

SECOND DIVISION

[G.R. NO. 167320, January 30, 2007]

HEIRS OF SALVADOR HERMOSILLA, NAMELY: ADELAIDA H. DOLLETON, RUBEN HERMOSILLA, LOLITA H. DE LA VEGA, ERLINDA H. INOVIO, CELIA H. VIVIT, ZENAIDA H. ACHOY, PRECILLA H. LIMPIAHYOY, AND EDGARDO HERMOSILLA, PETITIONERS, VS. SPOUSES JAIME REMOQUILLO AND LUZ REMOQUILLO, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

Petitioners Heirs of Salvador Hermosilla, namely: Adelaida H. Dolleton, Ruben Hermosilla, Lolita H. de la Vega, Erlinda H. Inovio,^[1] Celia^[2] H. Vivit, Zenaida H. Achoy, Precilla^[3] H. Limpiahoy, and Edgardo Hermosilla, assail the Court of Appeals' Decision^[4] dated September 29, 2004 which reversed the trial court's decision in their favor and accordingly dismissed their complaint.

Subject of the controversy is a 65-square meter portion of a lot located in Poblacion, San Pedro, Laguna.

On August 31, 1931, the Republic of the Philippines acquired through purchase the San Pedro Tunasan Homesite.

Apolinario Hermosilla (Apolinario), who was occupying a lot in San Pedro Tunasan Homesite until his death in 1964, caused the subdivision of the lot into two, Lot 12 with an area of 341 square meters, and Lot 19 with an area of 341 square meters of which the 65 square meters subject of this controversy form part.

On April 30, 1962, Apolinario executed a Deed of Assignment transferring possession of Lot 19 in favor of his grandson, herein respondent Jaime Remoquillo (Jaime). As the Land Tenure Administration (LTA) later found that Lot 19 was still available for disposition to qualified applicants, Jaime, being its actual occupant, applied for its acquisition before the LTA on May 10, 1963.

On July 8, 1963, Apolinario conveyed Lot 12 to his son Salvador Hermosilla (Salvador), Jaime's uncle.

Salvador later filed an application to purchase Lot 12 which was awarded to him by the defunct Land Authority on December 16, 1971.

On February 10, 1972, Jaime and his uncle Salvador forged a "*Kasunduan ng Paglipat Ng Karapatan sa Isang Lagay na Lupang Solar*" (*Kasunduan*) whereby Jaime transferred ownership of the 65 square meters (the questioned property) in favor of Salvador.

After Apolinario died, his daughter Angela Hermosilla filed a protest before the Land Authority, which became the National Housing Authority (NHA),^[5] contending that as an heir of the deceased, she is also entitled to Lots 12 and 19. By Resolution of June 10, 1981, the NHA dismissed the protest.

The NHA later awarded on March 16, 1986 Lot 19 to Jaime for which he and his wife were issued a title, Transfer Certificate of Title No. T-156296, on September 15, 1987.^[6]

On May 25, 1992, petitioners filed an action for Annulment of Title on the ground of fraud with damages against Jaime and his spouse, together with the Register of Deeds, before the Regional Trial Court (RTC) of Biñan, Laguna, alleging that by virtue of the *Kasunduan* executed in 1972, Jaime had conveyed to his uncle Salvador the questioned property—part of Lot 19 covered by TCT No. T-156296 which was issued in 1987.

By Decision^[7] of May 11, 1999, the RTC of Biñan, Laguna, Branch 25, found the *Kasunduan* a perfected contract of sale, there being a meeting of the minds upon an identified object and upon a specific price, and that ownership over the questioned property had already been transferred and delivered to Salvador.

On the alleged failure of consideration of the *Kasunduan*, the trial court held that the same did not render the contract void, but merely allowed an action for specific performance. The dispositive portion of the trial court's Decision reads:

WHEREFORE, judgment is hereby rendered declaring plaintiffs as co-owners of the 65 square meters of the 341 square meters covered by TCT T-156296, registered in the name of defendants. The Court hereby directs the Register of Deeds of Laguna, Calamba Branch, to cancel said Transfer Certificate of Title, and in lieu thereof, to issue another [to] plaintiffs [as] co-owners of the above portion.

No pronouncement as to costs.

SO ORDERED.^[8] (Underscoring supplied)

The Court of Appeals, reversing the decision of the trial court, held that the *Kasunduan* was void because at the time of its execution in 1972, the Republic of the Philippines was still the owner of Lot 19, hence, no right thereover was transmitted by Jaime who was awarded the Lot in 1986, and consequently no right was transmitted by Salvador through succession to petitioners. And it found no evidence of fraud in Jaime's act of having Lot 19, including the questioned property, registered in his and his wife's name in 1987.

At all events, the appellate court held that the action had prescribed, it having been filed in 1992, more than four years from the issuance to Jaime and his wife of the Transfer Certificate of Title.

Hence, the present petition for review on certiorari.

Petitioners argue that the application of the law on prescription would perpetrate

fraud and spawn injustice, they citing *Cometa v. Court of Appeals*;^[9] and that at any rate, prescription does not lie against a co-owner. *Cometa* involves a different factual milieu concerning the right of redemption, however. And petitioners' contention that prescription does not lie against a co-owner fails because only the title covering the questioned property, which petitioners claim to solely own, is being assailed.

While this Court finds that the action is, contrary to the appellate court's ruling, not barred by the statute of limitations, it is still dismissible as discussed below.

Albeit captioned as one for Annulment of Title, the Complaint ultimately seeks the reconveyance of the property.

From the allegations of the Complaint, petitioners seek the reconveyance of the property based on implied trust. The prescriptive period for the reconveyance of fraudulently registered real property is **10 years**, reckoned from the date of the issuance of the certificate of title,^[10] if the plaintiff is not in possession, but **imprescriptible** if he is in possession of the property.

An action for reconveyance based on an implied trust prescribes in ten years. The ten-year prescriptive period **applies only if there is an actual need to reconvey the property as when the plaintiff is not in possession of the property.** However, if the plaintiff, as the real owner of the property also remains in possession of the property, the prescriptive period to recover the title and possession of the property does not run against him. In such a case, an action for reconveyance, if nonetheless filed, would be in the nature of a suit for quieting of title, an action that is imprescriptible.^[11] (Emphasis and underscoring supplied)

It is undisputed that petitioners' houses occupy the questioned property and that respondents have not been in possession thereof.^[12] Since there was no actual need to reconvey the property as petitioners remained in possession thereof, the action took the nature of a suit for quieting of title, it having been filed to enforce an alleged implied trust after Jaime refused to segregate title over Lot 19. One who is **in actual possession** of a piece of land **claiming to be the owner** thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right.^[13] From the body of the complaint, this type of action denotes imprescriptibility.

As priorly stated, however, when the *Kasunduan* was executed in 1972 by Jaime in favor of Salvador – petitioners' predecessor-in-interest – Lot 19, of which the questioned property forms part, was still owned by the Republic. *Nemo dat quod non habet*.^[14] Nobody can give what he does not possess. Jaime could not thus have transferred anything to Salvador via the *Kasunduan*.

Claiming exception to the rule, petitioners posit that at the time the *Kasunduan* was executed by Jaime in 1972, his application which was filed in 1963 for the award to him of Lot 19 was still pending, hence, the *Kasunduan* transferred to Salvador Jaime's vested right to purchase the same, in support of which they cite a law on estoppel, Art. 1434 of the Civil Code, which provides that "[w]hen a person who is not the owner of a thing sells or alienates and delivers it and later, the seller or