441 Phil. 409

FIRST DIVISION

[G.R. No. 143369, November 27, 2002]

LEOPOLDO C. LEONARDO, REPRESENTED BY HIS DAUGHTER EMERENCIANA LEONARDO, PETITIONER, VS. VIRGINIA TORRES MARAVILLA AND LEONOR C. NADAL, AS ADMINISTRATRICES OF THE ESTATE OF MARIANO TORRES, AS SUBSTITUTED BY FE NADAL VENTURINA, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for review seeking to set aside the decision[1] dated November 26, 1999 and the resolution[2] dated May 19, 2000 of the Court of Appeals[3] in CA-G.R. CV No. 52932, which affirmed the order[4] of the Regional Trial Court of Pasay City, Branch III, dismissing petitioner's complaint[5] for "Delivery of Possession of Property, Owner's Duplicate Certificate of Title, Rentals and Damages," in Civil Case No. 93-10282.

The instant controversy stemmed from a dispute over a 1,151.80 square meter lot, located in Pasay City, covered by Transfer Certificate of Title No. 2355 (34515),[6] and registered in the name of Mariano Torres y Chavarria, the predecessor-in-interest of respondents. Petitioner claims that he is the lawful owner of the disputed lot, having purchased it on September 29, 1972 from a certain Eusebio Leonardo Roxas,[7] who in turn acquired the same lot by purchase on August 28, 1972 from Mariano Torres y Chavarria.[8]

On September 14, 1972, Eusebio Leonardo Roxas sent a letter-request[9] to the Register of Deed of Pasay City asking for the registration of the deed of sale allegedly executed in his favor by Mariano Torres y Chavarria. The letter was entered in the Register's Primary Book under Entry No. 55780, Vol. V. The Office of the Register of Deeds, however, did not register the deed as it was awaiting the final disposition of a pending case[10] between Mariano Torres y Chavarria and a certain Francisco E. Fernandez involving title of the lot.[11] Incidentally, the said case was decided in favor of Mariano Torres y Chavarria, which decision became final and executory on September 21, 1972.[12]

On October 6, 1972, petitioner likewise asked the Register of Deeds to register the deeds of sale dated August 28, 1972 and the September 29, 1972 involving Transfer Certificate of Title No. 2355 (34515), and to issue the corresponding transfer certificate of title in his name.[13] Petitioner did not present the owner's duplicate copy of Transfer Certificate of Title No. 2355 (34515), which remained in the possession of respondents. Petitioner's letter-request was entered in the Primary Books of the Register of Deeds under Entry No. 55952, V.5, on October 19, 1972. The Register of Deeds, however, certified that the original copy of TCT No. 2355

(34515), could not be retrieved or located in the office of the Register of Deeds of Pasay, hence, the requested registration could not be effected.[14]

On November 13, 1972, petitioner executed an affidavit of adverse claim[15] over TCT No. 2355 (34515) which was entered in the Primary Book under Entry No. 56039, Vol. 5, on November 15, 1972.

On May 18, 1993, the Register of Deeds of Pasay City was able to retrieve the original copy of TCT No. 2355 (34515).[16]

On May 20, 1993, petitioner caused the annotation of his affidavit of adverse claim on TCT No. 2355 (34515),[17] and asked the respondents to deliver possession of the owner's duplicate copy of TCT No. 2355 (34515). When the latter ignored his demand, petitioner filed on September 6, 1993 a complaint for "Delivery of Possession of Property, Owner's Duplicate Certificate of Title, Rentals and Damages." Petitioner alleged that he filed the case against respondents only in 1993 because he was living abroad.[18]

In their Answer, respondents countered that since 1938 up to the present, the lot in question has been registered in the name of the late Mariano Torres y Chavarria, their predecessor-in-interest, and that they have been in material possession thereof in the concept of owners. In the settlement of the estate of Mariano Torres y Chavarria, who died on August 30, 1974,[19] his widow, Rosario Nadal, and his natural child, Virginia Torres Maravilla, acquired the disputed lot by succession.[20] After the demise of Rosario Nadal, sometime in January 1990, her share in the said lot was inherited by her sister, Leonor Nadal, who was appointed as special administratrix of the estate of Rosario Nadal.[21] Subsequently, Leonor Nadal was also appointed administratrix of the estate of Mariano Torres y Chavarria.[22] Respondents maintain that they have been in open and peaceful possession of the said property and that it was only in 1993 when they came to know of the alleged claim of petitioners over the same property.

Respondents contended further that the deeds of sale dated August 28, 1972 and September 29, 1972 are falsified documents and that the signature of Mariano Torres y Chavarria on the August 28, 1972 deed of absolute sale was a forgery. On February 28, 1994, respondents filed a motion to dismiss[23] the complaint on the grounds of: (1) non-payment of the correct docket fees; (2) prescription; and (3) laches. The motion to dismiss was denied on July 25, 1995.

Meanwhile, Leonor Nadal died on October 23, 1995, and was substituted by Fe Nadal Venturina on January 19, 1996.[24]

On motion of respondents, the trial court reconsidered its order of July 25, 1995, and issued an order on February 1, 1996, dismissing petitioner's complaint on the ground of prescription and laches.

Dissatisfied, petitioner appealed to the Court of Appeals which affirmed the assailed order on November 26, 1999. The motion for reconsideration was denied on May 19, 2000.

Hence, the instant petition contending that the Court of Appeals erred in holding that:

I

THE RIGHT OF PETITIONER TO ENFORCE THE DEEDS (EXHS. 2 AND 4) THROUGH HIS COMPLAINT FILED ON SEPTEMBER 6, 1993 HAD ALREADY PRESCRIBED ON SEPTEMBER 29, 1982 PER ARTICLE 114[4];

II

THE TITLE ON THE PROPERTY REMAINED IN THE VENDOR'S (MARIO TORRES) NAME BEFORE AND AFTER THE EXECUTION OF THE DEEDS (EXHS. 2 AND 4);

III

IF THE ORIGINAL COPY OF THE TCT WAS LOST/MISSING IN THE FILES OF THE REGISTER OF DEEDS, PETITIONER SHOULD HAVE FILED A PETITION FOR RECONSTITUTION OF THE TITLE;

IV

PETITIONER'S INACTION FOR 21 YEARS TO ENFORCE HIS RIGHTS ON THE DEEDS (EXHS. 2 AND 4) MADE RESPONDENTS BELIVE THAT HE HAD ABANDONED HIS RIGHTS ON THE PROPERTY; and,

V

LACHES HAD OPERATED NOTWITHSTANDING THAT PETITIONER WROTE THE REGISTER OF DEEDS OF PASAY CITY (EXH. 8) AND THE LATTER REPLIED THAT REGISTRATION COULD NOT BE EFFECTED BECAUSE THE TITLE WAS MISSING (EXH. 9).[25]

The issue in the instant case is whether or not petitioner's action is barred by prescription and laches.

The Court of Appeals ruled that petitioner's cause of action is founded on the deed of absolute sale allegedly executed by respondents' predecessor-in-interest on August 28, 1972, which purportedly conveyed the disputed lot to Eusebio Leonardo Roxas, and the deed of sale dated September 29, 1972, whereby the latter sold the same lot to petitioner. Being an action based on written contracts, petitioner's complaint falls under Article 1144[26] of the Civil Code, which provides that an action upon a written contract shall prescribe in ten years from the time the right of action accrued. Since petitioner brought the instant case only on September 6, 1993, or 21 years from the time his supposed right of action accrued on September 29, 1972, *i.e.*, the date of execution of the contract conveying to him the questioned lot, his action was clearly barred by the statute of limitations.

Petitioner, on the other hand, contends that the applicable provision is Article 1141[27] and not 1144 of the Civil Code because his action is one for recovery of possession of real property which prescribes in thirty years.

The contention is without merit. Petitioner's action is actually an action for specific performance, *i.e.*, to enforce the deed of absolute sale allegedly executed in his favor. It is a fundamental principle that ownership does not pass by mere stipulation but by delivery. The delivery of a thing constitutes a necessary and indispensable requisite for the purpose of acquiring the ownership of the same by virtue of a

contract.[28] Under Article 1498 of the Civil Code, when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred. Thus, the execution of the contract is only a presumptive, not conclusive delivery which can be rebutted by evidence to the contrary, as when there is failure on the part of the vendee to take material possession of the land subject of the sale in the concept of a purchaser-owner.[29]

In the case at bar, it is not disputed that the lot in question was never delivered to petitioner notwithstanding the alleged execution of a deed of absolute sale. From 1972 to 1993, petitioner neither had, nor demanded, material possession of the disputed lot. It was the respondents who have been in control and possession thereof in the concept of owners since 1938 up to the present. It follows that ownership of the lot was never transferred to petitioner. Hence, he can not claim that the instant case is an *accion reivindicatoria* or an action to recover ownership and full possession of the property which, in the first place, never came into his possession for lack of the requisite delivery. Thus, in *Danguilan v. Intermediate Appellate Court*,[30] where the requisite delivery was not effected, the Court held that:

> Since in this jurisdiction it is a fundamental and elementary principle that ownership does not pass by mere stipulation but only by delivery (Civil Code, Art. 1095; Fidelity and Surety Co. v. Wilson, 8 Phil. 51), and the execution of a public document does not constitute sufficient delivery where the property involved is in the actual and adverse possession of third persons (Addison v. Felix, 38 Phil. 404; Masallo v. Cesar, 39 Phil. 134), it becomes incontestable that even if included in the contract, the ownership of the property in dispute did not pass... Not having become the owner for lack of delivery, [one] cannot presume to recover the property from its present possessors. [The] action, therefore, is not one of revindicacion, but one against [the] vendor for specific performance of the sale ...

Clearly, the case filed by petitioner was an action for specific performance of a written contract of sale which, pursuant to Article 1144 of the Civil Code, prescribes in 10 years from the accrual of the right of action. In a contract of sale, there is a reciprocal obligation to pay the purchase price and the corresponding delivery of the thing sold, which obligations give rise to a right of action in case of breach.[31] Here, petitioner's right of action for specific performance or rescission arose when delivery of the thing sold was not effected on September 29, 1972, despite the payment of the purchase price. Hence, from 1972 to 1993, when petitioner filed the instant case, 21 years had elapsed barring the institution of petitioner's action which is definitely beyond the 10 year prescriptive period.

Petitioner's claim that the prescriptive period was tolled when he registered his adverse claim with the Register of Deeds is untenable. In *Garbin v. Court of Appeals, et al.*,[32] wherein an action for annulment of a deed of sale was dismissed on the ground of prescription and laches, the Court held that the registration of an adverse claim does not toll the running of the prescriptive period, thus:

> x x x the title of the defendant must be upheld for failure or the neglect of the plaintiffs for an unreasonable and unexplained length of time of