THIRD DIVISION

[G.R. No. 255001. June 14, 2023]

HEIRS OF LEOPOLDO ESTEBAN, SR., REPRESENTED HEREIN BY LEOPOLDO ESTEBAN, JR., PETITIONERS, VS. LYNDA LIM LLAGUNO,[*] RESPONDENT.

D E C I S I O N

CAGUIOA, J.:

Before the Court is the Petition for Review on Certiorari[1] (Petition) under Rule 45 of the Rules of Court filed by petitioners Heirs of Leopoldo Esteban, Sr., represented by Leopoldo Esteban, Jr. (petitioners) assailing the Decision[2] dated October 18, 2019 and Resolution[3] dated September 17, 2020 of the Court of Appeals[4] in CA-G.R. SP No. 155738. The CA Decision granted the appeal filed by respondent Lynda Lim Llaguno (respondent). The CA Resolution denied petitioners' Motion for Reconsideration (MR).

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

> On [November 19, 2015], the heirs of Leopoldo B. Esteban, Sr. (hereinafter Leopoldo Sr.), namely, Leopoldo B. Esteban, Jr., Emily E. Riebel, Elena E. Presnedi, Sylvia E. Nocedal and Lydia E. Gorgonio (hereinafter [petitioners]) filed in the Municipal Trial Court, 5th Judicial Region, Goa, Camarines Sur [(MTC)], a complaint for unlawful detainer against L[y]nda Lim Llaguno (hereinafter [respondent]). Docketed as Civil Case No. 1144, the case involved a parcel of land covering an area of 238.5 square meters and situated in San Jose St., Goa, Camarines Sur.
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> Prior to the filing of said complaint, or on [February 11, 2000], Salvador B. Esteban[5] (hereinafter Salvador), another heir of Leopoldo Sr. and, along with [petitioners], a co-owner of the aforesaid property, entered into a contract of lease (hereinafter the first [lease] contract) with [respondent] and a certain Medellene[6] Dy for a period of fifteen [(15)] years. The [first lease contract] was signed by Salvador, in representation of himself and [petitioners], as lessor.

Some of the more relevant provisions in said first [lease] contract read as follows:

> 2. TERM – [T]his lease shall be for the period of FIFTEEN (15) YEARS commencing from the time the LESSEE actually start their business operations, renewable for another period upon mutual agreements of the parties. In the event the LESSEE intends to renew this lease agreement, notice must be given to the LESSOR at least two (2) months before the termination of this lease.
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> 3. IMPROVEMENTS – That it is expressly agreed upon and understood that the LESSEE, on their (sic) own account and expenses, shall cause the construction of a commercial building on the leased premises, and shall introduce improvements or make alterations in the leased premises even without prior written consent and approval of the LESSOR; and the parties agree that all construction, improvements or alterations of whatsoever nature such as may be made thereon shall, upon completion thereof, form integral parts of the leased premises and shall not be removed therefrom but shall belong to and become the exclusive property of the LESSOR, without any right on the part of the LESSEE to the reimbursement of the cost or value thereof.
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> 4. CONSTRUCTION OF A CONCRETE COMMERCIAL BUILDING. [-] It is expressly agreed and understood that the LESSEE, on their (sic) own exclusive account and expense, shall cause the construction of a CONCRETE or made of cement commercial building on the leased premises, costing no less than FIVE HUNDRED THOUSAND PESOS ([P]500,000.00) and shall continue to maintain such commercial building in its original state.

According to [petitioners], in February 2015, prior to the expiration of the first [lease] contract, they informed [respondent] that they no longer desire[d] to renew the first [lease] contract. Subsequently, [petitioners] sent [respondent] a Notice of Termination and Non-Renewal of Contract dated [August 20, 2014].

[Respondent] refused to vacate the premises despite the notice, prompting [petitioners] to send her a demand letter dated [May 15, 2015], demanding her to

turn over the possession of the leased premises to [petitioners].

[Respondent] did not heed the demand, thus (petitioners] filed their complaint for unlawful detainer in the [MTC].

Responding to the complaint, [respondent] alleged that prior to the expiration of the first [lease] contract, she executed with Salvador two other contracts extending the original term of the lease. A subsequent contract, dated [July 6, 2008] (hereinafter the second [lease] contract), provided for a thirty [(30)]-year term, commencing on [June 1, 2008] up until [June 1, 2038]. She explained that Salvador agreed to the extension because he knew of the business reversals she had suffered, and that such extension could help her recoup her investment in the commercial building she had erected in the leased premises, which she valued at [P]1,200,000.00.

On [February 20, 2018], the [MTC] rendered its decision the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the court finds in favour of plaintiffs [(petitioners)] and against defendant [(respondent)], who is hereby ordered ?
>
> 1. To vacate and turn over to plaintiffs ((petitioners)] the peaceful possession of the land situated in San Jose St., Goa, Camarines Sur, including the commercial building built by the defendant [(respondent)] and all improvements introduced thereon;
>
> 2. To pay plaintiffs [(petitioners)] the sum of [P]20,000.00 for attorney's fees.
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> Costs against defendant [(respondent)].
>
> SO ORDERED.

In finding for [petitioners], the [MTC] held that the first [lease] contract was signed by Salvador on his and [petitioners'] behalf [Petitioners] acquiesced to said contract and were therefore bound by the stipulations therein, even if it was

Salvador alone who signed the same.

The [MTC] ruled, however, that there was no showing that [petitioners] gave their imprimatur to the second [lease] contract. It noted that the second [lease] contract was entered into by [respondent] and Salvador, acting for himself and not in representation of his co-owners. Thus, according to said court, the second [lease] contract purporting to have extended the lease should not bind [petitioners] who, at the expiration of the first [lease] contract, even notified [respondent] that they were no longer interested in letting their property.

The [MTC] recognized Salvador's right as co-owner of the property, and concluded that the second lease contract should be deemed to be effective only insofar as his share of the property was concerned. lt noted that the leased premises were still under co-ownership as no partition had yet to be effected by [petitioners]. However, it ruled that to enforce the lease on Salvador's share of the leased premises might result in an anomalous situation whereby parts of the commercial building – which was to be wholly appropriated by [petitioners], as lessor, pursuant to Section 3 of the first [lease] contract – may, after partition, be found in portions of land that may be allotted to the other co-owners who did not consent to the second [lease] contract. It was a situation that, according to the [MTC], should not be countenanced.

From said decision, [respondent] filed an appeal before the [Regional Trial Court of San Jose, Camarines Sur, Branch 58 (RTC)]. In her appeal, [respondent], among others, raised for the first time (petitioners'] alleged lack of cause of action, for purportedly having filed their complaint prematurely. [Respondent] contended that paragraph 2 of the first [lease] contract provided that the lease should commence only from the time she would have started conducting her business on the premises. She claimed that she actually started to conduct business on the leased premises only in January 2001, and thus, the contract would have expired only in January 2016, making the filing of the complaint on [November 19, 2015] premature.

Aside from the foregoing allegation, [respondent] also insisted on the validity of the second [lease] contract, saying it should be deemed binding on Salvador's co-owners, the herein [petitioners].

On [February 20, 2018], the [RTC] rendered its Decision the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the Decision of the [MTC] is hereby AFFIRMED. The grant of attorney's fees is, however, DELETED.
>
> SO ORDERED.

In affirming the decision of the [MTC], the RTC held that the second [lease] contract was executed only by and between [respondent] and Salvador without the consent and authority of [petitioners] and, thus, it should be deemed binding only insofar as Salvador's aliquot share in the leased premises is concerned. However, just like the [MTC], the RTC also held that the lease should not be allowed even on Salvador's share because it might give rise to an anomalous situation whereby part of the constructed commercial building and the improvements thereon may be found in portions of the subject land that may be allotted to [petitioners] x x x who did not give their consent to the said subsequent lease contracts.

The RTC also did not give much credence to [respondent's] claim that [petitioners'] complaint had been prematurely filed. The RTC noted that [respondent] only raised this defense in [her] appeal, and thus it should not even be considered as this was not even previously put forward for the consideration of the [MTC]. However, the RTC held that even if the issue had been timely raised, the same would not make things any different for [respondent], as she failed to adduce evidence to show that indeed, she only was able to conduct business in the leased premises only (sic) in January 2001.

From the decision, [respondent] filed [an MR], anchored mainly on the issue of whether or not the lease should be held effective as to the aliquot share of Salvador in the leased premises, but it was denied by the RTC in its Order dated [April 2, 2018).

Thus, the petition [for review before the CA].[7]

Ruling of the CA

The CA, in its Decision[8] dated October 18, 2019, granted respondent's appeal.[9] The CA disagreed with the MTC and the RTC's ruling that after finding the second lease contract invalid as against petitioners, they ordered respondent to completely vacate the leased premises despite their conclusion that the second lease contract was valid insofar as the aliquot share of Salvador was concerned.[10] The CA noted that the MTC and the RTC were of the view that it was impossible to maintain respondent in possession of the leased premises as part of the erected structure naturally would be sitting on some portions that eventually could be apportioned to petitioners after its partition, and the MTC and the RTC described this as an "anomalous situation".[11]

According to the CA, the conclusion of the MTC and the RTC was conjectural for it could be possible that Leopoldo Sr. might have left some other properties sufficient to represent their shares in his estate, and leave the leased premises or subject property assigned exclusively to Salvador.[12]

To the CA, the question to be resolved was whether petitioners, who are not yet in fact owners of the entire property, should have a right to evict respondent therefrom, even from the aliquot part that should belong to Salvador and his heirs.[13] While the MTC and the RTC ruled in the affirmative on the premise of the "anomalous situation" described above, the CA observed that said courts failed to cite any law or jurisprudence fairly dealing with this situation.[14]

The CA exerted efforts to find some decisions that might give the ruling of the MTC and the RTC some support, but unfortunately, it found nothing in our jurisprudence that would justify said ruling.[15] Recognizing that there was a hiatus in our law and jurisprudence, the CA observed the ruling of the Court in *Reyes v. Lim*[16] where the Court ruled that in case of silence or insufficiency of the law, the application of equity is called for to fill the open spaces in the law to prevent unjust enrichment of a party.[17]

Thus, pursuant to the principles of fairness and equity, the CA found for respondent.[18] The CA, noting that respondent, at her expense, erected the present structure on the leased premises and she was only biding for some time to recoup some of her investments in said structure, postulated that if it should allow eviction at that point, petitioners would have received a windfall as the structure, under any of the contracts of lease, would wind up with the lessor upon expiration of the lease.[19]

Additionally, the CA ratiocinated that there was jurisprudence[20] supporting its view that partition is a prerequisite before respondent could rightfully be evicted from the subject property, and filing an eviction case before partition would be premature as the question of the definite portion belonging to each co-owner has yet to be resolved.[21]

The dispositive portion of the CA Decision states:

> **WHEREFORE**, premises considered, the instant petition is hereby **GRANTED**. The decision of the [RTC] is hereby **SET ASIDE** and a new one is entered **DISMISSING** Civil Case No. 1144.
>
> **SO ORDERED**[.][22]

Petitioners filed an MR, which the CA denied in its Resolution[23] dated September 17, 2020.

Hence the present Petition. Respondent filed her Comment[24] dated May 26, 2022.

The Issue

Petitioners submit this sole issue for resolution of the Court:

Whether the CA erred in issuing the assailed Decision granting respondent's petition and dismissing petitioners' action for unlawful detainer.[25]

The Court's Ruling

Before the Court may act on the Petition, the Court has to resolve petitioners' Motion for Leave to File and Admit Attached Petition for Review on Certiorari[26] dated January 21, 2021 (Motion for Leave). In the Motion for Leave, admitting the belated filing of the Petition, petitioners beg the kind indulgence of the Court to admit the Petition attached thereto and to resolve the instant case on the merits in the interest of substantial justice.[27] Petitioners cited several cases, where the Court set aside the rules of technicalities and gave due course to certain pleadings that had been filed beyond the applicable reglementary periods to give the parties an opportunity to present the merits of their case and in the interest of proper administration of justice, especially when the cause of the imploring party was impressed with merit.[28]

Also, petitioners proffer these extenuating circumstances as justification. While there were

two lawyers handling the instant case, Atty. Clarine Joyce U. Aquino (Atty. Aquino) and Atty. Frances Liaa C. Mendiola-Hilado (Atty. Hilado), Atty. Aquino was constrained to resign and return to her home province, out of fear that she might contract the COVID-19 virus without any family or relative nearby to attend, assist, and comfort her.[29] Atty. Hilado, on the other hand, was dealing with a precarious pregnancy which forced her to work from home most of the year 2020.[30] Worse, according to petitioners, in compliance with the quarantine rules and to ensure their safety, that unusual work arrangement led to the September 17, 2020 CA Resolution being misplaced and evaded the attention of the handling lawyer, Atty. Hilado.[31]

Further, petitioners submit that there is ostensible merit in the Petition which warrants that the same be given due course by the Court and that the CA Decision is contrary to law and jurisprudence.[32]

Without passing any judgment on whether the extenuating circumstances raised by petitioners constitute excusable negligence on the part of their counsel to justify the relaxation of procedural rules, the Court resolves to grant their Motion for Leave and give due course to their Petition.

Indeed, the rules of procedure ought not to be applied in a very rigid and technical sense, for they have been adopted to help secure, not override, substantial justice, and to afford party-litigants the fullest opportunity to establish the merits of their complaint or defense rather than for them to lose life, honor, or property on pure technicalities.[33] Another important consideration for the Court in suspending the rigid application of the rules in this case is its jurisprudential significance.

At the outset, the Court finds erroneous the application by the CA of equity to prevent unjust enrichment on petitioners' part on the pretext that there is a hiatus in our laws and jurisprudence. Also, the CA cannot just invoke the principles of fairness and equity to justify the continued lease of the subject property by respondent to allow her to recoup her investment in the concrete commercial building that she constructed. Respondent agreed in the first lease contract to put up a concrete commercial building worth P500,000.00 in the leased premises for her business, and after the expiration of the lease, said building and all other improvements introduced by her would pass on to the lessors, without any right on the part of respondent, as lessee, to the reimbursement of the value or cost thereof. The CA' s observation that petitioners would receive a windfall if respondent would be evicted before she recouped her investment in the costlier structure than what was agreed upon that she

caused to be erected in the leased premises runs counter to the lease contract between the parties.

Respondent knew that she was not obligated to put up a building costing P1,200,000.00, and she likewise knew that such building would be turned over to the lessors upon expiration of the lease. Her lease contract with the lessors is clear on the matters of "Improvements" and "Construction of a Concrete Commercial Building." The CA should have enforced the terms of said contract, which are generally provided in lease agreements and are by no means contrary to law, morals, good customs, public order, or public policy.

Regarding the purported hiatus in our law and jurisprudence as perceived by the CA, while there may be no jurisprudence squarely in point where the facts therein are identical or essentially the same as the facts obtaining in this case, there are decided cases, the doctrines of which can be applied by analogy. There may be no exact legal provision that can be applied directly to resolve the legal issues in this case. However, said issues can be resolved by applying our present laws.

Despite these observations regarding the CA Decision and considering the arguments raised by petitioners, the Petition is without merit.

Petitioners cite two cases, namely, *Barretto v. Court of Appeals, et al.*[34] (*Barretto*) and *Cabrera v. Ysaac*[35] (*Cabrera*), as their basis to dispel the CA's pronouncements that there seems to be nothing in our jurisprudence that would support a ruling that petitioners, who are not yet in fact owners of the entire property, should have a right to evict respondent therefrom, even from the aliquot part that should belong to Salvador and his heirs.[36]

However, a perusal of *Barretto* and *Cabrera* reveals that they are not squarely in point. While their factual backdrops revolved around co-ownership, ejectment was not in issue.

In *Barretto*, a fishpond was owned *pro indiviso* in the proportion of 371 hectares for Bibiano Barretto (Bibiano), married to Maria Gerardo-Barretto (Maria), and 100 hectares, 38 ares and 95 centares for the sisters Hermogena and Consorcia Crisostomo (Crisostomo sisters). Desiring to lease the entire 471-hectare-fishpond, Ricardo Gutierrez (Gutierrez) entered into two contracts of lease: (1) dated June 5, 1935 with Bibiano, and (2) dated April 10, 1936 with the Crisostomo sisters. Both leases were to begin on May 1, 1936 and to continue for a period of six years or until May 1, 1942. On February 18, 1936, Bibiano died. On July 12, 1940 or more than one year before the expiration of Gutierrez's lease on May 1, 1942, the widow, Maria, acting alone, executed a second contract of lease in favor of Gutierrez over

the same fishpond, extending the lease for five years, *i.e.*, from May 1, 1942 to May 1, 1947. On June 5, 1956, Gutierrez filed a claim against the estate of Maria in Special Proceedings No. 5002 in the Court of First Instance of Manila, praying for the return of the sum of P32,000.00 representing rentals which he allegedly paid, with legal rate of interest, plus damages.[37]

On the validity of the second lease contract, the Court opined that there was no question that the leased fishpond was co-ownership property of the late Bibiano and the Crisostomo sisters. Each had a right only to an ideal or undivided share of the entire property. Bibiano's share was an undivided 371 hectares out of a total area of 471 hectares, and upon his demise, his share devolved upon his legal heirs, his widow, Maria, and their only child, Lucia. As a mere co-owner, Maria did not have the authority to dispose of Bibiano's share, much less of the entire fishpond, without the consent of the other co-owners, her daughter Lucia and the Crisostomo sisters. She had no authority to extend the lease nor dispose of the P32,000.00 paid by Gutierrez under the first contract and treat it as a guaranty deposit fund for the second contract, without the consent of the Crisostomo sisters and Lucia who had a proportionate interest in the rental income of the fishpond. The Court concluded that the second lease contract which she made with Gutierrez was null and void.[38]

Additionally, the Court found that the first or original lease contract was rescinded when Gutierrez returned the fishpond to the lessors in November, 1941, or six months before the original lease was to expire on May 1, 1942. By his unilateral act of returning the fishpond, Gutierrez terminated the lease. Consequently, there was no more lease to be extended under the second lease contract. Apart from its invalidity by reason of a defect in the authority of one of the contracting parties (Maria), the second contract which she made in favor of Gutierrez never took effect; it never became operative.

Since the lease agreement was rescinded upon the return of the fishpond to the lessor, the latter should return to the lessee, Gutierrez, the advance rental of P32,000.00 that he paid on the second lease contract which never took effect, for rescission creates the obligation to return the things which were the object of the contract together with their fruits and the price with its interest.[39]

Thus, the Court in *Barretto* affirmed the decision of the CA ordering the petitioner therein (Lucia, the executor of Maria's will to whom letters testamentary were issued[40]) to pay to Gutierrez, the sum of P32,000.00 with interest of six percent (6%) *per annum* from July 9, 1957, when the claim was filed against the estate of Maria, until its full payment.[41]

Clearly, *Barretto* cannot control in this case. For one, the issue did not involve the ejectment of the lessee of a co-owner, who leased the entire property owned in common with others without the latter's consent. Secondly, the second lease contract entered into by the co-owner without the consent of the other co-owners was ineffective because the leased fishpond was returned to the lessors prior to the expiration of the original lease, which negated the validity of its extension under the unauthorized second lease contract. Lastly, the null and void characterization of the Court of such unauthorized second lease contract should not be taken in isolation from the Court's pronouncements in *Barretto*:

> "Before the partition of a land or thing held in common, no individual co-owner can claim title to any definite portion thereof." (*Oliveros, et al. vs. Lopez,* 168 SCRA 431.)
>
> "A person can sell only what he owns or is authorized to sell, and the buyer can acquire no more than what the seller can transfer legally." (*Segura vs. Segura,* 165 SCRA 368.)
>
> "Even if a co-owner sells the whole property as his, the sale will affect his own share but not those of other co-owners who did not consent to the sale." (*Bailon-Casilao vs. CA,* 160 SCRA 738.)
>
> "For co-ownership to exist, the co-owner must have a spiritual part of a thing which is not physically divided." (*Hernandez vs. Quitain,* 168 SCRA 92.)[42]

Regarding *Cabrera*, this case involved the sale of a specific or definite portion of a co-owned property and ejectment was also not in issue.

It appears in *Cabrera* that the heirs of Luis and Matilde Ysaac co-owned a 5,517-square-meter parcel of land located in Sabang, Naga City, and one of the co-owners was Henry Ysaac (Henry). On May 6, 1990, Henry needed money and offered to sell the 95-square-meter piece of land to Juan Cabrera (Cabrera). He told Henry that the land was too small for his needs because there was no parking space for his vehicle. In order to address Cabrera's concerns, Henry expanded his offer to include the two adjoining lands. Those three parcels of land had a combined area of 439 square meters. Cabrera accepted the new offer. Henry and Cabrera settled on the price of P250.00 per square meter, but Cabrera stated that he could only pay in full after his retirement on June 15, 1992. Henry agreed but demanded for

an initial payment of P1,500.00, which Cabrera paid.[43]

On June 9, 1990, Cabrera paid the amount of P6, 100.00. Henry issued a receipt for this amount. On June 15, 1992, Cabrera tried to pay the balance of the purchase price to Henry. However, at that time, Henry was in the United States. The only person in Henry's residence was his wife, and the latter refused to accept Cabrera's payment. On September 21, 1994, Henry's counsel wrote a letter addressed to Cabrera's counsel, where the former informed the latter that Henry was formally rescinding the contract of sale because Cabrera failed to pay the balance of the purchase price of the land between May 1990 and May 1992, and that Cabrera's initial payment of P1,500.00 and the subsequent payment of P6,100.00 were going to be applied as payment for overdue rent of the parcel of land Cabrera was leasing from Henry.[44]

Due to Cabrera's inability to enforce the contract of sale between him and Henry, he decided to file a civil case for specific performance on September 20, 1995. Cabrera prayed for the execution of a formal deed of sale and for the transfer of the title of the property in his name. As well, he tendered the sum of P69,650.00 to the clerk of coui1 as payment of the remaining balance of the original sale price.[45]

The Court declared the contract between Cabrera and Henry invalid and, therefore, could not be subject to specific performance. Henry was ordered to return P10,600.00 to Cabrera, with legal interest of twelve percent (12%) *per annum* from September 20, 1995 until June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until fully paid.[46]

As correctly raised by petitioners, in the prefatory statement of the Court's decision in *Cabrera*, it stated that:

> Unless all the co-owners have agreed to partition their property, none of them may sell a definite portion of the land. The co-owner may only sell his or her proportionate interest in the co-ownership. A contract of sale which purports to sell a specific or definite portion of unpartitioned land is null and void *ab initio*.[47] (Emphasis omitted)

In Cabrera, the Court likewise stated that there was no valid contract of sale between the parties therein. In finding that there was no contract of sale, it being null *ab initio*, the Court noted that the object of the sales contract between Cabrera and Henry was a definite

portion of a co-owned parcel of land, which at the time of the alleged sale was still held in common. While the rules allowed Henry to sell his undivided interest in the co-ownership, this was not the object of the sale between him and Cabrera. The object of the sale was a definite portion, and Henry had no right to sell or alienate a concrete, specific or determinate part of the thing owned in common because his right over the thing was represented by quota or ideal po1tion without any physical adjudication.[48]

At best, the Court considered the agreement between Cabrera and Henry as a contract to sell (a promise to sell an object, subject to suspensive conditions), not a contract of sale. Without the fulfillment of these suspensive conditions, the sale did not operate to detem1ine the obligation of the seller to deliver the object. The Court added that a co-owner could enter into a contract to sell a definite portion of the property; however, such contract was still subject to the suspensive condition of the partition of the property, and that the other co-owners agreed that the part subject of the contract to sell vested in favor of the co-owner's buyer. Hence, the co-owners' consent was an important factor for the sale to ripen.[49]

As to the validity of the rescission of the contract between the parties, the Court stated that the absence of a contract of sale meant that there was no source of obligations for Henry, as seller, or Cabrera, as buyer, and rescission was impossible because there was no contract to rescind.[50] As well, specific performance could not be had because a non-existent contract could not be a source of obligations.[51]

Consequently, the Court disagrees with petitioners that *Cabrera* should be applied in this case.

It must be recalled that the Petition stemmed from an unlawful detainer complaint where the lessee (respondent) of a co-owner (Salvador) is being evicted by the other co-owners (petitioners) of the co-owned property, which was leased by said co-owner without the consent of the other co-owners.

The issue on whether the non-consenting co-owners can evict the lessee of a co-owner, who leased the entire common property may be a novel one, but the issue on whether a co-owner can eject another co-owner in the co-owned property is not.

In the 2018 case of *Anzures v. Spouses Ventanilla*[52] (*Anzures*), the Court has pronounced that a co-owner of the property cannot be ejected from the co owned property, *viz*.:

Being a co-owner, petitioner cannot be ordered to vacate the house

> Being a co-owner of the property as heir of Carolina petitioner cannot be ejected from the subject property. In a co-ownership, the undivided thing or right belong to different persons, with each of them holding the property *pro indiviso* and exercising [his] rights over the whole property. Each co-owner may use and enjoy the property with no other limitation than that he shall not injure the interests of his co-owners. The underlying rationale is that until a division is actually made, the respective share of each cannot be determined, and every co-owner exercises, together with his co-participants, joint ownership of the *pro indiviso* property, in addition to his use and enjoyment of it.
>
> Ultimately, respondents do not have a cause of action to eject petitioner based on tolerance because the latter is also entitled to possess and enjoy the subject property. Corollarily, neither of the parties can assert exclusive ownership and possession of the same prior to any partition. If at all, the action for unlawful detainer only resulted in the recognition of co-ownership between the parties over the residential house.[53]

The basic rights of each co-owner are provided m Articles 485, 486, and 493 of the Civil Code, to wit:

> ART. 485. The share of the co-owners, in the benefits as well as in the charges, shall be proportional to their respective interests. Any stipulation in a contract to the contrary shall be void.
>
> The portions belonging to the co-owners in the co-ownership shall be presumed equal, unless the contrary is proved. (393a)
>
> ART. 486. Each co-owner may use the thing owned in common, provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. The purpose of the co-ownership may be changed by agreement, express or implied. (394a)
>
> x x x x

> ART. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. (399)

As recently pronounced by the Court in *Sps. Bangug, et al. v. Dela Cruz,*[54] which reiterated *Anzures*:

> The foregoing provisions confirm the co-owners to have a *pro indiviso*, *pro rata, pari passu* right in the co-ownership. In other words, a co-owner's right is proportional to his or her share or interest in the undivided co-owned property that is on equal footing with the other co-owners. Such being the nature of a co-owner's right, petitioners have no right to possess the subject property better than that of respondent George.
>
> In conclusion, petitioners, as co-owners, should be allowed to use the thing owned in common to the extent that they do not injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. Until the land previously owned by Cayetana is correctly partitioned, they cannot be ejected therefrom.[55]

In the present case, the possession of the lessee, herein respondent, may be considered to be on behalf of her lessor, Salvador, who was one of the co-owners of the leased premises.

Possession, pursuant to Article 524 of the Civil Code, may be exercised in one's own name or in that of another. Under Article 525 of the same Code, the possession of things or rights may be had in two concepts: either in the concept of an owner, or in that of the holder of the thing or right to keep or enjoy it, the ownership pertaining to another person. Thus, in lease, the lessee possesses the property leased in the concept of a holder with the right to keep or enjoy it, the ownership pertaining to the lessor.

However, is the second contract of lease valid, given that petitioners (other co-owners of the subject property) had terminated the first lease contract by notifying respondent of its non-renewal, and Salvador entered into it without petitioners' consent?

Article 493 of the Civil Code expressly grants each co-owner the right to alienate, assign or mortgage his or her part and of the fruits and benefits pertaining thereto, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him or her in the division upon the termination of the co-ownership.

As to the effect of the disposition by a co-owner of the entire property owned in common without the consent of the other co-owners, the Court, in the recent case of *Heirs of the late Apolinario Caburnay, etc. v. Heirs of Teodulo Sison, etc.*[56] (*Heirs of Caburnay*), reiterated:

> The Court, in applying Article 493 of the Civil Code to a situation wherein the entire co-owned property has been disposed by a co-owner without the consent of the other co-owners, has this to say in *Bailon-Casilao v. Court of Appeals:*[57]
>
> > The rights of a co-owner of a certain property are clearly specified in Article 493 of the Civil Code. xx x
> >
> > x x x x
> >
> > As early as 1923, this Court has ruled that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale [Punsalan v. Boon Liat, 44 Phil. 320 (1923)]. This is because under the aforementioned codal provision, the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common. [Ramirez v. Bautista, 14 Phil. 528 (1909)]. x x x[58]
>
> This pronouncement of the Court was reiterated in *Spouses Del Campo v. Court of Appeals,*[59] to wit:
>
> > x x x Since the co-owner/vendor's undivided interest could properly be the object of the contract of sale between the parties, what the vendee obtains by virtue of such a sale are the same rights as the vendor had

> as co-owner, in an ideal share equivalent to the consideration given under their transaction. In other words, the vendee steps into the shoes of the vendor as co-owner and acquires a proportionate abstract share in the property held in common.
>
> x x x We have ruled many times that even if a co owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale. Since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner will only transfer the rights of said co-owner to the buyer, thereby making the buyer a co-owner of the property.[60]

This recognition of the validity of the sale of the entire co-owned property by a co-owner without the consent or authority of the other co-owners to the extent of the ideal share of the disposing co-owner subsists despite Article 491 of the Civil Code, which provides that none of the co owners shall, without the consent of the others, make alterations in the thing owned in common, even though benefits for all would result therefrom, and the import of alteration as inclusive of any act of ownership or strict dominion such as alienation of the thing by sale or donation.[61] This recognition proceeds from the "well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so. '*Quando res non valet ut ago, valeat quantum valere potest.*' ([']When a thing is of no force as I do it, it shall have as much force as it can have.')"[62]

While jurisprudence recognizing the validity of the sale of the entire or whole co-owned property by a co-owner, without the consent of the other co owners, to the extent of the ideal or *pro indiviso* share of the disposing co-owner, subject to the outcome of the partition of the property abounds, there is dearth of jurisprudence regarding lease of the entire property by a co-owner without the consent of the other co-owners.

It will be recalled that *Barretto* involved the extension or renewal of a lease of the co-owned property without the consent of the other co-owners, and the Court considered the second lease contract null and void. However, as discussed above, the defect of the second lease contract was that it was not only unauthorized but more so it was ineffective because the original lease contract had been rescinded by the lessee prior to its renewal, or the execution of the second lease contract. Besides, *Barretto* echoed *Bailon-Casilao v. Court of Appeals,*[63] to wit: "Even if a co-owner sells the whole property as his, the sale will affect his

own share but not those of other co-owners who did not consent to the sale."[64] Thus, characterizing a lease of the entire property owned in common by a co-owner, without the consent of the other co-owners as null and void, or invalid, may be too rash, and may not be consistent with prevailing jurisprudence dealing with unauthorized alienations or dispositions of common property.

Since Article 493 of the Civil Code covers sale, assignment, mortgage, and substitution, and sale is as much an alteration as lease for more than one year,[65] which is also an act of strict ownership,[66] verily jurisprudence on the effect of the sale of the whole property owned in common by a co-owner without the consent of the other co-owners may be applied by analogy to the lease of the entire co-owned property by a co-owner without the other co-owners' consent or authority. Recognizing the validity of the unauthorized lease of the entire or whole property by a co-owner to the extent of the ideal or undivided share of the leasing co-owner is, in the Court's opinion, more sound and finds legal and jurisprudential anchor, as herein discussed.

Thus, the Court finds that the second lease contract executed by Salvador and respondent, without the consent of petitioners, is valid to the extent of the ideal share of Salvador in the subject property. As such, respondent possessed and continues to possess the leased premises on behalf of co-owner Salvador. Had Salvador possessed the subject property to the exclusion of petitioners, the latter could not evict Salvador therefrom. In the same vein, petitioners could not evict from the leased premises respondent, who is merely exercising the right to enjoy and use the co-owned property on behalf of a co-owner. This is akin to "substitut[ing] another person in its enjoyment" as provided in Article 493 of the Civil Code.

The co-ownership being subsisting, petitioners may avail of their remedy under Article 494 of the Civil Code where "[e]ach co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned." In the partition, the concrete share pertaining to Salvador and his heirs will be determined, and petitioners will be able to enforce their exclusive rights of ownership, including the right of use and possession, over the specific portions allotted to them. It is only then will petitioners be able to eject respondent as lessee of Salvador from the po1iions allotted to them.

The Court notes that even if ejectment is unavailable as a remedy against respondent and the second lease contract is not binding to petitioners, they are nonetheless entitled to their proportionate share in the rentals that have been paid from the start of the second lease contract on June 1, 2008 and are owing until June 1, 2038, the expiration thereof, or until

the partition of the subject property, whichever is earlier.

In this respect, the seminal case of *Pardell v. Bartolome*[67] (*Pardell*) is instructive.

In *Pardell*, the Court, invoking strict justice, required the husband of a co-owner sister, who occupied for four years a room or a part of the lower floor of the co-owned house on Calle Escolta, Vigan, using it as an office for the justice of the peace, a position which he held in the capital of that province, to pay his sister-in-law, the other co-owner, one-half of the monthly rent which the said quarters could have produced, had they been leased to another person. Said husband's liability, according to the Court, resulted from the fact that, even as the husband of the co-owner of the property, he had no right to occupy and use gratuitously the said part of the lower floor of the house in question, where he lived with his wife, to the detriment of the other co-owner sister, who did not receive one-half of the rent which those quarters could and should have produced, had they been occupied by a stranger, in the same manner that rent was obtained from the rooms on the lower floor that were used as stores. The Court noted that the stores of the lower floor were rented, accounting of the rents was duly made, and the other co-owner sister presumably received her due share.

This right of the co-owner to receive a *pro indiviso* share in the rentals, according to *Pardell*, proceeds from such co-owner's right to use and enjoy the co-owned property together with the other co-owners, *viz*.:

> Each co[-]owner of realty held *pro indiviso* exercises his rights over the whole property and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co[-]owners, for the reason that, until a division be made, the respective part of each holder cannot be determined and every one of the co[-]owners exercises, together with his other co[-]participants, joint ownership over the *pro indiviso* property, in addition to his use and enjoyment of the same.[68]

Also, the rentals being industrial fruits of the common property, the co owners are entitled thereto pursuant to the principle of accession.

All told, while the basis of the CA Decision in granting respondent's appeal and reversing the RTC Decision appears to be erroneous, nevertheless its affirmance is justified as explained above.

WHEREFORE, the Petition is hereby **DENIED**. The Decision dated October 18, 2019 and Resolution dated September 17, 2020 of the Court of Appeals in CA-G.R. SP No. 155738 are **AFFIRMED** on the grounds afore-discussed.

SO ORDERED.

Inting, Gaerlan, Dimaampao and *Singh, JJ.,* concur

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[*] Also "Linda Lim Llaguno," "Lynda Llaguno" and "Lynda P. Lim" in some parts of the *rollo*.

[1] *Rollo*, pp. 20-40, excluding Annexes.

[2] *Id*. at 42-53. Penned by Associate Justice Ricardo R. Rosario (now a Member of the Court), with Associate Justices Zenaida T. Galapate-Laguilles and Walter S. Ong concurring.

[3] *Id*. at 55.

[4] Ninth Division and Former Ninth Division, respectively.

[5] Salvador B. Esteban, also Leopoldo Sr.'s son, died on April 16, 2014 with one surviving child. *Rollo*, p. 88, Preliminary Conference Order.

[6] "Madellene" in some parts of the *rollo*.

[7] *Id*. at 43-47.

[8] Supra note 2.

[9] *Rollo*, p. 53.

[10] *Id*. at 50. Salvador was mistakenly named "Sebastian".

[11] *Id*. at 50, 51

[12] *Id*. at 50-51.

[13] *Id*. at 51.

[14] *Id*.

[15] *Id*.

[16] 456 Phil. 1 (2003).

[17] *Rollo*, pp. 51-52, CA Decision.

[18] *Id*. at 52.

[19] *Id*.

[20] Citing **Carvajal v. Court of Appeals,** 197 Phil. 913 (1982).

[21] *Rollo*, p. 52, CA Decision.

[22] *Id*. at 53.

[23] Supra note 3.

[24] *Rollo*, pp. 217-234.

[25] *Id*. at 31, Petition for Review on Certiorari.

[26] *Id*. at 3-19.

[27] *Id*. at 4-5.

[28] *Id*. at 5-10.

[29] *Id*. at 4, 9-10.

[30] *Id*. at 4, 10.

[31] *Id*.

[32] *Id*. at 10-11.

[33] **Tiangco, et al. v. Land Bank of the Philippines,** 646 Phil. 554, 568 (2010).

[34] 272 Phil. 479 (1991).

[35] 747 Phil. 187 (2014). Cited by petitioners as **Cabrera v. Isaac**.

[36] See *rollo*, p. 34, Petition for Review on Certiorari.

[37] **Barretto v. Court of Appeals, et al.,** supra note 34, at 481, 483, and 484.

[38] *Id*. at 486-487.

[39] *Id*. at 487-488.

[40] *Id*. at 484.

[41] *Id*. at 488.

[42] *Id*. at 487.

[43] **Cabrera v. Ysaac,** supra note 35, at 194.

[44] *Id*. at 195 196.

[45] *Id*. at 196.

[46] *Id*. at 215-216.

[47] *Id*. at 193.

[48] *Id*. at 207-208.

[49] *Id*. at 209-210.

[50] *Id*. at 211.

[51] *Id*. at 210.

[52] 835 Phil. 946 (2018).

[53] *Id*. at 963. Citation omitted.

[54] G.R. No. 259061, August 15. 2022.

[55] *Id*. at 11.

[56] G.R. No. 230934, December 2, 2020.

[57] Citing No. L-78178, April 15, 1988, 160 SCRA 738.

[58] Citing **Bailon-Casilao v. Court of Appeals,** id. at 744-745.

[59] Citing G.R. No. 108228, February 1, 2001, 351 SCRA 1.

[60] **Heirs of the late Apolinario Caburnay, etc. v. Heirs of Teodulo Sison, etc.,** supra note 56, at 27-28, citing **Campo v. Court of Appeals,** id. at 7-8, further citing **Tomas Claudio Memorial College. Inc. v. Court of Appeals,** G.R. No. 124262, October 12, 1999, 316 SCRA 502, 509.

[61] See Hector S. De Leon and Hector M. De Leon. Jr., COMMENTS AND CASES ON PROPERTY (Fourth Edition 2003), p. 234.

[62] **Lopez v. Vda. de Cuaycong. et al.,** 74 Phil. 601, 609 (1944).

[63] Supra note 57.

[64] **Barretto v. Court of Appeals, et al.,** supra note 34, at 487.

[65] The second lease contract provided for a 30-year term, commencing on June 1, 2008 up until June 1, 2038. *Rollo*, p. 44, CA Decision.

[66] See **Tan v. Lim,** 357 Phil. 452, 468 (1998).

[67] 23 Phil. 450 (1912).

[68] *Id*. at 460.

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