

## NINETEENTH DIVISION

[ C.A.-G.R. CV NO. 03279, January 30, 2015 ]

**JUAN S. GELIG, ET AL., PLAINTIFF-APPELLANT, VS. CECILIA NAZARENO, LINDA NAZARENO, ISABEL MAGALLON VDA. DE NAZARENO, BRYAN SHERWIN NAZARENO, ROBERTO L. NAZARENO, MARIA DE GUZMAN NAZARENO, CIRIACO ESCUTIN, REIZHELLE MARIE NAZARENO AND RODULFO APARRI DEFENDANTS-APPELLEES.**

### D E C I S I O N

**LOPEZ, J.:**

Before Us is an Original Appeal<sup>[1]</sup> from the Order<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 53, Lapu-lapu City dated January 18, 2006 in Civil Case No. 4690-L for *Quieting of Title, Declaration of Nullity and Reconveyance with Temporary Restraining Order and/or Preliminary Injunction with Damages* which granted defendants' motion to dismiss the case.

#### The Facts

The late Claudio Gelig and Guillerma Menguito were the owners of Lot No. 3589 situated at Agus, Lapu-lapu City, with a total land area of 24,211 square meters and previously covered by Original Certificate of Title (OCT) No. R0-0543. They were survived by their children, namely: Jesus Gelig, Lorenza Gelig, Emiliana Gelig and Atanacio Gelig who executed a *Confirmation of Extrajudicial Partition and Adjudication of the Estate of Claudio Gelig* wherein they partitioned and adjudicated among themselves Lot No. 3589 of the Opon Cadastre on September 17, 1965, in the following manner:

- a. To Atanacio – a part of Lot No. 3589 containing an area of 5,571 square meters, which was later on identified and designated as Lots Nos. 3589-A and 3589-B;
- b. To Lorenza, Emiliana and Jesus – a part of Lot No. 3589 containing an area of 18,640 square meters or at 5,571 square meters each, later on designated as Lot No. 3589-C.<sup>[3]</sup>

Atanacio sold his share (Lot Nos. 3589-A and 3589-B) to defendant-appellee Linda Nazareno and this transaction was contained in a *Deed of Absolute Sale*<sup>[4]</sup> dated October 7, 1965. Linda Nazareno had the entire Lot No. 3589 surveyed and subdivided and the title thereto was reconstituted at her own expense.

Lot No. 3589-C was subdivided into Lot No. 3589-C-1 and Lot No. 3589-C-2. Lot No. 3589-C-2 was subdivided into Lots Nos. 3589-C-2-A, 3589-C-2-B, and 3589-C-2-C. And, Lot No. 3589-C-2-C was subdivided into Lots Nos. 3589-C-2-C-1 and 3589-C-

Lorenza and Emiliana sold Lot No. 3589-C-1 to defendant-appellee Cecilia Nazareno, affixing in the document their thumbmarks. On the other hand, Jesus Gelig sold Lot No. 3589-C-2-B, with an area of 789 square meters, to Cecilia Nazareno, which lot is now covered by Transfer Certificate of Title (TCT) No. 21554 and registered in the name of defendant-appellee Bryan Sherwin R. Nazareno. Lot No. 3589-C-2-C-1 was sold by Jesus Gelig to defendant-appellee Linda Nazareno who subsequently conveyed it to her son, Jose Nazareno, Jr. covered by TCT No. 21748.

Plaintiff-appellant Juan Gelig filed a *Complaint*<sup>[5]</sup> on March 3, 1997, alleging that he is the heir of the late Jesus Gelig, the latter being one of the children of Claudio and Guillerma. Plaintiff-appellant contended that the sale of Lots Nos. 3589-A and 3589-B by Atanacio to Linda Nazareno were made in a falsified document of sale; that the subsequent reconstitution of title over the lot by Linda Nazareno was made without the approval of the compulsory heirs of Claudio and Guillerma;<sup>[6]</sup> that the subdivision of Lot No. 3589-C was caused by Linda Nazareno and Cecilia Nazareno who conspired and confederated with each other in causing the execution of deeds of sale thereon in favor of close relatives through the use of fraudulent schemes and machinations; that Cecilia Nazareno, in confederation with her subsequent transferees, including Spouses Roberto and Renilda Nazareno, made it appear in a fictitious document through fraudulent and deceitful machinations that Lot No. 3589-C-1 was sold by Lorenza Gelig and Emiliana Gelig in favor of said Cecilia Nazareno with the vendors merely affixing only their thumb marks when, in truth and in fact, they could have affixed their signatures being lettered people.<sup>[7]</sup>

Plaintiff-appellant alleged that he came to know of the unlawful schemes and fraudulent machinations of the defendants only when the latter made initiatory steps to oust the former from the premises sometime in July 1996; that since then and until the present, or for over 32 years from the alleged extrajudicial settlement and partition of the estate of the late Claudio Gelig sometime in 1965, plaintiff-appellant has been in possession of the lots in question, publicly, adversely, notoriously and continuously, in *concepto de dueño*; that in fact, he has his residential house thereon and he had developed these lots and made improvements thereon without the slightest opposition and disturbance from the defendants.<sup>[8]</sup>

Plaintiff-appellant also alleged that the locations of Lots Nos. 3589-C-2-B and 3589-C-2-C-1 were fraudulently and deliberately chosen by the defendants without the consent of the plaintiff-appellant and his predecessors, hence, invalid; that the existence of TCT No. 21748 registered in the name of Jose L. Nazareno for Lot No. 3589-C-2-C-1, TCT No. 21554 registered in the name of Bryan Sherwin R. Nazareno for Lot No. 3589-C-2-B, and TCT No. 23993 for Lot No. 3589-C-1, registered in the name of Roberto L. Nazareno, are prejudicial and have cast a cloud to the title of the plaintiff-appellant over the lots in question, thus, the same must be quieted by ordering the reconveyance of these certificates of title to the plaintiff-appellant;<sup>[9]</sup> that the certificates of title over Lots Nos. 3589-C-2-B and 3589-C-2-C-1 shall be reconveyed in favor of the plaintiff-appellant and the defendants Isabel Magallon vda. de Nazareno and Bryan Sherwin R. Nazareno shall be given land areas at the rear portion or behind Lot No. 3589-C-2-C-2, in accordance with the true intention of the late Jesus Gelig pursuant to the cadastral map of the Opon Cadastre, and that another subdivision of the whole lot in question must be ordered to specify the true

and correct location of the lots (3589-C-2-B and 3589-C-2-C-1) as originally intended by the vendor.<sup>[10]</sup>

Defendants-appellees filed their *Answer with Compulsory Counterclaims*<sup>[11]</sup> on April 25, 1997, wherein they narrated the transfers and subdivisions made on the subject property (Lot No. 3589).

In an *Order*<sup>[12]</sup> dated July 9, 1997, the RTC granted plaintiff-appellant's *Motion for Leave to Admit Amended Complaint*.<sup>[13]</sup> The plaintiff-appellant's *Amended Complaint*<sup>[14]</sup> impleaded the following defendants in their capacities as the present transferees/registered owners of the subject parcels of land, viz: Maria de Guzman Nazareno, Ciriaco Escutin, Reizhelle Marie Nazareno, and Rodolfo Aparri.

On October 15, 1997, newly impleaded defendant-appellee Rodolfo Aparri, filed his *Answer (with Compulsory Counterclaim)*<sup>[15]</sup> alleging that sometime in the early part of April 1990, Col. Arsenio De Guzman, through Col. Fortunato de Gracia, Jr. offered to sell to Rodolfo a certain parcel of land known as Lot No. 3589-A-2 situated in Agus, Lapu-lapu City, covered by TCT No. 2775 registered in the former's name containing an area of one thousand two hundred ninety nine (1,299) square meters; that Rodolfo decided to purchase the same on May 20, 1997, after going over the location of the lot and relying on the correctness of the Certificate of Title; that TCT No. 2775 in the name of Lt. Col. Arsenio D. de Guzman was cancelled and in lieu thereof TCT No. 21691 in the name of Rodolfo was issued;<sup>[16]</sup> that subsequently, Rodolfo had the property surveyed and caused the construction of a concrete fence over the said parcel of land and introduced improvements thereon without an opposition from anybody; that since then and up to the present, Rodolfo has been in possession of the lot in question, publicly, notoriously and continuously and have been religiously paying the taxes thereon.<sup>[17]</sup>

Defendant-appellee Maria de Guzman-Nazareno also filed her *Answer*<sup>[18]</sup> alleging that she is a buyer in good faith and for value and acquired Lot No. 3589-B-1 thru legal and valid mode of transfer; that she has been in actual, constructive, public, notorious and continuous possession of the lot since 1970, for almost twenty seven (27) years; that plaintiff-appellant has no legal personality to prosecute this kind of action being not a party to the transaction; that plaintiff-appellant is estopped from questioning or denying the rights or title of the defendants because the former had full knowledge of the status of the property that it was ceded/sold/transferred to third parties by their ascendants or predecessors in interest;<sup>[19]</sup> that granting without admitting that plaintiff-appellant has real rights over the properties in issue, his failure or neglect in exercising the right to prosecute and contest the same for an unreasonable length of time would bar him forever to lay claims over the same under the principle of estoppel by laches.

Defendants-appellees Reizhelle Marie R. Nazareno and Ciriaco Escutin filed an *Appearance with Manifestation and Motion to Set Case for Pre-Trial Conference*<sup>[20]</sup> on September 25, 2000, manifesting that they are adopting the Answer with Compulsory Counterclaims filed by the original defendants as their own answer to the Amended Complaint and the setting of the case for pre-trial conference. On June

27, 2001, defendants filed a *Second Motion to Set Case for Pre-Trial Conference*. In an Order<sup>[21]</sup> dated July 23, 2001, the RTC ruled:

It should have been plaintiff who should file the motion for pre-trial. The non-filing is, however, understandable, as the record shows that this Court has not yet received the return of summons by the serving officer in RTC-Manila, NCR, despite the 17 September 1999 Order, copy of which was received by the Clerk of Court OCC, RTC Manila, National Capital Region, per Registry Return Receipt attached to the record.

The Court will act accordingly upon the receipt of the return.

On August 10, 2001, defendants-appellees Reizhelle Marie R. Nazareno and Ciriaco Escutin filed a *Motion to Dismiss with Manifestation*<sup>[22]</sup> pointing out that in their prior Appearance with Manifestation, they manifested that they were adopting the Answer with Counterclaim filed by the original defendants as their own Answer in the Amended Complaint, hence, the issues have already been joined and that as early as September 25, 2000, the case was already ripe for pre-trial conference; that plaintiff failed and refused to move ex parte that the case be set for pre-trial conference which indicates his lack of interest to further prosecute the case and violates defendants' right to speedy disposition of cases.

On October 3, 2001, plaintiff-appellant filed an *Opposition to Motion to Dismiss with Motion to Set Case for Pre-Trial Conference*<sup>[23]</sup> alleging that defendants should not take advantage of the RTC's oversight of defendants' manifestation to adopt the previous Answer with Counterclaim; and that it will serve the ends of justice to deny the motion to dismiss and set the case for pre-trial conference.

On April 16, 2002, plaintiff-appellant filed a *Motion to Admit Second Amended Complaint*<sup>[24]</sup> impleading additional defendants but subsequently, he filed a *Motion to Admit Third Amended Complaint*<sup>[25]</sup> dropping them as party defendants. In an Order<sup>[26]</sup> dated March 14, 2003, the RTC granted plaintiff-appellant's Motion to Admit Third Amended Complaint.

After the Third Amended Complaint was admitted, defendant filed a *Motion to Dismiss*<sup>[27]</sup> dated March 12, 2003 praying for the dismissal of the case for plaintiff's failure to prosecute the same. Defendants also subsequently filed a *Supplemental Motion to Dismiss*<sup>[28]</sup> dated August 12, 2005 on the ground of lack of cause or causes of action.

On January 18, 2006, the Regional Trial Court rendered the assailed Order,<sup>[29]</sup> the dispositive portion of which states:

WHEREFORE, defendants' motion to dismiss is granted, and the above-entitled case is hereby dismissed.

SO ORDERED.

The RTC ruled that plaintiff-appellant is not a party to any of the conveyances affecting Lot No. 3589 and that all the alienations of portions of Lot No. 3589 to other persons were made by the children of the spouses Claudio Gelig and Guillerma

Menguito; that plaintiff-appellant is not a declared heir of Atanacio Gelig, Lorenza Gelig and Emiliana Gelig; that he has therefore no right or interest over the shares of these three children of Claudio and Guillerma; and that he has no personality to question whatever transactions they had entered into in connection with their respective shares of Lot No. 3589.<sup>[30]</sup>

The RTC further held that plaintiff-appellant is not even a declared heir of the late Jesus Gelig of whom he said in his Third Amended Complaint that he is the only surviving heir; that it appears that plaintiff-appellant has siblings whom he has not impleaded either as plaintiffs or as defendants; that his brother Sergio Gelig, has even filed a case for perjury against him pending before the RTC in Cities, Lapu-lapu City, which has been docketed as Criminal Case No. R-19455, which the Court takes judicial notice; that as reflected in the record of Criminal Case No. R-19455, plaintiff has two living siblings and one deceased sibling whose children are living about two kilometers from accused's place; that in claiming that he is the sole surviving heir of Jesus Gelig, plaintiff-appellant is hiding the truth, thus, the verification and certification in his Third Amended Complaint which he had signed under oath suffers from a very serious infirmity.<sup>[31]</sup>

Further, the RTC ruled that a cursory look at the Third Amended Complaint and its annexes shows that plaintiff-appellant's cause of action has already prescribed; that an action for reconveyance of real property as a result of fraud prescribes in four (4) years and if it is based on implied or constructive trust, it prescribes in ten (10) years.

Hence, this appeal with the following *Assignment of Error*:<sup>[32]</sup>

- I. THE LOWER COURT ERRED IN FINDING PLAINTIFF-APPELLANT AS HAVING NO RIGHTS AND INTEREST ON THE LOTS SUBJECT OF THIS CASE;
- II. THE LOWER COURT ERRED IN DISMISSING THIS CASE ON THE BASIS OF PRESCRIPTION, INVOKING THE RULE THAT AN ACTION FOR RECONVEYANCE OF REAL PROPERTY AS A RESULT OF FRAUD PRESCRIBES IN FOUR (4) YEARS; and
- III. THE LOWER COURT ERRED IN DISMISSING THIS CASE WITHOUT CONDUCTING A FORMAL HEARING ON THE MERITS OF THIS CASE.

#### Plaintiff-Appellant's Arguments

Appellant argues that he has clear legal rights and interest over the real properties in litigation, being the sole surviving heir of his predecessors-in-interest; that he is the sole surviving heir of his parent Jesus Gelig and the latter's siblings Atanacio, Lorenza and Emiliana who died without issue; that Jesus, Atanacio, Lorenza and Emiliana were in turn primary compulsory heirs of the deceased spouses Claudio Gelig and Guillerma Menguito, original owners of Lot No. 3589; that as such sole surviving heir, he succeeded to the estate of his predecessors-in-interest.<sup>[33]</sup>

Appellant contends that the reasoning of the lower court that he has not been declared as heir of Jesus, Atanacio, Lorenza and Emiliana, is opposed to jurisprudence as the Supreme Court in one case ruled that it was impractical to