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there will be intestate succession as to the property covered by the said legacy (*Macrohon Ong Ham vs. Saavedra*, 51 Phil. 267).

We find no merit in the appeal. The Appellate Court's decisions is affirmed. Cost against the petitioner.

SO ORDERED.

Fernando (Actg. C.J.), Barredo (Actg. Chairman), Antonio, Concepcion Jr., and *Santos, JJ.*, concur.

Abad Santos, J., took no part.

SECOND DIVISION

[G.R. No. L-24107. April 30, 1979]

MELITONA *VDA. DE* ARCEO, EUSEBIO, JR., ARACELI, RUBEN, CORAZON, DOROTHY, DANILO, all surnamed ARCEO, the last two minors herein represented by their mother MELITONA *VDA. DE* ARCEO, and JESUS, HONORITO, MENECENA, RAYMUNDA, MACARIO, FATIMA, and RAMON, all surnamed ARCEO, all minors herein represented by their mother MARTINIANA MONTEAGUNDO, *plaintiffs-appellants, vs.* **LAURO L. GO and JACINTA S. GO,** *defendants-appellees.*

SYLLABUS

CIVIL LAW; PRESCRIPTION OF ACTIONS; ACTION QUESTIONING NATURE OF ORIGINAL TRANSACTION PRESCRIBES IN TEN YEARS. — The right of action to question the nature of the original transaction as well as any

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action to recover land, prescribes 10 years after the execution of the questioned contract.

APPEARANCES OF COUNSEL

Jovito O. Vitanzo for plaintiffs-appellants.
Geronimo Ma. Call, Jr. for defendants-appellees.

D E C I S I O N

CONCEPCION JR., *J.*:

Appeal from the judgment of the Court of First Instance of Marinduque dismissing the complaint filed in Civil Case No. 1290 of said court.

The following facts are not disputed: Only July 6, 1944, Eusebio Arceo, predecessor-in-interest of the plaintiffs-appellants, sold two (2) contiguous parcels of residential land, situated in the *poblacion* of Mogpog, Marinduque, to Jacinta S. Go, married to Lauro L. Go, herein defendants-appellees, for the amount of ₱2,000.00, with the right to repurchase the same within one (1) year from the date of the notarial acknowledgment of the deed.[1] Immediately thereafter, Jacinta Go and her husband took possession of the property and "obtained one tax declaration in the name of defendant Lauro L. Go, with a portion thereof containing 356 square meters covered by Transfer Certificate of Title No. 167 in the name of Jacinta S. Go,"[2] which portion "was thereafter mortgaged for ₱2,500.00 with Security Bank and Trust Company, specifically on April 6, 1960."[3] Then, "on September 19, 1962 the defendants sold this time 209 square meters of the same property to a certain Presentacion Malabanan, for ₱4,000.00, more or less";[4] and "on September 12, 1963 the

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[1] Record on Appeal, p. 22.

[2] *Id.*, p. 16, par. 6 of Complaint.

[3] *Id., Id.*, par. 7 of Complaint.

[4] *Id., Id.*, par. 8 of Complaint.

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defendants furthermore sold 205.9 square meters of the property registered under Act No. 3344 to a certain Mrs. Judith S. Lara for the amount of ₱4,000.00;"[5] leaving "a portion containing 200 square meters, more or less, of the property registered under Act No. 3344, covered by Tax Declaration No. 12188 in the name of defendant Lauro L. Go."[6]

On April 12, 1946, Pilar Arceo sister of Eusebio Arceo, filed an action against the latter for the partition of the estate of their deceased parents, spouses Macario Arceo and Raymunda Monterey, with the Court of First Instance of Marinduque, which was docketed therein as *Civil Case No. 654*. On March 11, 1947, the parties submitted an agreement of partition, which included two residential lots, subject matter of the sale *con pacto de retro*. As a result, Atty. Milambiling asked, and was allowed, to intervene in behalf of his client, Lauro L. Go. On April 15, 1947, the court issued an order therein, which reads, as follows:

"The project of partition presented by the parties on March 11, 1947, is approved, excluding, however, the two parcels of land, one in Barrio Balanakan, Mogpog, and the other a residential lot in the poblacion of Mogpog, which parcels of land are subject of the intervention filed by Attorney F. Milambiling on behalf and in representation of his clients and which are the subject of the opposition to the project of partition. The parties are, therefore, enjoined to respect said project of partition as modified and must comply strictly with all the conditions therein stated."[7]

On May 8, 1952, Pilar Arceo filed an action with the Court of First Instance of Marinduque to recover possession of one-half (1/2) of the residential lots, subject matter of the deed of sale with right of repurchase, from the spouses Lauro L. Go and Jacinta S. Go, claiming that the lots belonged to Macario Arceo and being an heir to the latter, she is entitled to one-half (½) of said property, and that she was not a party to the deed

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[5] *Id.*, p. 17, par. 9 of Complaint.

[6] *Id.*, p. 25, par. 10 of Complaint.

[7] *Id.*, p. 25.

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of sale with right of repurchase, executed by Eusebio Arceo in favor of Jacinta S. Go and, consequently, cannot be bound by said contract, much less deprived of her share in said properties. The case was docketed therein as *Civil Case No. 903*. On December 4, 1955, the trial court rendered judgment therein, as follows:

"WHEREFORE, this Court hereby renders judgment in favor of the defendants declaring that the deed of sale with right to repurchase marked (Exh. 6) is valid and in full force and effect and that said defendants are entitled to remain in the possession of the lot in question as owners, with costs to the plaintiff."[8]

On February 18, 1964, Melitona *Vda. de* Arceo, Eusebio V. Arceo, Jr., Araceli V. Arceo, Ruben V. Arceo, Corazon M. Arceo, Dorothy V. Arceo, Danilo V. Arceo, Jesus M. Arceo, and Martiniana Monteagudo, representing her minor children Honorito, Menecena, Raymunda, Mavario, Fatima, and Ramon, all surnamed Arceo, alleging to be the heirs of Eusebio Arceo, filed a complaint with the Court of First Instance of Marinduque against Lauro L. Go and Jacinta S. Go for the reconveyance of their title over the residential lots, subject matter of the sale with right of repurchase, claiming that the contract of sale with right of repurchase executed by Eusebio Arceo and Jacinta S. Go is an equitable mortgage and that they are now seeking its redemption.[9] The case was docketed therein as *Civil Case No. 1290*, and subsequently thereafter, the defendants Lauro L. Go and Jacinta S. Go filed a motion to dismiss the complaint upon the following grounds:

"1. That the cause of action is barred by prior judgment and by statute of limitations;

"2. That the claim or demand set forth in the plaintiffs' pleading has been waived, abandoned, or otherwise extinguished;

"3. That the Court has no jurisdiction over the nature of the action or suit."[10]

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[8] *Id.*, p. 23.

[9] *Id.*, p. 14.

[10] *Id.*, p. 19.

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which the court granted on March 31, 1964.[11] The plaintiffs filed a motion for the reconsideration of the decision,[12] but the trial court denied the motion on November 5, 1964.[13] Whereupon, the plaintiffs appealed to this Court.[14]

The appellants contend that the trial court erred in finding that the cause of action is barred by prior judgment, and erred, consequently, in finding that the case cannot be brought for another litigation.

There is no merit in the appeal. It should be noted that the action filed by the appellants is for a judicial declaration that the agreement entered into by their ancestor, Eusebio Arceo, with Jacinta S. Go is a simple mortgage and not a sale with *pacto de retro.* The contract, however, was executed on July 6, 1944. The Court, per Mr. Justice J.B.L. Reyes, in *Fernandez vs. Fernandez,*[15] said that "the right of action to question the nature of the original transaction as well as any action to recover the land, if any such rights ever existed, were extinguished by prescription ten years after the appellee consolidated his ownership in 1936." Since the present action was filed only on February 18, 1964, almost 20 years after the execution of the questioned contract, the action has already prescribed.

WHEREFORE, the judgment appealed from should be, as it is hereby, AFFIRMED. With costs against the appellants.

SO ORDERED.

Barredo (Actg. Chairman), Antonio, Aquino, and *Santos, JJ.,* concur.

Abad Santos, J., took no part.

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[11] *Id.*, p. 11.

[12] *Id.*, p. 33.

[13] *Id.*, p. 40.

[14] *Id.*, p. 2.

[15] 109 Phil. 1033, restated in *Bunyi vs. Reyes,* L-28845, June 10, 1971, 39 SCRA 504.