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SECOND DIVISION

[G.R. No. 108547. February 3, 1997]

FELICIDAD VDA. DE CABRERA, MARYJANE CABRERA and **FELICIDAD TEOKEMIAN,** *petitioners, vs.* **COURT OF APPEALS and VIRGILIA ORAIS DE FELICIO,** represented by her Attorney-in-Fact, **ERNESTO M. ORAIS,** *respondents.*

SYLLABUS

1. **CIVIL LAW; PROPERTY; INDEFEASIBILITY OF THE TORRENS TITLE; A DEFENSE WHICH DOES NOT EXTEND TO A TRANSFEREE WHO HAS NOTICE OF A FLAW IN THE TITLE.** — As can be discerned from the established facts, the Certificates of Title of the vendees Orais are, to say the least, irregular, and were issued in a calculated move to deprive Felicidad Teokemian of her dominical rights over the property reserved to her by descent. Plaintiff could not have registered the part reserved to Felicidad Teokemian, as this was not among those ceded in the Deed of Sale between Daniel/ Albertana Teokemian and Andres Orais. It must be remembered that registration does not vest title, it is merely evidence of such title over a particular property. (Embrado *vs.* Court of Appeals, G.R. No. 51457, June 27, 1994, 233 SCRA 335). The defense of indefeasibility of the Torrens Title does not extend to a transferee who takes the certificate of title with notice of a flaw in his title. (Anonuevo *vs.* Court of Appeals, G.R. No. 113739, May 2, 1995, 244 SCRA 28). The principle of indefeasibility of title is unavailing where there was fraud that attended the issuance of the free patents and titles. (Meneses *vs.* Court of Appeals, G.R. No. 82220, July 14, 1995, 246 SCRA 162).

2. **ID.; ID.; ACTION FOR RECONVEYANCE; PERIOD OF PRESCRIPTION; REQUIREMENTS.** — In the case of Heirs of Jose Olviga *vs.* Court of Appeals, G.R. No. 104813, October 21, 1993, 227 SCRA 330, we observed that an action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property, but this rule applies only *when*

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the plaintiff or the person enforcing the trust is not in possession of the property, since if a person claiming to be the owner thereof is in actual possession of the property, as the defendants are in the instant case, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession. As it is, before the period of prescription may start, it must be shown that (a) the trustee had performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust,* (b) such positive acts of repudiation have been made known to the *cestui que trust,* and, (c) the evidence thereon is clear and positive.

3. **ID.; ID.; ID.; LACHES; DEFINED.** — Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier, it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

4. **ID.; ID.; ID.; ID.; WHEN AVAILABLE AS A DEFENSE; RATIONALE.** — The defense of laches is an equitable one and does not concern itself with the character of the defendant's title, but only with whether or not by reason of plaintiff's long inaction or inexcusable neglect, he should be barred from asserting his claim at all, because to allow him to do so would be inequitable and unjust to defendant. Laches is not concerned merely with lapse of time, unlike prescription. While the latter deals with the fact of delay, laches deals with the effect of unreasonable delay. This Court emphasized in Mejia de Lucas *vs.* Gamponia, G.R. No. L-9335, October 31, 1956, 100 Phil 277, the reason upon which the rule is based is not alone the lapse of time during which the neglect to enforce the right has existed, but the changes of condition which may have arisen during the period in which there has been neglect. In other words, where a court finds that the position of the parties has to change, that equitable relief cannot be afforded without doing injustice, or that the intervening rights

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of third persons may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequences of his own neglect. In our jurisdiction, it is an enshrined rule that even a registered owner of property may be barred from recovering possession of property by virtue of laches. Under the Land Registration Act (now the Property Registration Decree), no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession. The same is not true with regard to laches. As we have stated earlier in Mejia de Lucas *vs.* Gamponia, while the defendant may not be considered as having acquired title by virtue of his and his predecessor's long continued possession (37 years) the original owner's right to recover back the possession of the property and the title thereto from the defendant has, by the latter's long period of possession and by patentee's inaction and neglect, been converted into a stale demand.

5. **ID.; ID.; CO-OWNERSHIP; RIGHT OF AN HEIR AS CO-OWNER OF THE PROPERTY.** — In Go Ong *vs.* Court of Appeals, G.R. No. 75884, September 24, 1987, 154 SCRA 270, this Court ruled that the heirs, as co-owners, shall each have the full ownership of his part and the fruits and benefits pertaining to it. An heir may therefore, alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when the personal rights are involved. But the effect of the alienation or mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

APPEARANCES OF COUNSEL

Belo Gozon & Elma for petitioners.
Ramirez, Corro & Associates for private respondents.

DECISION

TORRES, JR., *J.*:

Assailed in this Petition for Review on *Certiorari* is the Decision[1] of the respondent Court of Appeals dated January 7,

[1] Annex "A", Petition, p. 35, *Rollo*.

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1993 in CA-G.R. No. 22407-CV, the dispositive portion of which reads:

"WHEREFORE, the decision of the lower court is hereby REVERSED and judgment is hereby entered ordering defendants Felicidad Vda. de Cabrera and Marykane Cabrera to vacate the portion of Lot 2238 occupied by them and surrender possession thereof to plaintiff.

SO ORDERED."

Reversed by the foregoing pronouncements was the decision[2] of the Regional Trial Court, Branch 7, Baganga, Davao Oriental in Civil Case No. 379, an action for "Quieting of Title to Real Property, Damages with Preliminary Injunction." The trial court's disposition reads:

"WHEREFORE, the plaintiff is hereby ordered:

(a) To execute a reconveyance within thirty (30) days after this decision shall have become final and executory in favor of defendant Felicidad Vda. De Cabrera corresponding only to that portion of Lot No. 2239 actually and physically possessed and occupied by the defendant as seen from the sketch plan of Engr. Enecio Magno (Exh. '2') and pinpointed and identified during the ocular investigation as to its extent and boundaries of the said portion bought by defendants Felicidad Vda. De Cabrera from Felicidad Teokemian;

(b) To reimburse defendants for litigation expenses and attorney's fees in the amount of P7,000.00; and

(c) To pay the cost.

SO ORDERED."

We are restating the facts as determined by the appellate court, *viz*:

"On January 16, 1950, a Deed of Sale (Exh. B) was executed by Daniel Teokemian and Albertana Teokemian in favor of Andres Orais over a parcel of unregistered land situated at Abejod, Cateel, Davao Oriental with an area described as 7.3720 hectares. The property was

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[2] Annex "B", Petition, p. 49, *Rollo*.

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owned in common by Daniel and Albertana and their sister Felicidad Teokemian, having inherited the same from their late father, Domingo Teokemian. However, the Deed of Sale was not signed by Felicidad, although her name was printed therein as one of the vendors. On January 26, 1950, the parcel of land was surveyed in the name of Virgilia Orais, daughter of the vendee Andres Orais, and denominated as Lot No. 2239, PLS-287, Cateel Cadastre. As surveyed, the property had an area of 11.1000 hectares.

On June 24, 1957, Virgilia Orais was issued Free Patent No. V-79089. Original Certificate of Title No. P-10908 was issued in her name (Exh. A).

On July 27, 1972, Alberto (sic. Albertana) Teokemian executed a Deed of Absolute Sale conveying to Elano Cabrera, husband of Felicidad Cabrera, 'ONE HALF PORTION OF LOT NO. 2239, Cad-287, eastern portion, containing an area of FIFTY FIVE THOUSAND FIVE HUNDRED TEN (55,510) SQUARE METERS, more or less' (Exh. 3), which portion supposedly corresponded to the one-third share in Lot 2239 of Felicidad Teokemian who was not a party to the Deed of Sale earlier executed by her brother and sister in favor of Andres Orais, Virgilia Orais' predecessor-in-interest. It was explained by Felicidad Cabrera that the Deed of Sale was signed by Albertana Teokemian, not by Felicidad Teokemian, because the whole of Lot 2239 was adjudicated to Albertana in a decision of a cadastral court dated June 8, 1965 as evidenced by a Certification of an officer-in-charge of the Office of the Clerk of Court, RTC, Br. 7, Baganga, Davao Oriental (Exh. 4). Felicidad Cabrera and her husband immediately took possession of the western portion of Lot 2239.

In 1974 and 1978, Virgilia Orais' brothers, Rodolfo and Jimmy Orais went to Cateel, Davao Oriental and confronted the Cabreras of the latter's alleged encroachment and illegal occupation of their sister's land, but no concrete action on the matter was pursued by Virgilia Orais until February 11, 1988 when she filed Civil Case No. 379 against Felicidad Cabrera, now a widow, and her daughter Marykane Cabrera for 'Quieting of Title to Real Property, Damages with Preliminary Mandatory Injunction.'

The complaint, which was amended on June 22, 1988 by including Felicidad Teokemian as party defendant (pp. 42-47, Records), alleged that sometime in 1972 and 1973 the late Elano Cabrera and defendant Felicidad Cabrera, knowing that Lot 2239 was already registered in the

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name of the plaintiff, prepared a document of sale and had Felicidad Teokemian sign it conveying a portion of said lot to them as described in the Sketch Map (Annex D of the Complaint), after which they entered and possessed said portion and enjoyed the fruits thereon. Plaintiff further averred that by reason of the document of sale and the declaration of the property involved in the name of defendant Felicidad Vda. De Cabrera, there created a cloud of doubt on the former's title on said property.

Plaintiff prayed as follows:

'WHEREFORE, premises considered, plaintiff through the undersigned counsel respectfully prays this Honorable Court that:

a) After due notice and hearing, a Writ of Preliminary Mandatory Injunction be issued restraining the defendants from further dispossessing the plaintiff of the land in question;

b) Ordering the defendants to pay jointly the plaintiff the amount of not less than Sixteen Thousand Two Hundred (P16,200) as total value of the rice produced from the riceland in question, and the amount of Twenty One Thousand Six Hundred (P21,600.00) Pesos as the total proceeds of the nuts of the coconut land in question;

c) The Defendants be ordered to pay the plaintiff the amount of Twenty Thousand (P20,000.00) Pesos and Ten Thousand (P10,000.00) Pesos as litigation expenses;

d) The defendants be ordered to pay Six Thousand (P6,000.00) Pesos for attorneys fees; Four Hundred (P400.00) Pesos as expenses for every appearance in Court;

e) The document of sale executed by Felicidad Teokemian and the Tax Declarations issued to the late Elano Cabrera and Felicidad Vda. De Cabrera and the subsequent Tax Declaration creating a cloud of doubt on the title, possession, rights and interest be declared null and void for being fraudulent and without any legal basis and inexistent; and

f) Such other reliefs and remedies which this Honorable Court may deem just, proper, and equitable in the premises.'

In their answer with counterclaim (pp. 10-18, Records), defendants alleged that they acquired a portion of Lot 2239 in good faith and for value; that said portion was owned by Felicidad Teokemian who was

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not a party to the Deed of Sale executed by Daniel and Albertana Teokemian on January 16, 1950 in favor of Andres Orais over Lot 2239; that not having signed the Deed of Sale, Felicidad Teokemian's one-third share in Lot 2239 could not have been legally conveyed to Andres Orais; that Virgilia Orais (successor-in-interest of Andres Orais) committed fraud in including the portion owned by Felicidad Teokemian in her applying for free patent over Lot 2239 is concerned pursuant to Art. 1456 of the Civil Code; and that plaintiff is guilty of laches for not initiating an action against defendants to recover the western portion of Lot 2239 despite plaintiff's knowledge of defendant's acquisition thereof in 1972, as in fact it was only in 1988 when the complaint for quieting of title was filed in court.

Defendants prayed, thus:

"WHEREFORE, this Honorable Court, after due notice and hearing on the merits of this case; to issue order or orders;

1. Finding the defendants as the rightful, lawful, and legal owner of that portion which was sold to them by Felicidad Teokemian and which was included in the title of plaintiff;

2. To find that the plaintiff did not own the said portion and that they have personal knowledge of the same when the plaintiff filed and secured the title under the Administrative Proceeding;

3. Finding that the plaintiff is only holding the title to that portion only in an implied trust in favor of the real owner;

4. Finding the plaintiff legally obligated to cause the segregation of the portion at their expense and deliver formally the said portion to the real owners, the defendants.

5. To order the plaintiff to execute, prepare and or make any instrument or document to finally vest in the Defendants absolute, clear and flawless title or ownership over the portion which the plaintiff holds title in trust in defendant's favor.

6. To Order the Plaintiff to pay actual damages in the sum of P2,000.00 as litigation expense and Attorney's fees in the sum of P5,000.00 in favor of defendants;

7. To direct the plaintiff to account for the share of the real owner of the portion of land illegally cultivated and planted by plaintiff to rice in favor of FELICIDAD TEOKEMIAN to be paid thru the Defendants who are the owners, which consisted in ONE

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THIRD OF THE RICE HARVEST every year since the year 1950 to 1972 when the portion was sold and cultivated by defendant based on the computation of income by the plaintiff in Paragraph 16, a paragraph in the Second Cause of Action of the complaint;

and to grant the defendants such other reliefs and remedies proper and equitable in the premises."[3]

On April 27, 1989, the lower court rendered judgment in favor of defendants and against the plaintiff, ruling that the latter can no longer recover the western portion of Lot 2239 conveyed in 1972 by Felicidad Teokemian in favor of the late Elano Cabrera and Felicidad Cabrera due to laches. In support of its findings, the trial court referred to the Court's pronouncements in Lola *vs.* Court of Appeals,[4] where it was held that although the defense of prescription is unavailing to the petitioners, because, admittedly, the title to the subject lot was still registered in the name of the respondent, still the petitioners have acquired title to it by virtue of the equitable principle of laches due to the respondent's failure to assert her claim and ownership for thirty-two years; and in Republic *vs.* Court of Appeals[5] that, while it is true that by themselves tax receipts and declaration of ownership for taxation purposes are not incontrovertible evidence of ownership, they become strong evidence of ownership acquired by prescription when accompanied by proof of actual possession of the property; and in Miguel *vs.* Catalino,[6] that even granting appellant's proposition that no prescription lies against their fathers' recorded title, their passivity and inaction for more than thirty four years justifies the defendant appellee in setting up the equitable defense of laches in his own behalf.

The respondent Court of Appeals reversed such findings upon appeal.

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[3] Court of Appeals Decision, pp. 36-40, *Rollo*.

[4] G.R. No. L-46573, November 13, 1986, 145 SCRA 439.

[5] G.R. Nos. L-43105 and L-43190, August 31, 1984, 131 SCRA 532.

[6] G.R. No. L-23072, November 29, 1968, 26 SCRA 234.

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Even as the appellate court observed that the registration made by the plaintiff was fraudulent insofar as it involved the one-third interest of Felicidad Teokemian, which was not included in the sale executed by Albertana and Daniel Teokemian, it nevertheless upheld its effects, on the justification that the defendants' action for reconveyance based on an implied trust had already been barred by prescription. Furthermore, the action of the plaintiff is not barred by laches, as was held by the lower court. Said the appellate court:

"We disagree with the lower court's ruling that plaintiff is barred from bringing an action for recovery of ownership. Parenthetically, while the complaint filed by plaintiff is designated as one for quieting of title, the allegations therein show that it is actually for recovery of ownership/possession.

First. The Deed of Absolute Sale dated May 27, 1972 (Exh. 3) executed by Albertana Teokemian in favor of Elcano Cabrera over the portion of 55,510 square meters of Lot 2238 which allegedly pertained to the one-third interest of Felicidad Teokemian did not convey any title to Elcano Cabrera, assuming that Felicidad Teokemian still owned a one-third portion of Lot 2238 which was already registered in plaintiff's name, considering that Albertana did not have any authority from Felicidad Teokemian to effect such conveyance. Consequently, defendants Felicidad vda. De Cabrera and Marykane Cabrera had acquired no title upon which to anchor their claim of ownership over the one-third portion. Such being the case, plaintiffs cannot be barred by laches from instituting the action to quiet title against defendants.

xxx xxx xxx

Second. There was no allegation, much less proof, that Lot 2239 had been partitioned among the co-owners Daniel, Albertana, and Felicidad, all surnamed Teokemian, before the land was sold to Andres Orais in 1950 when the same was still unregistered. This being the case, and assuming that Felicidad Teokemian had retained ownership over an undivided one-third portion of Lot 2239 despite its being titled in plaintiff's name in 1958, Felicidad Teokemian could only dispose her undivided interest, not a definite portion described in the Deed of Sale executed on July 27, 1972 (Exh. 3) as "eastern part." Worse, the supposed vendee, Elcano Cabrera, and her successors-in-interest, defendants Felicidad vda. de Cabrera and Marykane Cabrera, occupied

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the western portion of Lot 2239, not the eastern portion which was the subject of the sale. Their occupation of a definite portion of an undivided property, without any color of title, could not have ripened into ownership on the principle of laches.

Third. As testified to by Jimmy Orais, plaintiff's brother, it was only in 1974 when plaintiff came to know that her property was occupied by Elcano Cabrera. According to Jimmy, he and his elder brother Dr. Rodolfo Orais went to the house of Elcano Cabrera three times in 1974 and in 1979 complaining of the latter's occupancy of their sister's property. Jimmy further declared that after Elcano Cabrera was shown plaintiff's title to the property, Elcano Cabrera proposed a relocation survey of the area to determine whether the premises occupied by him were included in the plaintiff's title (T.S.N. pp. 39-44, January 3, 1989). It appears, however, that nothing came out of the proposal to conduct a relocation survey. From the time plaintiff became aware of Cabrera's possession of the western portion of Lot 2239, which was in 1974, up to the time she instituted the action for quieting of title in 1988, only fourteen (14) years had elapsed. This case, therefore, has no congruency with those cases where the Supreme Court ruled that the registered owner is barred by laches from recovering his property. Thus, in Lola *vs.* Court of Appeals (145 SCRA 439), the petitioners acquired title to the land owned by respondent by virtue of the equitable principles of laches due, according to the Supreme Court, to respondent's 'failure to assert her claims and ownership for thirty-two (32) years.' In Miguel *vs.* Catalino (26 SCRA 234), the Supreme Court said that appellant's 'passivity and inaction for more than 34 years (1928-1962) justifies the defendant-appellee in setting up the equitable defense of laches in his behalf.' In Mejia *vs.* Gampomana (100 Phil. 277), it was held that 'the original owner's right to recover back the possession of the property and title thereto from the defendant has by the long period of 37 years and by the patentee's inaction and neglect been converted into a stale demand.'

Laches, in a general sense, is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by the exercise of due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it (Tijam *vs.* Sibonghanoy, 32 SCRA 29). Since imprescriptibility is one of the basic features of a Torrens title, it is not an ordinary delay in asserting one's right that will give rise to the application of the principle of laches, otherwise, registered title can easily be defeated by prescription. This is precisely

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the reason why, in the cases cited, the delay or inaction by the registered owners in asserting their rights was considered unreasonable and unexplained because it took them from 32 to 37 years to do so. In contrast, the delay in the case at bar was only fourteen years.

While possession of defendants Felicidad vda. De Cabrera and Marykane Cabrera could not have ripened into ownership as already discussed, they are possessors in good faith of the portion occupied by them and, therefore, entitled to the benefits accorded by the Civil Code as such."[7]

Sisters Felicidad Vda. de Cabrera and Marykane Cabrera, together with Felicidad Teokemian are now before the Court as Petitioners in this Petition for Review on *Certiorari*, seeking relief from the respondent court's decision, assigning as errors the following:

A

RESPONDENT COURT OF APPEALS ERRED IN RULING THAT PRIVATE RESPONDENT'S COMPLAINT FILED IN 1988 FOR QUIETING OF TITLE WHICH ACTUALLY IS ONE FOR RECOVERY OF OWNERSHIP AND POSSESSION AS FOUND BY RESPONDENT COURT IS NOT BARRED BY LACHES BECAUSE:

1. A PERIOD OF 30 YEARS HAD ELAPSED FROM 1958 WHEN TORRENS TITLE WAS ISSUED TO PRIVATE RESPONDENT TO 1988 WHEN HER COMPLAINT BELOW WAS FILED DURING WHICH PERIOD OF TIME THE PROPERTY HAS BEEN IN OPEN, CONTINUOUS AND ADVERSE POSSESSION OF THE ORIGINAL OWNER, FELICIDAD TEOKEMIAN, FROM 1958, OR EVEN EARLIER IN 1941 WHEN SHE INHERITED THE PROPERTY, TO 1972 WHEN SHE SOLD IT TO THE CABRERAS WHO CONTINUED THE PRIOR POSSESSION UNTIL 1988 WHEN PRIVATE RESPONDENT'S COMPLAINT WAS FILED.
2. ASSUMING ARGUENDO RESPONDENT COURT'S HOLDING THAT ONLY 14 YEARS HAD ELAPSED COUNTED FROM 1974 WHEN CABRERAS' POSSESSION WAS QUESTIONED BY PRIVATE RESPONDENT'S BROTHERS, STILL THAT PERIOD CONSTITUTES LACHES.

[7] Court of Appeals Decision, *supra*.

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B

RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT LACHES DOES NOT APPLY BECAUSE WHAT WAS SOLD TO THE CABRERAS WAS A DEFINITE PORTION OF THE COMMUNITY PROPERTY BEFORE PARTITION, HENCE, VOID AND THAT ALBERTANA TEOKEMIAN WHO SIGNED THE DOCUMENT OF SALE IN FAVOR OF THE CABRERAS HAD NO AUTHORITY FROM HER SISTER-CO-OWNER FELICIDAD TEOKEMIAN TO EXECUTE THE DEED OF CONVEYANCE.[8]

The bone of the petitioners' contention rests on the alleged waiver of the plaintiff to recover any interest she had in the one-third portion of the property inherited by Daniel, Albertana and Felicidad Teokemian from their late father, Domingo, due to the long period of time which lapsed from the time the plaintiff's title was registered until the action for quieting of title was instituted.

We find merit in the petition.

At the outset, it must be observed that the Certificate of Title of the plaintiff, which was derived from Free Patent No. V-79089, issued in the name of Virgilia Orais, leaves much to be desired in propriety, considering that the Deed of Sale executed by Daniel and Albertana Teokemian, on one hand and Andres Orais on the other, did not bear the signature of Felicidad Teokemian, and therefore, did not cover the latter's share.

It was the respondent appellate court which observed that "the registration of the plaintiff's title over the subject property was fraudulent insofar as it involved the one-third interest of Felicidad Teokemian who did not sign the Deed of Sale in favor of plaintiff's predecessor-in-interest and, therefore, the latter held that portion as a trustee of an implied trust for the benefit of Felicidad, pursuant to Art. 1456 of the Civil Code."[9] Needless to state, these conclusions, being matters of fact, are entitled to our full affirmation, since they are congruent with the findings of the trial court, thus:

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[8] Petition, pp. 16-17, *Rollo*.

[9] Court of Appeals Decision, p. 45, *Rollo*.

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"It would seem from the facts of the case that the basis of the right of plaintiff over the land in litigation specifically Lot No. 2239 now titled in the name of the plaintiff, located at Buayahon, Abejod, Cateel, Davao Oriental, proceeded from the Deed of Sale executed by Daniel Teokemian and Albertana Teokemian on January 16, 1950 acknowledged before Judge Proserador Danao as Notary *Ex Oficio*. Taking a hard look over the aforesaid deed of sale (Exh. "B") the said document apparently included the third heir of Domingo Teokemian Felicidad Teokemian because her name was typewritten together with her sister Albertana and brother Daniel all surnamed Teokemian in the said document. Again this fact will come to mind that the vendee Andres Orais was anticipating at the time Felicidad Teokemian will also sell her share in this portion of land (Lot No. 2239) which at the time of the sale it was still unregistered land. The non-signing of Felicidad Teokemian over her typewritten name in this deed of sale (Exh. "B") will attest to the fact that she did not sell her share in the lot in question. After this sale the vendee Andres Orais through his encargado Melecio Capilitan and later Servillano Abarca immediately took possession of the two third portion of said parcel of land respecting the third portion owned by Felicidad Teokemian."[10]

However, the appellate court stated further that nonetheless, the plaintiff's attempt to recover the property is justified because defendant Felicidad Teokemian's own action for reconveyance has already been barred by prescription,[11] which is the same as stating that the very tardiness of the plaintiff in pursuing the present action for reconveyance of the subject property has rendered the defendants' defense nugatory, and has made the fortress of the plaintiff's case impregnable.

This conclusion is incorrect. As can be discerned from the established facts, the Certificates of Title of the vendees Orais are, to say the least, irregular, and were issued in a calculated move to deprive Felicidad Teokemian of her dominical rights over the property reserved to her by descent. Plaintiff could not have registered the part reserved to Felicidad Teokemian, as this was not among those ceded in the Deed of Sale between Daniel/

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[10] RTC Decision, pp. 60-61.

[11] Court of Appeals Decision, p. 45, *Rollo*.

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Albertana Teokemian and Andres Orais. It must be remembered that registration does not vest title, it is merely evidence of such title over a particular property. (Embrado *vs.* Court of Appeals)[12]

The defense of indefeasibility of the Torrens Title does not extend to a transferee who takes the certificate of title with notice of a flaw in his title. (Añonuevo *vs.* Court of Appeals)[13] The principle of indefeasibility of title is unavailing where there was fraud that attended the issuance of the free patents and titles. (Meneses *vs.* Court of Appeals)[14]

Be that as it may, that the right of the defendants for reconveyance of the subject property arising from an implied trust under Article 1456 of the Civil Code is material to the instant case, such remedy has not yet lapsed, as erroneously submitted by the plaintiff, and, is thus, a bar to the plaintiff's action. In the case of Heirs of Jose Olviga *vs.* Court of Appeals,[15] we observed that an action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property, but this rule applies only *when the plaintiff or the person enforcing the trust is not in possession of the property,* since if a person claiming to be the owner thereof is in actual possession of the property, as the defendants are in the instant case, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe. The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the reason for the rule being, that his undisturbed possession gives him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by one who is in possession.

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[12] G.R. No. 51457, June 27, 1994, 233 SCRA 335.

[13] G.R. No. 113739, May 2, 1995, 244 SCRA 28.

[14] G.R. No. 82220, July 14, 1995, 246 SCRA 162.

[15] G.R. No. 104813, October 21, 1993, 227 SCRA 330.

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As it is, before the period of prescription may start, it must be shown that (a) the trustee has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust*, (b) such positive acts of repudiation have been made known to the *cestui que trust*, and, (c) the evidence thereon is clear and positive.[16]

In the case at bar, the defendant Felicidad Teokemian, and thereafter, the Cabreras were in actual possession of the property since it was left to Felicidad Teokemian by her father in 1941, which possession had not been interrupted, despite the sale of the two-third portion thereof to the plaintiff in 1950, and the latter's procurement of a Certificate of Title over the subject property in 1957. Until the institution of the present action in 1988, plaintiff, likewise, had not displayed any unequivocal act of repudiation, which could be considered as an assertion of adverse interest from the defendants, which satisfies the above-quoted requisites. Thus, it cannot be argued that the right of reconveyance on the part of the defendants, and its use as defense in the present suit, has been lost by prescription.

On the other hand, the action for reconveyance (quieting of title) of the plaintiff was instituted only in 1988, that is, thirty years from the time the plaintiff's husband was able to acquire Certificate of Title covering the properties inherited by the Teokemians, and apparently including that portion belonging to Felicidad Teokemian. In the meantime, defendant Felicidad vda. De Cabrera and her late husband have been actively in possession of the same, tilling it, and constructing an irrigation system thereon. This must surely constitute such tardiness on the part of the plaintiff constituting the basis for laches.

Laches has been defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier, it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it

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[16] Huang *vs.* Court of Appeals, G.R. No. 108525, September 13, 1994, 236 SCRA 420.

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either has abandoned it or declined to assert it.[17] The defense of laches is an equitable one and does not concern itself with the character of the defendant's title, but only with whether or not by reason of plaintiff's long inaction or inexcusable neglect, he should be barred from asserting his claim at all, because to allow him to do so would be inequitable and unjust to defendant. Laches is not concerned merely with lapse of time, unlike prescription. While the latter deals with the fact of delay, laches deals with the effect of unreasonable delay.[18]

This Court emphasized in Mejia de Lucas *vs.* Gamponia,[19] the reason upon which the rule is based is not alone the lapse of time during which the neglect to enforce the right has existed, but the changes of condition which may have arisen during the period in which there has been neglect. In other words, where a court finds that the position of the parties has to change, that equitable relief cannot be afforded without doing injustice, or that the intervening rights of third persons may be destroyed or seriously impaired, it will not exert its equitable powers in order to save one from the consequences of his own neglect.

In our jurisdiction, it is an enshrined rule that even a registered owner of property may be barred from recovering possession of property by virtue of laches. Under the Land Registration Act (now the Property Registration Decree), no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession. The same is not true with regard to Laches.[20] As we have stated earlier in Mejia de Lucas *vs.* Gamponia, while the defendant may not be considered as having acquired title by virtue of his and his predecessor's long continued possession (37 years) the original owner's right to

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[17] Olizon *vs.* Court of Appeals, G.R. No. 107075, September 1, 1994, 236 SCRA 148.

[18] Palmera *vs.* Civil Service Commission, G.R. No. 110168, August 4, 1994, 235 SCRA 87.

[19] G.R. No. L-9335, October 31, 1956, 100 Phil. 277.

[20] Claverias *vs.* Quingco, G.R. No. 77744, March 6, 1992, 207 SCRA 66; De la Calzada-Cierras *vs.* CA, G.R. No. 95431, August 7, 1992, 212 SCRA 390.

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recover back the possession of the property and the title thereto from the defendant has, by the latter's long period of possession and by patentee's inaction and neglect, been converted into a stale demand.

The argument that laches does not apply because what was sold to the Cabreras was a definite portion of the community property, and, therefore, void, is likewise untenable.

Under Article 493 of the Civil Code:

"Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and even he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership."

In Go Ong *vs.* Court of Appeals,[21] this Court ruled that the heirs, as co-owners, shall each have the full ownership of his part and the fruits and benefits pertaining to it. An heir may, therefore, alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when the personal rights are involved. But the effect of the alienation or mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

Undisputed is the fact that since the sale of the two-third portion of the subject property to the plaintiff, the latter had allowed Felicidad Teokemian to occupy that one-third portion allotted to her. There has, therefore, been a partial partition, where the transferees of an undivided portion of the land allowed a co-owner of the property to occupy a definite portion thereof and has not disturbed the same, for a period too long to be ignored — the possessor is in a better condition or right (*Potior est conditio possidentis*).

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[21] G.R. No. 75884, September 24, 1987, 154 SCRA 270.

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Clearly, the plaintiff in this instance is barred from asserting her alleged right over the portion subject matter in the instant case on the ground that their right has been lost by laches. In Bailon-Casilao *vs.* Court of Appeals, we ruled that:

"As early as 1923, this Court has ruled that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale (Punzalan *vs.* Boon Liat, 44 Phil 320 [1923]). This is because under the aforementioned codal provision, the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the things owned in common (Ramirez *vs.* Bautista, 14 Phil 528 [1909]). xxx For Article 494 of the Civil Code explicitly declares: 'No prescription shall lie in favor of a co-owner or co-heir so long as he expressly or impliedly recognizes the co-ownership."[22]

IN VIEW WHEREOF, the petition is hereby GRANTED. The decision of the Court of Appeals dated January 7, 1993 is hereby SET ASIDE. The decision of the trial court dated April 27, 1989 is hereby REINSTATED *in toto*.

SO ORDERED.

Regalado (Chairman), Puno, and *Mendoza, JJ.*, concur.

Romero, J., took no part. Related to attorney who is a partner in law firm which is counsel of record.

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[22] G.R. No. L-78178, April 15, 1988, 160 SCRA 738.