

IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 23 of 2018.

Mr. Ramchandra Anant Sinai Rataboli,
s/o. Ananat N. S. Rataboli, Age 76 years
r/o. H. No. 2, Virlossa Waddo, Britona,
Bardez, Goa

....Appellant.

Vs

Smt. Manica Sinai Rataboli alias Manik
Venkatesh Nayak, d/o late Ananat N. S.
Rataboli Age 74 years, Represented by
her Power of attorney holder Shri Shamip
Venkatesh Naik, aged 39 years, married,
service, r/o. House No.C/002,
Shree Sayi Shilpa CHS Ltd.,
Gavanpada, Mulund (East)
Mumbai- 400081

.....Respondent.

Shri F. E. Noronha, Advocate for the appellant.
Shri V. Menezes, Advocate for the respondent.

Coram: DAMA SESHADRI NAIDU, J.
Reserved on 14th September 2020.
Pronounced on:-17th September 2020.

JUDGMENT

Introduction:

Mother dies, leaving behind a son and a daughter to inherit the estate. Though both are co-heirs and, thus, co-owners, the brother ostensibly possesses the properties. The sister initiates inventory proceedings over 30 years after the mother's death. The brother opposes the proceedings. He says the period of prescription under the Portuguese Civil Code, 1867, bars the remedy and declares the brother as the owner, too. Is it so?

Facts:

2. Petitioner Ramachandra A. S. Rataboli is the brother; respondent Monica Sinai Rataboli is the sister, represented by her power-of-attorney holder. Their mother died in 1979. By operation of law, the succession opened then.

3. But Monica initiated inventory proceedings in 2015. It was before the Senior Civil Judge of Bardez at Mapusa, in Inventory Proceedings No. 610/2015/C.

Procedural History:

4. The trial Court issued notice to Ramachandra on 15 June 2016, appointing him as *Cabeça de Casal*. It required him to state on oath about the properties. On 30 August 2017, Ramachandra, however, applied to the trial Court to have the inventory proceeding dismissed. It was on the premise that the proceedings was beyond the prescriptive period under the Portuguese Civil Code. On the merits, the trial Court dismissed Ramachandra's application. Through a cryptic order, dated 22 December 2017, it has held that the proceedings are maintainable though they were filed beyond 30 years. Aggrieved, Ramachandra has filed this Appeal from Order.

Arguments:

Appellant:

5. Shri F. E. Noronha, the learned counsel for the appellant, has submitted that uncontestably the prescriptive rights under the Portuguese Civil Code 1867 will apply to the Inventory Proceedings. According to him, the governing provision is Article 2017. And that Article, in fact, refers to Article 505, which defines what a prescriptive right is and how it gets extinguished.

6. In this context, Shri Noronha has delineated on the conceptual difference between limitation and prescription. He has also further drawn my attention to Article 535 of the Portuguese Civil Code. He wants me to

read both Articles 505 and 535 together, to appreciate the purport of Article 2017.

7. According to Shri Noronha, if we read Article 505 with Article 535, we find two contingencies: one is a positive prescription and the other negative prescription. As to the positive prescription, the time prescribed is 20 years; as to the negative prescription, it is 30 years. Even if we assumed that the negative prescriptive period would apply, still Monica's right to claim inheritance stood extinguished forever.

8. In this context, Shri Noronha has relied on *Sachindra Nath Roy v. Maharaj Bahadur Singh*^[1]; *Official Liquidator, Palai Central Bank Ltd. v. K. Joseph Augusti*^[2]; *T. Kalamurthi v. Five Gori Thaikkal Wakf*^[3]; *S.C. Prashar v. Vasantsen Dwarkadas*^[4]; *Mathukumalli Ramayya v. Uppalapati Lakshmayya*^[5]; and *The Employees' State Insurance Corporation v. M/s. Bharat Barrel and Drum Manufacturing Co. (P) Ltd*^[6].

Respondent:

9. On the other hand, Shri V. Menezes, the learned counsel for the respondent, has submitted that for enforcing the rights and obligations under the Indian statutes, indisputably the Limitation Act 1963 applies. If the cause of action arises entirely under the Portuguese Civil Code, what applies is the period of prescription provided in that Code. According to him, this aspect has been well established through a catena of decisions; one of them is *Syndicate Bank v. Prabha Naik*^[7]. In fact, Shri Menezes has read out extensively from that judgment.

1AIR 1922 PC 187

2AIR 1966 Kerala 121

3(2008) 9 SCC 306

4AIR 1963 SC 1356

5AIR 1942 PC 54

6AIR 1967 Bom 472

7(2001) 4 SCC 713

10. The primary contention on Shri Menezes's part is this: as is the case under the Indian law, when two co-owners succeed to an estate, they both are presumed to be in joint possession. Possession in the hands of one will be deemed possession in the hands of the other. To dislodge this presumption, the person claiming exclusive possession must plead and establish, among other things, ouster.

11. To elaborate, Shri Menezes has submitted that a co-owner holds the property not only for himself but also for other co-owners. So, in this case the possession, if any, of the mother's estate by Ramachandra must be deemed joint; Monica, too, is in possession—constructively, though. In other words, physical possession hardly counts. Therefore, neither Article 2107 nor Article 505 ousts a co-heir's to partition. Shri Menezes has also submitted that those provisions speak of obligation. And co-ownership is not a matter of obligation, contractual or otherwise. Such a concept does not apply at all. Therefore, according to Shri Menezes, the trial Court has rightly held that the proceedings are maintainable.

Reply:

12. In reply, Shri Noronha, the learned counsel for the appellant, has nevertheless submitted that Article 2107 specifically refers to the right to claim an inheritance, and that inheritance is subject to prescription. Therefore, the ratio of *Syndicate Bank* does not help the respondent's cause. In this context, he has also relied on *Comunidade of Morombi O Grande v. Jose Antonio Rodoilo Acuaviva Braganza*^[8].

13. Heard Shri F. E. Noronho, the learned counsel for the appellant, and Shri V. Menezes, the learned counsel for the respondent.

Discussion:

14. Facts are not in dispute. The brother and sister inherit the mother's estate. Over 30 years, the sister remained quiet. Later, she

claimed partition. The brother invokes the provisions in the Portuguese Civil Code and asserts that the sister's claim is barred by prescription.

Precedents:

15. The petitioner has cited a few authorities. Before we analyse the statutory scheme and apply that to the facts of the case, let us see whether these decisions influence the case outcome.

(a) *Prabha D. Naik*:

16. Actually, this is the solitary case cited by the respondent. In this case, the Supreme Court has approved this Court's case holding in *M/s. Cadar Constructions v. M/s. Tara Tiles*^[9]. The latter decision has set out these principles of law:

(i) Provisions in the Portuguese Civil Code or other Codes in force in the State of Goa relating to the periods of limitation are local laws within the meaning of Section 29(2) of the Indian Limitation Act, 1963;

(ii) They are also special laws dealing with the rights and liabilities under the Codes themselves;

(iii) If any cause of action arises under the Portuguese law in force in the State of Goa, then the period of limitation for the suit must be as provided in the relevant Portuguese law.

(iv) If, however, the relevant provision in the Portuguese law has been repealed, but the cause of action has arisen before the repeal of the law; then, despite the repeal, the suit will be governed by the period of limitation under the Code.

(v) If the cause of action has arisen outside the Portuguese law, then the Indian Limitation Act, 1963, applies.

(b) *Sachindra Nath Roy*:

17. It is a case of mortgage and sub-mortgage and redemption. One question was about when the limitation would begin. The other question

was about which of the two Limitation Acts, that of 1877 or that of 1908, would apply to the case. In answer to the first question, the Privy Council has held that the period of three years ran from the date of the decree appealed against and not from the date of the order dismissing the appeal for want of prosecution. The second question must, according to the Privy Council, be determined by the condition in which the decrees stood when the latter Statute came into force on the 1 January 1909. I do not think this decision affects this case.

(c) K. Joseph Augusti:

18. Kerala High Court has set out three related propositions of the law of limitation:

(1) Limitation does not extinguish the right but only bars the remedy.

(2) If a remedy becomes barred under the law of limitation, a subsequent change in law giving a longer period of limitation will not by itself revive or, rather, re-create the remedy.

(3) The law of limitation to be applied is the law in force when the case is instituted.

(d) T. Kaliampurthi:

19. When the Wakf filed a suit, it was barred by limitation. Later, through a provision under the Wakf Act, the limitation was extended. In that context, the Supreme Court has held that the right of the Wakf to the suit properties stood extinguished under Section 27 of the Limitation Act, 1963. So, when Section 107 of the Wakf Act came into force, it could not revive the extinguished right.

(e) S. C. Prabhakar:

20. Section 4 of the Income Tax Amending Act 1959 validated actions taken between 1956 and 1959. But it did not validate notices

issued before 1956, nor did it abrogate all periods of limitation. So the Supreme Court has held that the notice for assessment was invalid.

(f) *Mathukumalli Ramayya*:

21. A reversioner sued to recover properties from the descendants of another claimant. The defendants contended that the suit was barred by limitation under the Limitation Act, 1859; so, the right could not be revived under the Limitation Act, 1871. The Privy Council has held that the suit was governed by the Limitation Act 1908, which was the law in force when the suit was instituted. Therefore, the suit was not barred by limitation.

(g) *Bharat Barrel and Drum Manufacturing Co. (P) Ltd.*:

22. This Court has held that the law of limitation is a procedural or adjectival law and is not a part of substantive law. It is procedural or adjectival because it regulates how substantive rights can be enforced by judicial action.

The Statutory Analysis:

23. As held in *Prabha D. Naik*, if Portuguese substantive law—say on inheritance—applies, then the prescriptive period under the Portuguese Civil Code applies. So we need to look at these provisions: Articles 2017, 505, and 535. These Articles deal with the temporal limitations on a claim to real property. Before we examine them, we should appreciate the legal concept of “prescription”. As a legal concept, it is different under the common law and civil law. Here in Goa, when a cause of action arises under the Portuguese Civil Code, the forum may function under the common law, but it applies the civil law. For the Portuguese Civil Code is both procedural and substantive.

Prescription under the Common Law:

24. Black’s Law Dictionary defines “prescription” as “the effect of the lapse of time in creating and destroying rights. It is “the extinction of

a title or right by failure to claim or exercise it over a long period. Also termed negative prescription; extinctive prescription.” Another meaning ascribed to this expression is “the acquisition of title to a thing (esp. an intangible thing such as the use of real property) by open and continuous possession over a statutory period. Also termed positive prescription; acquisitive prescription.”

25. *Corpus Juris Secundum* (vol. 72) described the word prescription thus: “In law of prescription is of two kinds; it is either an instrument for the acquisition of property or an instrument of an exemption only from the servitude of judicial process. In the first sense, as relating to the acquisition of property, prescription is treated in Adverse Possession. In the second sense, as relating to exemption from the servitude of judicial process, prescription is treated as Limitation of Actions.”^[10]

26. According to *Gale Encyclopaedia of American Law*^[11], prescription is “a method of acquiring a nonpossessory interest in land through the long, continuous use of the land. Prescription refers to a type of easement—the right to use the property of another. It requires the use of the land to have been open, continuous, exclusive, and under a claim of right for the appropriate statutory period.” It differs from adverse possession in that adverse possession, according to the *Encyclopaedia*, entails the acquisition of title to the property, whereas prescription relates to a right to use the property of another that is consistent with the rights of the owner.

27. Blackstone, in his celebrated *Commentaries on the Laws of England*, has suggested five modes for acquiring title: 1. Escheat. 2. Occupancy. 3. Prescription. 4. Forfeiture. 5. Alienation^[12]. In 17th Chapter,

10As quoted in *Syndicate Bank v. Prabha D. Naik*

11Vol. 8, 3rd Ed. 2010 Gale, Cengage Learning, p.76)

12OUP, First Ed.2016, Vol. II, p.166

titled *Of Title by Prescription*^[13], the legendary legal commentator says that a person acquires title to real property by prescription; that is, “when a man can shew no other title to what he claims, than that he, and those under whom he claims, have immemorially used to enjoy it”. According to him, prescription is merely a personal usage. And formerly a man might, by the common law, have prescribed for a right which had been enjoyed by his ancestors or predecessors at any distance of time, though his or their enjoyment of it had been suspended for indefinite years. “But by the Statute of limitations, 32 Hen. VIII. c. 2. it is enacted that no person shall make any prescription by the seisin or possession of his ancestor or predecessor unless such seisin or possession hath been within threescore years next before such prescription made”.

28. Now, we will consider the legal position at the home front. According to U. N. Mitra,^[14] prescription in general is a mode of acquiring title in “incorporal hereditments by continued user, possession and enjoyment during the time. It is usually applied to acquisition hereditments and negative prescription”. While prescription is one of the modes of acquiring a certain right, limitation only bars a remedy.

29. The term ‘prescription’ as used in the Limitation Act, according to the learned author, excludes and is opposed to limitation. A person’s right is extinguished by prescription when he cannot assert it either judicially or extra-judicially. It perishes so far as he is concerned. But since a mode of losing a right is often a mode of acquiring it, the right is virtually, though not expressly or directly, transferred to the person that claims it by prescription. Where prescription extinguishes the substantive right itself, the remedy is necessarily lost or barred.

30. The prescription dealt with by Section 27 of the Limitation Act is an extinctive prescription. But if prescription not only extinguishes the

¹³Ibid, 262

¹⁴U. N. Mitra’s Law of Limitation and Prescription, 14 ed., LexisNexis, p.10

right of the original holder, but also directly transfers his right to the opposing claimant, it is acquisitive prescription. That is, the latter acquires a title against all the world. Such a prescription is referred to under Section 25 of the Limitation Act^[15]. As we shall see, Section 25 of the Limitation Act describes the extinctive prescription as “acquisition of easements by prescription”. And Section 25 describes the acquisitive prescription as “extinguishment of right to any property”. That is, Section 25 deals with adverse possession. The anomaly is, to gain a non-corporeal right of easement by prescription, it takes 20 years. But to claim a corporeal right—the real property—it takes only 12 years. To have the head, wait 12 years; to take the tail, wait 20 years, so to say.

Prescription under Civil Law:

31. Common Law has its origins in the 12th century, but actually it did not take shape until the 14th century. So it has jurisprudentially evolved in the last seven centuries. But Civil Law has evolved in the last couple of millennia. It has deeper roots and more varied nuances. Until the French Revolution, the Civil Law was developed by the legal scholars in the university portals. Later, it was taken over by Parliaments. On the other hand, Common Law originated in the adjudicatory sphere: the judges made it from decision to decision. Later, it too was taken over by Parliament. That is why, the former is Code oriented; the latter case law oriented. One is normative or prescriptive; the other descriptive or empirical. That said, the distinction has largely disappeared in the public law sphere. It only survives in the private law sphere, though.

32. I reckon we cannot adjudicate a party's right under the Portuguese Civil Code as to the prescriptive rights by importing the common law concepts of that legal principle. Let us see what the Civil Law or Roman Law holds.

¹⁵Ibid.

33. In *Roman Law and Common Law: A Comparison in Outline*, W. W. Buckland and Arnold D. McNair^[16] say that to the Roman lawyer limitation of actions was one thing, and acquisition of ownership by lapse of time quite another. “We are not so logical. We seem to have stumbled into the latter as a by-product of the former, and for no apparent reason have confined this mode of acquiring ownership to certain interests in land, easements and the like.” In other cases where limitation of actions has seemed inadequate, we have made lapse of time extinguish title rather than transfer it from one person to another. Our present periods for the limitation of actions are much shorter than those eventually reached by “the Romans, who seem to have attached more importance to the right of the individual and less to the principle *interest reipublicae ut sit finis litium*”^[17] than we do”. It is also an attitude which also accounts for their lack of any system of bankruptcy: till a man had paid his debt in full, he owed it. In many cases, till the fifth century, there was no prescription. And even then, the period (thirty years) was extremely long.^[18]

34. Under Chapter 9, titled “Acquisition by Long Possession”, the learned authors note that the rules as to acquiring property through long possession were in Roman law based on principles quite different from ours. With us there is, apart from easements and profits, no such thing as an acquisitive prescription. The most that can happen is that a title, hitherto defeasible, may become indefeasible by lapse of time, owing to the extinction of some other title. Although one often speaks loosely of acquiring a possessory title by lapse of time; the title, and indeed the estate, are the same after the lapse of time as they were before. Judicial language can be found in which the statutes have been described as ‘transferring’ the estate of the former owner or as making a

162nd ed. (1965) Cambridge University Press, UK

17In the interest of society as a whole, litigation must come to an end.

18Ibid, Introduction xviii

‘parliamentary conveyance’ of the land to the ‘person in possession’. But it is now clear that these expressions are incorrect and that ‘the statute does not convey but destroys the right’. It is in fact negative, not positive^[19].

35. In Rome, on the other hand, the lapse of time might lead, as observed by Buckland *et al.*, by process of *usucapio*^[20] to acquiring a new title, though there were other requirements of great importance. As to land, attention was directed, not to the title, but to the remedies open to the disseisee [the dispossessed], which were two: a right of entry, and a right of action. The former was peculiarly fragile, being destroyed by the death of the disseisor [the dispossessor], or conveyance by him to a third party. The latter was barred, not by a fixed period of limitation, but by some historical event, which was altered from time to time^[21].

36. In principle, there is no limitation of actions to recover property: they are *actiones perpetuae*^[22] in classical law. That said, the principle of limitation creeps in through the later law when all actions, with a few exceptions, are barred by the lapse of thirty years. Though a man's title could not be barred by the mere lapse of time, it might be barred by the fact that, meanwhile, someone had acquired ownership by long possession^[23].

Partition under Roman Law:

37. Now, we have come to the core of the issue—the partition. Under Chapter 10, captioned “Partition”, Buckland *et al.*, have observed that “any common owner at Roman law could compel partition”. But in our law, it was necessary (except for coparceners, who could already compel partition) to create this power by Statute. Roman law had a special

¹⁹Ibid, p. 117

²⁰Usucapio refers to ownership acquired by the length of possession.

²¹(n.13) p. 118

²²A perpetual or unlimited action

²³Ibid, p.120

mode of conveyance by judicial award called *adiudicatio*, which somewhat resembled in its method the procedure under the old writ of partition, now superseded in common law. Under the common-law system, the actual partition was carried out by the sheriff under a decree of the Court, and the judicial confirmation of his return constituted the basis of title. But under the Roman Law, the *Index* himself made or superintended the partition, no doubt, assisted by *agrimensores* [surveyors]. And *the Index's* order was the basis of title. In fact, the *Index* had a much freer hand than the judge under the old writ of partition. He could give or destroy no rights in others than the actual parties, but subject to this, he had large powers.

38. To elaborate, the learned authors note that where the fair division was impossible, *the Index* could make unequal division and order equalising payments, and other payments regarding expenses incurred or damage done by any party. And he could create such subsidiary rights as needed; for example, rights of way. He could even allot the actual property to one alone of the parties^[24].

The Civil Code:

39. In the light of the above distinction between the Common Law and the Civil Law on prescription, let us examine the material provisions in the Portuguese Civil Code. Chapter IV of the Code deals with provisions common to testamentary succession and statutory succession. As to opening and transmitting inheritances, Article 2009 declares that the inheritance opens by the death of the ancestor. Article 2011 holds that the transmission of the ownership and possession of the inheritance to the heirs, whether instituted or legal, takes place from the moment the estate-leaver died. If an heir is “found absent, minor, under interdiction or unknown, recourse shall be taken to inventory and partition through

²⁴Ibid, pp.123-24

court, wherever the same is required to be made”, according to Article 2012. If no heir suffers any legal shortcoming, they “may agree in any manner they wish as to the partition, provided that it is done by a public deed or public act.” So holds Article 2013.

40. Of vital importance is Articles 2015 and 2016. They read thus:

Article 2015 - Indivisibility of the inheritance prior to partition - Where many persons are entitled simultaneously to the same inheritance, their right shall be indivisible both in respect of possession as well as ownership, as long as the partition has not been effected.

Article 2016 - Right of petition of inheritance in totality - Each of the co-heirs may demand the totality of the estate, to which he along with others is entitled, without the person demanded against being able to raise objection that the estate does not entirely belong to him.

41. According to Article 2015, if many persons simultaneously have the same inheritance, their right shall be indivisible regarding both possession and ownership, as long as the partition has not been effected. It corresponds to Section 16 of the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012. To understand the true nature of inheritance or a demand for partition, we should look at Article 2016. It deals with “right of petition of inheritance in totality”. Each of the co-heirs may demand the totality of the estate, to which he along with others is entitled. It does not allow the person demanded against to object that the right does not exclusively belong to the person who wanted the partition and that he is only a co-owner.

42. We need to pause at this stage. The concept of joint family or coparcenary, as is known under the Hindu Law, may be alien to the Continental law. Article 2016 treats all the inheritors as one unit and permits one to act for all the others. Thus, any one co-heir may demand the totality of the estate, for himself and for all the other co-heirs. The person who has been demanded partition cannot object to the single heir's

claim on the premise that there are other co-heirs. It corresponds to Section 18 of the Goa Succession Act. Indeed, in this sense, Article 2017 provides for prescription of right to petition for inheritance. It groups all the co-heirs as one indivisible lot and allows any or all of them to demand partition. Then, the plea of prescription is available to the other member of the family who is not a co-heir. According to this Article, the right to petition the inheritance prescribes, in the same time and form, as “immobile rights”^[25] are prescribed.

43. Indeed, Articles 2015, 2016, and 2017 form a triumvirate. Article 2015 declares that the co-heirs right to inheritance is indivisible regarding both possession and ownership. It continues so under the partition takes place. Article 2017, applies prescription. Here, if we apply prescription between the co-heirs, who have their right protected as indivisible or joint until the partition takes place, Article 2017 conflicts with Article 2015. I am afraid, Ramachandra’s contention brings in this conflict, which the Code has never intended.

44. Now, let us examine Articles on prescription. Chapter II, with Articles 505 to 566, deals with prescription. To begin with, Article 505 describes the concept of prescription. According to this provision, things and rights are acquired by virtue of possession, just as obligations are extinguished by the fact of their fulfilment not being demanded. The law lays down conditions and the period of time, that are necessary, for one, as well as for the other. This is called prescription. It further distinguishes between positive prescription and negative prescription. The acquisition of things or rights by possession is known as positive prescription; the discharge of obligations by reason of their fulfilment not being demanded is known as negative prescription. Pithily put, through positive

²⁵The rights are not immobile; it meant the rights in the immobile or immovable property. The Code was originally in the Portuguese. Its translation into English has given us, sometimes, grotesque or convoluted expressions.

prescription, we gain a right; through negative prescription, we lose one. The former involves action, and the latter inaction.

45. Article 510 corresponds, as I understand, to Section 27 of the Indian Limitation Act, read with Article 65 of the Schedule appended to it. It allows acquisition of title by prescription. First, if a person possesses something in the name of another, he cannot acquire by way of prescription the thing he has possessed. That is, a co-owner possesses not only for himself but also for other co-owners. So, *vis-à-vis* those co-owners, he cannot claim adverse possession. But the adverse claim is allowed under two circumstances. First, a third party may stake an adverse claim of title through possession. Second, the possessor—for example, a co-owner in exclusive possession—may claim in himself open, hostile, continuous, and exclusive possession. Then, it is adverse to the true owner, “in whose name the possession was being exercised”. This claim starts “from the date of the said adverse claim of title”. And it gets perfected if the owner has not “repealed” the possessor’s claim. But under the Indian Limitation Act, if the possessor acknowledges the person “in whose name the possession is being exercised”, there can be no adverse possession.

46. Let us confine to the Portuguese Civil Code. For a prescriptive right under Article 510, the possessor must have acted openly and hostilely to the true owner’s interest in the property. This *nec clam, nec vi, nec precario* claim must have continued for the prescriptive period—30 years. And before that period, the owner ought to have failed to exercise his rights interrupting the possessor’s hostile claim.

47. Here, a passive act of a co-owner not seeking partition does not provoke prescriptive period. First, the co-owner in possession must have communicated to the other co-owner his intention in unmistakable terms that the other co-owner has been excluded or ousted from possession and

enjoyment. Let us assume all these ingredients are present; then, we can presume ouster under the Common Law. But under the Portuguese Civil Code, Article 2015 throws in a hurdle. As long as the partition has not taken place, the co-owners' right remains "indivisible in respect of both possession and ownership".

48. Here comes another hurdle. To appreciate this hurdle, first, we must accept that every co-owner is a joint possessor by the presumption of law. Possession can be immediate or mediate. The co-owner in actual possession is in immediate possession; the co-owner not in possession is in mediate or constructive possession. The latter possession is recognised by law under the head of legal presumptions. Under Articles 511 and 512, if a co-possessor acquires a right by prescription, it shall benefit the other co-possessors, too. Let us assume one co-heir in possession of indivisible property gets a title by prescription to a property—evidently other than the indivisible property. Then, that prescriptive right enures to the benefit of all other co-heirs. Therefore, faced with Articles 2015, 511 and 512, I wonder whether a plea of ouster by one co-heir against another co-heir is possible under the Civil Law. It is not.

49. To complete the narration, we may refer to Article 535. It fixes the period for negative prescription. Whoever is bound to another by an obligation to perform, or to do something, may stand relieved of the obligation, if its performance is not demanded for 20 years, and the obligant stands in good faith, at the end of the prescription period. In the alternative, when the performance is not demanded for 30 years, regardless of good faith or bad faith, unless special prescriptions are provided in law, the prescriptive right perfects itself.

50. As I have already noted, Articles 2015, 511 and 512 protect a co-owner from the rigours of Article 535. Besides, no co-owner need "demand the performance". So long as the partition has not taken place,

the co-owners right “shall be indivisible in respect of both possession and ownership”. Period.

Result:

I, therefore, find no merit in the Appeal from Order. I accordingly dismiss it.

No order on costs.

DAMA SESHADRI NAIDU, J.

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