

FIRST DIVISION

[G.R. NO. 157954, March 24, 2006]

**PAZ GALVEZ, CARLOS TAM, AND TYCOON PROPERTIES, INC.,
PETITIONERS, VS. HON. COURT OF APPEALS AND PORFIRIO
GALVEZ, RESPONDENTS.**

DECISION

CHICO-NAZARIO, J.:

The factual antecedents of this case reveal that Timotea F. Galvez died intestate on 28 April 1965.^[1] She left behind her children Ulpiano and Paz Galvez. Ulpiano, who died on 24 July 1959,^[2] predeceased Timotea and was survived by his son, Porfirio Galvez. Timotea left a parcel of land situated at Pagdaraoan, San Fernando, La Union, covered by Tax Declaration No. 39645^[3] and more particularly described as follows:

A parcel of unirrigated riceland situated at Brgy. Pagdaraoan, San Fernando, La Union under Tax Declaration No. 39645, series of 1957, with an area of 4,304.5 square meters, more or less bounded on the North by Valentin and Isidoro Sobrepeña; on the East by Nicolas Ducusin; on the South by Victor Ducusin; and on the West by the National Highway.^[4]

Considering that all the other compulsory heirs of Timotea already received their respective shares,^[5] the property passed by succession, both to Timotea's daughter, Paz Galvez, and to the former's grandson, Porfirio, the latter succeeding by right of representation as the son of Ulpiano.

Porfirio Galvez was surprised to discover that on 4 May 1970,^[6] Paz Galvez executed an affidavit of adjudication stating that she is the true and lawful owner of the said property. Tax Declarations No. 15749^[7] and No. 12342^[8] were then issued in the name of Paz Galvez. On 22 June 1992, without the knowledge and consent of Porfirio Galvez, Paz Galvez sold the property to Carlos Tam for a consideration of Ten Thousand Pesos (P10,000.00) by way of a Deed of Absolute Sale.^[9] Carlos Tam thereafter filed an application for registration of said parcel of land under Land Registration Case No. 2278 before the Regional Trial Court (RTC) of San Fernando, La Union. On 21 January 1994, Original Certificate of Title No. 0-2602 of the Registry of Deeds of San Fernando, La Union, was issued in the name of Carlos Tam.^[10] Subsequently, on 27 September 1994, Carlos Tam sold the property to Tycoon Properties, Inc. through a Deed of Absolute Sale executed by the former in favor of the latter.^[11] As a result, the title of Carlos Tam over the property was cancelled and a new one, Transfer Certificate of Title (TCT) No. T-40390^[12] was issued in favor of Tycoon Properties, Inc.

On 12 May 1994, Porfirio Galvez filed Civil Case No. 4895 before the RTC, Branch 26, of San Fernando, La Union, for Legal Redemption with Damages and Cancellation of Documents^[13] against Paz Galvez and Carlos Tam. The Complaint was later amended to implead as additional defendant, Tycoon Properties, Inc.^[14] When Tycoon Properties, Inc. filed its Answer, it also filed a cross-claim against Carlos Tam. In a decision^[14] dated 15 December 1999, the trial court held:

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

1. declaring null and void the Affidavit of Adjudication executed by defendant PAZ GALVEZ dated May 4, 1970;
2. declaring null and void the Deed of Absolute Sale over the property originally covered by Tax Declaration No. 39645 executed by PAZ GALVEZ in favor of CARLOS TAM;
3. the Original Certificate of Title No. 0-2602, in the name of CARLOS TAM be considered cancelled;
4. The Deed of Sale between CARLOS TAM and TYCOON PROPERTIES, Inc. is hereby ordered cancelled with Transfer Certificate of Title No. T-40390, being null and void;
5. That CARLOS TAM shall receive from the Clerk of Court, San Fernando City, La Union the amount of Ten Thousand (P10,000.00) pesos, as redemption of the property pursuant to law;
6. That the property covered by Transfer Certificate of Title No. T-40390, be reconveyed (whole property) to PORFIRIO GALVEZ, he having redeemed one-half ($\frac{1}{2}$) of the property from CARLOS TAM and other half of the property belongs to him as co-heir of TIMOTEA FLORES GALVEZ.
7. Defendant PAZ GALVEZ and CARLOS TAM shall be liable solidarily for the actual damages of the plaintiff in the amount of Ten Thousand (P10,000.00) pesos as well as moral damages in the amount of Fifty Thousand (P50,000.00) Pesos, together with attorney's fees in the amount of Ten Thousand (P10,000.00) Pesos acceptance fee and Five Hundred (P500.00) per appearance fee.^[16]

Petitioners Paz Galvez, Carlos Tam and Tycoon Properties, Inc. appealed the decision to the Court of Appeals.^[17] In a decision of the Court of Appeals dated 28 August 2002,^[18] the appellate court resolved to affirm the decision of the trial court. Petitioners filed a Motion for Reconsideration which was denied in a resolution dated 14 April 2003.^[19]

Not contented with the decision of the Court of Appeals, petitioners are now before this Court via Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

Petitioners Carlos Tam and Tycoon Properties, Inc. separately filed their Memorandum^[20] but raised the same issues to wit:

I

THE HONORABLE COURT OF APPEALS ERRED WHEN IT REFUSED TO HOLD THAT RESPONDENT'S CLAIM OVER THE SUBJECT PROPERTY,

WHICH IS BASED ON AN IMPLIED TRUST, HAS ALREADY PRESCRIBED BECAUSE THE ACTION WAS FILED 24 YEARS AFTER PETITIONER REPUDIATED THE SAID TRUST.

II

THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO RECOGNIZE THAT RESPONDENT'S CLAIM IS ALREADY BARRED BY LACHES BECAUSE HE FAILED TO ASSERT HIS ALLEGED RIGHT FOR ALMOST TWENTY FOUR (24) YEARS.

III

THE HONORABLE COURT ERRED IN FAILING TO RECOGNIZE THAT PETITIONERS [CARLOS TAM AND] TYCOON PROPERTIES ARE BUYERS IN GOOD FAITH AND FOR VALUE AND HAS THE RIGHT TO RELY ON THE FACE OF THE TITLE.^[21]

In assailing the decisions of the trial and appellate courts, petitioners cite Article 1451^[22] of the Civil Code and claim that an implied or constructive trust which prescribes in ten years, was established between Paz Galvez and Porfirio Galvez. It is petitioners' unflinching stand that the implied trust was repudiated when Paz Galvez executed an Affidavit of Self-Adjudication on 4 May 1970, registered the same before the Register of Deeds of La Union on 4 June 1970 and secured a new tax declaration in her name. From 4 May 1970 to the time the complaint was filed on 12 May 1994, 24 years have passed, hence, the action is clearly barred both by prescription and laches.

We find the petition bereft of merit.

Ostensibly, this case is governed by the rules on co-ownership^[23] since both Paz Galvez and Porfirio Galvez are obviously co-owners of the disputed property having inherited the same from a common ancestor. Article 494 of the Civil Code provides that "[a] prescription shall not run in favor of a co-owner or co-heir against his co-owners or co-heirs as long as he expressly or impliedly recognizes the co-ownership."

It is a fundamental principle that a co-owner cannot acquire by prescription the share of the other co-owners, absent any clear repudiation of the co-ownership.^[24] In *Santos v. Santos*,^[25] citing the earlier case of *Adille v. Court of Appeals*,^[26] this Court found occasion to rule that:

Prescription, as a mode of terminating a relation of co-ownership, must have been preceded by repudiation (of the co-ownership). The act of repudiation, in turn, is subject to certain conditions: (1) a co-owner repudiates the co-ownership; **(2) such an act of repudiation is clearly made known to the other co-owners**; (3) the evidence thereon is clear and conclusive; and (4) he has been in possession through open, continuous, exclusive, and notorious possession of the property for the period required by law.

For title to prescribe in favor of a co-owner there must be a clear showing that he has repudiated the claims of the other co-owners and the latter has been categorically advised of the exclusive claim he is making to the property in question.

The rule requires a clear repudiation of the co-ownership duly communicated to the other co-owners.^[27] It is only when such unequivocal notice has been given that the period of prescription will begin to run against the other co-owners and ultimately divest them of their own title if they do not seasonably defend it.^[28]

To sustain a plea of prescription, it must always clearly appear that one who was originally a joint owner has repudiated the claims of his co-owners, and that his co-owners were apprised or should have been apprised of his claim of adverse and exclusive ownership before the alleged prescriptive period began to run.^[29]

In *Salvador v. Court of Appeals*,^[30] it was held that the possession of a co-owner is like that of a trustee and shall not be regarded as adverse to the other co-owner but in fact beneficial to all of them.

The case of *Huang v. Court of Appeals*^[31] is instructive on the creation of trust relationships.

Trust is a fiduciary relationship with respect to property which involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another. A person who establishes a trust is called the trustor; one in whom confidence is reposed as regards property for the benefit of another person is known as the trustee; and the person for whose benefit the trust has been created is referred to as the beneficiary or *cestui que* trust. Trust is either express or implied. Express trust is created by the intention of the trustor or of the parties. Implied trust comes into being by operation of law. The latter kind is either constructive or resulting trust. A constructive trust is imposed where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it. The duty to convey the property arises because it was acquired through fraud, duress, undue influence or mistake, or through breach of a fiduciary duty, or through the wrongful disposition of another's property. On the other hand, a resulting trust arises where a person makes or causes to be made a disposition of property under circumstances which raise an inference that he does not intend that the person taking or holding the property should have the beneficial interest in the property. It is founded on the presumed intention of the parties, and as a general rule, it arises where, and only where such may be reasonably presumed to be the intention of the parties, as determined from the facts and circumstances existing at the time of the transaction out of which it is sought to be established.

Acts which may be considered adverse to strangers may not be considered adverse insofar as co-owners are concerned. Thus, *Salvador v. Court of Appeals* reiterated what acts constitute proof of exclusive ownership amounting to repudiation, emphasizing that the act must be borne out of clear and convincing evidence of acts of possession which unequivocally amounts to an ouster or deprivation of the right

of the other co-owner. The case of *Pangan v. Court of Appeals*^[32] enumerated the following as constituting acts of repudiation:

Filing by a trustee of an *action in court* against the trustor to quiet title to property, or for recovery of ownership thereof, held in possession by the former, may constitute an act of repudiation of the trust reposed on him by the latter.

The issuance of the *certificate of title* would constitute an open and clear repudiation of any trust, and the lapse of more than 20 years, open and adverse possession as owner would certainly suffice to vest title by prescription.

An action for the reconveyance of land based on implied or constructive trust prescribes within 10 years. And it is from the date of the *issuance of such title* that the effective assertion of adverse title for purposes of the statute of limitation is counted.

The prescriptive period may only be counted from the time petitioners repudiated the trust relation in 1955 upon the *filing of the complaint for recovery of possession* against private respondents so that the counterclaim of the private respondents contained in their amended answer wherein they asserted absolute ownership of the disputed realty by reason of the continuous and adverse possession of the same is well within the 10-year prescriptive period.

There is clear repudiation of a trust when one who is an apparent administrator of property causes the cancellation of the title thereto in the name of the apparent beneficiaries and gets a new certificate of title in his own name.

It is only when the defendants, alleged co-owners of the property in question, *executed a deed of partition and on the strength thereof obtained the cancellation of the title* in the name of their predecessor and the issuance of a new one wherein they appear as the new owners of a definite area each, thereby in effect denying or repudiating the ownership of one of the plaintiffs over his alleged share in the entire lot, that the statute of limitations started to run for the purposes of the action instituted by the latter seeking a declaration of the existence of the co-ownership and of their rights thereunder.

In this case, we find that Paz Galvez effected no clear and evident repudiation of the co-ownership. The execution of the affidavit of self-adjudication does not constitute such sufficient act of repudiation as contemplated under the law as to effectively exclude Porfirio Galvez from the property. This Court has repeatedly expressed its disapproval over the obvious bad faith of a co-heir feigning sole ownership of the property to the exclusion of the other heirs essentially stating that one who acts in bad faith should not be permitted to profit from it to the detriment of others. In the cases of *Adille*^[33] and *Pangan*^[34] where, as in this case, a co-heir was excluded from his legal share by the other co-heir who represented himself as the only heir, this Court held that the act of exclusion does not constitute repudiation.