Supreme Court E-Library

THIRD DIVISION

[G.R. No. 131803. April 14, 1999]

SOTERA PAULINO MARCELO, GABRIELA M. ANGELES, SIMEONA CUENCO, EMILIA MARCELO and RUBEN MARCELO, *petitioners, vs.* **HON. COURT OF APPEALS, FERNANDO CRUZ and SERVANDO FLORES,** *respondents.*

SYNOPSIS

The heirs of the deceased Jose Marcelo filed with the RTC an action to recover a portion of an unregistered land in Sta. Lucia, Angat, Bulacan. They alleged that two parcels of land, owned by the late Jose Marcelo and his spouse, had been encroached by Fernando Cruz and Servando Flores. After trial, a decision was rendered in favor of the heirs of Jose Marcelo; however, on appeal to the Court of Appeals, the same was reversed. Hence, this petition assailing the decision of the Court of Appeals which ruled that the action initiated by Marcelo's heirs would not prosper on the theory that Flores already has acquired ownership of the disputed land by ordinary acquisitive prescription.

According to Marcelo's heirs, the parcel of land subject of litigation was originally owned by Jose Marcelo and they had been in continuous possession thereof since 1939. In 1967, they discovered that a portion of said property had been encroached upon by Cruz, but Cruz still sold his property, including the encroached parcel of land to Flores. Cruz, however, alleged that the disputed land is part of the land he acquired in 1960 from the heirs of Jorge Sarmiento, which he (Cruz) had surveyed and declared for taxation purposes. Then, in 1968, he sold the whole lot to Flores who then occupied and cultivated the same.

The contract executed by Cruz and the heirs of Sarmiento includes the encroached property, as found by the trial court and the appellate court. And when Cruz sold the land to Flores, the latter immediately took possession of the same to the exclusion of all others and promptly paid the realty taxes thereon. From that time on, Flores had been in possession of the entire area in the concept of an owner and holding it in that capacity for almost 14 years before the heirs of Marcelo initiated their complaint in 1982. The records of the case supported the holding of the appellate

Supreme Court E-Library

court that the requirements for ordinary prescription have been duly met. Flores took possession of the controverted property in good faith and with just title because the said portion was an integral part of the bigger tract of land which he bought from Cruz. Further, Flores' possession was not only in the concept of an owner but also public, peaceful and uninterrupted. Hence, the Court found no cogent reasons to reverse the findings of the appellate court and thus gave its affirmance to the assailed decision.

SYLLABUS

1. **CIVIL LAW; DIFFERENT MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION OF OWNERSHIP AND OTHER REAL RIGHTS; ACQUISITIVE PRESCRIPTION; ELUCIDATED.** — Acquisitive prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. In order to ripen into ownership, possession must be in the *concept of an owner,* public, peaceful and uninterrupted. Thus, mere possession with a *juridical title,* such as, to exemplify, by a usufructuary, a trustee, a lessee, an agent or a pledgee, not being in the concept of an owner, cannot ripen into ownership by acquisitive prescription, unless the juridical relation is first expressly repudiated and such repudiation has been communicated to the other party. Acts of possessory character executed due to license or by mere tolerance of the owner would likewise be inadequate. Possession, to constitute the foundation of a prescriptive right, must be *en concepto de dueno*, or, to use the common law equivalent of the term, that possession should be adverse; if not, such possessory acts, no matter how long, do not start the running of the period of prescription.

2. **ID.; ID.; ID.; ID.; KINDS.** — Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law; without good faith and just title, acquisitive prescription can only be extraordinary in character.

3. **ID.; ID.; ID.; ID.; ID.; ORDINARY PRESCRIPTION; REQUIREMENTS; GOOD FAITH AND JUST TITLE.**— As regards real or immovable property, Article 1134 of the Civil Code provides: "Ownership and other real rights over immovable property are acquired by ordinary prescription through possession

Supreme Court E-Library

of ten years." Ordinary acquisitive prescription demands that the possession be in good faith and with just title." The good faith of the possessor consists in the reasonable belief that the person from whom the thing is received has been the owner thereof and could thereby transmit that ownership. There is, upon the other hand, just title when the adverse claimant comes into possession of the property through any of the modes recognized by law for the acquisition of ownership or other real rights, but that the grantor is neither the owner nor in a position to transmit the right.

APPEARANCES OF COUNSEL

Telesforo T. Barbadillo, Jr. for petitioner.
De Jesus Orioste Silvestre and Lim for private respondents.

D E C I S I O N

VITUG, *J.*:

The reversal of the 28th November 1996 decision[1] of the Court of Appeals setting aside that of the Regional Trial Court ("RTC"), Branch 19, of Malolos, Bulacan, is sought in this petition for review on *certiorari*. Petitioners seek the reinstatement of the RTC decision which has ordered respondents Fernando Cruz and Servando Flores to return the ownership and possession of a portion of unregistered and untitled land located in Sta. Lucia, Angat, Bulacan, to herein petitioners.

It would appear that on 06 October 1982, herein petitioners, heirs of the deceased Jose Marcelo, filed with the Regional Trial Court of Malolos, Bulacan, an action for the recovery of a portion of *unregistered* land in Sta. Lucia, Angat, Bulacan. The complaint, later amended on 12 October 1983, averred that two parcels of land in Sta. Lucia, declared for taxation purposes under Tax Declarations No. 2880 and No. 2882, owned by the late Jose Marcelo and his spouse, Sotera Paulino-Marcelo, had been encroached, to the extent of 7,540[2] square meters thereof, by respondents Fernando Cruz and Servando Flores.

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[1] *Rollo*, pp. 36-42.

[2] This figure appears in some portion of the decision of the Court of Appeals, as well as in other documents to be 7,856 square meters.

Supreme Court E-Library

In their answer, respondents Cruz and Flores denied the allegations of petitioners, assailing at the same time the jurisdiction of the trial court to act on the complaint which, it was claimed, had effectively asserted a cause of action for ejectment (unlawful detainer).

The appellate court adopted the summary of evidence made by the trial court; thus:

"Evidence adduced by the plaintiffs through the testimony of plaintiff Gabriela Angeles showed that the parcel of land subject of litigation covering Lot 3098 and embraced under Tax Declaration No. 2882 (Exh. A) was originally owned by spouses Jose Marcelo and Sotera Paulino and they had been in continuous possession of said property since 1939. Following the death of plaintiffs' father in 1965, they discovered in 1967 that a portion of said property had been encroached by defendant Fernando Cruz. Plainfiffs caused the relocation survey of said property and per plan of Lot 3096 and Lot 3098 of the Angat Cadastre as surveyed for the heirs of Jose Marcelo (Exh. B), 7540 square meters of Lot 3098 had been encroached by defendant Fernando Cruz as indicated in the shaded portion of said plan (Exh. B-1).

"Defendant Fernando Cruz sold his property with an area of 13,856 square meters to defendant Servando Flores pursuant to a deed of sale (*Kasulatan ng Bilihan*) dated November 3, 1968 (Exh. C) which sale, includes the encroached portion (7,540 square meters of plaintiffs' property). Defendant Fernando Cruz heretofore purchased the said property from Engracia dela Cruz and Vicente, Marta, and Florentino all surnamed Sarmiento, pursuant to a '*Kasulatan ng Partisyon sa Labas ng Hukuman at Bilihang Patulayan*' dated November 19, 1960 (Exh. D) covering an area of 6,000 square meters. The Tax Declaration No. 4482 (Exh. E) covering the property in the name of Jorge Sarmiento and Engracia Cruz covered an area of 6,800[3] square meters. As soon as the said property was sold to Fernando Cruz, the adjoining property described and classified as *'parang'* with an area of 7,856 square meters was declared by said Fernando Cruz in his name which circumstance, increased his landholding to 13,856 square meters (Exh. F). The said property was subsequently sold by defendant Fernando Cruz to defendant Servando Flores.

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[3] This figure appears in some portion of the decision of the Court of Appeals, as well as in other documents as 6,000 square meters.

Supreme Court E-Library

"According to Gabriela, they attempted to cultivate the disputed portion sometime in 1968, but were barred from doing so by defendant Servando Flores who claimed that the area was part of the land he bought from co-defendant Fernando Cruz.

"On the other hand, both defendants testified to refute plaintiffs' evidence. They invariably declared that the portion sought to be recovered by plaintiffs is part of the land which defendant Fernando Cruz acquired in 1960 from the Heirs of Jorge Sarmiento; that as stated in their document (Exh. 2), the land sold to defendant Fernando Cruz contained 6,000 square meters of '*palayero*' or riceland and 7,856 square meters of '*parang*' or pasture land; that defendant Fernando Cruz caused the entire parcel to be surveyed sometime in 1967 (Exhs. 3 & 4), which he then declared for taxation purposes under Tax Declaration No. 8505 (Exh. F); that on November 3, 1968 defendant Fernando Cruz sold the whole lot to defendant Servando Flores (Exh. I), who thereupon occupied and cultivated it."[4]

Evaluating the evidence of the contending parties, the trial court found and ratiocinated:

"The crux of the matter at issue apparently revolves on the so-called pasture land (*parang*) supposedly sold by the Sarmientos and Engracia de la Cruz to defendant Fernando Cruz. The said *'parang'* was never included and/or embraced in the Tax Declaration No. 4882 (Exh. E) of the Sarmientos at the time of the said sale in favor of defendant Fernando Cruz pursuant to an extrajudicial partition with sale dated November 19, 1960 (Exh. D). This is evident as indicated by the fact that the same was only declared by Fernando Cruz in his name in 1961 as evidenced by the tax declaration issued in his favor (Exh. F). On the other hand, the said *'parang'* is a part and parcel of plaintiffs' property to which they had been in possession thereof prior to World War II and evidenced by Tax Declaration No. 2882 (Exh. A). The plan of Lot 3096 and Lot 3098 of the Angat Cadastre (Exhs. B and B-1) inevitably indicated that what has been encroached by defendants refers to the '*parang*' of 7,540 square meters which defendant Fernando Cruz declared the same in his name in 1961. This explains the unnecessary increase of his property from 6,000 square meters which he purchased from the Sarmientos pursuant to an extrajudicial partition with sale and embraced under Tax Declaration No. 4882 (Exh. E), to 13,856 square meters."[5]

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[4] *Rollo*, pp. 37-38.

[5] *Rollo*, pp. 39-40.

Supreme Court E-Library

The trial court thereupon ruled in favor of petitioners; the dispositive portion of its decision concluded:

"WHEREFORE, judgment is hereby rendered against the defendants ordering the following:

"a. To return the ownership and possession of 7,540 square meters to the plaintiffs as indicated in the relocation survey plan; and

"b. To pay attorney's fees in the amount of P5,000.00;

"No actual and/or moral damages (sic) is awarded for lack of factual evidence.

"The counterclaim is hereby dismissed for lack of factual and/or legal basis."[6]

Respondents Cruz and Flores went to the Court of Appeals; in its now assailed decision, the appellate court reversed the judgment of the court *a quo*. Petitioners moved for a consideration; the motion, however, was denied.

In this latest recourse, petitioners assail the holding of the Court of Appeals that the action initiated in 1982 by petitioners against respondent Flores would not prosper on the theory that Flores already has acquired ownership of the disputed land by ordinary acquisitive prescription. Petitioners argue that —

"1. The respondent court erred in not applying the doctrine laid down by this Honorable Court in *Tero vs. Tero*, 131 SCRA 105 considering that respondents never acquired the 7,540 square meters lawfully, as the respondent court already stated that what was sold to respondent Cruz was the 6,800 square meters which he then sold to respondent Flores, hence respondents can not account as to how they acquire said lot, whereas the petitioner proved the 7,540 square meters formed part of 19,231 square meters of their parents in their possession since 1939.

"2. The respondent court erred in disregarding the findings of facts of the trial court, and substitute its own perception of the facts contrary to the incontrovertible evidence."[7]

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[6] *Rollo*, p. 38.

[7] *Rollo*, pp. 21-22.

Supreme Court E-Library

Petitioners assert that the property sold by the Sarmientos to respondent Cruz on 19 November 1960, under a "*Kasulatan ng Partisyon sa Labas ng Hukuman at Bilihang Patuluyan,*" covers only the "*palayero*" or riceland, which measures about 6,000 square meters, and that the "*parang,*" containing 7,856 square meters, has not been included.

The petition must be denied.

Contrary to the insistence of petitioners, the "*Kasulatan ng Partisyon sa Labas ng Hukuman at Bilihang Patuluyan.*" executed on 19 March 1960 by Engracia dela Cruz (widow of Jorge Sarmiento) and her children Vicente Sarmiento, Maria Sarmiento and Florentino Sarmiento, pertained not only to the "*palayero*" but also to the "*parang*" as well; this agreement provided thus:

"1. Na akong si Engracia de la Cruz at ang aking yumao ng asawang si Jorge Sarmiento (nuong nabubuhay ito) ay nakapagpundar ng isang lupa na ang buong description ay gaya ang sumusunod:

"Isang parselang lupang PALAYERO na may kasamang PARANG (Cogonales) na matatagpuan sa Barrio Ng Santa Lucia, Angat, Bulacan, P.I.

"Ang Palayero ay may sukat na 6,000 metros cuadrados, klasipikado 2-b, amillarado P270.00 Tax No. 4482; at ang parang ay may sukat na 7,856 metros cuadrados. Humahangga sa Norte, kay Antonio de la Rosa; Este, kina Fabian Garcia at Juan Geronimo; Sur, Kina Miguel Illescas, Ciriaco Reyes, y Juan de la Cruz; Oeste, Juan de la Cruz hoy Jose Marcelo y Mariano de la Cruz hoy Felipe de Leon. Walang mejoras at ang hangganan sa paligid ay makikilala sa pamamagitan ng mga matutuwid na sikang o pilapil na buhay.

"2. Ayon sa Tax No. 4482 ay lupang palayero lamang ang nakatala, subalit ito'y mayroong kasamang parang na hindi lamang naipatala niyang nakaraang pasukan ng lupa sa tanggapan ng Assessor Provincial, kaya't ngayon ay magalang naming hinihiling na matala ang naturang parang."[8] (Italics supplied)

Shortly after the execution of the deed of sale in his favor, respondent Cruz declared both parcels, *i.e.,* the *palayero* and the

[8] *Rollo*, p. 54.

Supreme Court E-Library

parang, for taxation purposes in 1960 in the Office of the Provincial Assessor and forthwith a new tax declaration was issued in his name for the entire 13,856 square-meter property. The trial court itself likewise found that the sale by the Sarmientos to respondent Cruz covered both the riceland and the pasture land; it said:

"x x x. It is worthy to note that the ownership of the adjoining property by defendant Fernando Cruz originated from an extrajudicial partition with sale (*Kasulatan ng Partisyon sa Labas ng Hukuman at Bilihang Patuluyan* dated November 19, 1960 x x x. Under the said document, Engracia de la Cruz and her children Vicente, Marta, and Florentino, all surnamed Sarmiento, sold to defendant Fernando Cruz a rice land containing an area of 6,000 square meters and embraced under Tax Declaration No. 4482 and a pasture land (*parang*) containing an area of 7,856 square meters. x x x"[9]

In turn, respondent Cruz sold, on 03 November 1968, the 13,856 square meters of land to respondent Flores under a "*Kasulatan ng Bilihan.*" Respondent Flores immediately took possession of the property to the exclusion of all others and promptly paid the realty taxes thereon. From that time on, Flores had been in possession of the entire area in the concept of an owner and holding it in that capacity for almost fourteen (14) years before petitioners initiated their complaint on 06 October 1982.

Acquisitive prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. In order to ripen into ownership, possession must be in the *concept of an owner*, public, peaceful and uninterrupted.[10] Thus, mere possession with a *juridical title*, such as, to exemplify, by a usufructuary, a trustee, a lessee, an agent or a pledgee, not being in the concept of an owner, cannot ripen into ownership by acquisitive prescription,[11]

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[9] *Rollo*, p. 56.

[10] Art. 1118. Civil Code. See also Arts. 537 and 540, Civil Code

"Art. 1118 Possession has to be in the concept of an owner, public peaceful and uninterrupted."

[11] (See *De Borja vs. De Borja*, 59 Phil. 19; *Cristobal vs. Gomez*, 50 Phil. 810; *Government vs. Abadilla*, 46 Phil. 642; *Severino vs. Severino*, 44 Phil. 343; *Bargayo vs. Camumot*, 40 Phil. 875; *Wolfson vs. Reyes*, 8 Phil. 364.)

Supreme Court E-Library

unless the juridical relation is first expressly repudiated and such repudiation has been communicated to the other party.[12] Acts of possessory character executed due to license or by mere tolerance of the owner would likewise be inadequate.[13] Possession, to constitute the foundation of a prescriptive right, must be *en concepte de dueno*, or, to use the common law equivalent of the term, that possession should be adverse; if not, such possessory acts, no matter how long, do not start the running of the period of prescription.[14]

Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law;[15] without good faith and just title, acquisitive prescription can only be extraordinary in character.

As regards, real or immovable property, Article 1134 of the Civil Code provides:

"ART. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years."

Ordinary acquisitive prescription demands, as aforesaid, that the possession be "in good faith and with just title."[16] The good faith of the possessor consists in the reasonable belief that the person

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[12] See *Mariategui vs. CA*, 205 SCRA 337; *Adille vs. CA*, 157 SCRA 455, *Bargayo vs. Camumot*, 40 Phil. 857; *Laguna vs. Levantino*, 71 Phil. 566.

[13] Art. 1119. Civil Code; *Coronado vs. CA*, 191 SCRA 814

"Art. 1119 Acts of possessory character executed in virtue of license or by mere tolerance of the owner shall not be available for the purpose of possession."

[14] *Coronado vs. CA*, 191 SCRA 814

[15] Art. 1117, Civil Code

" Art 1117. Acquisitive perscription of dominion and other real rights maybe ordinary or extraordinary."

"Ordinary acquisitive perscription requires possession of things in good faith and with just title for the time fixed by law."

[16] See Footnote 9, absent good faith and just title, the law requires, under extraordinary acquisitive prescription an uninterrupted adverse possession for thirty years (Art. 1137, Civil Code)

Supreme Court E-Library

from whom the thing is received has been the owner thereof and could thereby transmit that ownership.[17] There is, upon the other hand, just title when the adverse claimant comes into possession of the property through any of the modes recognized by law for the acquisition of ownership or other real rights, but that the grantor is neither the owner nor in a position to transmit the right.[18] In *Doliendo vs. Biarnesa*,[19] the Supreme Court has explained the law in Article 1130 of the Civil Code which states that the "title for prescription must be true and valid." Thus:

"We think that this contention is based on a misconception of the scope and effect of the provisions of this article of the Code in its application to 'ordinary prescription.' It is evident that by a *'titulo verdadero y valido'* in this connection we are not to understand a *'titulo que por si solo tiene fuerza de transferir el dominio sin necesidad de la prescripcion'* (a title which of itself is sufficient to transfer the ownership without the necessity of the lapse of the prescription period); and we accept the opinion of a learned Spanish law writer who holds that the *'titulo verdadero y valido'* as used in this article of the code prescribes a *'titulo colorado'* and not merely *'putativo'*; a *'titulo colorado'* being one 'which a person has when he buys a thing, in good faith, from one whom he believes to be the owner,' and a 'titulo putativo' 'being one which is supposed to have preceded the acquisition of a thing, although in fact it did not, as might happen when one is in possession of a thing in the belief that it had been bequeathed to him.' (*Viso Derecho Civil, Parte Segunda,* p. 541)."[20]

The records of the case amply supports the holding of the appellate court that the requirements for ordinary prescription hereinabove described have indeed been duly met; it explained:

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[17] Art. 1127, Civil Code

"Art. 1127. The good faith in the possessor consists in the reasonable belief that the person from whom he receive the thing was the owner thereof and could transmit his ownership."

[18] Art. 1129 Civil Code

"Art. 1129. For the purposes of prescription there is just title when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right."

[19] 7 Phil. 232

[20] At p. 234.

Supreme Court E-Library

"In the instant case, appellant Servando Flores took possession of the controverted portion in good faith and with just title. This is so because the said portion of 7,540 square meters was an integral part of that bigger tract of land which he bought from Fernando Cruz under public document (Exh. I). As explicitly mentioned in the document of sale (Exh. I) executed in 1968, the disputed portion referred to as *"parang"* was included in the sale to appellant Flores. Parenthetically, at the time of the sale, the whole area consisting of the riceland and pasture land was already covered by a tax declaration in the name of Fernando Cruz (Exh. F) and further surveyed in his favor (Exhs. 3&4). Hence, appellant Flores' possession of the entire parcel which includes the portion sought to be recovered by appellees was not only in the concept of an owner but also public, peaceful and uninterrupted. While it is true that the possession of the entire area by his predecessor-in-interest (Fernando Cruz) may not have been peaceful as it was indeed characterized with violence which resulted in the death of Jose Marcelo, this cannot be said of appellant Flores' possession of the property, in respect of which no evidence to the contrary appears on record."[21]

The Court finds no cogent reasons to reverse the above findings of the appellate court and thus gives its affirmance to the assailed decision.

WHEREFORE, the petitioner for review on *certiorari* is DENIED. No costs.

SO ORDERED.

Romero (Chairman), Panganiban, Purisima, and *Gonzaga-Reyes, JJ.,* concur.

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[21] *Rollo,* pp. 40-41.