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WHEREFORE, the assailed decision of public respondent dated April 6, 1984 is hereby ANNULLED and SET ASIDE. The decision of the Minister of Natural Resources dated June 28, 1983 is REINSTATED. Costs against private respondent.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and *Cortes, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-39299. October 18, 1988]

ISAAC, SEVERINO, MARIA, TELESFORA, FELISA, SERAPIO, SIMEON and MACARIA, all surnamed PANGAN, *petitioners, vs.* **COURT OF APPEALS and TEODORA GARCIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; APPELLATE COURT IS NOT BOUND BY THE FACTUAL FINDINGS OF THE TRIAL COURT. — It is stressed at the outset that the appellate court is not necessarily bound by the factual findings of the trial court simply because the latter had the opportunity to observe the witnesses and assess their credibility by their deportment. While this may be a conceded advantage of the trial judge, the appellate court may still reverse his findings of fact is they are not based on the evidence submitted or have been reached without considering the matters of record that might have dictated a different conclusion. The Court of Appeals precisely is vested with jurisdiction to review questions of fact as decided by the lower court. It would be evading this responsibility if it should merely adopt the findings in the decision under review on the convenient justification

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that the trial judge had the opportunity, which it did not have, of gauging the realiability of the witnesses first-hand.

2. CIVIL LAW; PROPERTY; OWNERSHIP; TAX DECLARATIONS ARE NOT CONCLUSIVE PROOF THEREOF. — Tax declarations are *indicia* but not conclusive proof of ownership. If the property was declared in the name of Tomas Pangan only, it could be that this was done only for reasons of convenience, more so if it was understood, as the private respondent did, that he was declaring the property not only for himself but for herself also as the other co-owner. As for the admitted fact that Teodora Garcia never actually paid the real estate taxes, the explanation she gave was that she assumed her share of such taxes was being paid from her share in the fruits of her portion of the land, which she said she was not getting regularly, much less in full. We hold that this explanation is also plausible enough.

3. ID.; ID.; ID.; IF A CO-OWNER ACTUALLY HOLDING THE PROPERTY ASSERTS EXCLUSIVE DOMINION OVER IT AGAINST THE OTHER CO-OWNERS, HE CAN ACQUIRE SOLE TITLE TO IT ONLY AFTER THE LAPSE OF THE PRESCRIBED PRESCRIPTIVE PERIOD. — It is a settled rule that possession by one-co-owner will not be regarded as adverse to the other co-owners but in fact as beneficial to all of them. Hence, as long as his co-ownership is recognized, an action to compel partition will not prescribe and may be filed at any time against the actual possessor by any of the other co-owners. However, if the co-owner actually holding the property asserts exclusive dominion over it against the other co-owners, the corollary of the rule is that he can acquire sole title to, it after the lapse of the prescribed prescriptive period. From that moment, the question involved will be one of ownership and no longer mere partition.

4. ID.; ID.; ID.; REQUISITES FOR TITLE TO PRESCRIBE IN FAVOR OF A CO-OWNER. — For title to prescribe in favor of the co-owner, however, there must be a clear showing that he has repudiated the claims of the other co-owners and that they have been categorically advised of the exclusive claim he is making to the property in question. It is only when such unequivocal notice has been given that the period of prescription will begin to run against the other co-owners and ultimately

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divest them of their own title if they do not seasonably defend it. Adverse possession requires the concurrence of the following circumstances: 1. That the trustee has performed unequivocal acts amounting to an ouster of the *cestui que trust;* 2. That such positive acts of repudiation had been made known to the *cestui que trust*; and 3. That the evidence thereon should be clear and conclusive.

5. ID.; ID.; ID.; ID.; LACK OF CATEGORICAL ASSERTION BY THE CO-OWNERS OF THEIR EXCLUSIVE RIGHT TO THE ENTIRE PROPERTY; CASE AT BAR. — Manifestly, the petitioners have acted in bad faith in denying their aunt and co-heir her legal share to the property they had all inherited from Leon Hilario through their respective parents. This is regrettable as Teodora Garcia is their father's first cousin who apparently trusted him and, indeed, relied on his promise that her share would be protected. Tomas Pangan presumably was sincere in this assurance, but it was unfortunately not honored by his children upon his death for they soon dismissed out of hand Teodora Garcia's claim to the subject property. In cases where there is a clear showing of imposition and improper motives, the courts must be vigilant in the protection of the rights of the exploited. So said the respondent court, and we agree. We note that the private respondent "is a poor and ignorant 62-year old widow" whose misplaced trust in her nephews and nieces is being used now precisely to defeat her claim to the share that she believes is rightfully hers. It is a sorry spectacle, indeed, to see her own close kin ganging up on her, so to speak, to deprive her small heritage, and in her old age at that. With all this in mind we affirm the finding of the respondent court that there was no adequate notice by the petitioners to the private respondent of the rejection of her claim to her share in the subject property. Noticeably absent here is a categorical assertion by the petitioners of their exclusive right to the entire property that barred her own claim of ownership of one-half thereof nor is there any explanation as to why they said she had no right to a share. If this trusting woman did not immediately take legal action to protect her rights, it was simply because of forbearance toward her nephews and nieces, let alone the fact that there was really no *casus belli* as yet that required her to act decisively. That legal provocation arose only when the petitioners commenced the registration

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proceedings in 1965, and it was from that time she was required to act, as she did, to protect her interests.

GANCAYCO, *J., separate opinion*:

CIVIL LAW; PROPERTY; CO-OWNERSHIP; VERBAL REPUDIATION CONSTITUTE AN EQUIVOCAL NOTICE.— As private respondent admitted that petitioners verbally repudiated her claims as co-owner of the property it was effectively an unequivocal notice amounting to an ouster of the *cestui que trust* and the period of prescription began to run since then. It is not required that such a repudiation should be through a formal legal action.

APPEARANCES OF COUNSEL

Magtanggol C. Gunigundo for petitioners.
David C. Canta for private respondent.

D E C I S I O N

CRUZ, *J.*:

The property in question is a parcel of land with an area of 635 square meters and situated in San Pascual, Obando, Bulacan.[1] It was originally owned by Leon Hilario and is now being disputed between the herein petitioners, who are his great grandchildren by his daughter Silvestra, and the private respondent, Teodora Garcia, who is his granddaughter by his daughter Catalina.[2]

In 1964, the petitioners filed an application for the registration of the land in their names by virtue of their continuous and exclusive possession thereof since 1895, by themselves and their father and grandfather before them. After proper notices by publication and posting as required the trial court issued an order of general default, there being no opposition to the

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[1] Exhibit "D", Original Record, p. 14.

[2] Original Record, p. 110.

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application, and proceeded to hear the evidence of the applicants *ex-parte*. On the basis thereof, the application was approved on March 31, 1966.

On June 8, 1966, the herein private respondent filed a petition to set aside the said decision, which the trial court[3] granted, admitting at the same time her opposition to the application and setting the case for reception of her evidence. This evidence sought to show that the land was inherited by Leon Hilario's three children, but the son, Felicisimo, waived his right thereto and thereby made his two sisters, Silvestra and Catalina, its exclusive co-owners. As Catalina's daughter, she was entitled to one-half of the property, the order half going to Silvestra's heirs, the petitioners herein and the latter's grandchildren.[4]

On September 13, 1968, the trial judge issued an order dismissing the opposition and reinstating his original order of March 31, 1966.[5] His reason was that whatever rights Teodora might have had over the property had been forfeited by extinctive prescription because she had left the land in 1942 and had not since then asserted any claim thereto until 1966.

On appeal to the respondent court,[6] this decision was reversed on the ground that the appellees had not clearly proved that they had acquired the property by prescription. Hence, the appellant was entitled to one-half of the property as heir, conformably to her opposition in the court *a quo*. Their motion for reconsideration having denied, they have now come to this Court in a petition for review by *certiorari* under Rule 45 of the Rules of Court.

The petitioner's position is that the respondent court erred in holding that the private respondent was entitled to one-half of the land, which she had not lost by extinctive prescription

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[3] Presided by Judge Juan de Borja.

[4] TSN, August 22, 1966, pp. 3-7, 16-21; Original Record, pp. 79-81.

[5] Original Record, pp. 110-112.

[6] Chanco, *J, ponente*, with A. Reyes and Pascual, *JJ.*

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because it was held by them in trust for her. They also insist that the appealed decision completely disregarded the factual findings of the trial court that they had acquired the whole land by virtue of their long, continued and adverse possession thereof, which should bar any claim by Teodora to her supposed part ownership.

It is stressed at the outset that the appellate court is not necessarily bound by the factual findings of the trial court simply because the latter had the opportunity to observe the witnesses and assess their credibility by their deportment. While this may be a conceded advantage of the trial judge, the appellate court may still reverse his findings of fact is they are not based on the evidence submitted or have been reached without considering the matters of record that might have dictated a different conclusion. The Court of Appeals precisely is vested with jurisdiction to review questions of fact as decided by the lower court. It would be evading this responsibility if it should merely adopt the findings in the decision under review on the convenient justification that the trial judge had the opportunity, which it did not have, of gauging the realiability of the witnesses first-hand.

When, therefore, the respondent court accepted the private respondent's allegation that the land was inherited by the parties from their common ancestor, Leon Hilario, such finding, based on the record and not rejected but even assumed by the trial court, did not, in our view, constitute grave abuse of discretion. And when, on the strength of this finding, it then held that an implied trust was created between the petitioners who were in possession of the land, and Teodora Garcia, their aunt and co-heir, that too, as we see it, is not an arbitrary assumption.

In fact, the Court feels this is the more plausible relationship between the parties, compared to the version offered by the petitioners, who claim they acquired the property from their grandfather through their father, who apparently acquired it from his mother, Leon Hilario's daughter. It does not appear that they have pre-empted the other heirs to the property through any other mode of acquisition, like sale or some similar exclusive

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transaction. They have not submitted any evidence of how they acquired the land from their great grandfather, confining themselves to the assertion that they have continued his original possession, presumably as heirs of their father, who inherited from his mother Silvestra, who was the daughter of Hilario. If this be their theory, then they unavoidably must recognize Teodora Garcia's own claim to the subject property as she too was an heir, being the daughter of Catalina, who was also a daughter of Hilario.

The trial court said, however, that assuming Teodora had the right to the disputed property, the same was forfeited by her through extinctive prescription by failure to assert it in time. In its original decision, it affirmed the petitioner's claim that they had acquired ownership over the whole property by their possession thereof for more than thirty years in concept of owner. Teodora Garcia apparently did not challenge such ownership and so by her inaction forever lost the right to do so.

The respondent court, rejecting this contention held that the petitioners' possession was not for their benefit alone but also in favor of Teodora, who was a co-heir with them and therefore also a co-owner of the property. In other words, their possession, while adverse to the rest of the world, was not against Teodora herself, whose share they held in implied trust for her as a co-owner of the land, and whose fruits their father shared with her occasionally, or at least promised her she would get eventually. The Court believes that this, too, is not an arbitrary conclusion.

To support their claim of exclusive ownership of the entire land, the petitioners stress that the property was declared for taxation purposes in the name of Tomas Pangan, their father, in 1948 and another tax declaration was issued, also in his name, in 1965. Moreover, real estate taxes were paid by them 1908 to 1914, 1930 to 1932, 1956 to 1957, and 1960 to 1965, whereas Teodora Garcia, by her own admission, never paid any tax at all on the disputed land.[7]

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[7] *Ibid.*, pp. 18-20.

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Tax declarations are *indicia* but not conclusive proof of ownership.[8] If the property was declared in the name of Tomas Pangan only, it could be that this was done only for reasons of convenience, more so if it was understood, as the private respondent did, that he was declaring the property not only for himself but for herself also as the other co-owner. As for the admitted fact that Teodora Garcia never actually paid the real estate taxes, the explanation she gave was that she assumed her share of such taxes was being paid from her share in the fruits of her portion of the land, which she said she was not getting regularly, much less in full. We hold that this explanation is also plausible enough.

But for all this, there is still the question of whether or not Teodora Garcia, her failure to assert her right, allowed the statutory period to lapse, thus enabling the petitioners to perfect their claim of ownership by acquisitive prescription and so exclude her from her share in the subject property.

It is settled rule that possession by one-co-owner will not be regarded as adverse to the other co-owners but in fact as beneficial to all of them.[9] Hence, as long as his co-ownership is recognized, an action to compel partition will not prescribe and may be filed at any time against the actual possessor by any of the other co-owners.[10] However, if the co-owner actually holding the property asserts exclusive dominion over it against the other co-owners, the corollary of the rule is that he can acquire sole title to, it after the lapse of the prescribed prescriptive period. From that moment, the question involved will be one of ownership and no longer mere partition.[11]

According to the petitioners, there was such repudiation which was admitted by the private respondent herself. Testifying for

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[8] *Ramos v. Court of Appeals*, 122 SCRA 542.

[9] *Cortes v. Oliva*, 33 Phil. 480.

[10] *Sebial v. Sebial*, 64 SCRA 385.

[11] *De Castro v. Echarri*, 20 Phil. 23; *Cortes v. Oliva, supra; Bargayo v. Camumot*, 40 Phil. 857; *Sebial v. Sebial, supra.*

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herself at the hearing on her opposition in the registration proceedings, she declared:

"ATTY. CANLAS:

"Q. After the death of Tomas Pangan, did you ask the heirs of Tomas Pangan of your alleged share in the property in question?

"A. Yes, sir.

"Q. What did they tell you?

"A They said that I have no right to a share and they won't give me my share

"Q. How many years ago did you ask from them?

"A. Immediately after the death of their father.

"Q. That was some 20 years ago?

"A. I do not know how many years ago.

"Q. And during all that span of more than 20 years ago you did not file any action to recover your share on the land in question?

"A. No sir, it was only this time."[12]

For title to prescribe in favor of the co-owner, however, there must be a clear showing that he has repudiated the claims of the other co-owners and that they have been categorically advised of the exclusive claim he is making to the property in question. It is only when such unequivocal notice has been given that the period of prescription will begin to run against the other co-owners and ultimately divest them of their own title if they do not seasonably defend it.[13]

Adverse possession requires the concurrence of the following circumstances:

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[12] TSN, August 22, 1966, pp. 27-28.

[13] *Cortes v. Oliva, supra.*

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1. That the trustee has performed unequivocal acts amounting to an ouster of the *cestui que trust;*

2. That such positive acts of repudiation had been made known to the *cestui que trust*; and

3. That the evidence thereon should be clear and conclusive.[14]

On the basis of the evidence presented by the parties, the Court is not convinced that the above requirements have been satisfied. Although there are admittedly some precedents to the contrary, it would appear that the weight of authority requires a categorical and final rejection of the co-owners' claim, usually manifested by a formal legal action, to make the prescriptive period start to run against the claimant. Thus —

"Filing by a trustee of *an action in court* against the trustor to quiet title to property, or for recovery of ownership thereof, held in possession by the former, may constitute an act of repudiation of the trust reposed on him by the latter."[15]

"The *issuance of the certificate of title* would constitute an open and clear repudiation of any trust, and the lapse of more than 20 years, open and adverse possession as owner would certainly suffice to vest title by prescription."[16]

"An action for the reconveyance of land based on implied or constructive trust prescribes within 10 years. And it is from the date of the *issuance of such title* that the effective assertion of adverse title for purposes of the statute of limitation is counted."[17]

"The prescriptive period may only be counted from the time petitioners repudiated the trust relation in 1955 upon the *filing of the complaint for recovery of possession* against private respondents so that the counterclaim of the private respondents contained in their amended answer wherein they asserted absolute ownership of the

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[14] *Valdez v. Olorga*, 51 SCRA 71.

[15] *Alzona v. Capunitan*, February 28, 1962, G.R. No. L-10220.

[16] *Lopez v. Gonzaga*, January 31, 1964, G.R. No. L-18788.

[17] *Jaramil v. Court of Appeals*, 78 SCRA 420.

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disputed realty by reason of the continuous and adverse possession of the same is well within the 10-year prescriptive period."[18]

"There is clear repudiation of a trust when one who is an apparent administrator of property causes the *cancellation of the title* thereto in the name of the apparent beneficiaries and gets a new certificate of title in his own name."[19]

"It is only when the defendants, alleged co-owners of the property in question, *executed a deed of partition and on the strength thereof obtained the cancellation of the title* in the name of their predecessor and the issuance of a new one wherein they appear as the new owners of a definite area each, thereby in effect denying or repudiating the ownership of one of the plaintiffs over his alleged share in the entire lot, that the statute of limitations started to run for the purposes of that action instituted by the latter seeking a declaration of the existence of the co-ownership and of their rights thereunder."[20]

The established evidence clearly shows that the subject land was inherited by the petitioners and the private respondent as co-heirs of their common ancestor, Leon Hilario, whose possession they continued to acquire prescriptive title over the property. That possession was originally in the name of all the heirs, including Teodora Garcia, who in fact had been assured by Tomas Pangan, the petitioners' father that she would get the share to which she was entitled. The petitioners have not proved that their possession excluded their co-owner and aunt or that they derived their title from a separate conveyance to them of the property by Leon Hilario. Parenthetically, such a conveyance, if it existed, would be questionable as it might have deprived Leon's other children of their legitime. In any case, the petitioners appear to have arrogated the entire property to themselves upon their father's death sometime in 1942 or at the latest in 1965 when they sought to register the land in their names to the exclusion of Teodora Garcia. The question is, Did such an

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[18] *Roa, Jr. v. Court of Appeals*, 123 SCRA 3.

[19] *Carantes v. Court of Appeals*, 76 SCRA 514.

[20] *Castrillo v. Court of Appeals*, 10 SCRA 549.

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act begin the period of extinctive prescription against the private respondent?

Manifestly, the petitioners have acted in bad faith in denying their aunt and co-heir her legal share to the property they had all inherited from Leon Hilario through their respective parents. This is regrettable as Teodora Garcia is their father's first cousin who apparently trusted him and, indeed, relied on his promise that her share would be protected. Tomas Pangan presumably was sincere in this assurance, but it was unfortunately not honored by his children upon his death for they soon dismissed out of hand Teodora Garcia's claim to the subject property.

In cases where there is a clear showing of imposition and improper motives, the courts must be vigilant in the protection of the rights of the exploited.[21] So said the respondent court, and we agree. We note that the private respondent "is a poor and ignorant 62-year old widow"* whose misplaced trust in her nephews and nieces is being used now precisely to defeat her claim to the share that she believes is rightfully hers. It is a sorry spectacle, indeed, to see her own close kin ganging up on her, so to speak, to deprive her small heritage, and in her old age at that.

With all this in mind we affirm the finding of the respondent court that there was no adequate notice by the petitioners to the private respondent of the rejection of her claim to her share in the subject property. Noticeably absent here is a categorical assertion by the petitioners of their exclusive right to the entire property that barred her own claim of ownership of one-half thereof nor is there any explanation as to why they said she had no right to a share. If this trusting woman did not immediately take legal action to protect her rights, it was simply because of forbearance toward her nephews and nieces, let alone the fact that there was really no *casus belli* as yet that required her to act decisively. That legal provocation arose only when

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[21] *Rollo*, p. 37.

* In 1974.

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the petitioners commenced the registration proceedings in 1965, and it was from that time she was required to act, as she did, to protect her interests.

In an earlier case,[22] we stressed that this Court is not only a court of law but also of justice. Faced with a choice between a decision that will serve justice and another that will deny it because of a too-strict interpretation of the law, we must resolve in favor of the former, for the ultimate end of the law is justice. *Bonus judex secundum aequum at bonum judicat stricto juri praefert.*[23] This is a wise maxim we will follow here in ruling for the deprived and ignorant old widow.

WHEREOF, the petition is DENIED and the challenged decision AFFIRMED in full, with costs against the petitioners. It is ordered.

Narvasa, Griño-Aquino, and *Medialdea, JJ.,* concur.

Gancayco, J., please see separate dissenting opinion.

SEPARATE DISSENTING OPINION

GANCAYCO, *J.*:

As private respondent admitted that petitioners verbally repudiated her claims as co-owner of the property it was effectively an unequivocal notice amounting to an ouster of the *cestui que trust* and the period of prescription began to run since then. It is not required that such a repudiation should be through a formal legal action.

I, therefore vote to grant the petition by reversing and setting aside the decision of respondent court and its resolution denying the motion for reconsideration thereof, and reinstating the order of March 31, 1966 of the trial court.

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[22] *Alonzo v. IAC,* 150 SCRA 259.

[23] "A good judge decides according to justice and right and prefers equity to strict law."