

RENATO P. GONZALES, PLAINTIFF-APPELLANT, VS. CARLOS GOTAUCO, DEFENDANT-APPELLEE.

Ponente: CASTILLO, M., J.

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CASTILLO, M., J.:

For this Court's consideration is an appeal from the Judgment[1] and Order[2], both rendered by the Regional Trial Court (RTC) of Manila, Branch 39, in Civil Case No. 85-32619 which accepted the partition of the subject property in accordance with the report and recommendations of the appointed commissioners, pursuant to the trial court's Decision dated August 12, 1999[3].

The antecedent facts are as follows:

After the demise of defendant-appellee Carlos Gotauco's father in 1929 and his mother in 1937, he and his three (3) brothers inherited their parents' property in equal shares.[4] The aforesaid property pertained to a parcel of land known as Lot 5, Block 378 located at M.H. Del Pilar Street, Ermita, Manila, with an area of Three Hundred Sixty Seven and 90/100 Square Meters (367.90 sq.m.). On May 9, 1966, Gotauco's three (3) brothers executed a Deed of Absolute Sale[5], wherein they sold their rights to three-fourths ($\frac{3}{4}$) of the subject property to herein plaintiff-appellant Renato Gonzales. Consequently, plaintiff-appellant Gonzales and defendant-appellee Gotauco became co-owners of the subject property covered by Transfer Certificate of Title (TCT) No. 84746[6] which was issued on July 28, 1966. Plaintiff-appellant Gonzales owned three-fourths ($\frac{3}{4}$) of the subject property while defendant-appellee Gotauco owned one-fourth ($\frac{1}{4}$) thereof. Thereafter, plaintiff-appellant Gonzales proposed the partition of the subject property into two (2) lots. On August 10, 1966, plaintiff-appellant Gonzales filed a Petition[7] for cancellation of TCT No. 53260 and/or issuance of a separate title, alleging that defendant-appellee Gotauco refused to surrender the title covering the subject property, thereby preventing Gonzales from registering the aforementioned Deed of Absolute Sale in his favor. On August 16, 1966, the Court of First Instance of Manila issued an Order[8], directing defendant-appellee Gotauco to surrender the owner's duplicate of TCT No. 53260 to the Register of Deeds of Manila, in order that the Deed of Absolute Sale which was executed in favor of Gonzales may be registered. On November 7, 1966, the Land Registration Commission approved a subdivision survey plan[9] of the subject property, together with the technical descriptions of both lots. Lot 5-A[10] (LRC) Psd-63860, with an area of Ninety One and 98/100 Square (91.98 sq.m.), would be adjudicated to Gotauco. On the other hand, Lot 5-B[11] (LRC) Psd-63860, with an area of Two Hundred Seventy Five and 92/100 Square Meters (275.92 sq.m.), would be assigned to Gonzales. However, defendant-appellee Gotauco[12] did not agree[13] with the proposed partition as indicated in the subdivision plan and refused to sign the Agreement of Partition[14].

Defendant-appellee Gotauco, on the other hand, offered to buy one-fourth ($\frac{1}{4}$) share in the subject property, in order that Gotauco would own one-half ($\frac{1}{2}$) of the subject property, rendering the same practicable and viable for his needs. Gotauco asserted that it would be difficult to build a structure on his portion of the subject property since it was only approximately three (3) meters wide and twenty-two (22) meters deep.[15] He also declared that he was not willing to sell his share in the subject property since he inherited the same from his parents and had a

sentimental value.[16] However, plaintiff-appellant Gonzales refused Gotauco's offer.[17]

On September 13, 1985, plaintiff-appellant Gonzales filed a Complaint[18] for partition which was docketed as Civil Case No. 85-32619. He alleged that his acquisition of a separate title for Lot 5-B for his business activities, particularly the establishment of a commercial enterprise such as a tourist inn and a shopping complex,[19] had been delayed due to Gotauco's unjustified refusal to accept the foregoing partition. After receiving summons and a copy of the complaint, Gotauco inspected the subject property and discovered that the same was being used as a restaurant called "Manukan sa Ermita". Its occupants then informed him that plaintiff-appellant Gonzales leased the property to a certain Jesus Miguel Benedicto[20] whom he presumed was the husband of Maria Lourdes Gonzales Benedicto, the latter being the sister of plaintiff-appellant Gonzales. On September 26, 1985, Gotauco filed his Answer[21]. Gotauco alleged that Gonzales could not, without the conformity of his co-owner, adjudicate unto himself Lot 5-B containing 275.92 sq.m., being a determinate portion of the subject property owned in common, to the exclusion of Gotauco. On October 3, 1985, Gonzales filed his Reply with Counterclaim[22]. On February 14, 1986[23], Geronimo Imperial, whom Gotauco employed, prepared a subdivision survey plan[24].

During the trial, plaintiff-appellant Gonzales testified on his behalf. On the other hand, defendant-appellee Gotauco likewise testified and presented the following witnesses: Geronimo Imperial, the geodetic engineer whom Gotauco employed to prepare a subdivision survey plan of the subject property, with Gotauco's frontage representing one-half ($\frac{1}{2}$) of the area facing M.H. Del Pilar Street; and Maria Lourdes G. Benedicto, sister of plaintiff-appellant Gonzales and manager of "Manukan sa Ermita", who testified that she was not a lessee but a part owner of the premises[25].

On March 7, 1986, plaintiff-appellant Gonzales filed his Formal Offer of Evidence[26], to wit:

Exhibit "A" - TCT No. 84746 registered in the name of Renato P. Gonzales ($\frac{3}{4}$) and Carlos Gotauco ($\frac{1}{4}$);[27]

Exhibit "B" - TCT No. 109778 registered in the name of Gonzales' family corporation, covering a parcel of land where Gonzales also resided[28] and which is adjacent to the subject property;[29]

Exhibit "C" - Deed of Absolute Sale executed by Juan Gotauco, Emilio Gotauco and Perfecto Gotauco, the defendant-appellee's three (3) brothers, in favor of plaintiff-appellant Gonzales, pertaining to three-fourths ($\frac{3}{4}$) of the subject property;[30]

Exhibit "D" - Petition for cancellation of TCT No. 53260 and/or issuance of a separate title filed by plaintiff-appellant Gonzales on August 10, 1966, due to defendant-appellee Gotauco's refusal to surrender the title, covering the subject property, for the purpose of registration of the Deed of Absolute Sale (Exhibit "C");[31]

Exhibit "E" - Order dated August 16, 1966, of the Court of First Instance of Manila, directing defendant-appellee Gotauco to surrender the owner's copy of TCT No. 53260 to the Register of Deeds of Manila, in order that the the Deed of Absolute Sale (Exhibit "C") may be registered;[32]

Exhibit "F" - Subdivision Survey Plan of the subject property, as described in TCT No. 84746;[33]

Exhibit "G" - Agreement of Partition, which defendant-appellee Gotauco refused to sign;[34]

Exhibit "H" - Technical Description of Lot 5-A;[35]

Exhibit "H-1" - Technical Description of Lot 5-B;[36]

Exhibit "I" - Xerox Copy of Tax Declaration No. A-072-0576 in the name of Renato Gonzales, pertaining to his three-fourths ($\frac{3}{4}$) share in the subject property;[37]

Exhibit “J” - Real Estate Tax Receipt for 1983, to show Gonzales' payment of the taxes on $\frac{3}{4}$ of the subject property;[38]

Exhibit “K” - Real Estate Tax Receipt for 1984, to show Gonzales' payment of RPT on $\frac{3}{4}$ of the subject property;[39]

Exhibit “L” - Real Estate Tax Receipt for 1985, to show Gonzales' payment of RPT on $\frac{3}{4}$ of the subject property;[40]

On the other hand, defendant-appellee Gotauco presented the following exhibits:

Exhibit “1” - Sketch of the location of the subject property;[41]

Exhibit “2” - Pictures showing the subject property and the improvements thereon;[42] and

Exhibit “3” - Subdivision Survey Plan of the subject property, showing the property's front area facing M.H. Del Pilar Street being equally divided between plaintiff-appellant Gonzales and defendant-appellee Gotauco, as well as the technical descriptions for Lot 5-A and Lot 5-B thereof.[43]

On November 25, 1987, defendant-appellee Gotauco filed his Memorandum.[44] On December 28, 1990, the trial court rendered a Decision[45], the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Ordering the parties to partition the property subject of this complaint;
2. Ordering the plaintiff to resell to defendant, $\frac{1}{4}$ of the property he has purchased from defendant's co-heirs;
3. Ordering the parties that after the plaintiff has resold the $\frac{1}{4}$ undivided share of defendant's co-heirs, to partition the property equally between them; and should the defendant failed (sic) to avail of his right to redeem $\frac{1}{4}$ of the property within 30 days from receipt of this decision, the same shall be deemed waived and the proposed plan of partition as initiated by the plaintiff (Exh. F) shall prevail and be the basis for partition; and
4. Dismissing defendant's counterclaim.

No pronouncement as to costs.

SO ORDERED.[46]

On February 1, 1991, pursuant to the foregoing Decision, defendant-appellee Gotauco sent to plaintiff-appellant Gonzales a letter[47] of availment of his right to redeem one-fourth ($\frac{1}{4}$) of the subject property.[48] On February 7, 1991, plaintiff-appellant Gonzales filed a Motion for Reconsideration[49] but the same was denied in the trial court's Order[50] dated August 28, 1991. On September 3, 1991, Gonzales filed his Notice of Appeal[51]. On February 14, 1995, this Court (Eleventh Division) rendered a Decision[52], the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is rendered REVERSING and SETTING ASIDE the decision of the Court a quo, hereby entering a new one:

1. Ordering the case REMANDED to the Court a quo for further proceedings relative to the partition of the property subject of the suit in an equitable and judicious manner;
2. All other claims and counterclaims are dismissed; and
3. No pronouncement as to costs.

SO ORDERED.[53]

The foregoing Decision dated February 14, 1995 became final and executory on March 16, 1995[54]. Thereafter, the defendant-appellee and plaintiff-appellant filed with the trial court their respective pleading[55] on their proposed partition. On August 12, 1999, the trial court rendered a Decision[56], the dispositive portion of which reads:

WHEREFORE, above premises considered, judgment is hereby rendered.

1. Ordering the partition of the subject property in this wise – $\frac{3}{4}$ of the whole thereof to the plaintiff and the remaining $\frac{1}{4}$ to the defendant; and
2. Conformably with Sec. 3, Rule 69, Rules of Court, this court hereby appoints The Chief, City Engineers Office, City of Manila (or his duly authorized representative), The Chief, City Assessors Office, City of Manila (or his duly authorized representative) and the Barangay Chairman of the subject area as commissioners to make the partition and who upon oath, shall make an accurate report to the court of all their proceedings as provided for under Secs. 6 and 7, Rule 69, Rules of Court.[57]

On September 22, 1999, plaintiff-appellant Gonzales filed a Motion for Partial Reconsideration/Modification/Clarification[58], praying that the partition be effected as decreed by RTC Judge Ildefonso E. Gascon in his Decision dated December 28, 1990[59] and in accordance with Gonzales' Exhibit "F". However, the trial court denied Gonzales' motion in its Order[60] dated November 12, 1999. On December 14, 1999, Gonzales filed a Notice of Appeal.[61] On April 19, 2006, this Court (Fourteenth Division) rendered a Decision[62] in the case of Gonzales v. Gotaucó which was docketed as CA-G.R. CV No. 66383, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the instant appeal is hereby DISMISSED for lack of merit.[63]

On May 10, 2006, Gonzales filed a Motion for Reconsideration[64] which was denied by this Court (Former Fourteenth Division) in the Resolution[65] dated June 14, 2006. On August 10, 2006, plaintiff-appellant Gonzales filed a Petition for Review on Certiorari[66] with the Supreme Court. On September 27, 2006, the Supreme Court issued a Resolution[67] denying Gonzales' petition. He filed a Motion for Reconsideration and a Motion to Admit Second Motion for Reconsideration but both were denied.[68] On February 15, 2007, the Supreme Court's Resolution dated September 27, 2006 became final and executory.[69] On April 22, 2008, the trial court in Civil Case No. 85-32619 issued an Order, the dispositive portion of which states:

WHEREFORE, conformably with the decision of this Court, the Court appointed commissioners, namely, The Chief, City Engineers Office, City of Manila (or his duly authorized representative), The Chief, City Assessors Office, City of Manila (or his duly authorized representative) and the Barangay Chairman of the subject area are directed to appear before this Court and submit their oath of office before they proceed to the partition of subject property known as Lot 5, Block 378 situated at Del Pilar St., Ermita, Manila within fifteen (15) days from receipt of this Order.

By agreement of the parties, the proceedings in this case is set on May 29, 2008 at 8:30 a.m.

SO ORDERED.[70]

Upon motion[71] of plaintiff-appellant Gonzales, the trial court issued an Order dated July 7, 2008[72], directing the three (3) appointees to take their oath of office as commissioners and directing the parties to attend a conference regarding the discharge of the commissioners' duties. On August 5, 2008, Barangay Chairwoman Flor A. Bayan took her oath as commissioner.[73] Acting Assistant City Assessor Romeo N. Lacsamana, Jr.[74] and Agnes B. Pangilinan[75] of the Drafting and Survey Division of the Department of Engineering and Public Works, took their oath as commissioners on September 15, 2008 and September 23, 2008, respectively. On March 26, 2009, the trial court issued an Order[76] directing the foregoing Commissioners to view and inspect the

subject property. Upon motion[77] of plaintiff-appellant Gonzales, the trial court issued an Order dated September 23, 2009, directing the duly-appointed Commissioners, specifically Barangay Chairwoman Bayan, Acting Assistant City Assessor Lacsamana and Pangilinan of the Drafting and Survey Division, Department of Engineering and Public Works of the City of Manila, “to submit to this Court their report on their inspection of the lot covered by the subdivision plan of Lot 5, Block 378, Manila (Exhibit “F” of the Complaint) and their implementation, if any, of the decreed partition per Decision of this Court dated August 12, 1999”[78]. On December 1, 2011, the trial court issued an Order[79] directing the Commissioners to show cause why they should not be cited for contempt for their failure to submit their report. On February 15, 2012, the Department of Assessment submitted its Report[80], with Commissioner Lacsamana, Jr. as one of its signatories. The Department of Engineering and Public Works also submitted its Verification Survey Report[81], as approved by Commissioner Pangilinan, on February 22, 2012. On February 23, 2012, the trial court issued an Order[82], ordering the Commissioners to submit their recommendation on the actual partition of the subject property. In compliance therewith, Commissioner Lacsamana, Jr. submitted a Supplemental Report[83] with the recommendation that both co-owners “be accorded equal rights on subject frontage (M.H. DEL PILAR ST.)”[84]. Commissioner Bayan submitted her Report[85] and Recommendation[86], likewise giving both co-owners equal shares of the front area facing M.H. Del Pilar Street[87], with Gotauco owning one-fourth ($\frac{1}{4}$) and Gonzales owning three-fourths ($\frac{3}{4}$) of the subject property. On April 16, 2012, the trial court issued an Order[88], declaring the following:

Before the Court acts on the said Inspection Report/Recommendation, the Branch Clerk of Court of this Court is hereby directed to serve copies of the same on all interested parties with notice that they are allowed ten (10) days within which to file objections to the findings of the report, if they so desire, pursuant to Section 6, Rule 69 of the Rules of Court. Thereafter the Court will act accordingly.

SO ORDERED.[89]

Thereafter, plaintiff-appellant Gonzales filed his Comment on the Commissioners' Recommendation/Supplemental Report[90], while defendant-appellee Gotauco filed his Reply[91] thereto. On June 28, 2012, Gonzales filed his Rejoinder[92]. On August 6, 2012, the trial court rendered the assailed Judgment[93], the dispositive portion of which reads:

WHEREFORE, finding merit on the Inspection Report and Supplemental Report filed by the Commissioners in this case, namely: Chairwoman Flor A. Bayan, OIC Agnes R. Pangilinan of the Drafting and Survey Division, Department of Engineering and Public Works, City of Manila, and Acting City Assessor Romeo N. Lacsamana of the City of Manila, the same is hereby ACCEPTED. Accordingly, judgment is hereby rendered in that the subject lot covered by the Subdivision Plan of Lot 5, Block 378, Manila (Exhibit “F” of the Complaint) is hereby PARTITIONED per Decision of this Court dated August 12, 1999, in the sense that the subject lot shall be divided into four equal parts, in which one-fourth section will have a frontal area (along M.H. Del Pilar Street, Ermita, Manila) in accordance with the divided parts, one-fourth ($\frac{1}{4}$) part will go to defendant Carlos Gotauco and the remaining three-fourths ($\frac{3}{4}$) section which will have front area (also along M.H. Del Pilar Street, Ermita, Manila) according to the divided parts will go to plaintiff Renato P. Gonzales in accordance with the sketch provided above.

SO ORDERED.[94]

Plaintiff-appellant Gonzales filed a Motion for Reconsideration[95] but the trial court denied the same in the assailed Order dated December 27, 2012[96].

Hence, this appeal.

On February 13, 2013, Gonzales filed his Notice of Appeal[97]. On September 23, 2013, he filed the Brief for

Plaintiff-Appellant[98], assigning the following errors:

Errors Assigned

- The trial court erred in not complying with the Decision of this Honorable Court of February 14, 1995[99], *Gonzales vs Gotauco*, CA-G.R. CV No. 66383 (Annex “A”)
- The trial court erred in violating Secs. 3, 4, 6, 7, 11, Rule 69, Rules of Court, inter alia and pertinent Decisions.[100]

The plaintiff-appellant raised the following issues:

- Whether or not the judgment of the trial court of August 12, 1999 was complied with by the trial court.
- Whether or not the trial court complied with the procedure required by Rule 69 thereby depriving the plaintiff of due process.
- Whether or not the trial court complied with the Decision of the Court of Appeals of February 14, 1995 requiring an equitable and judicious partition.[101]

Plaintiff-appellant Gonzales alleges that in accordance with this Court’s Decision dated April 19, 2006, the procedure to be followed pertained to Sections 3, 6 and 7 of Rule 69 of the Rules of Court. The Chief of the City Engineer's Office or his authorized representative, the Chief of the City Assessor's Office or his authorized representative, and the Barangay Chairman are those tasked to make the partition. After taking an oath, they shall also make an accurate report to the court of all their proceedings.[102] However, those who replaced the original commissioners did not take their oath, as required by Section 4[103], Rule 69 of the Rules of Court.[104] Instead of three (3) persons in accordance with Section 3 of Rule 69, there were seven (7) commissioners. They failed to make the partition since the trial court failed to direct them on how to perform the same. The trial court only directed the commissioners to inspect and view the subject property, submit a report and implement the decreed partition.[105] The Commissioners did not give due notice to Gonzales and Gotauco to attend the viewing and examination of the subject property, and the parties were also not heard as to their preference in the partition, in violation of Section 4, Rule 69 of the Rules of Court.[106] The trial court also violated Section 7, Rule 69 when it accepted the Commissioners' report and rendered judgment without conducting a hearing. The defendant-appellant testified that he agreed to the physical partition of the subject property as indicated in Exhibit “F”.[107] When Gonzales purchased the shares of the defendant-appellee's brothers, Gonzales succeeded to the rights of the brothers representing three-fourths ($\frac{3}{4}$) of the subject property. The frontage of the subject property is 15.2 meters long. Gotauco owns $\frac{1}{4}$ while Gonzales owns $\frac{3}{4}$ of the subject property. Thus, the defendant-appellee is entitled to only 3.8 meters of the frontage while Gonzales is entitled to 11.4 meters (3.8×3) thereof. The plaintiff-appellant purchased the brothers' shares because he wanted a wider access to M.H. Del Pilar Street. The subject property is also adjacent to the lot owned by his family. The partition which the Commissioners recommended would give Gotauco an additional 3.8 meters of the frontage without shelling out a single centavo.[108] The defendant-appellee may be ordered to sell his $\frac{1}{4}$ share in accordance with Article 498 of the New Civil Code, since he claims that his share may be rendered practically worthless. The plaintiff-appellant controls $\frac{3}{4}$ of the subject property. As a majority owner, his plan of partition should govern, pursuant to Article 492 of the New Civil Code.[109] Gotauco's allegation that his $\frac{1}{4}$ share will become worthless under Exhibit “F”, can no longer be considered. He failed to raise this issue in his Answer. Thus, he is deemed to have waived it.[110] Gonzales and Gotauco co-own the subject property with $\frac{3}{4}$ and $\frac{1}{4}$ shares, respectively. Gonzales' mode of partition should be upheld as the most advantageous to both co-owners. If Gotauco's share becomes worthless, it is his own fault since his brothers offered to sell their $\frac{3}{4}$ share to him but he failed to exercise his right of

pre-emption or redemption. Gonzales can no longer delay the case any further after 29 years. Gotauco cannot once again delay Gonzales' plans and projects by insisting on an equal frontage. The Supplemental Report of the commissioners will give undue advantage to the defendant-appellee. Without purchasing another $\frac{1}{4}$ of the subject property from the plaintiff-appellant, the defendant-appellee would be made practically the owner thereof by having a frontage equivalent to $\frac{2}{4}$ or half of Lot 5. Gotauco is entitled to only 3.8 meters out of the 15.2 meter-long frontage of the subject property. The plaintiff-appellant already possesses $\frac{3}{4}$ of the subject property and has introduced improvements thereon.[111] Had there been a hearing prior to the submission of the Supplemental Report, the plaintiff-appellant could have raised his arguments. He could have narrated the historical, factual and legal antecedents of the case, including the fact that the defendant-appellee had the opportunity to acquire an additional $\frac{1}{4}$ to his current share but did not exercise his right of redemption.[112] In his Reply Brief, the plaintiff-appellant alleges that Section 3, Rule 69 of the Rules of Court is mandatory. The number of commissioners shall not exceed three (3). The co-owners should also be heard or be present during the inspection of the property, in accordance with Section 4 of Rule 69.[113] The Commissioners conducted the inspection not as a group but separately and without the presence of the plaintiff-appellant. Section 7 of the same rule also mandates that a decision shall be arrived at only upon hearing. If the Commissioners worked as a group, they would have discovered that the plaintiff-appellant's corporation has a lot at the right side of the subject property. The defendant-appellee refused to buy the shares of his brothers when the latter notified him. The defendant-appellee failed to adduce evidence to prove that his $\frac{1}{4}$ share in the subject property is practically useless.[114] The amendment to conform to evidence is proper only if the party has introduced evidence to support the issue which was not raised in the pleading. The $\frac{3}{4}$: $\frac{1}{4}$ proportion in the sharing of the frontage is nearest to absolute equity since it is proportional to the extent of ownership of each co-owner.[115] The trial court failed to comply with Section 11, Rule 69 of the Rules of Court. It did not specify the metes and bounds and technical description of the shares of the parties.

We deny the appeal.

Firstly, the trial court complied with the Decision dated August 12, 1999[116], the dispositive portion of which reads:

WHEREFORE, above premises considered, judgment is hereby rendered.

1. Ordering the partition of the subject property in this wise – $\frac{3}{4}$ of the whole thereof to the plaintiff and the remaining $\frac{1}{4}$ to the defendant; and
2. Conformably with Sec. 3, Rule 69, Rules of Court, this court hereby appoints The Chief, City Engineers Office, City of Manila (or his duly authorized representative), The Chief, City Assessors Office, City of Manila (or his duly authorized representative) and the Barangay Chairman of the subject area as commissioners to make the partition and who upon oath, shall make an accurate report to the court of all their proceedings as provided for under Secs. 6 and 7, Rule 69, Rules of Court.[117]

Indeed, $\frac{3}{4}$ of the subject property was adjudicated to the plaintiff-appellant while $\frac{1}{4}$ was given to the defendant-appellee. The trial court likewise appointed the three (3) commissioners who took their oath of office and submitted their reports. There was no pronouncement that the commissioners who took their oath must be replaced and would no longer be authorized to perform their duties pertaining to the partition. There is a presumption that public officials have performed their duties in a regular manner.[118] Thus, the trial court did not err in accepting the reports of the commissioners who were duly-appointed and took their oath of office.

Secondly, plaintiff-appellant Gonzales has not been deprived of due process. Sections 3, 4, 6, 7 and 11 of Rule 69 of the Rules of Court read:

RULE 69

PARTITION

XXX

Sec. 3. Commissioners to make partition when parties fail to agree.

If the parties are unable to agree upon the partition, the court shall appoint not more than three (3) competent and disinterested persons to make the partition, commanding them to set off to the plaintiff and to each party in interest such part and proportion of the property as the court shall direct.

Sec. 4. Oath and duties of commissioners.

Before making such partition, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. In making the partition, the commissioners shall view and examine the real estate, after due notice to the parties to attend at such view and examination, and shall hear the parties as to their preference in the portion of the property to be set apart to them and the comparative value thereof, and shall set apart the same to the parties in lots or parcels as will be most advantageous and equitable, having due regard to the improvements, situation and quality of the different parts thereof.

Sec. 6. Report of commissioners; proceedings not binding until confirmed.

The commissioners shall make a full and accurate report to the court of all their proceedings as to the partition, or the assignment of real estate to one of the parties, or the sale of the same. Upon the filing of such report, the clerk of court shall serve copies thereof on all the interested parties with notice that they are allowed ten (10) days within which to file objections to the findings of the report, if they so desire. No proceeding had before or conducted by the commissioners shall pass the title to the property or bind the parties until the court shall have accepted the report of the commissioners and rendered judgment thereon.

Sec. 7. Action of the court upon commissioners' report.

Upon the expiration of the period of ten (10) days referred to in the preceding section, or even before the expiration of such period but after the interested parties have filed their objections to the report or their statement of agreement therewith, the court may, upon hearing, accept the report and render judgment in accordance therewith; or, for cause shown, recommit the same to the commissioners for further report of facts; or set aside the report and appoint new commissioners; or accept the report in part and reject it in part; and may make such order and render such judgment as shall effectuate a fair and just partition of the real estate, or of its value, if assigned or sold as above provided, between the several owners thereof.

Sec. 11. The judgment and its effect; copy to be recorded in registry of deeds.

If actual partition of property is made, the judgment shall state definitely, by metes and bounds and adequate description, the particular portion of the real estate assigned to each party, and the effect of the judgment shall be to vest in each party to the action in severalty the portion of the real estate assigned to him. If the whole property is assigned to one of the parties upon his paying to the others the sum or sums ordered by the court, the judgment shall state the fact of such payment and of the assignment of the real estate to the party making the payment, and the effect of the judgment shall be to vest in the party making the payment the whole of the real estate free from any interest on the part of the other parties to the action. If the property is sold and the sale confirmed by the court, the judgment shall state the name of the purchaser or purchasers and a definite description of the parcels of real estate sold to each purchaser, and the effect of the judgment shall be to vest the real estate in the purchaser or purchasers making the payment or payments, free from the claims of any of the parties to the action. A certified copy of the judgment shall in either case be recorded in the registry of

deeds of the place in which the real estate is situated, and the expenses of such recording shall be taxed as part of the costs of the action.

The other signatories in the report submitted by Lacsamana were not duly-appointed commissioners. Hence, Section 3 of Rule 69 which limits the number of appointed commissioners to three (3), was not violated. It is only the trial court which can appoint a commissioner and he did not appoint more than three (3). Even though only two (2) out of the three (3) appointed Commissioners submitted their recommendations, all of them inspected the subject property and filed their reports[119], pursuant to Section 6 of Rule 69. Moreover, both Commissioners, who represented the majority of the commission, had the same recommendation on how to divide the subject property in an equitable manner. Thus, the trial court did not err in accepting their proposal. In any case, the commissioners' reports are merely recommendatory and not conclusive, considering that the parties are given the opportunity to object thereto.[120] The plaintiff-appellant asserts that the Commissioners conducted the inspection without "due notice to the parties to attend such view and examination" and that the parties were not heard, in violation of Section 4 of Rule 69. However, We find that there was no violation of Gonzales' right to due process. In *Heirs of Marasigan v. Marasigan and CA*, the petitioners alleged that there was no notice of the viewing and examination by the Commissioners of the real property. In this regard, the Supreme Court ruled as follows:

We, on the other hand, find that the scales of justice have remained equal throughout the proceedings before the RTC and the Commissioners. xxx

xxx

It should not be forgotten that the purpose of the rules of procedure is to secure for the parties a just, speedy and inexpensive determination of every action or proceeding. xxx

Records reveal that the parties were given sufficient opportunity to raise their concerns. From the time the action for partition was filed by private respondents, all the parties, including the late Cesar, petitioners' predecessor, were given a fair opportunity to be heard.

xxx

While the lack of notice to Cesar of the viewing and examination by the Commissioners of the real properties comprising Alicia's estate is a procedural infirmity, it did not violate any of his substantive rights nor did it deprive him of due process. It is a matter of record, and petitioners cannot deny, that Cesar was able to file his Comment/Opposition to the Commissioners' Report. And after the RTC adopted and confirmed the Commissioners' recommendations in its Order dated 22 June 2001, Cesar was able to file a Motion for Reconsideration of the said Order. He had sufficient opportunity to present before the RTC whatever objections or oppositions he may have had to the Commissioners' Report, including the valuation of his share in Alicia's estate.[121] (Emphasis supplied.)

Similar to the foregoing case, the plaintiff-appellant asserts that the Commissioners did not notify them to attend the viewing and examination of the subject property. However, akin to the aforecited case, "the scales of justice have remained equal throughout the proceedings before the RTC and the Commissioners"[122]. Both the defendant-appellee and the plaintiff-appellee were given sufficient opportunity to raise their concerns. The parties were given the opportunity to file their comments on the Commissioners' reports and recommendations. Thus, they were not deprived of their right to be heard. On April 16, 2012, the trial court issued an Order[123], declaring the following:

Before the Court acts on the said Inspection Report/Recommendation, the Branch Clerk of Court of this Court is hereby directed to serve copies of the same on all interested parties with notice that they are allowed ten (10)

days within which to file objections to the findings of the report, if they so desire, pursuant to Section 6, Rule 69 of the Rules of Court. Thereafter the Court will act accordingly.

SO ORDERED.[124]

Neither Gonzales nor Gotauco objected to the description or depiction of the subject property's location and improvements, as indicated in the Commissioners' reports. Thus, the parties' non-attendance at the viewing and examination of the subject property did not prejudice them. Their preferences as regards the partition had been made known, considering that plaintiff-appellant Gonzales filed his Comment on the Commissioners' Recommendation/Supplemental Report[125] and Rejoinder[126] while defendant-appellee Gotauco filed his Reply[127]. Gonzales likewise filed a Motion for Reconsideration[128] but the trial court denied the same[129]. Thus, as the Supreme Court ruled, "[w]hile the lack of notice to [the party] of the viewing and examination by the Commissioners of the [subject property] is a procedural infirmity, it did not violate any of his substantive rights nor did it deprive him of due process"[130].

The case of *Arcenas v. Cinco* which was cited by the plaintiff-appellant is not applicable to the instant appeal since the foregoing case pertains to a "co-tenant in possession who has necessarily and in good faith improved the common property and enhanced its value at his own cost"[131]. On the other hand, herein plaintiff-appellant did not construct the improvements in good faith. Despite his knowledge of Gotauco's refusal to sign the Partition Agreement, Gonzales still constructed improvements thereon, without a partition that was mutually agreed upon by the parties or decreed by the court.

Anent the plaintiff-appellant's allegation that the trial court violated Section 11 of Rule 69, We note that in the assailed Judgment dated August 6, 2012, the trial court included an illustration of the subject property, showing the particular portions and size of shares which were allocated to Gonzales and Gotauco, and the front area facing M.H. Del Pilar Street. The trial court also discussed the measurements of the frontage and exactly how the subject property would be partitioned based on the $\frac{1}{4}$ and $\frac{3}{4}$ shares of both parties, in accordance with the Commissioners' reports. Contrary to the plaintiff-appellant's allegation, the trial court is not required to provide a technical description but only an "adequate description" of the shares of the parties, based on Section 11 of Rule 69. In the assailed Decision, the trial court also stated that it "believes that the Inspection Report and Supplemental Report of the commissioners in this case as illustrated above is the most advantageous and most equitable between the two parties considering that both parties, who have shares on the subject property, will have equal frontages along M.H. Del Pilar St., Ermita, Manila"[132].

The plaintiff-appellant argues that the defendant-appellee agreed to the partition of the subject property in accordance with Exhibit "F". However, based on the records, defendant-appellee Gotauco only agreed that the subject property be physically partitioned. He did not agree with Gonzales' proposal on the manner of its partition, as indicated in Exhibit "F". Gotauco testified as follows:

Q

And after you received that, I mean your copy [of the title], what happened, if there is anything happened (sic)?

A

Well, Mr. Gonzales also hinted that he want (sic) a physical partition of the property. To which, I agreed. He offered to have a surveyor and to make the necessary plan at his own expense, to which, I also agreed.[133]

xxx

Q

Now, I am showing you this plan, which has been marked as Exhibit F, what is the relation of this plan to the plan that Mr. Renato Gonzales showed to you?

A

This is the plan that he showed to me.

Q

And you told us earlier that you rejected that?

A

Yes, sir.

Q

Will you give the reason.

A

For the simple reason that the plan shown or the project of the partition was so unfair and one sided. If I have to agree with this plan, that property of mine will be practically worthless.[134]

In addition to the foregoing, the fact that the Partition Agreement prepared by Gonzales was unsigned, further supports Gotauco's claim that he refused to agree with Gonzales' manner of dividing the property.

Thirdly, the trial court complied with this Court's Decision dated February 14, 1995[135], which required that the partition be conducted in an "equitable and judicious manner"[136]. Under Section 4 of Rule 69, the partition of the parcel of land shall be done in a way which is "most advantageous and equitable, having due regard to the improvements, situation and quality of the different parts thereof". Hence, We note that due regard must be given not just to the improvements on the property but the situation and quality as well. Allocating a mere 3.8 meter frontage to Gotauco is not equitable, considering the size and shape of the parcel of land. Such situation and quality of his $\frac{1}{4}$ share of the subject property made it proper for the commissioners to recommend dividing the frontage equally between Gonzales and Gotauco. Equity entails fairness to both parties. We agree with defendant-appellant Gotauco's contention that if Gonzales' proposed partition was to be followed, Gotauco's one-fourth ($\frac{1}{4}$) share in the subject property would be similar to a "bowling alley". The essence of having an equitable partition is to render it favorable not just to one but both parties. Adjudicating one-half ($\frac{1}{2}$) of the front area to Gonzales will not prevent him from conducting business operations. He may still pursue his plan of establishing a commercial enterprise even if he acquires only one-half ($\frac{1}{2}$) of the frontage of the subject property. On the other hand, adjudicating a mere 3.8 meter frontage to Gotauco would be deemed unjust. Gonzales further argues that he purchased the shares of the three (3) Gotauco brothers specifically for the purpose of acquiring $\frac{3}{4}$ of the frontage facing M.H. Del Pilar Street in order to give him a wider access to the said street. However, Gonzales' motivation for purchasing $\frac{3}{4}$ of the subject property may not affect the rights of the defendant-appellee since the latter was not a party to the sale of the subject property. In fact, nowhere in the deed of absolute sale does it state that Gonzales would acquire the $\frac{3}{4}$ portion of the subject property in accordance with Gonzales' desired metes and bounds. Hence, it appears that Gonzales bought $\frac{3}{4}$ of the subject property from the heirs at his own risk, considering that there was no agreed partition yet at the time of his purchase. The Supreme Court has

ruled that “before a property owned in common is actually partitioned, all that the co-owner has is an ideal or abstract quota or proportionate share in the entire property”[137]. There was no law or prior agreement presented which states that the frontage of the property had to be divided in a certain way. Allocating $\frac{1}{2}$ instead of $\frac{3}{4}$ of the frontage to herein plaintiff-appellant will not diminish the value of his share. Gonzales would still be the owner of $\frac{3}{4}$ of the subject property. Otherwise stated, Gonzales was not prejudiced since the court-approved partition did not reduce his $\frac{3}{4}$ share in the subject property and he could still conduct his business operations.

The plaintiff-appellant alleges that since Gotauco claims that his $\frac{1}{4}$ share may be rendered practically worthless if Exhibit “F” would be followed, then Gotauco's share should be ordered sold, in accordance with Article 498[138] of the Civil Code. We do not agree. Article 498 is not applicable since the subject property may not be deemed indivisible, considering that there is a way to partition it that would be equitable to both parties, as adjudged by the trial court and recommended by the Commissioners. In *Heirs of Marasigan v. Marasigan and CA*, the Supreme Court ruled that “[a]s to whether a particular property may be divided without prejudice to the interests of the parties is a question of fact. To answer it, the court must take into consideration the type, condition, location, and use of the subject property. In appropriate cases such as the one at bench, the court may delegate the determination of the same to the Commissioners”[139]. The subject property in the instant appeal is a regular and simple parcel of land situated along a street in Manila which can be physically partitioned in an equitable manner. Thus, it is clearly divisible. The only dilemma is that the co-owners were unable to agree on the manner of partition which was precisely the reason why the commissioners were appointed.

Contrary to the plaintiff-appellant's assertion, Article 492 of the Civil Code is likewise inapplicable to the instant appeal, since it pertains to the administration and enjoyment of a property and not its partition. Article 492 of the Civil Code reads:

Art. 492. For the administration and better enjoyment of the thing owned in common, the resolutions of the majority of the co-owners shall be binding.

There shall be no majority unless the resolution is approved by the co-owners who represent the controlling interest in the object of the co-ownership. xxx (Emphasis supplied.)

Gonzales insists that the partition in accordance with Exhibit “F” should be applied since it is the most advantageous to both co-owners. He argues that if Gotauco considers worthless his $\frac{1}{4}$ share in the subject property, then Gotauco is to be blamed since he failed to exercise his right of redemption. We do not agree. It is true that defendant-appellee Gotauco lost his right of redeeming the portion of the subject property which his co-heirs sold to a third person, herein plaintiff-appellant. Nevertheless, Gonzales' right of redemption is no longer at issue. It has already been finally decided that Gotauco lost his right of redemption. Hence, what remains to be resolved is the manner of partition. Indeed, Gotauco failed to redeem the shares of his co-heirs from Gonzales but Gotauco may not be blamed for asserting that dividing the subject property in accordance with Exhibit “F” would render his $\frac{1}{4}$ share worthless. We note that what Gotauco maintains is that his $\frac{1}{4}$ share would be rendered worthless only if the same is allocated in the manner proposed by Gonzales but not if it's in accordance with the Commissioners' recommendations.

In sum, We are in consonance with the ruling of the trial court in the assailed Judgment, as follows:

After considering the arguments and evidence of the two parties, the Court believes that the Inspection Report and Supplemental Report of the commissioners in this case as illustrated above is the most advantageous and most equitable between the two parties considering that both parties, who have ideal shares on the subject property, will have equal frontages along M.H. Del Pilar St., Ermita, Manila. Since the Court did not find any abuse of discretion on the part of the Commissioners in this case then they inspected and subsequently made a recommendation as to the partition of subject property, the Court accords great weight on their inspection

Report and Supplemental Report and accordingly hereby adopts the same.[140]

WHEREFORE, premises considered, the appeal of plaintiff-appellant Gonzales is DENIED. The assailed Judgment[141] and Order[142], both rendered by the RTC of Manila, Branch 39, in Civil Case No. 85-32619, are AFFIRMED.

SO ORDERED.

Lazaro-Javier and Galapate-Laguilles, JJ., concur.

- [1] Records, pp. 478-482.
- [2] Records, pp. 500-501.
- [3] Rollo, pp. 21-25.
- [4] Records, p. 106.
- [5] Records, pp. 40-41.
- [6] Records, p. 5.
- [7] Records, pp. 42-47.
- [8] Records, p. 48.
- [9] Records, p. 49.
- [10] Records, p. 7.
- [11] Records, p. 8.
- [12] Records, p. 2.
- [13] Records, p. 99.
- [14] Records, pp. 51-52 and 100.
- [15] Records, p. 108.
- [16] Records, p. 104.
- [17] Records, p. 11.
- [18] Records, pp. 1-9.
- [19] Records, pp. 100 and 220.
- [20] Records, pp. 105 and 107.
- [21] Records, pp. 10-13.
- [22] Records, pp. 15-18.
- [23] Records, p. 110.
- [24] Records, p. 75.

- [25] Records, p. 110.
- [26] Records, pp. 36-38.
- [27] Records, p. 5.
- [28] Records, p. 100.
- [29] Records, p. 39.
- [30] Records, pp. 40-41.
- [31] Records, pp. 42-47.
- [32] Records, p. 48.
- [33] Records, p. 49.
- [34] Records, pp. 51-52.
- [35] Records, p. 7.
- [36] Records, p. 8.
- [37] Records, p. 50.
- [38] Records, p. 53.
- [39] Records, pp. 54-55.
- [40] Records, pp. 56-57.
- [41] Records, p. 70.
- [42] Records, pp. 71-74.
- [43] Records, pp. 68-69 and 75.
- [44] Records, pp. 89-118.
- [45] Rollo, pp. 16-20.
- [46] Rollo, p. 20.
- [47] Records, p. 148.
- [48] Records, pp. 146-148.
- [49] Records, pp. 127-135.
- [50] Records, p. 145.
- [51] Records, p. 150.
- [52] Records, pp. 156-163.
- [53] Records, pp. 162-163.
- [54] Records, p. 155.
- [55] Records, pp. 170-172 and 175-182.

- [56]Rollo, pp. 21-25.
- [57] Rollo, pp. 24-45.
- [58] Records, pp. 219-223.
- [59] Rollo, pp. 16-20.
- [60] Records, p. 238.
- [61]Records, p. 240.
- [62] Records, pp. 242-B- to 242-I.
- [63] Records, p. 242-H.
- [64] Records, pp. 242-KKK to 242-TTT.
- [65] Records, p. 242-R.
- [66] Records, pp. 242-X to 242-JJJ.
- [67] Records, p. 245.
- [68]Records, p. 242-XXX, 243 and 252.
- [69] Records, p. 245.
- [70] Records, p. 278.
- [71] Records, pp. 292-293.
- [72] Records, pp. 295-297.
- [73] Records, p. 305.
- [74]Records, p. 315.
- [75] Records, p. 320.
- [76] Records, p. 358.
- [77] Records, pp. 372-373.
- [78] Records, p. 374.
- [79]Records, p. 410.
- [80] Records, pp. 410-425.
- [81] Records, p. 429.
- [82] Records, p. 435.
- [83] Records, pp. 440-441.
- [84] Records, p. 440.
- [85] Records, pp. 445-449.
- [86] Records, pp. 442-443.

[87] Records, p. 442.

[88] Records, p. 450.

[89] Records, p. 450.

[90] Records, pp. 457-462.

[91] Records, pp. 467-472.

[92] Records, pp. 473-476.

[93] Records, pp. 478-482.

[94] Rollo, p. 482.

[95] Records, pp. 491-497.

[96] Records, pp. 500-501.

[97] Records, p. 504.

[98] Rollo, pp. 44-61.

[99] Rollo, pp. 75-82.

[100] Rollo, p. 44.

[101] Rollo, p. 46.

[102] Rollo, p.48.

[103] Section 4, Rule 69 of the Rules of Court reads:

Sec. 4. Oath and duties of commissioners.

Before making such partition, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. In making the partition, the commissioners shall view and examine the real estate, after due notice to the parties to attend at such view and examination, and shall hear the parties as to their preference in the portion of the property to be set apart to them and the comparative value thereof, and shall set apart the same to the parties in lots or parcels as will be most advantageous and equitable, having due regard to the improvements, situation and quality of the different parts thereof.

[104] Rollo, p. 49.

[105] Ibid.

[106] Ibid.

[107] Rollo, pp. 53-54.

[108] Rollo, p. 54.

[109] Rollo, p. 55.

[110] Rollo, p. 56.

[111] Rollo, p. 57.

- [112] Rollo, p. 58.
- [113] Rollo, p. 136.
- [114] Rollo, p. 137.
- [115] Rollo, p. 138.
- [116] Rollo, pp. 21-25.
- [117] Rollo, pp. 24-45.
- [118] *Gatmaitan v. Gonzales*, G.R. No. 149226, June 26, 2006.
- [119] Records, pp. 420-425, 429-431, and 445-449.
- [120] *Municipality of Daet v. CA*, G.R. No. L-35861, October 18, 1979.
- [121] G.R. No. 156078, March 14, 2008.
- [122] *Ibid.*
- [123] Records, p. 450.
- [124] Records, p. 450.
- [125] Records, pp. 457-462.
- [126] Records, pp. 473-476.
- [127] Records, pp. 467-472.
- [128] Records, pp. 491-497.
- [129] Records, pp. 500-501.
- [130] G.R. No. 156078, March 14, 2008.
- [131] Rollo, p. 56.
- [132] Records, p. 481.
- [133] TSN dated April 14, 1986, p. 17.
- [134] TSN dated April 14, 1986, pp. 70-71.
- [135] Rollo, pp. 75-82.
- [136] Rollo, p. 81.
- [137] *De Guia v. Court of Appeals*, G.R. No. 120864, October 8, 2003.
- [138] Article 498 of the Civil Code reads:
- Article 498. Whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds distributed.
- [139] G.R. No. 156078, March 14, 2008.
- [140] Records, pp. 481-482.

[141] Records, pp. 478-482.

[142] Records, pp. 500-501.

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