

## SECOND DIVISION

[ G.R. No. 147951, December 14, 2009 ]

**ARSENIO OLEGARIO AND HEIRS OF ARISTOTELES F. OLEGARIO,  
REPRESENTED BY CARMELITA GUZMAN-OLEGARIO,  
PETITIONERS, VS. PEDRO C. MARI, REPRESENTED BY LILIA C.  
MARI-CAMBA, RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

Possession, to constitute the foundation of acquisitive prescription, must be possession under a claim of title or must be adverse. Acts of a possessory character performed by one who holds the property by mere tolerance of the owner are clearly not in the concept of an owner and such possessory acts, no matter how long continued, do not start the running of the period of prescription.

In the present Petition for Review on *Certiorari*,<sup>[1]</sup> petitioners assail the April 18, 2001 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 52124, reversing the October 13, 1995 Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Pangasinan, Branch 39. The CA declared the respondent herein as the owner of Lot Nos. 17553, 17526 and 14356 of the Mangatarem cadastral survey.

#### **Factual antecedents**

As early as 1916,<sup>[4]</sup> Juan Mari, the father of respondent, declared his ownership over a parcel of land in Nancasalan, Mangatarem for tax purposes. He took possession of the same by delineating the limits with a bamboo fence,<sup>[5]</sup> planting various fruit bearing trees and bamboos<sup>[6]</sup> and constructing a house thereon.<sup>[7]</sup> After a survey made in 1950, Tax Declaration No. 8048<sup>[8]</sup> for the year 1951 specified the subject realty as a residential land with an area of 897 square meters and as having the following boundaries: North - Magdalena Fernandez; South - Catalina Cacayorin; East - Camino Vecinal; and West - Norberto Bugarin. In 1974, the subject realty was transferred to respondent, Pedro Mari, by virtue of a deed of sale.

Meanwhile, in 1947, Wenceslao Olegario, the husband of Magdalena Fernandez and father of petitioner Arsenio Olegario, filed a new tax declaration<sup>[9]</sup> for a certain 50-square meter parcel of land, indicating the following boundaries: North - Cesario and Antonio Fernandez; South - Juan Mari; East - Barrio Road; and West - Norberto Bugarin. Then on May 14, 1961, Wenceslao Olegario executed a "Deed of Quit-Claim of Unregistered Property"<sup>[10]</sup> in favor of Arsenio Olegario transferring to the latter *inter alia* the aforementioned 50-square meter property.

In the cadastral survey conducted from 1961 to 1962, the subject realty was

identified as Lot Nos. 17526, 17553 and 14356 of the Mangatarem Cadastre. At this time, Wenceslao Olegario disputed Juan Mari's claim over Lot Nos. 17526 and 17553. Hence, on the two corresponding survey notification cards dated September 28, 1968,<sup>[11]</sup> the claimant appeared as "Juan Mari v. Wenceslao Olegario". With regard to Lot No. 14356, the survey notification card named Juan Mari as the claimant.

Sometime around 1988, respondent filed with the Department of Environment and Natural Resources Regional Office in Pangasinan a protest against the petitioners because of their encroachment into the disputed realty. After investigation, said office decided in favor of the respondent and found the latter to be the owner of Lot Nos. 17526, 17553 and 14356. Petitioners did not appeal and the said decision became final and executory.

In 1989, Arsenio Olegario caused the amendment of his tax declaration<sup>[12]</sup> for the 50-square meter property to reflect 1) an increased area of 341 square meters; 2) the Cadastral Lot No. as 17526, Pls-768-D;<sup>[13]</sup> and 3) the boundaries as: North-NE Lot 16385 & Road; South-NW-Lots 14363 & 6385, Pls-768-D; East-SE-Lot 17552, Pls-768-D and West-SW-Lot 14358, Pls-768-D.

### ***Proceedings before the Regional Trial Court***

In 1990, after discovering the amended entries in Arsenio Olegario's Tax Declaration No. 4107-R, respondent filed a complaint<sup>[14]</sup> with the RTC of Lingayen, Pangasinan, for Recovery of Possession and Annulment of Tax Declaration No. 4107-R. Respondent alleged, *inter alia*, that Juan Mari, and subsequently his successor, was deprived by the Olegarios of the possession of portions of subject realty which respondent owned. Trial thereafter ensued.

On October 13, 1995, the RTC rendered judgment in favor of the petitioners, *viz*:

WHEREFORE, in the light of the foregoing considerations, judgment is hereby rendered as follows:

1. Declaring the defendants-Olegario the owners of Lots 17553 and 17526 of the Mangatarem cadastral survey.
2. Dismissing the plaintiff's Complaint on the ground of prescription of action and on the further ground that [he] failed to prove [his] ownership of any portion of the two lots mentioned in the next preceding paragraph (assuming *arguendo* that [his] action has not prescribed);
3. Ordering the plaintiff to pay the costs of this suit. No damages are awarded by the Court.

SO ORDERED.<sup>[15]</sup>

### ***Proceedings before the Court of Appeals***

Respondent appealed to the CA which reversed the trial court's findings. The CA found respondent to have adduced stronger evidence of prior possession and ownership of the disputed realty. The dispositive portion of the CA Decision states:

WHEREFORE, the trial court's Decision dated October 13, 1995 is REVERSED and SET ASIDE and a new one is hereby entered declaring appellant Pedro C. Mari represented by Lilia C. Mari-Camba the lawful owner of Lot Nos. 17526, 17553 and 14356 of the Mangatarem Cadastre, without pronouncement as to costs.

SO ORDERED.<sup>[16]</sup>

Petitioners, without filing a motion for reconsideration of the CA Decision, thereafter filed the present petition for review.

### **Issues**

Petitioners raise the following issues:

1. Whether or not there was failure on [the part of] the Court of Appeals to appreciate and give weight to the evidence presented by the petitioners;
2. Whether or not the Court of Appeals erred in its decision in adjudicating ownership of the said lots in favor of the respondent and [in] giving great weight to the respondent's evidence;
3. Whether or not the Court of Appeals erred in its failure to declare the action as barred by laches;
4. Whether or not the Court of Appeals failed to find an[d] declare the petitioners as having acquired ownership of the disputed lots by acquisitive prescription;
5. Whether or not the Court of Appeals erred in adjudicating the lot in favor of respondent and also [in] denying award of damages to petitioners.<sup>[17]</sup>

### **Petitioners' Arguments**

Petitioners contend that they have been in possession of the disputed lots since 1948 or thereabouts, or for more than 30 years already. Hence, they acquired ownership thereover by virtue of prescription. They also impute negligence or failure on the part of respondent to assert his alleged rights within a reasonable time.

### **Respondent's Arguments**

On the other hand, respondent asserts that petitioners claim ownership over only a certain 50-square meter parcel of land, as evidenced by their tax declaration which

consistently declared only such area. It was only in September 1989 that petitioners sought to expand the area of their claim to 341 square meters by virtue of a letter to the Provincial Assessor of Pangasinan. Hence, respondent asserts that prescription has not set in. Respondent also contends that petitioners' occupancy has been illegal from the point of inception and thus, such possession can never ripen into a legal status.

### **Our Ruling**

The petition has no merit.

#### *Petitioners' Evidence is Weak*

Considering the conflicting findings of the RTC and the CA, a circumstance that constitutes an exception<sup>[18]</sup> to the general rule that only questions of law are proper subjects of a petition under Rule 45, we shall assess and weigh the evidence adduced by the parties and shall resolve the questions of fact raised by petitioners.

A study of the evidence presented by petitioners shows that the CA did not err in finding such evidence weaker than that of respondent. Arsenio Olegario testified that as early as 1937 their family had built a nipa house on the land where they lived. Yet he also testified that the former owner of the land was his mother, Magdalena Fernandez.<sup>[19]</sup> Significantly, Magdalena Fernandez has never claimed and was never in possession or ownership of Lot Nos. 17553, 17526 and 14356. Petitioners' evidence thus supports the conclusion that in 1937 they were in possession, not of Lot No. 17526, but of their mother's land, possibly 50 square meters of it, which is the approximate floor area of the house. Conversely, petitioners' evidence fails to clearly prove that in 1937 they were already occupying the disputed lots. The records, in fact, do not show exactly when the Olegarios entered and started occupying the disputed lots.

The evidence shows that a hollow block fence, an improvement introduced by the Olegarios in 1965, now exists somewhere along the disputed lots. Petitioners' claim that they were in possession of the disputed lots even prior to 1965 based on the existence of the bamboo fence on the boundary of their land preceding the existence of the hollow block fence, however, holds no water. The testimony of Marcelino Gutierrez shows that formerly there was a bamboo fence demarcating between the land of the Olegarios and the Maris and that in 1964 or 1965 a hollow block fence was constructed. He did not say, however, that the place where the hollow block fence was constructed was the exact same place where the bamboo boundary fence once stood. Even the testimony of Arsenio Olegario was ambiguous on this matter, viz:

Q When was the [concrete] hollow block [fence] separating your property [from] the property of Juan Mari constructed?

A It was constructed in 1965.

Q Before the construction of that concrete hollow block fence between your land and the land of Juan Mari [in] 1965,

what was the visible boundary between your land and the land of Juan Mari?

A Bamboo fence, sir.<sup>[20]</sup>

Arsenio merely testified that a bamboo fence was formerly the visible boundary between his land and the land of Juan Mari; and that a concrete hollow block fence was constructed in 1965. His testimony failed to show that the concrete hollow block fence was constructed in the same position where the bamboo boundary fence once stood.

On the other hand, there is ample evidence on record, embodied in Tax Declaration No. 9404 for the year 1947; the survey sketch plan of 1961; and the survey plan of 1992, that the boundary claimed by the Olegarios kept moving in such a way that the portion they occupied expanded from 50 square meters (in the land of his mother) to 377 square meters.<sup>[21]</sup> Viewed in relation to the entire body of evidence presented by the parties in this case, these documents cannot plausibly all be mistaken in the areas specified therein. As against the bare claim of Arsenio<sup>[22]</sup> that his predecessor merely made an inaccurate estimate in providing 50 square meters as the area claimed by the latter in 1947 in the tax declaration,<sup>[23]</sup> we find it more plausible to believe that each of the documents on record stated the true area measurements of the parties' claims at the particular time each document was executed.

As correctly found by the CA, the earliest that petitioners can be considered to have occupied the disputed property was in 1965 when the concrete hollow block fence was constructed on the disputed lots.

#### *Ownership and Prescription*

As previously mentioned, respondent's predecessor, Juan Mari, had declared the disputed realty<sup>[24]</sup> for tax purposes as early as 1916. The tax declarations show that he had a two storey house on the realty. He also planted fruit bearing trees and bamboos thereon. The records<sup>[25]</sup> also show that the 897-square meter property had a bamboo fence along its perimeter. All these circumstances clearly show that Juan Mari was in possession of subject realty in the concept of owner, publicly and peacefully since 1916 or long before petitioners entered the disputed realty sometime in 1965.

Based on Article 538 of the Civil Code,<sup>[26]</sup> the respondent is the preferred possessor because, benefiting from his father's tax declaration of the subject realty since 1916, he has been in possession thereof for a longer period. On the other hand, petitioners acquired joint possession only sometime in 1965.

Despite 25 years of occupying the disputed lots, therefore, petitioners did not acquire ownership. Firstly, they had no just title. Petitioners did not present any document to show how the titles over Lot Nos. 17526 and 17533 were transferred to them, whether from respondent, his predecessor, or any other person.<sup>[27]</sup> Petitioners, therefore, could not acquire the disputed real property by ordinary prescription through possession for 10 years. Secondly, it is settled that ownership cannot be acquired by mere occupation. Unless coupled with the element of hostility