



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HEIRS OF LEONARDA NADELA TOMAKIN, namely: LUCAS NADELA, OCTAVIO N. TOMAKIN, ROMEO N. TOMAKIN, MA. CRISTETA* T. PANOPIO, and CRESCENCIO TOMAKIN, JR. (deceased), represented by his heirs, BARBARA JEAN R. TOMAKIN RAFOLS*** and CRISTINA JEAN R. TOMAKIN,**
Petitioners,

G.R. No. 223624

Present:

CARPIO, J., Chairperson,
PERLAS-BERNABE,*
CAGUIOA,
J. REYES, JR., and
LAZARO-JAVIER, JJ.

- versus -

Promulgated:

17 JUL 2019

HEIRS OF CELESTINO NAVARES, namely: ERMINA N. JACA, NORMITA NAVARES, FELINDA N. BALLENA, RHODORA N. SINGSON, CRISTINA N. CAL ORTIZ, ROCELYN N. SENCIO, JAIME B. NAVARES, CONCHITA N. BAYOT, PROCULO NAVARES, LIDUVINA N. VALLE, MA. DIVINA N. ABIS, VENUSTO B. NAVARES and RACHELA N. TAHIR,
Respondents.

Handwritten signature: H.M. Cabalag

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DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) under Rule 45 of the Rules of Court (Rules) assailing the Decision² dated October 28, 2014 (CA Decision) and the Resolution³ dated March 23, 2016

* Also spelled as "Cristita" in some parts of the *rollo*.
** Also stated as "Cresencio" in some parts of the *rollo*.
*** Also appears as "Barbara Jean Tomakin-Rafols" in some parts of the *rollo*.
* On official leave.

¹ *Rollo*, pp. 3-22, excluding Annexes.
² Id. at 25-37. Penned by Associate Justice Renato C. Francisco, with Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino concurring.
³ Id. at 55-58. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pamela Ann Abella Maxino and Geraldine C. Fiel-Macaraig concurring.

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of the Court of Appeals⁴ (CA) in CA-G.R. CEB CV No. 03806. The CA Decision granted the appeal of respondents Heirs of Celestino Navares (respondents Navares) as well as reversed and set aside the Decision⁵ dated May 6, 2010 rendered by the Regional Trial Court, Branch 23, 7th Judicial Region, Cebu City (RTC) in Civil Case No. CEB-30246, which was in favor of petitioners Heirs of Leonarda Nadela Tomakin (petitioners Tomakin). The CA Resolution dated March 23, 2016 denied the Motion for Reconsideration⁶ filed by petitioners Tomakin.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

The property in dispute is Lot No. 8467⁷ originally owned by the late Jose Badana who died without issue. He was survived by his two sisters Quirina Badana and Severina Badana. The property was then covered by Original Certificate of Title No. RO-2230 (O-7281) in the name of Jose Badana.

On 18 May 2004, [Heirs of Celestino Navares (respondents Navares)] filed a Complaint for *Reconveyance and Damages* against [Heirs of Leonarda Nadela Tomakin (petitioners Tomakin)] before the RTC x x x.

In their complaint, [respondents Navares] alleged (a) that on 23 February 1955, Quirina Badana, as heir of her brother Jose Badana, sold one-half (½) of Lot No. 8467 to the late spouses Remigio Navares and Cesaria Gaviola, which portion, as claimed, is known as Lot No. 8467-B as evidenced by Sale with Condition;⁸ (b) that as successors-in-interest of the late spouses [Navares], [respondents Navares] inherited Lot No. 8467-B; (c) that they and their predecessors had been religiously paying realty taxes on Lot No. 8467-B since 1955; (d) that most of them had been occupying and residing on the property adversely and openly in the concept of an owner; (e) that on 6 December 1957, Severina Badana sold the other half of Lot No. 8467 known as Lot No. 8467-A to spouses Aaron Nadela and Felipa Jaca, the predecessors-in-interest of [petitioners Tomakin].⁹

On 30 October 1991, [petitioner] Lucas Nadela, together with Leonarda N. Tomakin, sold a portion of Lot No. 8467 with an area of 1,860 square meters out of what they inherited from [s]pouses Aaron Nadela and Felipa Jaca to spouses Alfredo Dacua, Jr. and Clarita Bacalso. The sale was evidenced by a Deed of Absolute Sale.¹⁰ [Respondents Navares] alleged that on the basis of this Absolute Sale, x x x Alfredo Dacua, Jr.¹¹ caused Lot No. 8467-A to be titled in his name. [Respondents

⁴ Eighteenth (18th) Division and Special Former Eighteenth (18th) Division, respectively.

⁵ *Rollo*, pp. 128-131. Penned by Presiding Judge Generosa G. Labra.

⁶ *Id.* at 38-52. Denominated as “Motion for Reconsideration of the Decision dated 28 October 2014 and Formal Entry of Appearance.”

⁷ Located at Inayawan, Cebu City. *Id.* at 101.

⁸ “That the VENDOR, in executing this conveyance hereby RESERVES her right to the fruits or products of the land herein conveyed during her lifetime, and the VENDEES, in accepting the same hereby OBLIGATES themselves to acknowledge the said right, provided, however, that upon the termination of the said lifetime of the VENDOR, then this document shall become absolute without the necessity of drawing a new deed of absolute sale.” *Id.* at 102.

⁹ *Rollo*, p. 111.

¹⁰ *Id.* at 104.

¹¹ Impleaded as one of the defendants in the RTC but is not impleaded as petitioner in the instant Petition.

Navares] further alleged that on 10 January 1994, [petitioners Tomakin] made it x x x appear that one Mauricia¹² Bacus (a complete stranger to the property) executed a document denominated as *Extra Judicial Settlement of the Estate of Jose Badana with Confirmation of Sale*; and that on the basis of this document, x x x Alfredo Dacua, Jr. maliciously caused Lot No. 8467-B to be titled in the name of Leonarda Nadela Tomakin and Lucas J. Nadela under Transfer Certificate of Title No. 131499.¹³ Oral demands were made by [respondents Navares] upon [petitioners Tomakin] to reconvey the title of Lot No. 8467-B which remained unheeded.

In their Answer, [petitioners Tomakin] claimed that they are the heirs of the late Leonarda Tomakin; that Lot No. 8467 was purchased by [s]pouses Aaron Nadela and Felipa Jaca from Severina Badana, sister-heir of the late Jose Badana, as evidenced by a Deed of Absolute Sale dated 6 December 1957;¹⁴ that the heirs of [spouses] Aaron Nadela and Felipa Jaca, namely Leonarda N. Tomakin and her brother Lucas J. Nadela executed a Deed of Partition conveying x x x Lot No. 8467 in favor of Leonarda N. Tomakin; that before Leonarda Tomakin died, she and her brother Lucas Nadela sold the one-half (½) portion of Lot No. 8467 in favor of [s]pouses Alfredo Dacua, Jr. and Clarita Bacalso evidenced by a Deed of Absolute Sale;¹⁵ that [s]pouses Aaron Nadela and Felipa Jaca, their heirs Leonard[a] N. Tomakin and Lucas Nadela and, thereafter, [petitioners Tomakin] have been exercising acts of ownership over Lot No. 8467 and Lot No. 8467-B. Lastly, [petitioners Tomakin] averred that [respondents Navares] are barred by prescription and laches – 49 years having elapsed since the alleged sale of the ½ portion of the property in 1955.

On 6 May 2010, the RTC rendered the assailed Decision in favor of [petitioners Tomakin] and against [respondents Navares]. It ruled that [respondents Navares] failed to prove that they are the rightful owners of Lot No. 8467-B. x x x¹⁶

[The dispositive portion of the RTC Decision reads as follows:]

WHEREFORE, foregoing premises considered, judgment is hereby rendered directing [respondents Navares]:

- 1) to return the owner's copy of TCT No. 131499 to [petitioners Tomakin];
- 2) to pay [petitioners Tomakin] [a]ttorney's fees in the amount of P30,000.00;
- 3) to pay [petitioners Tomakin] litigation expenses in the amount of P10,000.00.

¹² Spelled as "Maurecia" in the *Extra Judicial Settlement of Estate of Deceased Jose Badana with Confirmation of Sale*. In the said document, it is stated that Jose Badana, the registered owner of the parcel of land covered by OCT No. RO-2230 (O-7281), died single and was survived by his two sisters, Severina Badana and Quirina Badana; Severina Badana sold the said property to spouses Aaron Nadela and Felipa Jaca pursuant to a Deed of Absolute Sale on December 5, 1957; Severina Badana and Quirina Badana died without any issue except Mauricia Badana who is their only cousin; and Mauricia Badana, as "the sole and only living and direct heir of Jose Badana," had adjudicated unto herself the said estate of Jose Badana. *Rollo*, pp. 88-89.

¹³ *Rollo*, p. 90.

¹⁴ The sale appears to be inscribed on OCT No. RO-2230 (O-7281) on January 3, 1995. *Id.* at 27.

¹⁵ The sale appears to be inscribed on OCT No. RO-2230 (O-7281) on January 3, 1995. *Id.*

¹⁶ *Rollo*, pp. 26-28.

SO ORDERED.¹⁷

Aggrieved, respondents Navares appealed to the CA.¹⁸

Ruling of the CA

The CA in its Decision dated October 28, 2014 granted the appeal.

The CA held that the defense of prescription could not be sustained. Respondents Navares' complaint for reconveyance was not barred by prescription because of their actual possession of Lot No. 8467-B based on petitioner Tomakin's admission that most of respondents Navares are living in the said Lot and leasing portions thereof to tenants.¹⁹

The CA disagreed with the RTC's negation of the transfer of ½ of Lot No. 8467 in favor of respondents Navares based on their alleged failure to adduce evidence that the condition contained in the 1955 Deed of Absolute Sale with Condition (1955 Deed of Sale) in their favor was complied with. Contrary to the ruling of the RTC, the CA did not construe the proviso on the reservation of the right to the fruits or products of the property conveyed by Quirina Badana to respondents Navares' predecessors during her lifetime as a condition on the ground that the 1955 Deed of Sale did not in express terms provide that the non-fulfillment of the obligation to deliver the fruits would prevent the transfer of ownership of the property in question.²⁰ Even if petitioner Tomakin's argument that the proviso partook of the nature of a condition were to be sustained, the CA stated that they lacked personality to assail the same because they were not privies to the 1955 Deed of Sale.²¹ According to the CA, only Quirina Badana, as the vendor, had a cause of action to assail the non-fulfillment of the condition, and her failure to institute any action regarding the alleged condition during her lifetime constituted a waiver of whatever cause of action she might have had thereon.²²

The CA upheld the validity of the February 23, 1955 sale covering the ½ portion of Lot No. 8647 (known as Lot No. 8647-B and covered by Transfer Certificate of Title No. 131499) executed by Quirina Badana in favor of respondents Navares' predecessors and the December 6, 1957 sale executed by Severina Badana in favor of petitioner Tomakin's predecessors but only to the extent of her ½ share of Lot No. 8647.²³

The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the Appeal is **GRANTED**.
The Decision, dated 6 May 2010, rendered by the Regional Trial Court,

¹⁷ Id. at 131.

¹⁸ Id. at 132.

¹⁹ Id. at 30-31.

²⁰ Id. at 32.

²¹ Id.

²² Id.

²³ Id. at 36.



Branch 23, 7th Judicial Region, Cebu City in CIVIL CASE NO. CEB – 30246 for *Reconveyance and Damages* is hereby **REVERSED AND SET ASIDE**, to wit:

(a) *DECLARING* the Deed of Sale dated 6 December 1957, insofar as Lot No. 8647-B [now covered by TCT No. 131499] is concerned, as null and void; and

(b) *DECLARING* TCT No. 131499 in the name of Leonarda Nadela Tomakin and Lucas J. Nadela as null and void and *ORDERING* the Register of Deeds of Cebu City to cancel said title and to issue, in lieu thereof, new title in the name of the Heirs of Celestino Navares.

SO ORDERED.²⁴

Petitioners Tomakin filed a Motion for Reconsideration, which was denied by the CA in its Resolution²⁵ dated March 23, 2016.

Hence, the instant Rule 45 Petition. The Court in its July 4, 2016 Resolution²⁶ required respondents Navares to comment on the Petition within 10 days from notice thereof. To date, they have not filed any Comment. As such, respondents Navares are deemed to have waived the opportunity to file any Comment on the Petition.

The Issues

The Petition raises the following issues:

1. whether the CA failed to appreciate that respondents Navares' possession was not in the concept of an owner;
2. whether the CA failed to appreciate the indefeasibility of the Torrens title;
3. whether the CA failed to appreciate that respondents Navares in not previously filing a case for declaration of heirship as heirs of spouses Remegio Navares and Cesaria Gaviola have no cause of action against petitioners Tomakin; and
4. whether the CA failed to appreciate that respondents Navares are guilty of laches.²⁷

The Court's Ruling

The Petition is bereft of merit.

²⁴ Id. at 36-37.

²⁵ Id. at 55-58.

²⁶ Id. at 159.

²⁷ Id. at 5-6.



Review by the Supreme Court via a Rule 45 *certiorari* petition is not a matter of right, but involves sound judicial discretion because it will be granted only when there are special and important reasons therefor.²⁸ Petitioners Tomakin have failed to convince the Court that their Petition is justified by special and important reasons to warrant the granting thereof.

The grounds relied upon by petitioners Tomakin in the Petition are the very same arguments that they raised in their Motion for Reconsideration²⁹ before the CA, which the latter found to be without merit in its Resolution³⁰ dated March 23, 2016.

Anent the first issue, the Court quotes with approbation the CA's explanation why it was not persuaded by petitioners Tomakin's argument that respondents Navares' possession of the subject property is not in the concept of an owner, *viz.*:

[Petitioners Tomakin] assert, [respondents Navares'] possession of the property is not in the concept of an owner.

We are not persuaded.

In [*Sps.*] *Alfredo v. [Sps.] Borrás*,³¹ the Court ruled that prescription does not run against the plaintiff in actual possession of the disputed land because such plaintiff has a right to wait until his possession is disturbed or his title is questioned before initiating an action to vindicate his right. His undisturbed possession gives him the continuing right to seek the aid of a court of equity to determine the nature of the adverse claim of a third party and its effect on his title. The Court held that where the plaintiff in an action for reconveyance remains in possession of the subject land, the action for reconveyance becomes in effect an action to quiet title to property, which is not subject to prescription.

The action for reconveyance was filed by [respondents Navares] precisely because they deemed themselves owner of the litigated property prior to the claim of [petitioners Tomakin]. The filing of such action was an assertion of their title to the property. Thus, the question of whether or not [respondents Navares] are in possession of the subject property in the concept of an owner is a question of fact; and such question of fact has already been resolved by this Court in Our Decision.³²

Regarding the second issue, petitioners Tomakin argue that the complaint for reconveyance filed by respondents Navares involves a collateral attack on the subject certificate of title covering Lot No. 8647-B. They invoke Section 48 of Presidential Decree No. 1529 or the Property Registration Decree, which provides:

²⁸ RULES OF COURT, Rule 45, Sec. 6.

²⁹ *Rollo*, p. 39.

³⁰ *Id.* at 55-58.

³¹ 452 Phil. 178, 206 (2003).

³² *Rollo*, p. 57.

SEC. 48. *Certificate not subject to collateral attack.* – A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

Contrary to petitioners Tomakin's postulation, respondents Navares availed themselves of the correct remedy of reconveyance. The Court in *The Director of Lands v. The Register of Deeds for the Province of Rizal*³³ stated that: "[t]he sole remedy of the land owner whose property has been wrongfully or erroneously registered in another's name is, after one year from the date of the decree, not to set aside the decree x x x, but, respecting the decree as incontrovertible and no longer open to review, to bring an ordinary action in the ordinary court of justice for reconveyance or, if the property has passed into the hands of an innocent purchaser for value, for damages."³⁴

Proceeding to the third issue, petitioners Tomakin belatedly raised the same in their Motion for Reconsideration before the CA.³⁵ They never raised in their Answer³⁶ the ground that respondents Navares have no cause of action against them because the former had not previously filed a petition for declaration of heirship as heirs of spouses Remigio Navares and Cesaria Gaviola.

The third issue may no longer be raised by petitioners Tomakin on appeal.

Firstly, it is well-settled that a party may not change his theory of the case on appeal and this is expressly adopted in Section 15, Rule 44 of the Rules, which provides:

"SEC. 15. *Questions that may be raised on appeal.* – Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties."³⁷

The Pre-Trial Brief³⁸ of petitioners Tomakin raised only the following issues: (1) whether respondents Navares are the owners of Lot No. 8467-B; (2) whether the present action is barred by prescription; and (3) whether petitioners Tomakin are entitled to their counterclaims.³⁹ The RTC Decision⁴⁰ dated May 6, 2010 framed the issues to be resolved as follows: (1) whether the present action is barred by prescription; (2) whether

³³ 92 Phil. 826 (1953).

³⁴ Id. at 831.

³⁵ See *rollo*, pp. 44-47.

³⁶ Id. at 64-71.

³⁷ Willard B. Riano, CIVIL PROCEDURE, VOLUME I, THE BAR LECTURES SERIES (2011 Bantam Edition), p. 579.

³⁸ *Rollo*, pp. 78-80.

³⁹ Id. at 79.

⁴⁰ Id. at 128-131.



respondents Navares are the owners of Lot No. 8467 by right of succession; and (3) whether petitioners Tomakin are entitled to their counterclaims.⁴¹

Clearly, the third issue was not raised by petitioners Tomakin before the RTC. As such, this may no longer be raised nor ruled upon on appeal.

Secondly, defenses not pleaded in the answer may not be raised for the first time on appeal. Citing *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,⁴² Remedial Law Author and Reviewer Willard B. Riano explains:

x x x A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party. Accordingly, “courts of justice have no jurisdiction or power to decide a question not in issue.” Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties, is not only irregular but also extrajudicial and invalid. The rule rests on the fundamental tenets of fair play[, justice and due process⁴³].⁴⁴

Thirdly, it is also well-settled that issues raised for the first time on appeal and not raised in the proceedings in the lower court are barred by estoppel.⁴⁵

Given the foregoing, the Court cannot pass upon the third issue.

On the fourth issue, respondents Navares, having been in possession of and exercising acts of dominion over the subject property as found by the CA, cannot be deemed to be guilty of laches because they cannot be said to have omitted or neglected to assert and exercise their rights as owner thereof. Pursuant to *Sps. Alfredo v. Sps. Borrás*⁴⁶ cited by the CA in its Resolution dated March 23, 2016, the undisturbed possession of respondents Navares give them the continuing right to seek the aid of a court of equity to determine the nature of the adverse claim of petitioners Tomakin and its effect on their ownership of Lot No. 8467-B.⁴⁷

WHEREFORE, the Petition is hereby **DENIED**. The Decision dated October 28, 2014 and the Resolution dated March 23, 2016 of the Court of Appeals in CA-G.R. CEB CV No. 03806 are **AFFIRMED**.

⁴¹ Id. at 129.

⁴² 535 Phil. 481 (2006).

⁴³ Id. at 490, citing *Canada v. All Commodities Marketing Corporation*, 590 Phil. 342, 348 (2008).

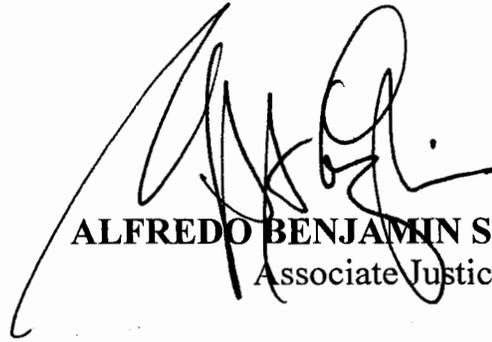
⁴⁴ Willard B. Riano, *supra* note 37, at 579-581.

⁴⁵ Id. at 581, citing *Imani v. Metropolitan Bank & Trust Company*, 649 Phil. 647, 661-662 (2010).

⁴⁶ *Supra* note 31.

⁴⁷ *Rollo*, p. 57.

SO ORDERED.



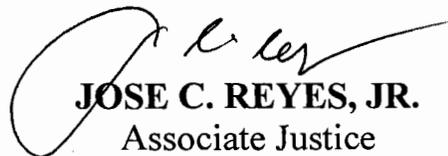
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson

(On official leave)
ESTELA M. PERLAS-BERNABE
Associate Justice



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Chief Justice

