

CIVIL LAW — PART TWO

PROPERTY, SUCCESSION AND SPECIAL CONTRACTS

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For this area of civil law, there is no appreciable change in the doctrines laid down by the Supreme Court. In most of the cases, the task of the Court was confined merely to the determination of the facts and the law applicable.

PROPERTY

In the field of property, two cases involved the use of public waters. One case related to the easement of aqueduct when the canal which passed through the servient estate was demolished by its occupant, thus preventing the flow of water to the adjoining estate.¹ The other case related to the question of the exclusive use of public waters resulting from the act of a land-owner in increasing the height of the dam at the mouth of the creek, shutting off the supply of water to the adjoining estate whose owner was previously granted appropriation rights in the river by the government.²

Easement of aqueduct-registration of the servient estate under the Land Registration Act

In the first case mentioned above, the canal in question was found to be merely an extension of a system of conduits established long ago, and that the plaintiff had been using the water from said canal to irrigate his land for at least 30 years, before the respondent demolished the canal in 1953, stopping the flow of water and depriving the land of the plaintiff of water. The action was for preliminary injunction and the restoration of the demolished canal.

The Court, applying Article 558 (now 643) of the Civil Code, held that there was a fair presumption that plaintiff had a right to the easement of aqueduct, that the water was sufficient for his purpose, and that it was more convenient to draw the water from said canal than directly from the creek, in view of the topography of the area and its proximity to the main

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¹ Salazar v. Gutierrez, et. al., G.R. No. 21727, May 29, 1970.

² Del Valle-Tiongson v. Fernandez, G.R. No. 26403, October 20, 1970.

dike. It further held that plaintiff's right to use the water had become vested under Article 194 of the Spanish Law of Waters which provides for 20 years' prescriptive period, without objection on the part of the authorities, or of third persons, and under Article 504 of the Civil Code which provides for prescription in 10 years. Article 118 of the Spanish Law of Waters also allowed the creation of a compulsory easement of aqueduct for the purpose of establishing or extending an irrigation system. The fact that the servient estate was registered in 1923 without any annotation of the easement, did not extinguish the easement as the owner of the servient estate allowed the easement to continue, in spite of such non-registration, thus either recognizing its existence as a compulsory servitude or voluntarily agreeing to its establishment and continuance.

Use of public waters—requisites for acquisitive prescription

In the second case, the Court held applicable the following provisions of the Spanish Law of Waters of August 3, 1866:

“Article 39. The right to enjoy in perpetuity the waters of springs and creeks is acquired by the owners of lower estates and in the same way by those adjoining estates when they have appropriated said waters without interruption for 20 years.

Article 194. Any person who has enjoyed the use of public waters for 20 years without objection on the part of the authorities or of any third person, shall continue in its enjoyment, even though he may not be able to show that he received proper permission.”

In order that prescription must set in, possession must be adverse, continuous, public, and to the exclusion of all others. It was found that the plaintiffs started to appropriate the waters exclusively for themselves only in 1940, when a concrete dam was constructed at the mouth of the creek. Only 15 years had elapsed up to the filing of the complaint. Before that time, the use by the plaintiffs was not exclusive nor adverse to others. Hence, they had no right to the exclusive use of water.

SUCCESSION

In the field of succession one case involved the question of betterment under the old Civil Code, another involved the partition of the estate by will whereby the legitime of some of the heirs were impaired, and still another involved the annulment of the institution of a voluntary heir allegedly based on a false cause.

Mejora or betterment—who are entitled

In the case of *Testate Estate of Lucia Agaton*,³ the decedent who died on May 27, 1949, was survived by two sons and their legitimate descendants.

³ *Estorque v. Estorque*, G.R. No. 19573, June 30, 1970.

In the will, she left two lots and one-half interest in the house to her son S; the other half interest to the son of S; one-sixth interest in a parcel of land to her other son V, and the other 5/6 interest to the daughter of V. The value of the property devised to the two grandchildren exceeded the free portion (1/3) of the estate. The question was whether the share given to the grandchildren could be considered as a betterment so as to be chargeable to the other half of the legitime.

The Court applied Articles 808 and 828 of the old Civil Code, which provide as follows:

"Article 808. The legitime of the legitimate children and descendants consist of 2/3 of the hereditary estate of the father and of the mother. Nevertheless, the latter may dispose of one of the 2/3 forming the legitime in order to apply it as a betterment to their legitimate children or descendants.

Article 828. The bequest or legacy made by the testator to one of the children or descendants shall not be considered a betterment except where the testator expressly declared that such is his will or when it cannot be included in the free portion (as long as the strict legitime of the compulsory heir is not impaired)."

The Court applied the last phrase of Article 828, and ruled that a descendant who is not a forced heir can be given a *mejora*, and cited the opinions of Manresa and Scaevola, and the decision of the Supreme Court of Spain of December 19, 1903 which traced the rule from Law 18 of the Laws of Toro granting such right expressly, there being no provision to the contrary in the Spanish Civil Code and the Law of Bases.

Partition by will-impairment of legitime

In the case of *Rivera v. Dizon, et al.*,⁴ the testatrix died in 1961, survived by seven compulsory heirs, consisting of 6 legitimate children and a legitimate grandchild who was the only son of a predeceased legitimate son of the decedent. In the will, the testatrix divided and distributed her properties among her compulsory heirs and 7 other legitimate grandchildren.

The appraised value of the real properties devised by the testatrix to two of her children exceeded their legitime, while the appraised value of the properties devised to five heirs were less than their legitime. The project of partition filed by the executrix would respect the properties devised to each, the deficiency of the legitime to be completed by payment in cash, while the project of partition presented by the other compulsory heirs would treat all testamentary dispositions as devises to be reduced proportionately so as to be encompassed in the free portion, and the shares of the compulsory heirs would consist of their share in the legitime plus their devise proportionately reduced.

⁴ G. R. No. 24561, June 30, 1970.

The issue was whether the testamentary dispositions were in the nature of devises imputable to the free portion, and therefore subject to reduction, or whether the compulsory heirs could merely demand the completion of their legitime, and be compelled to accept payment in cash.

The Court held that the testamentary dispositions were in the nature of a partition of the estate by will, as shown by the fact that after commanding all her obligations paid, the testatrix expressly commanded that her properties be divided in accordance with the dispositions in the will. The right of the testator to partition her estate under Article 1080 is subject only to the right of the compulsory heirs to their legitime.

The Court further held that the oppositor's project of partition would amount to distribution by intestacy, nullify the testatrix' will, and would run counter to Article 1091, citing the case of *Habana v. Imbo*.⁵ The testamentary dispositions, being disposed in favor of the compulsory heirs, do not have to be taken only from the free portion. Article 912 of the Civil Code allows the giving of a devise to a compulsory heir who may retain the same, provided its value does not exceed the disposable portion and the share pertaining to him as legitime. The compulsory heirs are entitled to demand completion, not in real property as they had already been partitioned by the testatrix to her heirs, but by being paid in cash. Despite the fact that the purchasing value of the peso has greatly declined since the testatrix' death in 1961, the value of the estate must be reckoned as of the death of the decedent, as, otherwise, estates could never be settled if there were to be a revaluation with every subsequent fluctuation in the values of currency and the properties of the estate.

Institution of voluntary heirs in will—false cause

In the case of *Austria, et. al. v. Reyes, et. al.*,⁶ the testatrix instituted as heirs to 1/2 of her entire estate, her five "adopted" children. Her relatives by nature (nephews and nieces) claimed their right to inherit *ab intestato*, on the ground that the adoption was not legal and hence, the testatrix instituted said children on the belief that they were her compulsory heirs and entitled to legitime. On the theory that under Article 850, the institution was based on a false cause, that the testatrix would not have made such institution had she known of such falsity, and that therefore, the institution should be annulled, the nephews and nieces of the testatrix claimed the entire estate.

The Court held that the institution can be annulled only when one is satisfied after an examination of the will that the testator clearly would not have made the institution if he had known the cause to be false. There

⁵ G. R. Nos. 15598 & 15726, March 31, 1964.

⁶ G. R. No. 23079, February 27, 1970.

was no indication that the decedent would have willed her estate other than the way she did, if she had known that she was not bound by law to make allowance for legitimes. Testacy is favored and doubts are resolved on its side, especially where the will evinces an intention on the part of the testator to dispose of practically his whole estate. Intestacy should be avoided and the wishes of the testator should be allowed to prevail.

PRESCRIPTION OF ACTIONS

In the field of prescription only three cases merit attention. One relates to a right of action to demand a share in the business against a former partner,⁷ the second refers to prescription in derogation of a decision in a land registration case,⁸ and the third refers to the question of interruption of the prescriptive period to revive a final judgment.⁹

Prescription between partners—accrual of action

In the first case, the Court held that Articles 1785¹⁰ and 1829¹¹ presuppose a continuation of the partnership after the termination of the period for which it was created, and not where, as in this case, defendant repudiated the partnership as early as 1947, with either actual or presumed knowledge of the plaintiff. Plaintiff pledged his share in the partnership to defendant, his copartner, in consideration of the latter's payment of plaintiff's debt to another. Due to plaintiff's failure to pay upon demand, defendant assumed full ownership of the business in 1947, and changed the name of the business to his own. Plaintiff brought the action in 1961 to demand an accounting, and to claim his share in the business.

The Court held that plaintiff's action was barred. Whether defendant acted in bad faith or good faith, after eight years of actual, adverse possession, defendant acquired clear ownership of the business by acquisitive prescription under Articles 1132 and 1140 of the Civil Code.

⁷ *Dira, v. Tañega*, G. R. No. 23232, June 17, 1970.

⁸ *Alvero v. Reas, et al.*, G. R. No. 28337, September 30, 1970.

⁹ *PNB v. Deloso*, G. R. No. 28301, March 30, 1970.

¹⁰ Article 1785, Civil Code provides:

“When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is *prima facie* evidence of a continuation of the partnership. (n)”

¹¹ Article 1829, Civil Code provides:

“On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed. (n)”

Prescription—registered lands, when considered

In the second case, the land in question was adjudged to the petitioners in a decision of the Court of Land Registration in 1937, by virtue of a sale made in their favor by the heirs of their common ancestor. Said decision was not entered or transcribed, as provided in section 41 of the Land Registration Act, and no decree or certificate of title issued. Neither was the decision enforced. Said heirs verbally partitioned the land in 1938, and each heir had since then possessed his share as exclusive owner, and the agreement was ratified in writing in 1949.

On the question as to who had a better right to the land, the Court held that the land did not become registered land under Sections 41, 45 and 46 of the Land Registration Act, there having been no proper entry of judgment and decree of registration. Hence, the judgment did not acquire any greater force than an ordinary judgment. The law applicable is sections 40 and 41 of the Code of Civil Procedure which provide for 10 years' actual, adverse, uninterrupted, open, and public possession under a claim of title, adverse to all other claimants. The law did not require good faith and just title. Hence, respondents acquired ownership by acquisitive prescription.

Action for revival of final judgments—interruption of period

In the third case, judgment was rendered by the Court of First Instance on January 25, 1951 in favor of plaintiffs ordering defendants to pay the sum of ₱600 plus interests, attorney's fees and costs. Said judgment was not enforced within 5 years from the date it became final. On June 28, 1960, plaintiff filed with the same Court of First Instance an action for the revival of said judgment. The case was dismissed on September 30, 1964 for lack of jurisdiction.

On January 11, 1965, plaintiff filed a similar action in the City Court. The action was dismissed on the ground that more than 10 years elapsed from the date of the final judgment sought to be revived.

The issues were: whether the first case brought in the Court of First Instance for the revival of the judgment interrupted the running of the prescriptive period, and whether the period commenced to run only after the lapse of the five-year period within which the judgment can be executed by mere motion under the Rules of Court.

Citing the case of *PNB v. Osete, et. al.*,¹² the Supreme Court reiterated its previous ruling that Article 1155 of the New Civil Code which provides for interruption of the period applies only to actions to collect, not actions for revival of a judgment. Citing the case of *Gutierrez Hnos. v. De la Riva*,¹³ the Court reiterated the doctrine that the ten-year prescriptive period com-

¹² G. R. No. 24997, July 18, 1968.

¹³ 46 Phil. 827 (1923)

menced to run from the date of judgment became final, and not from the expiration of five years thereafter.

SPECIAL CONTRACTS; SALES

Commercial brokerage distinguished from sale

The case of *Commissioner of Internal Revenue v. Constantino, et. al.*,¹⁴ involved the determination of whether the contract between the respondent and International Harvester Company was one of agency or sale. Respondent had a business establishment under his name where he stored, displayed, and sold trucks, machinery, equipment, spare parts, and accessories shipped to him by IHC, in accordance with their "Dealers Sales and Service Agreement". Under said agreement, respondent was designated as the exclusive dealer of the products of IHC within a prescribed territory. Whenever respondent wished to buy from IHC, either on cash or on credit, he filed a "Dealer Order of Goods" which contained the following conditions in small print: the title of the goods delivered under said order shall remain in the IHC until the full purchase price shall have been paid in cash or acceptable security; that prior to full payment of the price, the dealer shall have no right to sell or dispose of the goods except in the ordinary course of retail trade for their reasonable value; and that before delivery to a purchaser, the dealer shall secure from the purchaser full payment of the price, and such proceeds shall be considered the property of the IHC.

The Court ruled that the effect of the aforementioned condition in the "Dealer Order for Goods" is that title to the goods sold by the dealer to his customer passed directly from the IHC to the customer, and that the price of such goods belong to IHC. Whenever the transaction between the respondent and his customer was on credit, respondent required his customer to execute a chattel mortgage in his favor, but then he must assign in favor of the IHC all his rights, interest and participation in the goods.

Since IHC retained ownership of the goods and the price and the terms of which were subject to IHC's control, the relationship between IHC and the dealer was held to be one of agency, and the discount that the dealer received was not a "trade discount" but compensation or profit for selling or bringing about the sale of merchandise for IHC.

Sale of movable on installments—right of vendor to receive payments pending action for replevin

In the case of *Northern Motors, Inc. v. Sapinosa, et. al.*,¹⁵ upon failure of the vendee to pay more than two installments on the price, the

¹⁴ G. R. No. 25926, February 27, 1970.

¹⁵ G. R. No. 28074, May 29, 1970.

vendor filed an action for replevin, electing the remedy of extrajudicial foreclosure of mortgage over the object of the contract of sale. Before filing the answer, defendant vendee made two installment payments on the price. The writ of replevin was issued and the object of the contract was turned over to the plaintiff. After trial, the lower court affirmed the right of the plaintiff to foreclose the mortgage but denied his right to retain the amounts paid after the filing of the action.

Upon appeal, the Supreme Court held that it is the fact of the actual sale or foreclosure of the mortgaged chattel which barred further recovery of the balance of the price. The payments made by the vendee after the filing of the action was a voluntary act on his part, and did not result from a "further action" instituted by the plaintiff. There is no reason why a mortgagee should be barred from accepting, before foreclosure sale, payments voluntarily tendered by the mortgagor who admits a subsisting indebtedness.

Applicability of Article 1544 to unregistered lands

The case of *Carumba v. Court of Appeals, et. al.*¹⁶ involved the execution sale of unregistered parcel of land at the instance of a creditor of the vendor who had previously sold the same land to another. The latter did not register the sale in their favor but nevertheless took possession of the land and cultivated it. The purchaser at the execution sale who was the creditor of the vendor registered the sale in the Office of the Register of Deeds.

The Supreme Court held that Article 1544¹⁷ is not applicable to unregistered land. The purchaser of unregistered land at an execution sale merely steps into the shoes of the judgment debtor and acquires the latter's interest in the property sold, as provided in section 35 of Rule 39 of the Rules of Court. The Court further ruled that although the first sale was embodied in a private document, inasmuch as the vendees took possession of the land prior to the levy, ownership vested in said vendees. Therefore when the levy was made, the judgment debtor had no more right over the land which could pass to the purchaser at the execution sale.

¹⁶ G. R. No. 27587, February 18, 1970.

¹⁷ Article 1544, Civil Code provides:

"If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property. Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. (1473)"

Contract to sell real property—right to cancel as stipulated

In the case of *J.M. Tuason & Co., Inc. v. Javier*,¹⁸ the right to cancel the agreement as given to the plaintiff in a contract to sell real property on installments, payable in 10 years, upon failure of the vendee to pay four installments. Defendants vendee paid the installments for almost eight years. Subsequently she defaulted in several payments, in view of which plaintiff notified her of the rescission of the contract, and instituted this action to recover possession of the land. After the filing of the complaint, defendant offered to pay all the installments in arrears, plus interests, reasonable attorney's fees and the costs of the suits. The offer was turned down by the plaintiff.

The Supreme Court, however, in the interest of justice and equity, allowed the defendant to pay the amounts due within 60 days from receipt of notice of the judgment, plus interests, attorney's fees in the sum of ₱1,000, and costs. As plaintiff would recover everything due it under the contract, including damages, and defendant had made payments exceeding the principal obligation, under Article 1234 of the Civil Code, the Court gave defendant a new term. This is one case where the Court did not strictly enforce the stipulations in the contract, and instead allowed a grace period for the defendant.

Right of legal redemption — co-ownership

In the case of *De la Cruz v. Cruz, et. al.*,¹⁹ the land in question consisted of 662 square meters, the northern half of which was first conveyed to the plaintiff. The remaining southern half was later sold by the owner to the defendant. Plaintiff, claiming to be a co-owner of the vendor, brought this action to exercise the right of legal redemption.

The Court held that plaintiff was not a co-owner of the vendor, since the portion sold to him was concretely determined and identifiable as the northern half. Hence, said portion became his exclusive property, and there was no right of legal redemption.

Judicial compromise—execution

In an unlawful detainer case,²⁰ the parties entered into a compromise whereby defendants admitted they owed plaintiff ₱4,070.00 as rents in arrears, and bound themselves to pay it in installments. They also agreed on a new lease contract of one year, renewable in writing, and in case of failure to comply with said agreement, to vacate, and upon termination of the lease, execution shall immediately issue. The compromise agreement was approved by the Court. More than a year after, plaintiff moved for the

¹⁸ G. R. No. 28569, February 27, 1970.

¹⁹ G. R. No. 27759, April 17, 1970.

²⁰ *Vda. de Corpus v. Ambrosio*, G. R. No. 30206, March 30, 1970.

execution of said agreement. The motion was opposed on the ground that the unpaid rentals involved in the unlawful detainer case had already been paid. Hence, there was nothing more for the Court to execute.

The Supreme Court held that the agreement covered other subjects, such as the granting of a new lease, the possibility of its renewal, and enforcement by execution of the agreement, in case of failure to vacate upon termination. Hence, a writ of execution was held to be in order.

Discharge of surety—insolvency of debtor

In the case of *Manila Surety & Fidelity Co., Inc. v. Almeda, et. al.*,²¹ the debtor having been judicially declared insolvent, his surety filed an action against the debtor and the creditor NAMARCO to secure its release from the bond executed by it in favor of NAMARCO basing its action on Article 2071(2) of the Civil Code.

The Supreme Court held that Article 2071 gives a right of action against the principal debtor, and not against the creditor, as the purpose of a guaranty is precisely to protect the creditor from insolvency of the debtor. Article 2071 would apply if the creditor agreed to accept an equally safe security, such as a pledge or mortgage or another guaranty. If the creditor does not agree, the debtor may only give a counter-bond or counter-guaranty to his guarantor, which was not possible in this case as the assets of the debtor were in custody of the court. The remedy of the surety should have been to file a contingent claim in the insolvency proceedings.

Extra-judicial foreclosure of mortgage - - period to redeem

In the case of *Lazo, et. al. v. Republic Surety & Insurance Co.*,²² the only question raised was whether to count the one year period of legal redemption from the date of registration of the sale in the Register of Deeds.

The Court did not apply the rule concerning registration because the certificate of sale itself stated the expiration date of the redemption, and plaintiffs were notified of the sale. Plaintiffs asked for and obtained two extensions of the period. Hence, the registration of the certificate of sale almost five years later did not affect their agreement as to the expiration date of the redemption. In any event, the principle of estoppel would prevent plaintiffs from going back on their own acts and representations, to the prejudice of the other party who relied upon them.

²¹ G. R. No. 27249, July 31, 1970.

²² G. R. No. 27365, January 30, 1970.