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it follows that the introduction of the questioned documents in Civil Case No. 754 is not an offense punished by any provision of the Revised Penal Code or any other law. The petitioners should not be burdened with court proceedings, more particularly a criminal proceeding, if in the first place, there is no evidence sufficient to engender a well-founded belief that an offense was committed.

**WHEREFORE,** the petition is *GRANTED*. The Decision of the Court of Appeals, dated June 20, 2000, in CA-G.R. SP No. 49666 is *REVERSED and SET ASIDE*. The Temporary Restraining Order dated August 2, 2000 is hereby made permanent. Accordingly, the Municipal Trial Court in Cities, City of Bago, is *ORDERED* to *DISMISS* Criminal Case Nos. 6683-86.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario,* and *Reyes, JJ.*, concur.

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**THIRD DIVISION**

[G.R. No. 148788. November 23, 2007]

**SOLEDAD CAÑEZO, substituted by WILLIAM CAÑEZO and VICTORIANO CAÑEZO,** *petitioners, vs.* **CONCEPCION ROJAS,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; TRUST; EXPRESS OR IMPLIED; DEFINED. —** A trust is the legal relationship between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and

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the exercise of certain powers by the latter. Trusts are either express or implied. Express trusts are those which are created by the direct and positive acts of the parties, by some writing or deed, or will, or by words evincing an intention to create a trust. Implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or, independently, of the particular intention of the parties, as being superinduced on the transaction by operation of law basically by reason of equity. An implied trust may either be a resulting trust or a constructive trust.

**2. ID.; ID.; EXPRESS TRUST; A TRUSTEE CANNOT ACQUIRE BY PRESCRIPTION A PROPERTY ENTRUSTED TO HIM UNLESS HE REPUDIATES THE TRUST; RATIONALE. —** It is true that in express trusts and resulting trusts, a trustee cannot acquire by prescription a property entrusted to him unless he repudiates the trust. The following discussion is instructive: There is a rule that a trustee cannot acquire by prescription the ownership of property entrusted to him, or that an action to compel a trustee to convey property registered in his name in trust for the benefit of the *cestui que trust* does not prescribe, or that the defense of prescription cannot be set up in an action to recover property held by a person in trust for the benefit of another, or that property held in trust can be recovered by the beneficiary regardless of the lapse of time. That rule applies squarely to express trusts. The basis of the rule is that the possession of a trustee is not adverse. Not being adverse, he does not acquire by prescription the property held in trust. Thus, Section 38 of Act 190 provides that the law of prescription does not apply "in the case of a continuing and subsisting trust." The rule of imprescriptibility of the action to recover property held in trust may possibly apply to resulting trusts as long as the trustee has not repudiated the trust. x x x x Acquisitive prescription may bar the action of the beneficiary against the trustee in an express trust for the recovery of the property held in trust where (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 conclusive.

**3. ID.; ID.; ID.; ELEMENTS WHICH MUST BE PROVED TO SHOW EXISTENCE OF TRUST. —** As a rule, however, the burden

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of proving the existence of a trust is on the party asserting its existence, and such proof must be clear and satisfactorily show the existence of the trust and its elements. The presence of the following elements must be proved: (1) a trustor or settlor who executes the instrument creating the trust; (2) a trustee, who is the person expressly designated to carry out the trust; (3) the *trust res*, consisting of duly identified and definite real properties; and (4) the *cestui que trust*, or beneficiaries whose identity must be clear. Accordingly, it was incumbent upon petitioner to prove the existence of the trust relationship.

**4. ID.; ID.; ID.; EXISTENCE THEREOF CONCERNING REAL PROPERTY MAY NOT BE ESTABLISHED BY PAROL EVIDENCE; EXCEPTION. —** The existence of express trusts concerning real property may not be established by parol evidence. It must be proven by some writing or deed. In this case, the only evidence to support the claim that an express trust existed between the petitioner and her father was the self-serving testimony of the petitioner. Bare allegations do not constitute evidence adequate to support a conclusion. They are not equivalent to proof under the Rules of Court. In one case, the Court allowed oral testimony to prove the existence of a trust, which had been partially performed. It was stressed therein that what is important is that there should be an intention to create a trust, thus: What is crucial is the intention to create a trust. While oftentimes the intention is manifested by the trustor in express or explicit language, such intention may be manifested by inference from what the trustor has said or done, from the nature of the transaction, or from the circumstances surrounding the creation of the purported trust. However, an inference of the intention to create a trust, made from language, conduct or circumstances, must be made with reasonable certainty. It cannot rest on vague, uncertain or indefinite declarations. An inference of intention to create a trust, predicated only on circumstances, can be made only where they admit of no other interpretation. Although no particular words are required for the creation of an express trust, a clear intention to create a trust must be shown; and the proof of fiduciary relationship must be clear and convincing. The creation of an express trust must be manifested with reasonable certainty and cannot be inferred from loose and vague declarations or from ambiguous circumstances susceptible of other interpretations.

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**5. ID.; ID.; ID.; LEGAL TITLE IS VESTED IN THE FIDUCIARY; NOT PRESENT IN CASE AT BAR. —** What distinguishes a trust from other relations is the separation of the legal title and equitable ownership of the property. In a trust relation, legal title is vested in the fiduciary while equitable ownership is vested in a *cestui que trust.* Such is not true in this case. The petitioner alleged in her complaint that the tax declaration of the land was transferred to the name of Crispulo without her consent. Had it been her intention to create a trust and make Crispulo her trustee, she would not have made an issue out of this because in a trust agreement, legal title is vested in the trustee. The trustee would necessarily have the right to transfer the tax declaration in his name and to pay the taxes on the property. These acts would be treated as beneficial to the *cestui que trust* and would not amount to an adverse possession.

**6. ID.; ID.; RESULTING TRUST; DEFINED. —** A resulting trust is a species of implied trust that is presumed always to have been contemplated by the parties, the intention as to which can be found in the nature of their transaction although not expressed in a deed or instrument of conveyance. A resulting trust is based on the equitable doctrine that it is the more valuable consideration than the legal title that determines the equitable interest in property.

**7. ID.; ID.; IMPLIED TRUST; WHEN MAYBE ESTABLISHED BY PAROL EVIDENCE. —** While implied trusts may be proved by oral evidence, the evidence must be trustworthy and received by the courts with extreme caution, and should not be made to rest on loose, equivocal or indefinite declarations. Trustworthy evidence is required because oral evidence can easily be fabricated. In order to establish an implied trust in real property by parol evidence, the proof should be as fully convincing as if the acts giving rise to the trust obligation are proven by an authentic document. An implied trust, in fine, cannot be established upon vague and inconclusive proof. In the present case, there was no evidence of any transaction between the petitioner and her father from which it can be inferred that a resulting trust was intended.

**8. ID.; ID.; ID.; CONSTRUCTIVE TRUST; WHEN CREATED. —** A constructive trust is one created not by any word or phrase, either expressly or impliedly, evincing a direct intention to create

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a trust, but one which arises in order to satisfy the demands of justice. It does not come about by agreement or intention but in the main by operation of law, construed against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.

**9. ID.; ID.; ID.; ID.; PRESCRIPTION MAY SUPERVENE EVEN IF THE TRUSTEE DOES NOT REPUDIATE THE RELATIONSHIP; RATIONALE. —** As previously stated, the rule that a trustee cannot, by prescription, acquire ownership over property entrusted to him until and unless he repudiates the trust, applies to express trusts and resulting implied trusts. However, in constructive implied trusts, prescription may supervene even if the trustee does not repudiate the relationship. Necessarily, repudiation of the said trust is not a condition precedent to the running of the prescriptive period. A constructive trust, unlike an express trust, does not emanate from, or generate a fiduciary relation. While in an express trust, a beneficiary and a trustee are linked by confidential or fiduciary relations, in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary. The relation of trustee and *cestui que trust* does not in fact exist, and the holding of a constructive trust is for the trustee himself, and therefore, at all times adverse.

**10. ID.; ESTOPPEL; PRINCIPLE OF ESTOPPEL *IN PAIS*; EXPLAINED. —** The principle of estoppel *in pais* applies when — by one's acts, representations, admissions, or silence when there is a need to speak out — one, intentionally or through culpable negligence, induces another to believe certain facts to exist; and the latter rightfully relies and acts on such belief, so as to be prejudiced if the former is permitted to deny the existence of those facts.

**11. ID.; LACHES; DEFINED. —** Laches is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to it has either abandoned or declined to assert it.

**12. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; EFFECT OF ABSENCE OF INDISPENSABLE PARTY IN THE SUIT, CLARIFIED. —** It is axiomatic that

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owners of property over which reconveyance is asserted are indispensable parties. Without them being impleaded, no relief is available, for the court cannot render valid judgment. Being indispensable parties, their absence in the suit renders all subsequent actions of the trial court null and void for want of authority to act, not only as to the absent parties but even as to those present. Thus, when indispensable parties are not before the court, the action should be dismissed.

**APPEARANCES OF COUNSEL**

*Tarcelo A. Sabarre* for petitioners.
*Montejo Nuez & Villarino Law Offices* for respondent.

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

**NACHURA, *J.*:**

This is a petition for review on *certiorari* from the Decision[1] of the Court of Appeals, dated September 7, 2000, in CA-G.R. SP No. 53236, and Resolution dated May 9, 2001.

On January 29, 1997, petitioner Soledad Cañezo filed a Complaint[2] for the recovery of real property plus damages with the Municipal Trial Court (MTC) of Naval, Biliran, against her father's second wife, respondent Concepcion Rojas. The subject property is an unregistered land with an area of 4,169 square meters, situated at Higatangan, Naval, Biliran. Cañezo attached to the complaint a Joint Affidavit[3] executed on May 10, 1979 by Isidro Catandijan and Maximina Cañezo attesting to her acquisition of the property.

In her complaint, the petitioner alleged that she bought the parcel of land in 1939 from Crisogono Limpiado, although the

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[1] Penned by Associate Justice Ramon A. Barcelona, with Associate Justices Renato C. Dacudao and Edgardo P. Cruz, concurring; *rollo*, pp. 21-33.

[2] *Rollo,* p. 158.

[3] *Id.* at 40.

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transaction was not reduced into writing. Thereafter, she immediately took possession of the property. When she and her husband left for Mindanao in 1948, she entrusted the said land to her father, Crispulo[4] Rojas, who took possession of, and cultivated, the property. In 1980, she found out that the respondent, her stepmother, was in possession of the property and was cultivating the same. She also discovered that the tax declaration over the property was already in the name of Crispulo Rojas.[5]

In her Answer, the respondent asserted that, contrary to the petitioner's claim, it was her husband, Crispulo Rojas, who bought the property from Crisogono Limpiado in 1948, which accounts for the tax declaration being in Crispulo's name. From then on, until his death in 1978, Crispulo possessed and cultivated the property. Upon his death, the property was included in his estate, which was administered by a special administrator, Bienvenido Ricafort. The petitioner, as heir, even received her share in the produce of the estate. The respondent further contended that the petitioner ought to have impleaded all of the heirs as defendants. She also argued that the fact that petitioner filed the complaint only in 1997 means that she had already abandoned her right over the property.[6]

On July 3, 1998, after hearing, the MTC rendered a Decision in favor of the petitioner, thus:

> WHEREFORE, premises considered, the Court finds a preponderance of evidence in favor of plaintiff Soledad Cañezo and against defendant Concepcion Rojas by declaring plaintiff the true and lawful owner of the land more particularly described under paragraph 5 of the complaint and hereby orders defendant Concepcion Rojas:
>
> a) To vacate and surrender possession of the land to plaintiff;
>
> b) To pay plaintiff the sum of ₱34,000.00 actual damages, ₱10,000.00 for attorney's fees and litigation expenses; and

[4] Also spelled "Crispolo" in the pleadings.

[5] *Id*. at 159.

[6] *Id*. at 162-165.

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c) To pay the costs.

SO ORDERED.[7]

Despite the respondent's objection that the verbal sale cannot be proven without infringing the Statute of Frauds, the MTC gave credence to the testimony of the petitioners' two witnesses attesting to the fact that Crisogono Limpiado sold the property to the petitioner in 1939. The MTC also found no evidence to show that Crispulo Rojas bought the property from Crisogono Limpiado in 1948. It held that the 1948 tax declaration in Crispulo's name had little significance on respondent's claim, considering that in 1948, the "country was then rehabilitating itself from the ravages of the Second World War" and "the government was more interested in the increase in tax collection than the observance of the niceties of law."[8]

The respondent appealed the case to the Regional Trial Court (RTC) of Naval, Biliran. On October 12, 1998, the RTC reversed the MTC decision on the ground that the action had already prescribed and acquisitive prescription had set in. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the decision of the Municipal Trial Court of Naval, Biliran awarding ownership of the disputed land to the plaintiff and further allowing recovery of damages is hereby REVERSED *in toto*. There is no award of damages.

The said property remains as the legitime of the defendant Concepcion Rojas and her children.

SO ORDERED.[9]

However, acting on petitioner's motion for reconsideration, the RTC amended its original decision on December 14, 1998.[10] This time, it held that the action had not yet prescribed considering

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[7] *Id*. at 170-171.

[8] *Id*. at 170.

[9] *Id*. at 177-178.

[10] *Id*. at 41-50.

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that the petitioner merely entrusted the property to her father. The ten-year prescriptive period for the recovery of a property held in trust would commence to run only from the time the trustee repudiates the trust. The RTC found no evidence on record showing that Crispulo Rojas ever ousted the petitioner from the property. The dispositive portion of the amended decision reads as follows:

> WHEREFORE, in view of the foregoing considerations, the decision of this Court dated October 12, 1998 is hereby set aside and another is hereby entered modifying the decision of the Court *a quo* and declaring Soledad Rojas *Vda. De* Cañezo as the true and lawful owner of a parcel of land, more particularly described and bounded as follows:
>
> > A parcel of land situated at Higatangan, Naval, Biliran, bounded on the North by Policarpio Limpiado; on the South by Fidel Limpiado; on the East by Seashore; and on the West by Crispolo (sic) Limpiado with an approximate area of 4,169 square meters per Tax Declaration No. 2258, later under Tax Declaration No. 4073 in the name of Crispolo Rojas and later in the name of the Heirs of Crispolo Rojas.
>
> Further, ordering defendant-appellant Concepcion Rojas and all persons claiming rights or interest under her to vacate and surrender possession of the land aforecited to the plaintiff or any of her authorized representatives, Ordering the Provincial and/or Municipal Assessor's Office to cancel the present existing Tax Declaration in the name of Heirs of Crispolo Rojas referring to the above-described property in favor of the name of Soledad Rojas *Vda. De* Cañezo, Ordering the defendant-appellant Concepcion Rojas to pay the plaintiff-appellee the sum of ₱34,000.00 in actual damages, and to pay for the loss of her share in money value of the products of the coconuts of said land from 1979 to 1997 and to pay further until the case is terminated at the rate of ₱200.00 per quarter based on the regular remittances of the late Crispolo Rojas to the plaintiff-appellee, and to pay the costs.
>
> SO ORDERED.[11]

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[11] *Id*. at 48-49.

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The respondent filed a motion to reconsider the Amended Decision but the RTC denied the same in an Order dated April 25, 1999.

She then filed a petition for review with the Court of Appeals (CA), which reversed the Amended Decision of the RTC on September 7, 2000, thus:

> WHEREFORE, the *amended decision* dated December 14, 1998 rendered in Civil Case No. B-1041 is hereby REVERSED and SET ASIDE. The *complaint filed by Soledad Cañezo* before the Municipal Trial Court of Naval, Biliran is hereby DISMISSED on grounds of laches and prescription and for lack of merit.
>
> SO ORDERED.[12]

The CA held that the petitioner's inaction for several years casts a serious doubt on her claim of ownership over the parcel of land. It noted that 17 years lapsed since she discovered that respondent was in adverse possession of the property before she instituted an action to recover the same. And during the probate proceedings, the petitioner did not even contest the inclusion of the property in the estate of Crispulo Rojas.[13]

The CA was convinced that Crispulo Rojas owned the property, having bought the same from Crisogono Limpiado in 1948. Supporting this conclusion, the appellate court cited the following circumstances: (1) the property was declared for taxation purposes in Crispulo's name and he had been paying the taxes thereon from 1948 until his death in 1978; (2) Crispulo adversely possessed the same property from 1948 until his death in 1978; and (3) upon his death in 1978, the property was included in his estate, the proceeds of which were distributed among his heirs.[14]

The CA further held that, assuming that there was an implied trust between the petitioner and her father over the property,

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[12] *Id* at 32.

[13] *Id*. at 31.

[14] *Id*.

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her right of action to recover the same would still be barred by prescription since 49 years had already lapsed since Crispulo adversely possessed the contested property in 1948.[15]

On May 9, 2001, the CA denied the petitioner's motion for reconsideration for lack of merit.[16]

In this petition for review, the petitioner, substituted by her heirs, assigns the following errors:

> That the Court of Appeals committed grave abuse of discretion in setting aside petitioner's contention that the Petition for Review filed by respondent CONCEPCION ROJAS before the Court of Appeals was FILED OUT OF TIME;
>
> That the Court of Appeals erred and committed grave abuse of discretion amounting to lack or excess of jurisdiction when it decided that the filing of the case by SOLEDAD CAÑEZO for Recovery of Real Property was already barred by PRESCRIPTION AND LACHES.[17]

The petitioner insists that the respondent's petition for review before the CA was filed out of time. The petitioner posits that the CA may not grant an additional extension of time to file the petition except for the most compelling reason. She contends that the fact that respondent's counsel needed additional time to secure the certified copy of his annexes cannot be considered as a compelling reason that would justify an additional period of extension. She admits, though, that this issue was raised for the first time in their motion for reconsideration, but insists that it can be raised at any time since it concerns the jurisdiction of the CA over the petition.

The petitioner further posits that prescription and laches are unavailing because there was an express trust relationship between the petitioner and Crispulo Rojas and his heirs, and express trusts do not prescribe. Even assuming that it was not an express trust, there was a resulting trust which generally does not prescribe unless there is repudiation by the trustee.

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[15] *Id*. at 31-32.

[16] *Id*. at 34.

[17] *Id*. at 12-13.

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For her part, the respondent argues that the petitioners are now estopped from questioning the CA Resolution granting her second motion for extension to file the petition for review. She notes that the petitioner did not raise this issue in the comment that she filed in the CA. In any case, the grant of the second extension of time was warranted considering that the certified true copy of the assailed RTC orders did not arrive at the office of respondent's counsel in Cebu City in time for the filing of the petition.

On the merits, the respondent asserts that the complaint is barred by prescription, laches and estoppel. From 1948 until his death in 1978, Crispulo cultivated the property and was in adverse, peaceful and continuous possession thereof in the concept of owner. It took the petitioner 49 years from 1948 before she filed the complaint for recovery of the property in 1997. Granting that it was only in 1980 that she found out that the respondent adversely possessed the property, still petitioner allowed 17 years to elapse before she asserted her alleged right over the property.

Finally, the respondent maintains that the other co-owners are indispensable parties to the case; and because they were not impleaded, the case should be dismissed.

The petition has no merit.

On the procedural issue raised by the petitioner, we find no reversible error in the grant by the CA of the second motion for extension of time to file the respondent's petition. The grant or denial of a motion for extension of time is addressed to the sound discretion of the court.[18] The CA obviously considered the difficulty in securing a certified true copy of the assailed decision because of the distance between the office of respondent's counsel and the trial court as a compelling reason for the request. In the absence of any showing that the CA granted the motion for extension capriciously, such exercise of discretion will not be disturbed by this Court.

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[18] *Cosmo Entertainment Management, Inc. v. La Ville Commercial Corporation*, G.R. No. 152801, August 20, 2004, 437 SCRA 145, 150.

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On the second issue, the petitioner insists that her right of action to recover the property cannot be barred by prescription or laches even with the respondent's uninterrupted possession of the property for 49 years because there existed between her and her father an express trust or a resulting trust. Indeed, if no trust relations existed, the possession of the property by the respondent, through her predecessor, which dates back to 1948, would already have given rise to acquisitive prescription in accordance with Act No. 190 (Code of Civil Procedure).[19] Under Section 40 of Act No. 190, an action for recovery of real property, or of an interest therein, can be brought only within ten years after the cause of action accrues. This period coincides with the ten-year period for acquisitive prescription provided under Section 41[20] of the same Act.

Thus, the resolution of the second issue hinges on our determination of the existence of a trust over the property — express or implied — between the petitioner and her father.

A trust is the legal relationship between one person having an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and

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[19] Article 1116 of the Civil Code of the Philippines states:

ART. 1116. Prescription already running before the effectivity of this Code shall be governed by laws previously in force; but if since the time this Code took effect the entire period herein required for prescription should elapse, the present Code shall be applicable, even though by the former laws, a longer period might be required.

[20] *Title to land by prescription.* – Ten years actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the person under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must be actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all claimants x x x.

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the exercise of certain powers by the latter.[21] Trusts are either express or implied.[22] Express trusts are those which are created by the direct and positive acts of the parties, by some writing or deed, or will, or by words evincing an intention to create a trust.[23] Implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or, independently, of the particular intention of the parties, as being superinduced on the transaction by operation of law basically by reason of equity.[24] An implied trust may either be a resulting trust or a constructive trust.

It is true that in express trusts and resulting trusts, a trustee cannot acquire by prescription a property entrusted to him unless he repudiates the trust.[25] The following discussion is instructive:

> There is a rule that a trustee cannot acquire by prescription the ownership of property entrusted to him, or that an action to compel a trustee to convey property registered in his name in trust for the benefit of the *cestui que trust* does not prescribe, or that the defense of prescription cannot be set up in an action to recover property held by a person in trust for the benefit of another, or that property held in trust can be recovered by the beneficiary regardless of the lapse of time.
>
> That rule applies squarely to express trusts. The basis of the rule is that the possession of a trustee is not adverse. Not being adverse, he does not acquire by prescription the property held in trust. Thus, Section 38 of Act 190 provides that the law of prescription does not apply "in the case of a continuing and subsisting trust."

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[21] *Tigno v. Court of Appeals*, 345 Phil. 486, 497 (1997), citing *Morales v. Court of Appeals*, 274 SCRA 282 (1997).

[22] Article 1441, Civil Code of the Philippines states:

> ART. 1441. Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties. Implied trusts come into being by operation of law.

[23] *Buan Vda. de Esconde v. Court of Appeals*, 323 Phil. 81, 89 (1996).

[24] *Id*.

[25] *Id*. at 92.

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The rule of imprescriptibility of the action to recover property held in trust may possibly apply to resulting trusts as long as the trustee has not repudiated the trust.

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Acquisitive prescription may bar the action of the beneficiary against the trustee in an express trust for the recovery of the property held in trust where (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 conclusive.[26]

As a rule, however, the burden of proving the existence of a trust is on the party asserting its existence, and such proof must be clear and satisfactorily show the existence of the trust and its elements.[27] The presence of the following elements must be proved: (1) a trustor or settlor who executes the instrument creating the trust; (2) a trustee, who is the person expressly designated to carry out the trust; (3) the *trust res*, consisting of duly identified and definite real properties; and (4) the *cestui que trust*, or beneficiaries whose identity must be clear.[28] Accordingly, it was incumbent upon petitioner to prove the existence of the trust relationship. And petitioner sadly failed to discharge that burden.

The existence of express trusts concerning real property may not be established by parol evidence.[29] It must be proven by some writing or deed. In this case, the only evidence to support the claim that an express trust existed between the petitioner and her father was the self-serving testimony of the petitioner. Bare allegations do not constitute evidence adequate to support a conclusion. They are not equivalent to proof under the Rules of Court.[30]

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[26] *Pilapil v. Heirs of Maximino R. Briones*, G.R. No. 150175, February 5, 2007, 514 SCRA 197, 214-215. (Citations omitted.)

[27] *Morales v. Court of Appeals*, *supra* note 14, at 300.

[28] *Ringor v. Ringor*, G.R. No. 147863, August 13, 2004, 436 SCRA 484, 496.

[29] Civil Code, Art. 1443.

[30] *Filipinas Port Services, Inc. v. Go*, G.R. No. 161886, March 16, 2007.

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In one case, the Court allowed oral testimony to prove the existence of a trust, which had been partially performed. It was stressed therein that what is important is that there should be an intention to create a trust, thus:

> What is crucial is the intention to create a trust. While oftentimes the intention is manifested by the trustor in express or explicit language, such intention may be manifested by inference from what the trustor has said or done, from the nature of the transaction, or from the circumstances surrounding the creation of the purported trust.
>
> However, an inference of the intention to create a trust, made from language, conduct or circumstances, must be made with reasonable certainty. It cannot rest on vague, uncertain or indefinite declarations. An inference of intention to create a trust, predicated only on circumstances, can be made only where they admit of no other interpretation.[31]

Although no particular words are required for the creation of an express trust, a clear intention to create a trust must be shown; and the proof of fiduciary relationship must be clear and convincing. The creation of an express trust must be manifested with reasonable certainty and cannot be inferred from loose and vague declarations or from ambiguous circumstances susceptible of other interpretations.[32]

In the case at bench, an intention to create a trust cannot be inferred from the petitioner's testimony and the attendant facts and circumstances. The petitioner testified only to the effect that her agreement with her father was that she will be given a share in the produce of the property, thus:

> Q: What was your agreement with your father Crispulo Rojas when you left this property to him?
>
> A: Every time that they will make copra, they will give a share.
>
> Q: In what particular part in Mindanao [did] you stay with your husband?
>
> A: Bansalan, Davao del Sur.

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[31] *Ringor v. Ringor*, *supra* note 28, at 497-498.

[32] *Medina v. Court of Appeals*, 196 Phil. 205, 213-214 (1981).

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Q: And while you were in Bansalan, Davao del Sur, did Crispolo Rojas comply with his obligation of giving your share the proceeds of the land?

A: When he was still alive, he gave us every three months sometimes ₱200.00 and sometimes ₱300.00.[33]

This allegation, standing alone as it does, is inadequate to establish the existence of a trust because profit-sharing *per se*, does not necessarily translate to a trust relation. It could also be present in other relations, such as in deposit.

What distinguishes a trust from other relations is the separation of the legal title and equitable ownership of the property. In a trust relation, legal title is vested in the fiduciary while equitable ownership is vested in a *cestui que trust.* Such is not true in this case. The petitioner alleged in her complaint that the tax declaration of the land was transferred to the name of Crispulo without her consent. Had it been her intention to create a trust and make Crispulo her trustee, she would not have made an issue out of this because in a trust agreement, legal title is vested in the trustee. The trustee would necessarily have the right to transfer the tax declaration in his name and to pay the taxes on the property. These acts would be treated as beneficial to the *cestui que trust* and would not amount to an adverse possession.[34]

Neither can it be deduced from the circumstances of the case that a resulting trust was created. A resulting trust is a species of implied trust that is presumed always to have been contemplated by the parties, the intention as to which can be

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[33] TSN, September 11, 1997, pp. 7-8; *rollo*, pp. 148-149.

[34] See *Salvador v. Court of Appeals*, 313 Phil. 36, 56-57 (1995), where the Court likened a co-owner's possession to that of a trustee. It was then held that a mere silent possession, receipt of rents, fruits or profits from the property, the erection of buildings and fences and the planting of trees thereon, and the payment of land taxes, cannot serve as proof of exclusive ownership, if it is not borne out by clear and convincing evidence that a co-owner (trustee) exercised acts of possession which unequivocally constituted an ouster or deprivation of the rights of the other co-owners (*cestui que trust*).

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found in the nature of their transaction although not expressed in a deed or instrument of conveyance. A resulting trust is based on the equitable doctrine that it is the more valuable consideration than the legal title that determines the equitable interest in property.[35]

While implied trusts may be proved by oral evidence, the evidence must be trustworthy and received by the courts with extreme caution, and should not be made to rest on loose, equivocal or indefinite declarations. Trustworthy evidence is required because oral evidence can easily be fabricated.[36] In order to establish an implied trust in real property by parol evidence, the proof should be as fully convincing as if the acts giving rise to the trust obligation are proven by an authentic document. An implied trust, in fine, cannot be established upon vague and inconclusive proof.[37] In the present case, there was no evidence of any transaction between the petitioner and her father from which it can be inferred that a resulting trust was intended.

In light of the disquisitions, we hold that there was no express trust or resulting trust established between the petitioner and her father. Thus, in the absence of a trust relation, we can only conclude that Crispulo's uninterrupted possession of the subject property for 49 years, coupled with the performance of acts of ownership, such as payment of real estate taxes, ripened into ownership. The statutory period of prescription commences when a person who has neither title nor good faith, secures a tax declaration in his name and may, therefore, be said to have adversely claimed ownership of the lot.[38] While tax declarations and receipts are not conclusive evidence of ownership and do not prove title to the land, nevertheless, when coupled with actual possession, they constitute evidence of great weight and can be the basis of a claim of ownership through

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[35] *Heirs of Yap v. Court of Appeals,* 371 Phil. 523, 531 (1999).

[36] *Morales v. Court of Appeals, supra* note 18.

[37] *Heirs of Yap v. Court of Appeals, supra.*

[38] *Heirs of Flores Restar v. Heirs of Dolores R. Cichon,* G.R. No. 161720, November 22, 2005, 475 SCRA 731, 740.

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prescription.[39] Moreover, Section 41 of Act No. 190 allows adverse possession in *any* character to ripen into ownership after the lapse of ten years. There could be prescription under the said section even in the absence of good faith and just title.[40]

All the foregoing notwithstanding, even if we sustain petitioner's claim that she was the owner of the property and that she constituted a trust over the property with her father as the trustee, such a finding still would not advance her case.

Assuming that such a relation existed, it terminated upon Crispulo's death in 1978. A trust terminates upon the death of the trustee where the trust is personal to the trustee in the sense that the trustor intended no other person to administer it.[41] If Crispulo was indeed appointed as trustee of the property, it cannot be said that such appointment was intended to be conveyed to the respondent or any of Crispulo's other heirs. Hence, after Crispulo's death, the respondent had no right to retain possession of the property. At such point, a constructive trust would be created over the property by operation of law. Where one mistakenly retains property which rightfully belongs to another, a constructive trust is the proper remedial device to correct the situation.[42]

A constructive trust is one created not by any word or phrase, either expressly or impliedly, evincing a direct intention to create a trust, but one which arises in order to satisfy the demands of justice. It does not come about by agreement or intention but in the main by operation of law, construed against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.[43]

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[39] *Id*. at 741.

[40] *Vda. de Rigonan v. Derecho*, G.R. No. 159571, July 15, 2005, 463 SCRA 627, 644.

[41] *Booth v. Krug*, 368 Ill. 487, 14 N.E. 2d 645 (1938).

[42] *Yamaha Motor Corp., U.S.A. v. Tri-City Motors and Sports, Inc.*, 171 Mich. App. 260, 429 N.W. 2d 871, 7 UCC Rep. Serv. 2d 1190 (1988).

[43] *Heirs of Yap v. Court of Appeals*, *supra* note 35, at 531.

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As previously stated, the rule that a trustee cannot, by prescription, acquire ownership over property entrusted to him until and unless he repudiates the trust, applies to express trusts and resulting implied trusts. However, in constructive implied trusts, prescription may supervene even if the trustee does not repudiate the relationship. Necessarily, repudiation of the said trust is not a condition precedent to the running of the prescriptive period.[44] A constructive trust, unlike an express trust, does not emanate from, or generate a fiduciary relation. While in an express trust, a beneficiary and a trustee are linked by confidential or fiduciary relations, in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary.[45] The relation of trustee and *cestui que trust* does not in fact exist, and the holding of a constructive trust is for the trustee himself, and therefore, at all times adverse.

In addition, a number of other factors militate against the petitioner's case. First, the petitioner is estopped from asserting ownership over the subject property by her failure to protest its inclusion in the estate of Crispulo. The CA, thus, correctly observed that:

> Even in the probate proceedings instituted by the heirs of Crispulo Rojas, which included her as a daughter of the first marriage, Cañezo never contested the inclusion of the contested property in the estate of her father. She even participated in the project of partition of her father's estate which was approved by the probate court in 1984. After personally receiving her share in the proceeds of the estate for 12 years, she suddenly claims ownership of part of her father's estate in 1997.

The principle of estoppel *in pais* applies when — by one's acts, representations, admissions, or silence when there is a need to speak out — one, intentionally or through culpable negligence, induces another to believe certain facts to exist;

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[44] *Buan Vda. de Esconde v. Court of Appeals*, *supra* note 23, at 92.

[45] *Aznar Brothers Realty Company v. Aying*, G.R. No. 144773, May 16, 2005, 458 SCRA 496, 508.

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and the latter rightfully relies and acts on such belief, so as to be prejudiced if the former is permitted to deny the existence of those facts.[46] Such a situation obtains in the instant case.

Second, the action is barred by laches. The petitioner allegedly discovered that the property was being possessed by the respondent in 1980.[47] However, it was only in 1997 that she filed the action to recover the property. Laches is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to it has either abandoned or declined to assert it.[48]

Finally, the respondent asserts that the court *a quo* ought to have dismissed the complaint for failure to implead the other heirs who are indispensable parties. We agree. We note that the complaint filed by the petitioner sought to recover ownership, not just possession of the property; thus, the suit is in the nature of an action for reconveyance. It is axiomatic that owners of property over which reconveyance is asserted are indispensable parties. Without them being impleaded, no relief is available, for the court cannot render valid judgment. Being indispensable parties, their absence in the suit renders all subsequent actions of the trial court null and void for want of authority to act, not only as to the absent parties but even as to those present. Thus, when indispensable parties are not before the court, the action should be dismissed.[49] At any rate, a resolution of this issue is now purely academic in light of our finding that the complaint is already barred by prescription, estoppel and laches.

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[46] *Cuenco v. Cuenco Vda. de Manguerra*, G.R. No. 149844, October 13, 2004, 440 SCRA 252, 266.

[47] The petitioner testified that she discovered that the property was in the respondent's possession in 1978, when her father died. TSN, September 11, 1997, p. 10; *rollo*, p. 151.

[48] *Pahamotang v. Philippine National Bank*, G.R. No. 156403, March 31, 2005, 454 SCRA 681, 699-700.

[49] *MWSS v. Court of Appeals*, 357 Phil. 966, 986-987 (1998).

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**WHEREFORE,** premises considered, the petition is *DENIED*. The Decision of the Court of Appeals, dated September 7, 2000, and Resolution dated May 9, 2001, are *AFFIRMED*.

**SO ORDERED.**

*Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario,* and *Reyes, JJ.,* concur.

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**THIRD DIVISION**

[G.R. No. 149177. November 23, 2007]

**KAZUHIRO HASEGAWA and NIPPON ENGINEERING CONSULTANTS CO., LTD.,** *petitioners, vs.* **MINORU KITAMURA,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; THE TERMINATION OF A CASE NOT ON THE MERITS DOES NOT BAR ANOTHER ACTION WITHOUT INVOLVING THE SAME PARTIES, ON THE SAME SUBJECT MATTER AND THEORY; APPLICATION IN CASE AT BAR. —** The dismissal being without prejudice, petitioners can re-file the petition, or file a second petition attaching thereto the appropriate verification and certification—as they, in fact did—and stating therein the material dates, within the prescribed period in Section 4, Rule 65 of the said Rules. The dismissal of a case without prejudice signifies the absence of a decision on the merits and leaves the parties free to litigate the matter in a subsequent action as though the dismissed action had not been commenced. In other words, the termination of a case not on the merits does not bar another action involving the same parties, on the same subject matter and theory. Necessarily,