

**VICENTE V. TORRES, JR., MARIANO VELEZ AND CARLOS VELEZ,
PLAINTIFFS-APPELLEES, VS. AMPARO ALFORQUE,
DEFENDANT-APPELLANT,**

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

Can a co-owner sell a definite portion of a lot owned in common before its partition?

That is the principal question raised in this case. The present appeal seeks the reversal of the September 23, 2009 Judgment[1] and the April 30, 2010 Order[2] of the Regional Trial Court (RTC), Branch 5, Cebu City. The dispositive portion of the September 23, 2009 Judgment reads:

“WHEREFORE, premises considered, judgment is hereby rendered declaring the sale to defendant Alforque by defendant Velez of a definite portion of Lot No. 4389 as null and void; ordering defendant Alforque to vacate the portion of Lot 4389 she is occupying; ordering defendants, jointly and severally, to pay plaintiffs the sum of Php 1,000.00 as damages from January 2004 until the portion of Lot No. 4389 occupied is vacated by defendant Alforque, Php 30,000.00 as attorney's fees and Php 20,000.00 as litigation expenses.

Notify the parties and their counsel of this judgment.

IT IS SO ORDERED.”

The facts, as culled from the records, are as follows:

This case stemmed from a Complaint[3] dated February 4, 2006 filed by Vicente V. Torres, Jr., Mariano Velez, and Carlos Velez (plaintiffs) before the Regional Trial Court, Branch 5, Cebu City, for Declaration of Nullity of Deed of Sale and Recovery of Possession and Ownership and Damages, against Amparo Alforque and Jesus Velez (defendants).

The complaint alleged that plaintiffs and defendant Jesus Velez are co-owners of Lot No. 4389 situated in Carcar City, Cebu, covered by Transfer Certificate of Title No. T-134124, with an assessed value of Php 21,770.[4] Sometime in 1993, Jesus Velez filed an Action for Partition against plaintiffs. The case was docketed as Civil Case No. CEB-14785 filed before the RTC, Branch 21, Cebu City.[5]

On August 13, 2001, Judgment by Compromise[6] was rendered authorizing Jesus Velez, Mariano Velez, and Vicente Torres, Jr., to sell the properties under litigation and to divide the proceeds among themselves. However, due to defendant Velez's non-cooperation, the RTC issued another Order,[7] upon motion of the plaintiffs, revoking the authority of defendant Velez to sell the subject properties.

Pursuant to such authority, plaintiffs inspected the said lot and discovered that a certain Amparo Alforque was occupying a portion thereof. Plaintiffs subsequently filed a case for Forcible Entry against Alforque before the Municipal Trial Court in Cities of Carcar, Cebu. In the said Forcible Entry case, Alforque claimed that while the case for Partition was pending, defendant Jesus Velez sold to him a definite portion of Lot No. 4839, evidenced

by a Deed of Conveyance dated May 4, 1999[8]

Plaintiffs-appellees argued that the sale by Jesus Velez of a definite portion of Lot No. 4839, to his co-defendant Amparo Alforque is void. In addition, Jesus Velez's authority to sell was already revoked by the Court and thus he had no right to sell a portion of the lot.

In her Answer,[9] Alforque denied most of the material allegations in the Complaint. Alforque maintained that she had always believed that her co- defendant (Jesus Velez) is the absolute owner of the disputed property, the latter claiming to have inherited the property from his deceased parents.[10] Alforque also stressed the fact that the disputed property consists only of one hundred (100) square meters, and as such, the assessed value thereof is much lesser than twenty-one thousand seven hundred and seventy pesos (PhP 21,770.00). Since the assessed value does not exceed twenty thousand pesos (PhP 20,000), the case should have been filed with the municipal trial court.[11] The fact that the case was denominated as Declaration of Nullity of Deed of Sale is of no moment as the ultimate purpose of plaintiffs is to recover possession of the subject property.

Alforque also categorically denied that she stated in his Answer to the Complaint for Forcible Entry that the sale was made while the partition case was pending, the truth being that she had no knowledge of the said partition case.[12]

Alforque argued that the sale by Jesus Velez to her is valid as the latter is the absolute owner of the one hundred (100) square meter portion of the lot. Moreover, plaintiffs never questioned the sale even after the alleged partition was concluded sometime in 2001.[13]

Further, Alforque pointed out that the Forcible Entry case was decided in her favor[14], a fact which, for obvious reasons, was never mentioned in the Complaint. Consequently, plaintiffs-appellants are guilty of forum-shopping as they have already filed a case involving the same issue as to who has a better right of possession over the subject property.[15]

Meanwhile, Mariano Velez died during the pendency of the case and was substituted by his heirs, Anita Chiong Velez, Robert Oscar Velez, Sarah Jean Velez, and Ted Velez.[16]

On May 8, 2006, defendant Jesus Velez submitted a Letter-Affidavit before the RTC, Branch 5, Cebu City, stating that he owns seventy-three percent (73%) of Lot No. 4389, having bought some of the portions from the other co-owners.[17]

On May 9, 2006, plaintiffs filed a Motion to Declare Defendant Jesus Velez in Default,[18] because the latter failed to file an Answer despite service of summons. The Motion was denied since the trial court considered the Letter-Affidavit as defendant Velez's Answer.[19]

For failure of plaintiffs and their counsel to appear during pre-trial, they were declared non-suited and the case was dismissed.[20] Plaintiffs filed a Motion for Reconsideration[21] of the Order dismissing the case, which the trial court granted on September 18, 2006.[22]

After numerous postponements, pre-trial was finally scheduled on July 7, 2009. However, defendants and their counsel failed to appear on that date, and upon Motion of plaintiff's counsel, the trial court allowed the plaintiffs to present evidence ex-parte.[23]

After presentation of plaintiffs' evidence, the trial court rendered Judgment[24] declaring null and void the sale by Jesus Velez to Amparo Alforque of a definite portion of Lot No. 4389 on the ground that Jesus Velez had no authority to sell the subject property to Amparo Alforque. Defendants filed a Motion for Reconsideration but it was denied.

Only Amparo Alforque filed a Notice of Appeal,[25] raising the following assignment of errors:

ISSUES

- THE REGIONAL TRIAL COURT ERRED IN DECLARING THAT THE SALE TO DEFENDANT-APPELLANT BY DEFENDANT VELEZ OF A DEFINITE PORTION OF LOT NO. 4389 IS NULL AND VOID.
- THE REGIONAL TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT TO VACATE THE PORTION OF LOT NO. 4389 SHE IS OCCUPYING.
- THE REGIONAL TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT AND CO-DEFENDANT VELEZ TO PAY, JOINTLY AND SEVERALLY, PLAINTIFFS-APPELLEES DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES.

THE RULING OF THE COURT

The appeal is impressed with merit.

At the outset, it must be stressed that the Deed of Conveyance executed by defendant Jesus Velez in favor of defendant-appellant Alofroque was executed on May 4, 1999 and notarized by Atty. Ma. Consuelo Filisopo on the same date,[26] while the Judgment by Compromise[27] in the partition case (Civil Case No. CEB-14785) authorizing Jesus Velez, Mariano Velez, and Vicente Torres, Jr., to sell the properties under litigation was rendered on August 13, 2001. Jesus Velez's authority to sell the properties was revoked on August 29, 2003.[28]

Clearly, the sale of a portion of the lot in question was perfected before the Judgment of Compromise, and before the revocation by the trial court of the authority of Jesus Velez. Consequently, the finding of the trial court in the assailed Judgment[29] that the act of defendant Velez in selling a portion of Lot No. 4389 to his co-defendant Alforque violates the court a quo's order and has no legal effect, is patently erroneous.

To Our mind, it is legally and chronologically impossible for defendants-appellants to violate a court order which did not exist yet at the time of the sale. We quote the trial court's erroneous finding as follows:

“Having no authority from the court to sell the said properties, the act of defendant Velez in selling a portion of Lot 4389 to his co-defendant Alforque is therefore a violation and has no legal effect.”[30]

On this score alone, the appeal should be granted and the case closed. But not yet. For the guidance of the parties and their counsels, We will discuss the principal issue raised by defendant-appellant in her Brief.

On the principal issue of whether the sale of a definite portion of Lot No. 4389 by Jesus Velez to Amparo Alforque prior to the partition of the property is valid, We rule in the affirmative.

In the case of *Sps. Del Campo v. Court of Appeals*,[31] citing the case of *Lopez v. Vda. De Cuaycong*,[32] the Supreme Court ratiocinated in this wise:

The mere fact that Salome purportedly transferred a definite portion of the co-owned lot by metes and bounds to Soledad, however, does not per se render the sale a nullity. This much is evident under Article 493[33] of the Civil Code and pertinent jurisprudence on the matter. More particularly in *Lopez vs. Vda. De Cuaycong*, et.al. which we find relevant, the Court, speaking through Mr. Justice Bocobo, held that:

The fact that the agreement in question purported to sell a concrete portion of the hacienda does not render the sale void, for it is a 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.)[34] (Emphasis Ours)

We are not unaware of the principle that a co-owner cannot rightfully dispose of a particular portion of a co-owned property prior to partition among all the co-owners. However, this should not signify that the vendee does not acquire anything at all in case a physically segregated area of the co-owned lot is in fact sold to him. 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.[35]

We find that the present case is on all fours with the cases decided by the Supreme Court quoted in the preceding paragraphs. Consequently, We are duty-bound to uphold the validity of the sale of a definite portion of Lot No. 4389 by defendant-appellant Velez to defendant-appellant Alforque. Moreover, there is no showing that the portion of Lot No. 4389 sold by Jesus Velez to Alforque exceeds the aliquot share of the former with respect to the properties held in common.

Since We sustained defendant-appellant on the first issue, it follows that the second and third issues must be resolved in her favor because the remaining issues are premised on the first. A discussion on those matters is no longer necessary since We have already determined the validity of the sale to defendant-appellant of a definite portion of the subject lot.

WHEREFORE, premises considered, the instant appeal is GRANTED and the September 23, 2009 Judgment and the April 30, 2010 Order are REVERSED and SET ASIDE. The Complaint for Declaration of Nullity of Deed of Sale and Recovery of Possession and Ownership of Real Property and Damages in Civil Case No. CEB-32116 is DISMISSED.

SO ORDERED.

Delos Sanots, and Lopez, JJ., concur.

[*] Substituted by his heirs Anita Chiong Velez, Robert Oscar Velez, Sarah Jean Velez and Ted Velez pursuant to the Order of the RTC, Branch 5, Cebu City dated May 5, 2006. Records, p. 23.

[1] Rendered by Judge Douglas Marigomen in Civil Case No. CEB-32116, Records, pp. 79-81.

[2] Records, p. 92.

[3] Records, pp. 2-4.

[4] Records, pp. 3-4.

[5] Records, p. 3.

[6] Records, pp. 74-75.

[7] Dated August 29, 2003. Records, p. 76.

[8] Records, p. 7.

[9] Records, pp. 9-13.

[10] Supra.

[11] Records, p. 12.

[12] Records, p. 10.

[13] Records, p. 10.

[14] Decision dated January 21, 2005, Records, p. 32.

[15] Records, pp. 12-13.

[16] Order dated May 5, 2006. Records, p. 23.

[17] Records, p. 19.

[18] Records, p. 24.

[19] Order dated May 19, 2006. Records, p. 28.

[20] Order dated June 7, 2006. Records, p. 45.

[21] Records, p. 49.

[22] Order. Records, p. 63.

[23] Order dated July 7, 2009. Records, p. 71.

[24] See footnote 3.

[25] Records, p. 93.

[26] Records, pp. 7-8.

[27] Records, p. 74.

[28] Records, p. 76.

[29] Rendered by Hon. Douglas Marigomen, September 23, 2009. Records, pp. 79-81.

[30] Records, p. 81.

[31] G.R. No. 108228, February 1, 2001.

[32] 74 Phil. 601 (1944).

[33] 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)

[34] Id. at 609.

[35] Sps. Del Campo v. Court of Appeals, G.R. No. 108228, February 1, 2001.

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