Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LILIBETH ESPINAS-LANUZA, ONEL ESPINAS, as heirs of LEOPOLDO ESPINAS, and the MUNICIPAL ASSESSOR OF DARAGA, ALBAY,
Petitioners,

- versus -

FELIX LUNA, JR., ARMANDO VELASCO and ANTONIO VELASCO, as heirs of SIMON VELASCO,
Respondents.

G.R. No. 229775

Present:

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

Promulgated:

11 MAR 2019

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DECISION

REYES, J. JR., *J.*:

Assailed in this petition for review on *certiorari* are the June 13, 2016 Decision[1] and the January 26, 2017 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 104306 which affirmed the December 2, 2014 Decision[3] of the Regional Trial Court (RTC), Legazpi City, Branch 1 in Civil Case No. 10955, a case for annulment of extrajudicial settlement.

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1 Penned by Associate Justice Renato C. Francisco, with Associate Justice Apolinario D. Bruselas, Jr. and Associate Justice Danton Q. Bueser, concurring; *rollo*, pp. 34-43.

2 Id. at 69-71.

3 Penned by Judge Solon B. Sison; id. at 45-55.

The Antecedents

During his lifetime, Simon Velasco (Simon) was the owner of several properties including the land covered by Original Certificate of Title (OCT) No. 20630, situated in Namantao, Daraga, Albay (subject property). Simon had four children, namely, Heriberto Velasco (Heriberto), Genoviva Velasco (Genoviva),[4] Felisa Velasco (Felisa),[5] and Juan Velasco (Juan). Felix Luna, Jr. (Felix), is the son of Genoviva, while Armando Velasco and Antonio Velasco are the children of Heriberto (collectively, respondents).

Respondents allege that Juan and Felisa, through deceit, connivance, and misrepresentation, executed a Deed of Extrajudicial Settlement and Sale dated May 14, 1966, which adjudicated the subject property to Leopoldo Espinas (Leopoldo), son of Felisa. They further contend that they discovered the fraud in 2010 when they came to know that Tax Declaration No. 02-040-0147 was issued in Leopoldo's name.

In their defense, Lilibeth Espinas-Lanuza and Onel Espinas (petitioners), children of Leopoldo, argue that when Simon died intestate, his children agreed to partition his estate such that the property situated in Magogon, Camalig, Albay went to Genoviva and the parcel of land located in Ting-ting, Taloto, Camalig, Albay went to Heriberto. On the other hand, the subject property was the joint share of Juan and Felisa who subsequently executed a Deed of Extrajudicial Settlement and Sale on May 14, 1966, conveying the subject property to Leopoldo.

The RTC Ruling

In a Decision dated December 2, 2014, the RTC ruled that the co-owners of Simon's properties were his children, Genoviva, Felisa, Juan and Heriberto. It held that as co-owners of the subject property, Felisa and Juan enjoyed full ownership of their portions and they had the right to alienate the same. The trial court added that the sale by Felisa and Juan of their respective undivided shares in the co-ownership was valid and the vendee, Leopoldo, became the owner of the shares sold to him. It concluded that the heirs of Heriberto and Genoviva were co-owners of Leopoldo in the subject property. The *fallo* reads:

> WHEREFORE, the evidence for the [petitioners] not having been preponderant on their claim, the court rules in favor of the [respondents] and now declare that [respondents] **FELIX LUNA, JR., ARMANDO VELASCO and ANTONIO VELASCO, are co-owners with [petitioners] LILIBETH ESPINAS-LANUZA and ONEL ESPINAS,**

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4 Also referred to as "Genoveva" in some parts of the *rollo*.

5 Also referred to as "Feliza" in some parts of the *rollo*.

of Cadastral Lot No. 13507 situated in the Municipality of Daraga, Albay.

By whatever manner Cadastral Lot No. 13507 is listed for tax purposes in the Office of the Municipal Assessor of Daraga, Albay the same does not alter the fact that it is a parcel of land in co-ownership.

Defendants' counterclaim is dismissed for lack of merit.

SO ORDERED.[6]

The CA Ruling

In a Decision dated June 13, 2016, the CA adjudged that Heriberto and Genoviva were excluded in the execution of the Deed of Extrajudicial Settlement entered into by Juan and Felisa as there was no showing that Heriberto and Genoviva were already deceased when the deed was executed. It noted that the extrajudicial settlement adjudicated and sold properties which still formed part of the estate of Simon and were, therefore, co-owned by his heirs. The appellate court emphasized that under Section 1, Rule 74 of the Rules of Court, no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof. It opined that fraud had been committed against the excluded heirs, thus, the Deed of Extrajudicial Settlement and Sale must be annulled. The CA disposed the case in this wise:

WHEREFORE, premises considered, the instant appeal is **DENIED** for lack of merit.

SO ORDERED.[7]

Petitioners moved for reconsideration, but the same was denied by the CA in a Resolution dated January 26, 2017. Hence, this petition for review on *certiorari*, wherein petitioners raised the following errors:

I. THE [CA] ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDINGS OF THE RTC-ALBAY, BRANCH 1 THAT FELIX LUNA, JR., ARMANDO VELASCO AND ANTONIO VELASCO ARE CO-OWNERS WITH [PETITIONERS] LILIBETH ESPINAS-LANUZA AND ONEL ESPINAS OF CADASTRAL LOT NO. 13507 SITUATED IN THE MUNICIPALITY OF DARAGA, ALBAY[;]

II. THAT THE [CA] ERRED AND GRAVELY ABUSED ITS DISCRETION IN IGNORING THE ACTUAL PARTITION

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6 *Rollo*, p. 55.
7 Id. at 43.

ALREADY DONE BY GENOVIVA, HERIBERTO, FELISA AND JUAN, ALL SURNAMED VELASCO LONG BEFORE THE SALE OF LOT NO. 13507 IN FAVOR OF LEOPOLDO ESPINAS ON MAY 14, 1966[; and]

III. THAT THE [CA] ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT IGNORED THE PRESENCE OF LACHES AND PRESCRIPTION IN PETITIONERS' FAVOR ALLEGING FRAUD HAS BEEN COMMITTED AGAINST THE EXCLUDED HEIRS.[8]

Petitioners argue that all of Simon's children were given their respective hereditary shares from the estate; that the property situated in Magogon, Camalig, Albay went to Genoviva, while the property situated in Ting-ting, Taloto, Camalig, Albay went to Heriberto; that the subject property was given to Juan and Felisa as their share in the estate; that Juan and Felisa knew that their brother and sister had already been given their due shares in the estate of Simon, thus, when they sold the subject property to Leopoldo, they no longer deemed it necessary to have Genoviva and Heriberto sign the Deed of Extrajudicial Settlement and Sale; that the land given to Juan and Felisa was under the name of Simon, thus, they had to execute a deed of extrajudicial settlement in order to transfer the subject property to Leopoldo; that the distribution of Simon's properties shows that there had been a partition; that the heirs of Simon had been in possession of their respective hereditary shares; and that Genoviva and Heriberto never questioned the ownership of Juan and Felisa during their lifetime nor the sale made in favor of Leopoldo.[9]

In their Comment,[10] respondents counter that a deed of extrajudicial partition executed without including some of the heirs, who had no knowledge of and consent to the same, is fraudulent and vicious; and that after the death of Simon, his children never partitioned his estate.

In their Reply,[11] petitioners contend that "a parol partition may also be sustained on the ground that the parties thereto have acquiesced in and ratified the partition by taking possession in severalty, exercising acts of ownership with respect thereto, or otherwise recognizing the existence of the partition:"[12] that for more than 44 years, no one among the heirs of Simon ever bothered to question Leopoldo's open possession of the subject property which was the joint hereditary share of Felisa and Juan; that Leopoldo's open and notorious possession of the subject property for 44 years supports the presumption that there was already an actual partition among the heirs of Simon.

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8 Id. at 10.
9 Id. at 10-30.
10 Id. at 73-81.
11 Id. at 85-93.
12 *Hernandez v. Andal*, 78 Phil. 196, 203 (1947).

The Court's Ruling

The petition is meritorious.

Partition is the separation, division and assignment of a thing held in common among those to whom it may belong.[13] It may be effected extrajudicially by the heirs themselves through a public instrument filed before the register of deeds.[14]

However, as between the parties, a public instrument is neither constitutive nor an inherent element of a contract of partition.[15] Since registration serves as constructive notice to third persons, an oral partition by the heirs is valid if no creditors are affected.[16] Moreover, even the requirement of a written memorandum under the statute of frauds does not apply to partitions effected by the heirs where no creditors are involved considering that such transaction is not a conveyance of property resulting in change of ownership but merely a designation and segregation of that part which belongs to each heir.[17]

Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, an exchange, a compromise, or any other transaction.[18] Furthermore, in *Hernandez v. Andal,*[19] the Court explained that:

> On general principle, independent and in spite of the statute of frauds, courts of equity have enforced oral partition when it has been completely or partly performed.
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> > Regardless of whether a parol partition or agreement to partition is valid and enforceable at law, equity will in proper cases, where the parol partition has actually been consummated by the taking of possession in severalty and the exercise of ownership by the parties of the respective portions set off to each, recognize and enforce such parol partition and the rights of the parties thereunder. Thus, it has been held or stated in a number of cases involving an oral partition under which the parties went into possession, exercised acts of ownership, or otherwise partly performed the partition agreement, that equity will confirm such partition and in a proper case decree title in accordance with the possession in severalty.

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13 CIVIL CODE, Art. 1079.
14 RULES OF COURT, Rule 74, Sec. 1.
15 *Hernandez v. Andal,* supra note 12, at 205.
16 Id. at 208-209.
17 Id. at 208.
18 CIVIL CODE, Art. 1082.
19 Supra note 12.

> In numerous cases it has been held or stated that parol partitions may be sustained on the ground of estoppel of the parties to assert the rights of a tenant in common as to parts of land divided by parol partition as to which possession in severalty was taken and acts of individual ownership were exercised. And a court of equity will recognize the agreement and decree it to be valid and effectual for the purpose of concluding the right of the parties as between each other to hold their respective parts in severalty.
>
> A parol partition may also be sustained on the ground that the parties thereto have acquiesced in and ratified the partition by taking possession in severalty, exercising acts of ownership with respect thereto, or otherwise recognizing the existence of the partition.
>
> A number of cases have specifically applied the doctrine of part performance, or have stated that a part performance is necessary, to take a parol partition out of the operation of the statute of frauds. It has been held that where there was a partition in fact between tenants in common, and a part performance, a court of equity would have regard to and enforce such partition agreed to by the parties.

In *Maglucot-Aw v. Maglucot,*[20] the Court declared, *viz.*:

> Partition may be inferred from circumstances sufficiently strong to support the presumption. Thus, after a long possession in severalty, a deed of partition may be presumed. It has been held that recitals in deeds, possession and occupation of land, improvements made thereon for a long series of years, and acquiescence for 60 years, furnish sufficient evidence that there was an actual partition of land either by deed or by proceedings in the probate court, which had been lost and were not recorded.

In the case at bar, it has been shown that upon the death of Simon, his children, Genoviva, Heriberto, Juan and Felisa, orally partitioned the estate among themselves, with each one of them possessing their respective shares and exercising acts of ownership. Respondents did not dispute that the property situated in Magogon, Camalig, Albay went to Genoviva while the property situated in Ting-ting, Taloto, Camalig, Albay went to Heriberto. Further, they did not raise any objection to the fact that the subject property was given to Juan and Felisa as their share in Simon's estate. It must be emphasized that no one among the children of Simon disturbed the *status quo* which has been going on from the year 1966. To be sure, Genoviva and Heriberto were not without knowledge that the subject property was transferred to Leopoldo and that the latter had introduced improvements

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[20] 385 Phil. 720, 736-737 (2000).

thereon. They could have easily questioned the transfer, but they chose to remain silent precisely because they were already given their respective shares in the estate. Hence, it can be gleaned unerringly that the heirs of Simon agreed to orally partition his estate among themselves, as evinced by their possession of the inherited premises, their construction of improvements thereon, and their having declared in their names for taxation purposes their respective shares. Actual possession and exercise of dominion over definite portions of the property in accordance with an alleged partition are considered strong proof of an oral partition.[21]

In addition, a possessor of real estate property is presumed to have title thereto unless the adverse claimant establishes a better right.[22] Also, under Article 541 of the Civil Code, one who possesses in the concept of an owner has in his favor the legal presumption that he possesses with a just title, and he cannot be obliged to show or prove it. Moreover, Article 433 of the Civil Code provides that actual possession under a claim of ownership raises a disputable presumption of ownership. Here, aside from respondents' bare claim that they are co-owners of the subject property, they failed to adduce proof that the heirs of Simon did not actually partition his estate.

Finally, laches has set in against respondents, precluding their right to recover the subject property. In *De Vera-Cruz v. Miguel*,[23] the Court declared:

> Laches has been defined as such neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. It is a delay in the assertion of a right which works disadvantage to another because of the inequity founded on some change in the condition or relations of the property or parties. It is based on public policy which, for the peace of society, ordains that relief will be denied to a stale demand which otherwise could be a valid claim. It is different from and applies independently of prescription. While prescription is concerned with the fact of delay, laches is concerned with the effect of delay. Prescription is a matter of time; laches is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; laches is not. Laches applies in equity, whereas prescription applies at law. Prescription is based on a fixed time, laches is not. Laches means the failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it. (Citations omitted)

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21 *Heirs of Mario Pacres v. Heirs of Cecilia Ygoña*, 634 Phil. 293, 309 (2010).
22 *Heirs of Jose Casilang, Sr. v. Casilang-Dizon*, 704 Phil. 397, 419 (2013).
23 505 Phil. 591, 602-603 (2005).

The elements of laches are: (1) conduct on the part of the defendant, or one under whom he claims, giving rise to the situation that led to the complaint and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred.[24]

In this case, there is no question on the presence of the first element of laches. The object of respondents' complaint before the trial court was to annul the extrajudicial settlement in order to recover their shares in the subject property, which is presently in the hands of petitioners. The second element of delay is also present in the case at bar. Respondents' suit was instituted in 2010, 44 years after the property was conveyed to Leopoldo in 1966. Again, respondents' predecessors-in-interest, Genoviva and Heriberto, could not have been unaware of Leopoldo's open and continuous possession of the subject property. The third element is also present in this case. Petitioners had no inkling of respondents' intent to possess the subject property considering that Simon's children never contested the conveyance of the subject property to Leopoldo. As to the fourth element of laches, it goes without saying that petitioners will be prejudiced if respondents' complaint is accorded relief, or not held barred. Needless to say, laches has set in against respondents, precluding their right to recover the subject property.

Accordingly, considering that Felisa and Juan already owned the subject property at the time they sold the same to Leopoldo on May 14, 1966, having been assigned such property pursuant to the oral partition of the estate of Simon effected by his heirs, petitioners are entitled to actual possession thereof.

WHEREFORE, the petition is **GRANTED**. The June 13, 2016 Decision and the January 26, 2017 Resolution of the Court of Appeals in CA-G.R. CV No. 104306 are **REVERSED and SET ASIDE.** A new judgment is hereby entered:

1) Declaring the land covered by Original Certificate of Title (OCT) No. 20630, situated in Namantao, Daraga, Albay as the share of Juan Velasco and Felisa Velasco in the estate of Simon Velasco; and

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[24] *Metropolitan Waterworks and Sewerage System v. Court of Appeals*, 357 Phil. 966, 984 (1998).

2) Declaring petitioners as lawful possessors of the property covered by Original Certificate of Title (OCT) No. 20630, situated in Namantao, Daraga, Albay by virtue of the Deed of Extrajudicial Settlement and Sale executed by Juan Velasco and Felisa Velasco in favor of Leopoldo Espinas, petitioners' predecessor-in-interest.

SO ORDERED.

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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
Senior 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