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The contention of the appellant that Maura Bagsic should be succeeded by Felipa Bagsic, her sister of full blood, to the exclusion of the nephews and nieces of half blood citing Art. 1004, N.C.C., is unmeritorious and erroneous for it is based on an erroneous factual assumption, that is, that Felipa Bagsic died in 1955, which as indicated here before, is not true as she died on May 9, 1945, thus she predeceased her sister Maura Bagsic.

We find the judgment of the trial court to be in consonance with law and jurisprudence.

**ACCORDINGLY,** the judgment of the trial court is hereby affirmed.

No costs.

*Teehankee (Chairman), Makasiar, Muñoz Palma, Martin,* and *Fernandez, JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. L-39478. November 29, 1977]

**FAUSTINA CABABARROS VDA. DE NACALABAN, ANDRONICA, TEODITA, GODOFREDO, PROPULO, CALVIN, TARCIANO, OROTON, and NEVIL, all surnamed NACALABAN,** *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, and CATALINA CABABARROS, ROSITA, PRUTO AMADEO, LILA, NATIVIDAD, ADORACION, ALEJANDRIA ARQUIPO, ARLITA, JOSEFA, VERONA, JOSEFINA, LOURDES, PUSINA, MAGNA, and JOSEFINO, all surnamed CABABARROS; VIVINA, ROGELIO, FRANCISCO, GLORIA, CALINICO, all surnamed ABEJO; LEO, CLEMENTE, VICTOR, EDITHA, ANNE, ALEJANDER, FELIX,**

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**and AMPARO, all surnamed ABEJO; minors and are represented by their natural mother and guardian, NATIVIDAD NANGCAS VDA. DE ABEJO,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; CO-OWNERSHIP; NOT ESTABLISHED IN CASE AT BAR.—** The record discloses that the spouses Narciso Cababarros and Narcisa Edmilao acquired the land in question; that said spouses executed a mortgage over the aforementioned land in favor of Casimiro Tamparong to secure the payment of the indebtedness of Gerardo Cababarros, a son of the former; that Narciso Cababarros and Narcisa Edmilao were unable to pay the indebtedness hence the mortgage was foreclosed; that Casimiro Tamparong acquired the land in question as a result of the foreclosure proceedings; that the spouses Dioniciano Nacalaban and Faustina Cababarros purchased said land from Casimiro Tamparong; that by virtue of the sale in their favor, the said spouses claimed the land in question in the cadastral proceedings; that as a result, Original Certificate of Title No. 6929 covering the land was issued by the Register of Deeds of Misamis Oriental on January 8, 1938 to the spouses Dioniciano Nacalaban and Faustina Cababarros; that the aforementioned spouses have been in possession as owners of the land in question continuously, openly and quietly since they bought the same from Casimiro Tamparong until the present; that they have been paying the taxes on the land regularly; and that the spouses Dioniciano Nacalaban and Faustina Cababarros had mortgaged the property twice to the Philippine National Bank and had sold a portion thereof to Cagayan de Oro City for the extension of Corrales Avenue. From the facts of record it is clear that when the spouses Narciso Cababarros and Narcisa Edmilao died, they were no longer owners of the land in question which had been previously acquired by Casimiro Tamparong. Hence the plaintiffs, private respondents herein, did not inherit any right on the land in question. The record also shows that a deed of sale conveying the land in question was executed by Casimiro Tamparong in favor of the spouses Dioniciano Nacalaban and Faustina Cababarros. On the basis of the deed of sale in their favor, said spouses claimed the land in the cadastral proceedings and as a consequence Original Certificate

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of Title No. 6929 of the Registry of Deeds of Misamis Oriental was issued to them on January 8, 1938. There is no showing that the petitioners ever recognized the private respondents as their co-owners of the land in question. Since 1952 the land in question had been declared for taxation purposes only in the name of Dioniciano Nacalaban.

2. **ID.; TRUSTS; IMPLIED TRUSTS; EXTINGUISHED BY PRESCRIPTION; CASE AT BAR.**— The contention of the private respondents that an implied trust over the land in question existed between them and the petitioners has no factual and legal basis. Granting, *arguendo*, that such an implied trust existed, the cause of action of the private respondents has prescribed. Their cause of action arose on January 8, 1938 when Original Certificate of Title No. 6929 was issued by the Register of Deeds of Misamis Oriental to the spouses Dioniciano Nacalaban and Faustina Cababarros. The issuance of the title was constructive notice to the private respondents. Moreover, there is evidence that in 1945 the private respondents had demanded partition of the land in question and the petitioners refused to comply with the demand. The present action for partition and reconveyance was commenced only on February 11, 1964, more than ten (10) years from the date the cause of action arose in 1938. It is now settled that actions on implied and constructive trusts are extinguished by laches or prescription of ten years.

**APPEARANCES OF COUNSEL**

*A. R. Montemayor* for petitioners.

**D E C I S I O N**

**FERNANDEZ, *J.*:**

This is a petition for *certiorari* to review the decision[1] of the Court of Appeals in CA-G.R. No. 41486-R entitled "*Rosita*

[1] *Rollo*. pp. 20-30. The decision was written by Justice Ruperto G. Martin and concurred in by Justice Emilio A. Gancayco and Justice Mariano Serrano.

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*Cababarros, et al., vs. Faustina Vda. de Nacalaban, et al.*" affirming *in toto* the judgment of the Court of First Instance of Misamis Oriental in Civil Case No. 2317, the dispositive part of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered declaring the parcel of land particularly described in the plaintiffs' amended complaint as a common hereditary property of the plaintiffs and the defendants in the above-entitled case and ordering the latter to effect the partition thereof and to reconvey in favor of the persons legally entitled thereto their respective lawful shares interests and/or participation over the same under the following proportions, to wit:

One-sixth (1/6) share to the Heirs of Gerardo Cababarros;

One-sixth (1/6) share to the Heirs of Jose Cababarros;

One-sixth (1/6) share to the Heirs of Felicisimo Cababarros;

One-sixth (1/6) share to Catalina Cababarros;

One-sixth (1/6) share to the Heirs of Ignacio Cababarros;

The remaining one-sixth (1/6) share shall be retained by the defendants as their own share. The defendants are likewise ordered to pay jointly and severally, unto the plaintiffs the sum of ₱500.00 as attorney's fees and to pay the costs.

SO ORDERED.

Done in the city of Cagayan de Oro this 27th day of November, 1967.

(Sgd.) BENJAMIN K. GOROSPE
J u d g e"[2]

On February 11, 1964 Rosita, Pruto, Amadeo, Natividad, Adoracion, Alejandria, Lila, and Josefina, all surnamed Cababarros, and Vivina, Rogelio, Francisco, Gloria, Calinico and Ciriaco, all surnamed Abejo, claiming to be heirs of the spouses Narciso Cababarros and Narcisa Edmilao, instituted against Faustina Vda. de Nacalaban and Godofredo, Propulo, Calvin, Tarciano, Oroton and Nivel, all surnamed Nacalaban,

[2] Record on Appeal, pp. 40-41, *Rollo*. p. 31.

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and Gerardo Cababarros and Catalina Cababarros Civil Case No. 2317 for partition of a parcel of land and reconveyance of shares therein.

The complaint[3] stated that the spouses Narciso Cababarros and Narcisa Edmilao, during their lifetime, acquired a certain parcel of land known as Lot No. 1162, surveyed in the name of Heirs of Narciso Cababarros, situated at Corrales Extension, Telegrapo, Cagayan de Oro City containing an area of 4,082 square meters and declared in the name of Dioniciano Nacalaban under Tax Declaration No. 16358; that upon the death of Narciso Cababarros and Narcisa Edmilao the said land was transmitted by operation of law to the defendants and the parents of the plaintiffs; that the property in question being owned in common, was placed in trust and in the physical possession of defendant Faustina Vda. de Nacalaban and her late husband, Dioniciano Nacalaban, on the understanding that they should deliver the shares of the herein plaintiffs in case the latter demanded the same; that while the property in question was in the possession of the defendant Faustina Vda. de Nacalaban and her husband Dioniciano Nacalaban, the said spouses were able to secure fraudulently a certificate of title in their names, without the consent and knowledge of the plaintiffs; and that upon knowing of the fraudulent acquisition, the plaintiffs had exerted on several occasions efforts to demand for their respective shares but the defendants arrogantly refused and ignored the plaintiffs' demands.

In their answer[4] the defendants alleged that the late spouses Narciso Cababarros and Narcisa Edmilao were not owners anymore of the land subject of this action long before their deaths and hence could not have transmitted non-existent rights over the said land which was no longer theirs; that no trust, express or implied, had ever existed between plaintiffs and defendants; and that the plaintiffs were fully aware that the spouses Dioniciano Nacalaban and Faustina Cababarros were

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[3] *Ibid.*, pp. 2-6. *Rollo.* p. 31.

[4] *Ibid.*, pp. 7-12. *Rollo.* p. 31.

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issued a torrens title as proof of their exclusive ownership over the land in question long before World War II. They averred as affirmative defenses that the complaint states no cause of action; that even assuming that a cause of action exists, the same has already been barred by prior judgment; and that the same has already been barred by the statute of limitations or prescription. The defendants asked for damages and attorney's fees.

The defendants-appellants, now petitioners, assign the following errors:

"I.

THE RESPONDENT COURT OF APPEALS ERRED IN INSTALLING PLAINTIFFS-RESPONDENTS, AS CO-OWNERS OF THE LAND IN SUIT SINCE THERE IS NO EVIDENCE OF FRAUD TO JUSTIFY THE CREATION OF AN IMPLIED TRUST IN THE CADASTRAL PROCEEDING WHEREIN O.C.T. NO. 6929 WAS ADJUDICATED AS CONJUGAL PROPERTY OF YOUR DEFENDANTS-PETITIONERS.

II.

THE RESPONDENT COURT OF APPEALS ERRED IN NOT HOLDING PLAINTIFFS-RESPONDENTS' ACTION BARRED BY PRIOR JUDGMENT AND/OR BY PRESCRIPTION."[5]

The respondents did not file their brief. Hence they were not able to refute the arguments of the petitioners.

The record discloses that the spouses Narciso Cababarros and Narcisa Edmilao acquired the land in question; that said spouses executed a mortgage over the aforementioned land in favor of Casimiro Tamparong to secure the payment of the indebtedness of Gerardo Cababarros, a son of the former; that Narciso Cababarros and Narcisa Edmilao were unable to pay the indebtedness hence the mortgage was foreclosed; that Casimiro Tamparong acquired the land in question as a result of the foreclosure proceedings; that the spouses Dioniciano Nacalaban and Faustina Cababarros purchased said land from

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[5] Brief for defendants-petitioner 4, p. 8, *Rollo*, p. 43.

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Casimiro Tamparong; that by virtue of the sale in their favor, the said spouses claimed the land in question in the cadastral proceedings; that as a result, Original Certificate of Title No. 6929 covering the land was issued by the Register of Deeds of Misamis Oriental on January 8, 1938 to the spouses Dioniciano Nacalaban and Faustina Cababarros; that the aforementioned spouses have been in possession as owners of the land in question continuously, openly and quietly since they bought the same from Casimiro Tamparong until the present; that they have been paying the taxes on the land regularly; and that the spouses Dioniciano Nacalaban and Faustina Cababarros had mortgaged the property twice to the Philippine National Bank and had sold a portion thereof to Cagayan de Oro City for the extension of Corrales Avenue.[6]

From the facts of record it is clear that when the spouses Narciso Cababarros and Narcisa Edmilao died, they were no longer owners of the land in question which had been previously acquired by Casimiro Tamparong. Hence the plaintiffs, private respondents herein, did not inherit any right on the land in question.

The record also shows that a deed of sale conveying the land in question was executed by Casimiro Tamparong in favor of the spouses Dioniciano Nacalaban and Faustina Cababarros. On the basis of the deed of sale in their favor, said spouses claimed the land in the cadastral proceedings and as a consequence Original Certificate of Title No. 6929 of the Registry of Deeds of Misamis Oriental was issued to them on January 8, 1938.

There is no showing that the petitioners ever recognized the private respondents as their co-owners of the land in question. Since 1952 the land in question had been declared for taxation purposes only in the name of Dioniciano Nacalaban.[7]

The contention of the private respondents that an implied trust over the land in question existed between them and the

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[6] *Ibid.*, pp. 4-6, *Rollo*, p. 43.

[7] Record on Appeal, p. 4 and p. 37, *Rollo*, p. 31.

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petitioners has no factual and legal basis. Granting, *arguendo*, that such an implied trust existed, the cause of action of the private respondents has prescribed. Their cause of action arose on January 8, 1938 when Original Certificate of Title No. 6929 was issued by the Register of Deeds of Misamis Oriental to the spouses Dioniciano Nacalaban and Faustina Cababarros. The issuance of the title was constructive notice to the private respondents.[8] Moreover, there is evidence that in 1945 the private respondents had demanded partition of the land in question and the petitioners refused to comply with the demand.[9]

The present action for partition and reconveyance was commenced only on February 11, 1964, more than ten (10) years from the date the cause of action arose in 1938.

It is now settled that actions on implied and constructive trusts are extinguished by laches or prescription of ten years.[10]

There is no factual and legal basis for award of damages and attorney's fees to the petitioners.

**WHEREFORE**, the decision appealed from is hereby set aside and the complaint in Civil Case No. 2317 of the Court of First Instance of Misamis Oriental is dismissed, without pronouncement as to costs.

**SO ORDERED.**

*Teehankee (Chairman), Makasiar, Muñoz Palma,* and *Guerrero, JJ.*, concur.

*Martin, J.,* took no part.

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[8] *Fermodo vs. Tutaan*, 53 SCRA, 505, 509.

[9] Brief for defendants-petitioners, p. 26. *Rollo*, p. 43.

[10] *Varsity Hills, Inc. vs. Navarro*, G. R. No. L-30889. February 29. 1972, 43 SCRA 503.