

## THIRD DIVISION

**[ G.R. No. 161720, November 22, 2005 ]**

**HEIRS OF FLORES RESTAR NAMELY: ESMENIA R. RESTAR, BERNARDITA R. RENTINO, LUCIA RESTAR, RODOLFO RESTAR, JANET R. RELOJERO, LORNA R. RAMOS, MANUEL RESTAR, NENITA R. BELLEZA, MIRASOL R. DELA CRUZ, ROSELLE R. MATORRE, POLICARPIO RESTAR AND ADOLFO RESTAR PETITIONERS, VS. HEIRS OF DOLORES R. CICHON, NAMELY: RUDY R. CICHON, NORMA C. LACHICA, NILDA C. JUMAYAO, LYDIA C. SANTOS, AND NELSON R. CICHON; HEIRS OF PERPETUA R. STA. MARIA, NAMELY GEORGE STA. MARIA, LILIA M. MANIAGO, DERLY M. CONCEPCION, GERVY STA. MARIA, DORY M. INDULO; HEIRS OF MARIA R. ROSE, NAMELY: TERESITA R. MALOCO, ROLANDO ROSE, EDELYN R. PALACIO AND MINERVA R. PASTRANA, DOMINICA RESTAR-RELOJERO AND PACIENCIA RESTAR MANARES, RESPONDENTS.**

### DECISION

**CARPIO MORALES, J.:**

In 1935, Emilio Restar (Restar) died intestate, leaving eight (8) children-compulsory heirs, namely: Flores Restar, Dolores Restar-Cichon, Perpetua Restar-Sta. Maria, Paciencia Restar-Manares, Dominica Restar-Relojero, Policarpio Restar, Maria Restar-Rose and Adolfo Restar.

In 1960, Restar's eldest child, Flores, on the basis of a July 12, 1959 Joint Affidavit<sup>[1]</sup> he executed with one Helen Restar, caused the cancellation of Tax Declaration No. 6696<sup>[2]</sup> in Restar's name covering a 5,918<sup>[3]</sup> square meter parcel of land, Lot 3177 (the lot), located at Barangay Carugdog, Lezo, Aklan which was among the properties left by Restar, and the issuance of Tax Declaration No. 11134 in his name.

Flores died on June 10, 1989.

On November 5, 1998, the co-heirs of Flores discovered the cancellation of Restar's Tax Declaration No. 6696 and the issuance in lieu thereof of Tax Declaration No. 11134<sup>[4]</sup> in his name.

On January 21, 1999, the heirs of Flores' sisters Dolores R. Cichon, Perpetua Sta. Maria, and Maria Rose who had in the meantime died, together with Flores' surviving sisters Dominica Restar-Relojero and Paciencia Restar-Manares, filed a Complaint<sup>[5]</sup> against Flores' heirs for "partition [of the lot], declaration of nullity of documents, ownership with damages and preliminary injunction" before the Regional Trial Court (RTC) of Aklan.

Flores' brothers Policarpio and Adolfo were impleaded also as defendants, they being unwilling co-plaintiffs.

The plaintiffs, herein respondents, alleged that, *inter alia*, during the lifetime of Flores, they were given their shares of *palay* from the lot and even after Flores' death up to 1991; after Flores' death in 1989, his widow Esmenia appealed to them to allow her to hold on to the lot to finance the education of her children, to which they (the plaintiffs) agreed on the condition that after the children had finished their education, it would be divided into eight (8) equal parts; and upon their demand for partition of the lot, the defendants Heirs of Flores refused, they claiming that they were the lawful owners thereof as they had inherited it from Flores.

By Answer<sup>[6]</sup> filed February 23, 1999, the defendants-herein petitioners Heirs of Flores claimed that they had been in possession of the lot in the concept of owner for more than thirty (30) years and have been paying realty taxes since time immemorial. And they denied having shared with the plaintiffs the produce of the lot or that upon Flores' death in 1989, Esmenia requested the plaintiffs to allow her to hold on to it to finance her children's education, they contending that by 1977, the children had already finished their respective courses.<sup>[7]</sup>

The defendants Heirs of Flores further claimed that after World War II and under the "new Tax Declaration in 1945," Flores caused the transfer of parcels of ricelands situated in Carugdog, Lezo, Aklan to his siblings as their shares from the estate of their father Restar;<sup>[8]</sup> and an extra-judicial partition was subsequently executed on September 28, 1973 by Restar's heirs, which was notarized by one Atty. Jose Igtanloc, dividing and apportioning among themselves four (4) parcels of land. <sup>[9]</sup>

The defendant Adolfo Restar, by separate Answer,<sup>[10]</sup> alleged that the complaint did not state a cause of action as against him for he interposed no objection to the partition of the lot among the heirs of Restar.

As for the defendant Policarpio Restar, he in his Amended Answer<sup>[11]</sup> acknowledged Flores as the owner of the lot but claimed that a portion of it, 1,315 square meters, was sold to him as shown by a Deed of Absolute Sale dated May 14, 1981.<sup>[12]</sup> He thus prayed that, among other things, an order for the partition of the lot among Restar's heirs be issued excluding, however, that portion sold to him by Flores.<sup>[13]</sup>

After trial, Branch 3 of the RTC of Kalibo, Aklan held that Flores' share in Restar's estate was not the lot but that covered by Cadastral Lot No. 3183. Nevertheless, the trial court, holding that Flores and his heirs had performed acts sufficient to constitute repudiation of the co-ownership, concluded that they had acquired the lot by prescription.<sup>[14]</sup>

Respecting the defendant Policarpio's claim that a portion of the lot was sold to him, the trial court discredited the same upon noting that Flores' signature in the purported Deed of Sale differed from those appearing in other documents submitted by the parties; in 1981, when the said Deed of Sale was alleged to have been executed, Flores was admittedly paralyzed and bedridden and could not have written his name in a "straight" manner, as in fact his signature appearing in at least two documents dated 1980 was "crooked," and there existed discrepancies in the

spelling of Flores' wife's signature which read "Esmeña" in the deed, and not as "Esmenia."<sup>[15]</sup>

The trial court thus dismissed the complaint by Decision of June 30, 1999.<sup>[16]</sup>

On appeal by the defendants Heirs of Flores and Policarpio Restar, the appellate court, by Decision of October 29, 2002.<sup>[17]</sup> reversed the decision of the trial court, it finding that the defendants Heirs of Flores failed to prove that their possession of the lot excluded their co-owners or that they derived title to it from a separate conveyance to them by Restar.

The appellate court further found that there was no adequate notice by Flores to his other co-heirs/co-owners of the repudiation of the co-ownership and neither was there a categorical assertion by the defendants of their exclusive right to the entire lot that barred the plaintiffs' claim of ownership.<sup>[18]</sup>

And the appellate court found it credible for the plaintiffs to have failed to immediately take legal action to protect their rights on account of forbearance towards their eldest brother who had asked them to continue cultivating the lot to support his children's education.<sup>[19]</sup>

Respecting the defendant Policarpio's claim that part of the lot had been sold to him by Flores, the appellate court sustained the trial court's rejection thereof.

Accordingly, the appellate court disposed:

**WHEREFORE**, in view of all the foregoing, the appeal is hereby GRANTED in so far as plaintiffs-appellants Heirs of Dolores Cichon, et al., are concerned and **DENIED** in so far as defendant-appellant Policarpio Restar. The decision of the Regional Trial Court of Kalibo, Aklan, Branch 3, dated June 30, 1999 is **MODIFIED**. The ruling of the said court that the heirs of Flores Restar have acquired ownership by adverse possession of the land in question, Cadastral Lot No. 6686, is hereby **REVERSED**.

**SO ORDERED.** (Emphasis in the original)

The appellate court having denied reconsideration of its decision, only the defendants Heirs of Flores filed the present petition, assigning the following errors:

- A. THE COURT OF APPEALS PATENTLY ERRED IN REVERSING THE RULING OF THE LOWER COURT THAT THE PETITIONERS AS HEIRS OF FLORES RESTAR HAVE ACQUIRED OWNERSHIP BY ADVERSE POSSESSION OF THE LAND IN QUESTION.
- B. THE COURT OF APPEALS PATENTLY ERRED IN NOT RULING THAT THERE WAS ACQUISITIVE PRESCRIPTION ON THE LAND IN QUESTION NOTWITHSTANDING THAT THE LAND IN QUESTION HAS BEEN DECLARED IN THE NAME OF FLORES RESTAR, FATHER OF PETITIONERS, AS EARLY AS 1960 AND THAT PETITIONERS AND THEIR PREDECESSOR-IN-INTEREST HAVE BEEN IN OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION OF THE

LAND IN QUESTION IN THE CONCEPT OF OWNER FOR MORE THAN  
THIRTY (30) YEARS.<sup>[20]</sup>

The petition is impressed with merit.

Article 494 of the New Civil Code expressly provides:

ART. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

x x x

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

While the action to demand partition of a co-owned property does not prescribe, a co-owner may acquire ownership thereof by prescription<sup>[21]</sup> where there exists a clear repudiation of the co-ownership, and the co-owners are apprised of the claim of adverse and exclusive ownership.<sup>[22]</sup>

Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession of things in good faith and with just title for a period of ten years. Without good faith and just title, acquisitive prescription can only be extraordinary in character which requires uninterrupted adverse possession for thirty years.

Thus, the New Civil Code provides:

ART. 1117. Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary.

Ordinary acquisitive prescription requires possession of things in good faith and with just title for the time fixed by law.

ART. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

ART. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

Resolving the main issue of whether petitioners acquired ownership over the lot by extraordinary prescription, the appellate court held in the negative.

While this Court is not a trier of facts, if the inference drawn by the appellate court from the facts is manifestly mistaken, it may, in the interest of justice, review the evidence in order to arrive at the correct factual conclusions based on the record.  
<sup>[23]</sup>

Contrary to the findings of the appellate court, the records of the case amply support petitioners' claim that the requirements for extraordinary prescription had