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FIRST DIVISION

[G.R. Nos. L-40151-52. April 8, 1986]

GREGORIO MIRAFLOR, *petitioner, vs.* **HON. COURT OF APPEALS and SEVERO MONSALUD,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; COURT OF APPEALS; HAS DISCRETIONARY POWER TO LOOK INTO RELATED MATTERS OF RECORD HAVING SOME BEARING ON SPECIFIC ISSUES BEFORE IT.**— In *Hernandez v. Andal* (78 Phil. 196), and *Baquiran v. Court of Appeals* (2 SCRA 873), this Court had occasion to pass upon the broad discretionary power of the Court of Appeals to look into related matters of record having some bearing on specific issues raised before it, stressing the paramount aim of promoting the ends of Justice.

2. **CIVIL LAW; PRESCRIPTION OF ACTION; GOVERNING LAW PRIOR TO THE EFFECTIVITY OF THE CIVIL CODE.** — In the instant case, the Court of Appeals correctly ruled that the petitioner has lost whatever rights he had over the land by prescription. We apply the ruling in the case of *Cruz v. Court of Appeals* (93 SCRA 619) which states: x x x "x x x [S]ince petitioners' possession of the property in question commenced way back in 1938 which was at the time the old Civil Code was still in force, the prescriptive period is governed under Section 41 of the Code of Civil Procedure because Article 1116 of the New Civil Code provides that 'Prescription already running before the effectivity of this Code (August 30, 1950) shall be governed by laws previously in force. 'Section 41 of the C.C.P. states: "'Sec. 41. Title to land by prescription. - Ten years of actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly, continuously for ten years by occupancy, descent, grants of otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual possessor of such land a full complete title, saving to the person under disabilities the rights, secured by the next section.'"

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3. **ID.; ID.; ID.; RULE IN CASE OF ACQUISITIVE PRESCRIPTION.** — In the same case, the Court discussed lengthily the ten-year prescriptive period which we quote: "Jurisprudence, however, is overwhelming and well-established in support of petitioners' claim of title acquired through acquisitive prescription. In *Ongsiaco v. Dallo*, 27 SCRA 161, the Supreme Court said: 'Under the Code of Civil Procedure formerly in force, good or bad faith was immaterial for purposes of acquisitive prescription. Adverse possession in either character ripened into ownership after the lapse of ten years. In the same manner, an action to recover title to or possession of immovable property prescribed in the same period.' In *Narag v. Cecilio*, 48 SCRA 11, the Supreme Court traced the pronouncements and rulings of the Supreme Court dating as far back as 1908 in the case of *Altman v. Commanding Officer*, 11 Phil. 516, to the case of *Ongsiaco v. Dallo, supra,* concerning the ten-year period required by Sec. 41 of the Code of Civil Procedure that it suffices that there be a claim as 'owner for that time of a piece of land [to vest] in him the full and complete title thereto,' the Court speaking thru Justice Williard.

4. **ID.; CONTRACTS; FRAUD; DOES NOT NECESSARILY THE CONTRACT VOID *AB INITIO*.**— With respect to the petitioner's allegation that the finding of fraud in the execution of the deed of sale was final and conclusive, such contention is devoid of merit. Though the trial court and the Court of Appeals found that there was fraud in the execution of the deed of sale, fraud or deceit does not necessarily render a contract void *ab initio* and, therefore, imprescriptible (*Tongoy v. Court of Appeals*, 123 SCRA 99). It can only be a ground for rendering the contract voidable or annullable and hence, the action to annul the deed is subject to prescription (*Pangadil v. Court of First Instance*, 116 SCRA 347; *Tumalad v. Vicencio*, 41 SCRA 143). This right of action has likewise been lost in favor of Severo Monsalud who has rightfully acquired the land through prescription.

APPEARANCES OF COUNSEL

Manuel V. Albano and *Leonardo Abola* for petitioner.

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DECISION

GUTIERREZ, JR., *J.*:

This petition for review involves two cases tried jointly in the then Court of First Instance, Branch II of Zambales, to wit: (1) Civil Case No. 1382, an action for partition and annulment of a deed of reconveyance; and (2) Civil Case No. 219-I, an action for recovery of possession and collection of unpaid rentals.

The records establish that the spouses Joaquin Miraflor and Petronila Misa were survived by four children, namely Gavino, Catalino, Benito and Atanacia, all surnamed Miraflor. Joaquin died in 1896 while Petronila died on September 18, 1907. Benito died on June 25, 1914 without any issue. Gavino died on January 1, 1917 leaving one child, Rosa Miraflor, the plaintiff in Civil Case No. 1382. Catalino died on March 23, 1920 leaving two children, namely the defendant Gregorio Miraflor who was born on March 11, 1919 and Elena Miraflor, who was born on February 26, 1917. Elena Miraflor married Antonio Merza with whom she had one child, Eulogia Merza, the other defendant in Civil Case No. 1382. Atanacia married Severino Espinosa and they had one child, Gerardo Espinosa. Gerardo died after Atanacia and left no heir. Ultimately therefore, the property of Petronila Misa was inherited by her grandchildren, to wit: Rosa Miraflor (daughter of Gavino) and Gregorio and Elena (children of Catalino). When Catalino died on March 23, 1920, Elena was only three years old while Gregorio was only one year old.

On October 17, 1938, Elena Miraflor and Gregorio Miraflor executed a document purporting to be an "*Escritura de Compra Venta Definitiva*" in favor of the defendant Severo Monsalud, selling to the latter the parcel of land described in Rosa Miraflor's amended complaint. This *escritura* is now assailed by the plaintiff Rosa Miraflor who claims an undivided one-half of the property as her lawful inheritance from her father, Gavino. It is Rosa's contention that as far as she is concerned, the *escritura de compra definitiva* is null and void because she was never a party to its

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execution. In so far as Gregorio Miraflor is concerned, he claims that the instrument is likewise null and void because he was a minor at the time of its execution while his sister was an "ignoramus" and both were persuaded to sign the instrument without any consideration at all.

On the other hand, the defendant Severo Monsalud contends that the property, subject matter of the sale, was the exclusive property of Catalino Miraflor to whom it was adjudicated upon the death of his parents Joaquin Miraflor and Petronila Misa. Monsalud claims that the deed was valid because Gregorio and Elena Miraflor received the consideration of P1,000.00. Monsalud states that ever since the conveyance of the property on October 17, 1938, he has been in continuous and physical possession of the land and whatever right Rosa Miraflor and Gregorio Miraflor have over the land have already prescribed.

The trial court, presided by Judge Sulpicio V. Cea, rendered its decision on September 17, 1953 declaring the plaintiff Rosa Miraflor as the owner of one-half of the land in question and the defendants Gregorio Miraflor and Eulogia Merza as the owner of the other half of the land.

After his amended motion for new trial was denied, defendant Severo Monsalud appealed to the Court of Appeals which affirmed the decision of the trial court. Not satisfied, Severo Monsalud elevated the case to the Supreme Court. On December 27, 1960, the Supreme Court promulgated its decision, in L-9573, 110 Phil. 1038. The pertinent portion of the decision reads:

"After a careful study and review of the records of this case, we are convinced that, in the interest of justice, it should be remanded to the trial court, for further proceedings, on the following grounds:

"(1) It is not disputed that petitioner Monsalud has constructed on the lot in question a house of strong material, admittedly, in good faith. The decision of the trial court, however fails to make any finding or disposition as to said house, but merely directs petitioner Monsalud to deliver the possession of said lot to respondent Rosa Miraflor and defendant Gregorio Miraflor.

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"(2) In his answer (dated January 12, 1951) to respondent Rosa Miraflor's complaint, petitioner Monsalud alleged, as affirmative defense, the fact that upon the death of Joaquin Miraflor and Petronila Misa in 1896 and 1907, respectively, their properties 'were distributed and partitioned' among their children and heirs, namely: Benito, Atanacia, Catalino, and Gavino Miraflor; that the lot in question was 'among those adjudicated to Catalino Miraflor' and upon his death, his children, Gregorio and Elena Miraflor immediately succeeded to the ownership and possession thereof, to the exclusion of respondent Rosa Miraflor. (See p. 15, Record on Appeal) At the trial, however, petitioner failed to submit evidence regarding the alleged partition. Nevertheless, in his motion for new trial, he offered to submit evidence tending to prove the same, but the trial court refused to grant said motion. We think it would be in the interest of justice if petitioner were given the opportunity to prove his claim, considering that the decision of the case would be different if said fact were established, for the reason that, if it is true that the lot in question has been adjudicated to Catalino Miraflor (father of Gregorio and Elena Miraflor) in the alleged partition, then respondent Rosa Miraflor has, indeed, no cause of action against petitioner Monsalud.

"At this juncture, it may be pointed out that the trial court, as well as the appellate court seem to be of the impression that the deceased Petronila Misa owned only one parcel of land (the lot in question), contrary to what appears on record that she, in fact, did have several parcels of land at the time of her death (See testimony of Maria S. Montevirgine, p. 6, t.s.n., Estrada).

"(3) The trial court is of the view that the sale of the land in question to petitioner on October 17, 1938 is null and void, as said property was then in custodia legis, since Gregorio and Elena Miraflor were at the time under guardianship (Spec. Proc. No. 297) and the lot was sold without the authorization of the court. In his motion for new trial (p. 07, et seq. Record on Appeal), petitioner claims that said Spec. Proc. No. 297 'refers to a different proceeding entitled Testate Estate of the deceased Simeon Tagle, filed by Regina Tagle for the probate of a will involving a different land, in a different municipality, and affecting a different person.' On the other hand, petitioner Monsalud had presented at the trial Exhibit "E", which is a deed of sale executed by administratrix Placida Mayor, in compliance with the order of the court in Spec. Proc. No. 236 the entitled Intestate Estate of Teresa Minas, mother of Elena and Gregorio Miraflor. It is his contention that this Spec. Proc. No. 236 exclusively pertaining

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to the estate of the late Teresa Minas could not include the land in question which belonged exclusively to Catalino Miraflor and, granting it is so included, the sale on October 17, 1938 to petitioner of said land is valid even without the court's authorization, because Placida Mayor's administration terminated on March 14, 1931. In the circumstances, we think, it consonant with justice that there be a finding as to the veracity or merit of petitioner Monsalud's said claim.

"(4) Petitioner Monsalud, in his answer to the complaint of respondent Rosa Miraflor, claims that he had acquired the lot in question, through acquisitive prescription, since he had been in physical and material possession thereof for more than 13 years. It is noted that the trial court failed to rule on this contention of petitioner. Neither did the appellate court make any specific finding or ruling on the matter, although both courts considered the period of prescription of actions. (See p. 17, Decision of Court of Appeals).

"WHEREFORE, the case is hereby ordered remanded to the trial court, for further proceedings, consistent with this decision. Without pronouncement as to costs."

Before the trial court could conduct further proceedings on Civil Case No. 1382, Severo Monsalud commenced an action in April 1966 in the Court of First Instance of Zambales against spouses Gregorio Miraflor and Guillerma Misa de Miraflor, seeking the recovery of the possession of a portion of the ground floor of a building of strong materials constructed on the land in question in Civil Case No. 1382 and the recovery of P13,270.00 as unpaid rentals and attorney's fees. This case was docketed as Civil Case No. 219-I.

In the answer filed on May 23, 1966, Gregorio Miraflor raised as affirmative defenses that he is the owner of the land where the house was situated; that the possession of the defendants since 1948 up to the present was with the knowledge and consent of one Josefa Mena, sister-in-law of plaintiff Severo Monsalud by his first marriage to Dolores Mena and that the defendants are not bound to pay any rentals; that the plaintiff has not averred any claim for rentals against Gregorio Miraflor in Civil Case No. 1382 and that whatever action the plaintiffs might have against the defendants has prescribed. As counterclaim,

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defendants asked for rentals for the lot on which the building was constructed and attorney's fees.

Meanwhile, on August 12, 1966, defendant Eulogia Merza filed the following:

"MANIFESTATION AND MOTION

"COMES NOW the defendant Eulogia Merza and before the Hon. Court respectfully states:

"1. That she is now of legal age, having been born on September 13, 1939, in the Municipality of Santa Cruz, Province of Zambales, Philippines, being the only daughter of Elena Miraflor, now deceased, and Antonio Merza;

"2. That her said mother, Elena Miraflor, was born on April 1, 1917, in Santa Cruz, Zambales, Philippines; consequently, her said mother was 21 years, 6 months and 16 days old when she executed and signed on October 17, 1938, the document known as ESCRITURA DE COMPRA VENTA DEFINITIVA involved in the present case;

"3. That defendant Eulogia Merza hereby respectfully manifests that, as far as she is concerned, she recognizes the validity of the aforesaid ESCRITURA DE COMPRA VENTA DEFINITIVA dated October 17, 1938, as well as the ownership claimed by defendant Severo Monsalud over the parcel of land described in said document and involved in the present case; and that she is not claiming any right, title, interest or participation whatsoever over said land.

PRAYER

"WHEREFORE, defendant Eulogia Merza hereby respectfully prays the Hon. Court to dismiss her cross-claim, or counterclaim, in the Amended Answer dated May 20, 1952, filed by defendant Gregorio Miraflor on her behalf as her guardian *ad litem* against defendant Severo Monsalud."

Civil Case No. 1382 and Civil Case No. 219-I were tried jointly.

The trial court, presided by then Judge Pedro D. Cenzon rendered its joint decision dated November 15, 1967, the dispositive portion of which reads:

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"IN VIEW OF ALL THE FOREGOING, the Court hereby renders judgment in the following tenor:

"1. In Civil Case No. 1382, judgment is hereby rendered declaring the plaintiff Rosa Miraflor the owner of one-half (1/2) undivided portion of the lot described in paragraph 3 of the amended complaint; that Gregorio Miraflor is likewise the owner of one-fourth (1/4) undivided portion of the same lot; that the same remaining one fourth (1/4) undivided portion is owned by Severo Monsalud in view of the renunciation made by the defendant Eulogia Merza of this portion in his favor; that Rosa Miraflor, Gregorio Miraflor, and Severo Monsalud shall partition the said lot among themselves in the proportion herein stated and submit the instrument of partition to the court for confirmation;

"2. That the defendant Severo Monsalud is the owner and a builder in good faith of the house valued to P13,000.00 standing on the lot in question. The plaintiff Rosa Miraflor and the defendant Gregorio Miraflor shall, within thirty days after this decision becomes final, elect either to pay Severo Monsalud the amount of P13,000.00 for the house or compel him to pay their respective shares on the lot at a price to be mutually determined by the parties, also, within a period of thirty days from the finality of this decision. Until the plaintiff Rosa Miraflor and the defendant Gregorio Miraflor shall have elected to buy the house or compel Severo Monsalud to pay the lot, the latter shall retain the possession of the whole land.

"3. The defendant Severo Monsalud is hereby ordered to pay the plaintiff Rosa Miraflor and the defendant Gregorio Miraflor the amount of P25.00 a month as rental of their three fourth (3/4) portion of the lot in question beginning November 17, 1950, the date of the filing of the complaint, and until he vacates or buy the shares of the last two parties over the lot.

"In Civil Case No. 219-I, judgment is hereby rendered in favor of the plaintiff Severo Monsalud and against the defendant spouses Gregorio Miraflor and Guillerma Misa de Miraflor by sentencing the latter to vacate that portion of the ground floor of the building described in paragraph 2 of the complaint and to pay the plaintiff a monthly rental of P50.00 from April 1, 1966 until the possession thereof is restored to Severo Monsalud.

"In both cases, the respective claims for attorney's fees of Rosa Miraflor, Gregorio Miraflor and Severo Monsalud are denied for being improper under the law.

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"Without pronouncement as to costs."

Rosa Miraflor, Gregorio Miraflor, Guillerma Misa de Miraflor and Severo Monsalud appealed the decision to the Court of Appeals. The appeal interposed by Rosa Miraflor was dismissed in a resolution dated December 1, 1971. During the pendency of the appeal, appellant Severo Monsalud died. In a resolution dated February 6, 1973, the Court of Appeals allowed the substitution of the deceased Severo Monsalud by his widow and five children.

After considering the numerous assignments of errors made by both parties, the Court of Appeals rendered a decision in favor of defendant-appellant Severo Monsalud. The dispositive portion of the decision reads:

"WHEREFORE, the decision appealed from is hereby modified in that (a) in Civil Case No. 1382 the amended complaint of Rosa Miraflor and the cross-claim of Gregorio Miraflor are dismissed and the heirs of Severo Monsalud are declared the absolute owners and entitled to the possession of the land in question as described in paragraph 3 of the amended complaint together with the improvements thereon and (b) in Civil Case No. 219-I the defendant Gregorio Miraflor and Guillerma Misa de Miraflor are ordered to vacate the building in question and to restore the possession thereof to the heirs of Severo Monsalud and said defendants are ordered to pay to the heirs of Severo Monsalud a monthly rental of Fifty Pesos (P50.00) from April 1, 1966 until they vacate the premises.

"There is no pronouncement as to costs in both cases."

Gregorio Miraflor then filed this petition for review raising the following issues:

I

WHETHER, AFTER A FIRST APPEAL WHEREIN THE ISSUES OF PRESCRIPTION OF ACTION AND FRAUD HAD BEEN SQUARELY DECIDED BY THE COURT OF APPEALS (in 1955) AND INCLUDED IN THE DECISION OF THE SUPREME COURT (in 1960 - WHICH REMANDED THE CASE FOR FURTHER PROCEEDINGS IN THE TRIAL COURT ONLY UPON CERTAIN SPECIFIC ISSUES) COULD AGAIN BE REOPENED AND

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DECIDED ON SECOND APPEAL WHICH WAS ONLY ON THE SPECIFIC ISSUES REMANDED.

II

WHETHER OR NOT THE VENDEE OF REAL PROPERTY BELONGING TO A MINOR UNDER GUARDIANSHIP (THE SALE OF WHICH WAS WITHOUT THE APPROVAL OF THE GUARDIANSHIP COURT) WHO, UPON THE SALE, IMMEDIATELY TOOK OCCUPANCY THEREOF, COULD ACQUIRE IT THROUGH ACQUISITIVE PRESCRIPTION ALTHOUGH BEFORE THE COMPLETION OF THE PERIOD OF PRESCRIPTION THE OWNER-VENDOR (ALREADY OF AGE) CAME BACK TO THE PROPERTY AND REMAINED THEREIN TOGETHER WITH SAID VENDEE.

III

WHETHER OR NOT AN ACTION TO COLLECT UNPAID RENTALS AND TO RECOVER POSSESSION OF THE PREMISES FOR WHICH THE RENTALS ARE BEING COLLECTED BROUGHT WITHIN ONE YEAR AFTER DEMAND TO PAY RENTALS AND TO VACATE WAS REFUSED PARTAKES OF THE NATURE OF 'ACCION PUBLICIANA' OR UNLAWFUL DETAINER; IF UNLAWFUL DETAINER, WHETHER OR NOT JURISDICTION WAS WAIVED THE SAME NOT HAVING BEEN QUESTIONED BEFORE THE COURT OF FIRST INSTANCE WHEREIN THE ACTION WAS ORIGINALLY FILED.

Anent the first issue, the petitioner contends that the issues of prescription of action and fraud were already decided by the Court of Appeals in 1955 and were not among the issues remanded by the Supreme Court in 1960 for further proceedings. He states that it would be contrary to the sound judicial and public policy of ending litigations and avoiding multiplicity of suits if these issues are reopened.

The petitioner's contention is untenable. It was not error for the respondent court to have looked into these issues again. Nor can we consider the decision of the Court of Appeals in 1955 as final and binding. In fact, when the Supreme Court in 1960 allowed the submission of further evidence by Severo Monsalud it thereby laid these issues subject to being reopened

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and reviewed. Neither can we conclude that the Supreme Court meant to remand the case for further proceedings on *specific issues alone* as contended by the petitioner for it would be unfair and unjust to disregard matters necessary to arrive at a sound and fair disposition of the case.

In fact, the specific issues ordered by the Supreme Court to be examined on remand, by their very nature were susceptible of leading to findings and conclusions different from those arrived at earlier. Precisely, this Court in 1960 ordered the trial court to conduct further proceedings on the issue of prescription raised by Monsalud in his answer to Rosa Miraflor's complaint, an issue which, according to the petitioner, may no longer be reopened.

In *Hernandez v. Andal* (78 Phil. 196), and *Baquiran v. Court of Appeals* (2 SCRA 873), this Court had occasion to pass upon the broad discretionary power of the Court of Appeals to look into related matters of record having some bearing on specific issues raised before it, stressing the paramount aim of promoting the ends of justice. The appellate court did not exceed its powers as alleged by the petitioner.

In the instant case, the Court of Appeals correctly ruled that the petitioner has lost whatever rights he had over the land by prescription.

We apply the ruling in the case of *Cruz v. Court of Appeals* (93 SCRA 619) which states:

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"x x x [S]ince petitioners' possession of the property in question commenced way back in 1938 which was at the time the old Civil Code was still in force, the prescriptive period is governed under Section 41 of the Code of Civil Procedure because Article 1116 of the New Civil Code provides that 'Prescription already running before the effectivity of this Code (August 30, 1950) shall be governed by laws previously in force. 'Section 41 of the C.C.P. states:

"'Sec. 41. Title to land by prescription. - Ten years of actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly, continuously for ten

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years by occupancy, descent, grants of otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual possessor of such land a full complete title, saving to the person under disabilities the rights, secured by the next section.'"

In the same case, the Court discussed lengthily the ten-year prescriptive period which we quote:

"Jurisprudence, however, is overwhelming and well-established in support of petitioners' claim of title acquired through acquisitive prescription. In *Ongsiaco v. Dallo*, 27 SCRA 161, the Supreme Court said: 'Under the Code of Civil Procedure formerly in force, good or bad faith was immaterial for purposes of acquisitive prescription. Adverse possession in either character ripened into ownership after the lapse of ten years. In the same manner, an action to recover title to or possession of immovable property prescribed in the same period.' In *Narag v. Cecilio*, 48 SCRA 11, the Supreme Court traced the pronouncements and rulings of the Supreme Court dating as far back as 1908 in the case of *Altman v. Commanding Officer*, 11 Phil. 516, to the case of *Ongsiaco v. Dallo, supra*, concerning the ten-year period required by Sec. 41 of the Code of Civil Procedure that it suffices that there be a claim as 'owner for that time of a piece of land [to vest] in him the full and complete title thereto,' the Court speaking thru Justice Williard.

"The Court, in the *Narag v. Cecilio* case, continued: 'The same form of words was repeated by Justice Trent for the Court in *Corporacion de PP. Agustinos Recoletos v. Crisostomo*, 32 Phil. 427 (1915). Thus: 'With real property however, it is different. Section 40 bars the owner's remedy after ten years and Section 41 vests in the adverse possessor after the same period of time 'a full and complete title.' Two years later, in 1917, came this reaffirmation of such a view from Justice Torres: 'Taking into consideration that the applicant, Manuel Locsin Rama, is now and has been for twenty years, in possession of the same property, counting that of his predecessors, it may be said that beyond a shadow of a doubt that the ownership in the said strip of land has prescribed, pursuant to the provisions of section 41 of Act No. 190, since the possession of the applicant has been actual, open, public, and continuous, under a claim of title exclusive of any other right and adverse to all other claimants, x x x' Nor is there any need for a just title. Justice Street made such a point-clear as early as 1921 in *Santos v. Heirs of Crisostomo*, 41 Phil. 342. Thus: 'Our opinion upon this point is that adverse possession

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must be taken to have begun with occupancy; and supposing that occupancy of the usurped property began, as the trial court evidently believed, with the execution of the contract of sale x x x, or soon thereafter, it results that the petitioners had acquired title by ten years' adverse possession, under section 41 of the Code of Civil Procedure, prior to the beginning of these proceedings. x x x.' As a matter of fact, Justice Laurel, in *Labot v. Librada*, 72 Phil. 433 (1941), in sustaining a plea that a party was entitled to the benefits of this provision of law, stated: 'To constitute exclusive possession, it is not necessary to exclude every one from all entry on the land, and the fact that another person uses the property concurrently with the claimants by the permission of the latter or in subordination to their claim, does not, in a legal sense, militate against the exclusiveness of their possession.' Moreover, in a 1950 decision, *Arboso v. Andrade*, 87 Phil. 782, Justice Bautista Angelo, for this Court, reiterated the view that the presence of good faith, inferentially by just title, is immaterial. x x x As was so categorically announced by Justice J.B.L. Reyes: 'Prescription lies under the said section even in the absence of good faith and just title. (*Alvero v. Reas*, L-28337, September 30, 1970, 35 SCRA 210, 214).

"In other words, the good faith and just title of Juan Andan in the case at bar, is immaterial for prescription lies under Section 41, C.C.P."

Severo Monsalud has indeed exercised acts of dominion over the land since 1938 considering that he has lived on the land, built a house, declared the land in his own name for tax purposes and religiously paid the taxes thereon. (See *Dacasin v. Court of Appeals*, 80 SCRA 89).

Gregorio Miraflor, on the other hand, argues that he entered the premises on May 1, 1948, about nine years and seven months after the execution of the Escritura de Compra Venta Definitiva on October 17, 1938, thus interrupting the ten-year prescriptive period as provided in sec. 41 of the Code of Civil Procedure.

The records do not show an iota of evidence to prove that Gregorio Miraflor asserted ownership or even possession over the land in question. His entry into the premises was by an oral lease agreement whereby he agreed to pay P50.00 a month for the use of one-half of the house's groundfloor. But the fact that he paid P50.00 for the first month belies the presumption

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that he entered the premises in the concept of an owner. As the respondent court correctly ruled:

"Gregorio Miraflor was able to occupy in May, 1948 a portion of the ground floor of the building constructed by the defendant Severo Monsalud on the land in question *as a mere lessee or by mere tolerance, not as a co-owner of the land in question.*" (Italics supplied)

From the foregoing, it is clear that Severo Monsalud acquired all the rights over the land through acquisitive prescription. Gregorio Miraflor can no longer come forward and assert ownership over it.

With respect to the petitioner's allegation that the finding of fraud in the execution of the deed of sale was final and conclusive, such contention is devoid of merit. Though the trial court and the Court of Appeals found that there was fraud in the execution of the deed of sale, fraud or deceit does not necessarily render a contract void *ab initio* and, therefore, imprescriptible (*Tongoy v. Court of Appeals*, 123 SCRA 99). It can only be a ground for rendering the contract voidable or annullable and hence, the action to annul the deed is subject to prescription (*Pangadil v. Court of First Instance*, 116 SCRA 347; *Tumalad v. Vicencio*, 41 SCRA 143). This right of action has likewise been lost in favor of Severo Monsalud who has rightfully acquired the land through prescription. As stated in *Conspecto v. Fruto*, (31 Phil. 144):

"Section 40 of Act 190 is plain and unambiguous. It plainly says: 'An action for the recovery of title to or possession of, real property, or an interest therein, can only be brought within ten years after the cause of such action accrues.' In the present case, the action for the recovery of the possession of the real property in question was not brought within ten years after the cause of action had accrued."

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"It is the essence of the statute of limitations that, whether the party had a right to the possession or not, if he entered under the claim of such right and remained in possession for the period (ten years) named in the statute of limitations, the right of action of the plaintiff who had the better title is barred by that adverse possession. The right given by the statute of limitations does not depend upon

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and has no necessary connection with, the validity of the claim under which the possession is held. Otherwise there could be no use for the statute of limitations or adverse possession as a defense to an action, for if the decision is made to depend upon the validity of the respective titles set up by the plaintiff and the defendant, there can be no place for the consideration of the question of adverse possession. It is because the plaintiff has a better title that the defendant is permitted to rely upon such uninterrupted possession, adverse to the plaintiff's title, as the statute prescribes, it being well understood and an element in such cases, that the plaintiff does have the better title, but that he has lost it by delay in asserting it. (*Probst v. Presbyterian Church*, 129 U.S. 182).

"Neither is it necessary that the defendant should have a proper title, under which he claims possession. It is sufficient, if he asserts ownership of the land, and that this assertion is accompanied by an uninterrupted possession for the period named in the statute. It is this which constitutes adverse possession-claiming himself to be the owner of the land. If the one in possession asserts his right to own the land in dispute, asserts his right to the possession, and his possession has been adverse and uninterrupted, it constitutes a bar which the statute intended to give him. (*Ewing v. Burnet*, 11 Peters [U.S.], 39 52; *Harvey v. Tyler*, 2 Wallace [U.S.], 328, 349; Coke's Institutes, First Part, 153).

As stated in *Cruz v. Court of Appeals* earlier cited:

"Whatever right private respondents had to the property had already prescribed by the mere lapse of time by reason of negligence, carelessness and abandonment and their cause of action is barred or can no longer prosper after more than twenty six (26) years, that is from 1938 when the cause of action accrued, to 1964 when the complaint was filed. The laws aid the vigilant, not those who slumber on their rights. *Vigilantibus sed non dormientibus jura subveniunt.*"

The remaining issue is whether or not Civil Case No. 219-I is an action for unlawful detainer or a plenary action to recover possession.

We rule that this case is an *accion publiciana*. As held in the case of *Reyes v. Sta. Maria*, (91 SCRA 164):

"The lower court was clearly in error in issuing its dismissal order on its mistaken notion 'that the allegations of facts are only constitutive

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of an action for unlawful detainer' since the complaint shows on its face that respondents' refusal to deliver the possession of the property was due to their adverse claim of ownership of the same property and their counter allegation that they had bought the same from a certain Pablo Aguinaldo and therefore, petitioners' action was clearly one for recovery of their right to possess the property (possesion de jure) as well as to be declared the owners thereof as against the contrary claim of respondents."

In the instant case, Miraflor's refusal or failure to pay the unpaid rentals was due to adverse claim over the land which was based on the question of ownership, the very main issue raised in Civil Case No. 1382. Consequently, the trial court or the Court of First Instance of Iba, Zambales had the rightful jurisdiction over Case No. 219-I.

WHEREFORE, the petition for review is DISMISSED for lack of merit. The decision of the respondent court is AFFIRMED.

SO ORDERED.

*Teehankee, C.J., Melencio-Herrera, Plana, De la Fuente,*** and *Patajo, JJ.*, concur.

** His signature should be disregarded, Justice de la Fuente having retired from the Court on March 6, 1986.