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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
APR 29 2016

Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

HEIRS OF FELICIANO YAMBAO, namely: CHONA YAMBAO, JOEL YAMBAO, WILLY YAMBAO, LENNIE YAMBAO and RICHARD YAMBAO, and all other persons acting under their authority, Petitioners,	**G.R. No. 194260** Present: VELASCO, JR., *J.*, *Chairperson*, PERALTA, PEREZ, REYES, and JARDELEZA, *JJ.*
- versus -	
HEIRS OF HERMOGENES YAMBAO, namely: ELEANOR YAMBAO, ALBERTO YAMBAO, DOMINIC YAMBAO, ASESCLO YAMBAO, GERALD DANTIC and MARIA PILAR YAMBAO, who are all represented by their Attorney-in-Fact, MARIA PILAR YAMBAO, Respondents.	Promulgated: April 13, 2016

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RESOLUTION

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated October 22, 2010 issued by the Court of Appeals (CA) in CA-G.R. CV No. 92755, which reversed and set aside the Decision dated December 23, 2008 of the

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1 *Rollo*, pp. 9-23.

2 Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Francisco P. Acosta and Samuel H. Gaerlan concurring; id. at 26-36.

Regional Trial Court (RTC) of Iba, Zambales, Branch 69, in SP. Civil Case No. RTC-88-I.

Facts

The subject of this case is a parcel of land located in Barangay Bangan, Botolan, Zambales, which was originally possessed by Macaria De Ocampo (Macaria). Macaria's nephew, Hermogenes Yambao (Hermogenes), acted as the administrator of the property and paid realty taxes therefor. Hermogenes has eight children, namely: Ulpiano, Dominic, Teofilo, Feliciano, Asesclo, Delia, Amelia, and Melinda, all surnamed Yambao.[3]

After Hermogenes died, it was claimed that all of his heirs were free to pick and harvest from the fruit-bearing trees planted on the subject property. Eleanor Yambao (Eleanor), Ulpiano's daughter, even constructed a house on the subject property. However, sometime in 2005, the communal and mutual use of the subject property by the heirs of Hermogenes ceased when the heirs of Feliciano, herein petitioners, prohibited them from entering the property. The heirs of Feliciano even ejected Eleanor from the subject property.[4]

This prompted the heirs of Hermogenes, herein respondents, to file with the RTC a complaint for partition, declaration of nullity of title/documents, and damages against the heirs of Feliciano. The heirs of Hermogenes alleged that they and the heirs of Feliciano are co-owners of the subject property, having inherited the right thereto from Hermogenes.[5]

The heirs of Feliciano denied the allegations of the heirs of Hermogenes and claimed that their father, Feliciano, was in possession of the subject property in the concept of owner since time immemorial. Accordingly, Feliciano was awarded a free patent thereon for which Original Certificate of Title (OCT) No. P-10737 was issued. They also averred that the cause of action in the complaint filed by the heirs of Hermogenes, which questioned the validity of OCT No. P-10737, prescribed after the lapse of one year from its issuance on November 29, 1989.[6]

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3 Id. at 27.
4 Id. at 28.
5 Id. at 27.
6 Id. at 28-29.

Ruling of the RTC

On December 23, 2008, the RTC rendered a Decision dismissing the complaint filed by the heirs of Hermogenes. The RTC opined that the heirs of Hermogenes failed to show that the subject property is owned by Macaria, stating that tax declarations and receipts in Macaria's name are not conclusive evidence of ownership. The RTC further held that even if Macaria owned the subject property, the heirs of Hermogenes failed to show that Hermogenes had the right to succeed over the estate of Macaria.

Ruling of the CA

On appeal, the CA, in its Decision[7] dated October 22, 2010, reversed and set aside the RTC's Decision dated December 23, 2008. The CA found that the RTC, in hastily dismissing the complaint for partition, failed to determine first whether the subject property is indeed co-owned by the heirs of Hermogenes and the heirs of Feliciano. The CA pointed out that:

> [A] review of the records of the case shows that in Feliciano's application for free patent, he acknowledged that the source of his claim of possession over the subject property was Hermogenes's possession of the real property in peaceful, open, continuous, and adverse manner and more importantly, in the concept of an owner, since 1944. Feliciano's claim of sole possession in his application for free patent did not therefore extinguish the fact of co-ownership as claimed by the children of Hermogenes.[8] (Citation omitted and emphasis deleted)

Accordingly, the CA, considering that the parties are co-owners of the subject property, ruled that the RTC should have conducted the appropriate proceedings for partition.[9]

Aggrieved, the heirs of Feliciano filed with the Court this petition for review alleging that the CA erred in ruling that there is co-ownership between them and the heirs of Hermogenes. The heirs of Feliciano likewise averred that the CA also erred in ordering the partition of the subject property since it amounts to a collateral attack on the validity of OCT No. P-10737.[10]

Ruling of the Court

The petition is denied.

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7 Id. at 26-36.
8 Id. at 34.
9 Id. at 35.
10 Id. at 14.

As pointed out by the CA, the RTC overlooked the fact that the subject property is co-owned by the parties herein, having inherited the same from Hermogenes. Feliciano's free patent application indicated that he merely tacked his possession of the subject property from Hermogenes, his father, who held the property in peaceful, open, continuous, and adverse manner in the concept of an owner since 1944. This is an implicit recognition of the fact that Feliciano merely co-owns the subject property with the other heirs of Hermogenes. Indeed, the heirs of Feliciano have not presented any evidence that would show that Hermogenes bequeathed the subject property solely to Feliciano.

A co-ownership is a form of trust, with each owner being a trustee for each other. Mere actual possession by one will not give rise to the inference that the possession was adverse because a co-owner is, after all, entitled to possession of the property. Thus, as a rule, prescription does not run in favor of a co-heir or co-owner as long as he expressly or impliedly recognizes the co-ownership; and he cannot acquire by prescription the share of the other co-owners, absent a clear repudiation of the co-ownership. An action to demand partition among co-owners is imprescriptible, and each co-owner may demand at any time the partition of the common property.[11]

Prescription may nevertheless run against a co-owner if there is adverse, open, continuous and exclusive possession of the co-owned property by the other co-owner/s. In order that a co-owners possession may be deemed adverse to the *cestui que trust* or other co-owners, the following requisites must concur: (1) that he has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust* or other co-owners; (2) that such positive acts of repudiation have been made known to the *cestui que trust* or other co-owners; and (3) that the evidence thereon must be clear and convincing.[12]

The issuance of the certificate of title would constitute an open and clear repudiation of any trust.[13] In such a case, an action to demand partition among co-owners prescribes in 10 years, the point of reference being the date of the issuance of certificate of title over the property. But this rule applies only when the plaintiff is not in possession of the property, since if a person claiming to be the owner thereof is in actual possession of the property, the right to demand partition does not prescribe.[14]

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11 *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 261-262 (2007).

12 *See Heirs of Juanita Padilla v. Magdua*, 645 Phil. 140, 151 (2010).

13 *Pangan v. Court of Appeals*, G.R. No. L-39299, October 18, 1988, 166 SCRA 375, 383, citing *Lopez, et al. v. Gonzaga, et al.*, 119 Phil. 424 (1964).

14 *Heirs of Jose Olviga v. Court of Appeals*, G.R. No. 104813, October 21, 1993, 227 SCRA 330, 334.

Although OCT No. P-10737 was registered in the name of Feliciano on November 29, 1989, the prescriptive period within which to demand partition of the subject property, contrary to the claim of the heirs of Feliciano, did not begin to run. At that time, the heirs of Hermogenes were still in possession of the property. It was only in 2005 that the heirs of Feliciano expressly prohibited the heirs of Hermogenes from entering the property. Thus, as aptly ruled by the CA, the right of the heirs of Hermogenes to demand the partition of the property had not yet prescribed. Accordingly, the RTC committed a reversible error when it dismissed the complaint for partition that was filed by the heirs of Hermogenes.

There is likewise no merit to the claim that the action for partition filed by the heirs of Hermogenes amounted to a collateral attack on the validity of OCT No. P-10737. The complaint for partition filed by the heirs of Hermogenes seeks first, a declaration that they are a co-owners of the subject property, and second, the conveyance of their lawful shares. The heirs of Hermogenes do not attack the title of Feliciano; they alleged no fraud, mistake, or any other irregularity that would justify a review of the registration decree in their favor. Their theory is that although the subject property was registered solely in Feliciano's name, they are co-owners of the property and as such is entitled to the conveyance of their shares. On the premise that they are co-owners, they can validly seek the partition of the property in co-ownership and the conveyance to them of their respective shares.[15]

Moreover, when Feliciano registered the subject property in his name, to the exclusion of the other heirs of Hermogenes, an implied trust was created by force of law and he was considered a trustee of the undivided shares of the other heirs of Hermogenes in the property. As trustees, the heirs of Feliciano cannot be permitted to repudiate the trust by relying on the registration.[16] "A trustee who obtains a Torrens title over a property held in trust for him by another cannot repudiate the trust by relying on the registration."[17]

WHEREFORE, in light of the foregoing disquisitions, the petition is hereby **DENIED**. The Decision dated October 22, 2010 issued by the Court of Appeals in CA-G.R. CV No. 92755 is **AFFIRMED**.

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15 *See Mallilin, Jr. v. Castillo*, 389 Phil. 153, 165 (2005).

16 *See Vda. de Figuracion, et al. v. Figuracion-Gerilla*, 703 Phil. 455, 472 (2013).

17 *Ringor v. Ringor*, 480 Phil. 141, 161 (2004).

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

(on official leave)
DIOSDADO M. PERALTA
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

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