

FIRST DIVISION

[G.R. No. 184109, February 01, 2012]

**CELERINO E. MERCADO, PETITIONER, VS. BELEN*
ESPINOCILLA** AND FERDINAND ESPINOCILLA, RESPONDENTS.**

DECISION

VILLARAMA, JR., J.:

The case

Petitioner Celerino E. Mercado appeals the Decision^[1] dated April 28, 2008 and Resolution^[2] dated July 22, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 87480. The CA dismissed petitioner's complaint^[3] for recovery of possession, quieting of title, partial declaration of nullity of deeds and documents, and damages, on the ground of prescription.

The antecedent facts

Doroteo Espinocilla owned a parcel of land, Lot No. 552, with an area of 570 sq. m., located at Magsaysay Avenue, Zone 5, Bulan, Sorsogon. After he died, his five children, Salvacion, Aspren, Isabel, Macario, and Dionisia divided Lot No. 552 equally among themselves. Later, Dionisia died without issue ahead of her four siblings, and Macario took possession of Dionisia's share. In an affidavit of transfer of real property^[4] dated November 1, 1948, Macario claimed that Dionisia had donated her share to him in May 1945.

Thereafter, on August 9, 1977, Macario and his daughters Betty Gullaba and Saida Gabelo sold^[5] 225 sq. m. to his son Roger Espinocilla, husband of respondent Belen Espinocilla and father of respondent Ferdinand Espinocilla. On March 8, 1985, Roger Espinocilla sold^[6] 114 sq. m. to Caridad Atienza. Per actual survey of Lot No. 552, respondent Belen Espinocilla occupies 109 sq. m., Caridad Atienza occupies 120 sq. m., Caroline Yu occupies 209 sq. m., and petitioner, Salvacion's son, occupies 132 sq. m.^[7]

The case for petitioner

Petitioner sued the respondents to recover two portions: an area of 28.5^[8] sq. m. which he bought from Aspren and another 28.5 sq. m. which allegedly belonged to him but was occupied by Macario's house.^[9] His claim has since been modified to an alleged encroachment of only 39 sq. m. that he claims must be returned to him. He avers that he is entitled to own and possess 171 sq. m. of Lot No. 552, having inherited 142.5 sq. m. from his mother Salvacion and bought 28.5 sq. m. from his aunt Aspren. According to him, his mother's inheritance is 142.5 sq. m., that is,

114 sq. m. from Doroteo plus 28.5 sq. m. from Dionisia. Since the area he occupies is only 132 sq. m.,^[10] he claims that respondents encroach on his share by 39 sq. m.^[11]

The case for respondents

Respondents agree that Doroteo's five children each inherited 114 sq. m. of Lot No. 552. However, Macario's share increased when he received Dionisia's share. Macario's increased share was then sold to his son Roger, respondents' husband and father. Respondents claim that they rightfully possess the land they occupy by virtue of acquisitive prescription and that there is no basis for petitioner's claim of encroachment.^[12]

The trial court's decision

On May 15, 2006, the Regional Trial Court (RTC) ruled in favor of petitioner and held that he is entitled to 171 sq. m. The RTC found that petitioner inherited 142.5 sq. m. from his mother Salvacion and bought 28.5 sq. m. from his aunt Aspren. The RTC computed that Salvacion, Aspren, Isabel and Macario each inherited 142.5 sq. m. of Lot No. 552. Each inherited 114 sq. m. from Doroteo and 28.5 sq. m. from Dionisia. The RTC further ruled that Macario was not entitled to 228 sq. m. Thus, respondents must return 39 sq. m. to petitioner who occupies only 132 sq. m.^[13]

There being no public document to prove Dionisia's donation, the RTC also held that Macario's 1948 affidavit is void and is an invalid repudiation of the shares of his sisters Salvacion, Aspren, and Isabel in Dionisia's share. Accordingly, Macario cannot acquire said shares by prescription. The RTC further held that the oral partition of Lot No. 552 by Doroteo's heirs did not include Dionisia's share and that partition should have been the main action. Thus, the RTC ordered partition and deferred the transfer of possession of the 39 sq. m. pending partition.^[14] The dispositive portion of the RTC decision reads:

WHEREFORE, in view of the foregoing premises, the court issues the following ORDER, thus -

- a) Partially declaring the nullity of the Deed of Absolute Sale of Property dated August 9, 1977 x x x executed by Macario Espinocilla, Betty E. Gullaba and Saida E. Gabelo in favor of Roger Espinocilla, insofar as it affects the portion or the share belonging to Salvacion Espinocilla, mother of [petitioner,] relative to the property left by Dionisia Espinocilla, including [Tax Declaration] No. 13667 and other documents of the same nature and character which emanated from the said sale;
- b) To leave as is the Deeds of Absolute Sale of May 11, 1983 and March 8, 1985, it having been determined that they did not involve the portion belonging to [petitioner] x x x.
- c) To effect an effective and real partition among the heirs for purposes of determining the exact location of the share (114 sq. m.) of the late Dionisia Espinocilla together with the 28.5 sq. m. belonging to [petitioner's] mother Salvacion, as well as, the exact location of the 39 sq. m. portion belonging to the

[petitioner] being encroached by the [respondents], with the assistance of the Commissioner (Engr. Fundano) appointed by this court.

- d) To hold in abeyance the transfer of possession of the 39 sq. m. portion to the [petitioner] pending the completion of the real partition above-mentioned.^[15]

The CA decision

On appeal, the CA reversed the RTC decision and dismissed petitioner's complaint on the ground that extraordinary acquisitive prescription has already set in in favor of respondents. The CA found that Doroteo's four remaining children made an oral partition of Lot No. 552 after Dionisia's death in 1945 and occupied specific portions. The oral partition terminated the co-ownership of Lot No. 552 in 1945. Said partition also included Dionisia's share because the lot was divided into four parts only. And since petitioner's complaint was filed only on July 13, 2000, the CA concluded that prescription has set in.^[16] The CA disposed the appeal as follows:

WHEREFORE, the appeal is GRANTED. The assailed May 15, 2006 Decision of the Regional Trial Court (RTC) of Bulan, Sorsogon is hereby REVERSED and SET ASIDE. The Complaint of the [petitioner] is hereby DISMISSED. No costs.^[17]

The instant petition

The core issue to be resolved is whether petitioner's action to recover the subject portion is barred by prescription.

Petitioner confirms oral partition of Lot No. 552 by Doroteo's heirs, but claims that his share increased from 114 sq. m. to 171 sq. m. and that respondents encroached on his share by 39 sq. m. Since an oral partition is valid, the corresponding survey ordered by the RTC to identify the 39 sq. m. that must be returned to him could be made.^[18] Petitioner also alleges that Macario committed fraud in acquiring his share; hence, any evidence adduced by him to justify such acquisition is inadmissible. Petitioner concludes that if a person obtains legal title to property by fraud or concealment, courts of equity will impress upon the title a so-called constructive trust in favor of the defrauded party.^[19]

The Court's ruling

We affirm the CA ruling dismissing petitioner's complaint on the ground of prescription.

Prescription, as a mode of acquiring ownership and other real rights over immovable property, is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted, and adverse. Acquisitive prescription of real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession in good faith and with just title for 10 years. In extraordinary