. More important is the fact that after the respondents purchased the land they worked to secure an Original Certificate of Title on the basis of a free patent application. This was way back in 1958, 15 years

Supreme Court E-Library

before the petitioners decided to file the action below. Clearly, the petitioners' action is now barred by the statute of limitations.

In the case of *Iglesia ni Cristo v. Hon. Judge, Court of First Instance of Nueva Ecija, Br. I* (123 SCRA 523), quoting the case of *Labora v. Dayang-hirang* (37 SCRA 346), we ruled:

"The rule in this jurisdiction, regarding public patents and the character of the certificate of title that may be issued by virtue thereof, is that where land is granted by the government to a private individual, the corresponding patent therefor, is recorded, and the certificate of title is issued to the grantee; thereafter, the land is automatically brought within the operation of the Land Registration Act, the title issued to the grantee becoming entitled to all the safeguards provided in Section 38 of said Act. In other words, upon the expiration of one year from its issuance, the certificate of title becomes irrevocable and indefeasible like a certificate issued in a registration proceeding."

It is quite obvious, therefore, that the respondents' title has already become indefeasible and irrevocable, the one-year period provided by law having expired in 1959.

Moreover, even if we add the lower court's finding that there was fraud on the part of Martin Pascua when he effected the sale of the disputed lot in favor of the respondents, the petitioners are still barred from recovering the lot because their action should have been filed within four (4) years from their discovery of the fraud, which in turn, is deemed at the latest to have taken place in 1958, when the respondents were issued an original certificate of title. This was our ruling in the case of *Balbin v. Medalla* (108 SCRA 666) where we stated:

"An action for reconveyance of real property resulting from fraud my be barred by the statute of limitations, which requires that the action shall be filed within four (4) years from the discovery of the fraud. Such discovery is deemed to have taken place when the petitioners herein were issued original certificates of title through either homestead or free patent grants, for the registration of said patents constitutes constructive notice to the whole world. (Gerona *v.* de Guzman, 11 SCRA 153, and cited cases thereof).

Supreme Court E-Library

"In the case at bar, the latest patent was issued on October 14, 1959. There is, therefore, merit in petitioner's contention that if any action for reconveyance should be commenced, the same should be filed on or before October 14, 1963. But private respondents' complaint for reconveyance and annulment of titles with damages was filed only on August 30, 1973 or more than 14 years had already elapsed from the date of the issuance of the respective titles of the defendants. Consequently, the action for reconveyance of land titled in the names of defendants (petitioners herein) had already prescribed."

The petitioners raise as a second issue that the respondent court had no alternative but to grant the relief prayed for in their complaint as this was evident in the tenor of the summons issued by said court which in part stated:

"x x x if you fail to appear within the time aforesaid, the plaintiff will take judgment against you by default and demand from this Court the relief applied for in said complaint x x x."

Petitioners also anchor their contention on Rule 18, Section 1 of the Rules of Court which provides:

"Judgment by default.- If the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff and proof of such failure, declare the defendant in default. Thereupon the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant. This provision applies where no answer is made to counter-claim, cross-claim or third-party complaint within the period provided in this Rule."

Nowhere in the aforequoted provision nor in the summons issued by the respondent court is it stated that the petitioners are automatically entitled to the relief prayed for, once the respondents are declared in default.

Favorable relief can be granted only after the court has ascertained that the evidence offered and the facts proven by the presenting party, petitioners in this case, warrant the grant of the same. Otherwise, it would be meaningless to require presentation of evidence if everytime the other party is declared in default, a decision would automatically be rendered in favor

Supreme Court E-Library

of the non-defaulting party and exactly according to the tenor of his prayer. This is not contemplated by the Rules nor is it sanctioned by the due process clause.

In the case of *Lim Tanhu v. Ramolete* (66 SCRA 452-453), we had occasion to elaborate on this point. We ruled:

"The Rules of Court contain a separate rule on the subject of default, Rule 18. But said rule is concerned solely with default resulting from failure of the defendant or defendants to answer within the reglementary period. Referring to the simplest form of default, that is, where there is only one defendant in the action and he fails to answer on time, Section 1 of the rule provides that upon 'proof of such failure, (the court shall) declare the defendant in default. Thereupon the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant.' This last clause is clarified by Section 5 which says that 'a judgment entered against a party in default shall not exceed the amount or be different in kind from that prayed for.'

"Unequivocal, in the literal sense, as these provisions are, they do not readily convey the full import of what they contemplate. To begin with, contrary to the immediate notion that can be drawn from their language, these provisions are not to be understood as meaning that default or the failure of the defendant to answer should be 'interpreted as an admission by the said defendant that the plaintiff's cause of action find support in the law or that plaintiff is entitled to the relief prayed for.' (Moran, *supra*, p. 535 citing Macondray & Co. *v.* Eustaquio, 64 Phil. 466, citing with approval Chaffin *v.* McFadden, 41 Ark. 42; Johnson *v.* Pierce, 12 Ark. 599; Mayden *v.* Johnson, 59 Ga. 105; People *v.* Rust, 292 III. 328; Ken *v.* Leopold, 21 Ill. A. 163; Chicago, etc. Electric R. Co. *v.* Krempel, 116 Ill. A. 253).

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"In other words, a defaulted defendant is not actually thrown out of court. While in a sense it may be said that by defaulting he leaves himself at the mercy of the court, the rules see to it that any judgment against him must be in accordance with law. The evidence to support the plaintiff's cause is, of course, presented in his absence, but the court is not supposed to admit that which is basically incompetent. Although the defendant would not be in a position to object, elementary justice requires that only legal evidence should be considered against him. If the evidence presented should not be

Supreme Court E-Library

sufficient to justify a judgment for the plaintiff, the complaint must be dismissed. And if an unfavorable judgment should be justifiable, it cannot exceed in amount or be different in kind from what is prayed for in the complaint."

In the instant case, from the evidence presented ex-parte by the petitioners and from their very own allegations, the only judgment that is warranted is the dismissal of the complaint. It is barred by the statute of limitations.

WHEREFORE, the petition is hereby DISMISSED for lack of merit. No costs.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova, de la Fuente, and *Alampay, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-39379. April 30, 1985]

BONIFACIO GOTICO, *plaintiff-appellant,* vs. LEYTE CHINESE CHAMBER OF COMMERCE, *defendant-appellee.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; COMPLAINT; AMENDMENT OF PLEADINGS; CLAIM OF POSSESSION INVOLVING A SPAN OF 33 YEARS IS A SUBSTANTIAL ELEMENT OF THE CAUSE OF ACTION.**— On the strength of Original Certificate of Title No. P-139 covering Lot 4875, plaintiff filed the complaint for ejectment. Traversing the complaint, defendant claimed that it had possession over the lot since 1928. Realizing that the admission as to the date of commencement of defendant's possession would be fatal to his cause, plaintiff moved to amend his complaint by changing "1928" to "1961." Held: We find that the Trial Court correctly exercised its discretion