

**RAMON MERCADO, BASILIA MERCADO JOINED BY HER HUSBAND,
FRANCISCO RONQUILLO, PLAINTIFF AND APPELLANTS, VS. PIO D.
LIWANAG, DEFENDANT AND APPELLEE.**

G. R. No. L-14429. June 30, 1962

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The present appeal, taken by the plaintiff from the decision of the Court of First Instance of Rizal (Quezon City), is before us on certification by the Court of Appeals, the questions involved being purely legal. The case was submitted to the trial court upon the following stipulation of facts:

"1. That the Complaint filed by the plaintiffs against the defendant seeks to annul a Deed of Sale on the ground of fraud and on the provisions of Article 493 of the Civil Code.

"2. That on July 14, 1956, in the City of Manila, Philippines, the plaintiff Ramon Mercado and the defendant Pio D. Liwanag executed a Deed of Sale, photostat copy of which is attached hereto marked as Annex "A" and forming an integral part hereof, covering a divided half and described in metes and bounds, or an area of 2,196 square meters at P7.00 per square meter or for a total amount of P15,372.00, of a parcel of land situated at Kangkong, Quezon City, covered Transfer Certificate of Title No. 20805 of the Register of Deeds for the province of Rizal, now Quezon City;

"3. That the said T.C.T. No. 20805 containing an area of 4,392 square meters, is issued in the name of the plaintiffs Ramon Mercado and Basilia Mercado as co-owners PRO-INDIVISO, and the sale was without the knowledge and consent of plaintiff Basilia Mercado;

"4. That out of the total area of 4,392 square meters, an area consisting of 391 square meters was expropriated by the National Power Corporation sometime in December, 1953 at a price of P10.00 per square meter, Civil Case No. Q-829 (Eminent Domain), of the Court of First Instance of Rizal, Quezon City Branch, entitled "National Power Corporation, plaintiff, versus Brigido Almodoban, et als., defendants," but this fact of expropriation came to the knowledge of the defendant Pio D. Liwanag upon the registration of the Deed of Sale Annex "A";

"5. That pursuant to the Deed of Sale Annex "A" T.C.T. No. 32757 was issued in the name of Pio D. Liwanag and Basilia Mercado, photostat copy of which is hereto attached and marked as Annex "B";

"6. That defendant submits the receipt signed by plaintiff Ramon Mercado dated July 14, 1956 photostat copy of which is attached hereto and marked as Annex "C" and promissory note of the same date for P10,000.00, photostat copy of which is attached hereto and marked as Annex "D" which are both self-explanatory, but plaintiff Ramon Mercado disclaims payment and receipt of such check and promissory note, the check being uncashed and is still in the possession of Atty. Eugenio de Gracia;

"7 That plaintiffs and defendant respectfully submit for resolution of this Honorable Court the issue of whether or not the Deed of Sale Annex "A" could be annulled based on the foregoing facts-in relation to Article 493 of the Civil Code, setting aside all other issues in the pleadings."

Upon the issue thus presented the trial court held that under Article 493 of the Civil Code the sale in question was valid and so dismissed the complaint, without costs. This ruling is now assailed as erroneous.

Article 493 provides:

"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

Appellants except to the application of this provision in this case for the reason that in the deed of sale sought to be annulled the vendor disposed of a divided and determinate half of the land under co-ownership. The argument, as far as it goes, seems to be tenable. What a co-owner may dispose of under Article 493 is only his undivided aliquot share, which shall be limited to the portion which may be allotted to him upon the termination of the co-ownership. He has no right to divide the property into parts and then convey one part by metes and bounds. *Lopez vs. Ilustre*, 5 Phil. 567; *Gonzales, et al. vs. Ichon, et al.* 47 Off. Gaz. 6290; *Manresa*, Vol. 3, 7th ed. p. 630.

The pertinent recitals in the disputed deed of sale read:

"I hereby sell, transfer and convey absolutely and irrevocably unto said Pio D. Liwanag, his heirs, successors, and assigns my rights, title and interests on my chosen portion of the above-described property which consist of one-half of aforesaid ownership bounded on the West by Pacifico Gahudo, on the North by Hacienda de Piedad and on the South by Circumferential Road, consisting of 50 meters more or less frontal length along Circumferential Road and with a total area of 2,196 square meters as indicated in Co-owners Transfer Certificate of Title No. 20805."

Nevertheless, upon registration of the sale and cancellation of transfer certificate of title No. 20805 in the names of the previous co-owners, the new transfer certificate that was issued (No. 32757) did not reproduce the description in the instrument but carried the names of appellee Pio D. Liwanag and Basilia Mercado as "co-owners pro-indiviso." There is no suggestion by any of the parties that this new certificate of title is invalid, irregular or inaccurate. There is no prayer that it be canceled. As far as Basilia Mercado is concerned she retains in all their integrity her rights as co-owner which she had before the sale, and consequently she has no cause to complain. Much less has Ramon Mercado, for it was he who was responsible for whatever indicia there may be in the deed of sale that a determinate portion of the property was being sold, as shown by the second paragraph thereof, quoted without contradiction in appellee's brief as follows:

"That the aforesaid Transfer Certificate of Title was originally in my name, but was split into two equal parts by virtue of my desire to donate to my sister-in-law Jyana Gregorio an equal half thereof with the understanding that I as donor would have the absolute power to choose from the property owned in common that part which I would like to segregate for myself or my heirs and assigns."

And of course appellee himself not only does not challenge the new certificate of title, wherein he appears as co-owner of an undivided one-half share, but precisely relies upon it for his defense in this action.

The title is the final and conclusive repository of the rights of the new co-owners. The question of whether or not the deed of sale should be annulled must be considered in conjunction with the title issued pursuant thereto. Since, according to this title, what appellee acquired by virtue of the sale is only an undivided half-share of the property, which under the law the vendor Ramon Mercado had the absolute right to dispose of, the trial court committed no error in dismissing the action. The end-result of the transaction is in accordance with Article 493 of the Civil Code.

The other point raised by appellants refers to the statement in the dispositive portion of the decision appealed from

that "the stipulation with regards to the deed of sale based on the ground of fraud is insufficient for all purposes and besides, no proof showing the allegation of such fraud exists in the record." It is contended that the trial court erred in making such statement, the same being contrary to the stipulation in which the parties expressly eliminated the issue of fraud. From the entire context of the decision, however, it can be gathered that the case was not decided on the basis of the said issue. In any event, even if the court did err in considering the question of fraud in spite of the stipulation, the error is not a prejudicial one. As far as the dismissal of the action is concerned, it makes no difference whether fraud has not been proven or fraud has been abandoned as an issue by express agreement.

Wherefore, the decision appealed from is affirmed, with costs against appellants in this instance.

Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon and Regala, JJ., concur.

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