

PACIENCIA DE JESUS, FELINA DE JESUS, ELENA DE JESUS, AND MARIA DE JESUS, PLAINTIFFS-APPELLANTS, VS. JUSTINA S. VDA. DE MANGLAPUS, DEFENDANT-APPELLEE.

G. R. No. L-527. May 28, 1948

Ponente: TUASON, J.

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TUASON, J.:

This appeal is from an order of the Court of First Instance of Batangas dismissing the action on the ground that the amended and supplemental complaint "do not state facts sufficient to constitute a cause of action." As the question concerns the interpretation of the amended and supplemental complaint it is here copied in full:

AMENDED COMPLAINT

1. That all the plaintiffs, and the defendant, are Filipinos and of age; that the plaintiff Paciencia de Jesus is actual resident of the City of Manila; that the plaintiffs Felina, Elena and Maria de Jesus are residents of Balayan, Batangas; and that the defendant Justina S. Vda. de Manglapus, is resident of the City of Manila and may be served with summons at No. 355 Aviles Str., City of Manila, or at her other known address, No. 4 Regidor Street, San Juan del Monte, Province of Rizal;
2. That the plaintiffs, and, one, Sixto de Jesus, are children of the spouses Natalia Alfonga and Gavino de Jesus who is already dead;
3. That in the Testate Estate of the late Gavino de Jesus, Special Proceedings No. 3174 of the Court of First Instance of Batangas, the plaintiffs, the said Sixto de Jesus, and their mother, Natalia Alfonga, were the instituted heirs of the said deceased;
4. That Sixto de Jesus and Natalia Alfonga sold their rights, interests and participation in the said Testate Estate of the late Gavino de Jesus (before the partition of the Estate), particularly, the two parcels of land covered by O.C.T. Nos. 1292 and 1344 issued by the Office of the Register of Deeds of the Province of Batangas and referred to and described in the original complaint, to the herein defendant, Justina S. Vda. de Manglapus, for the sum of P106,997.87, in Japanese War Notes;
5. That the plaintiffs only learned of the sale of the aforesaid rights, interests and participation of Sixto de Jesus and Natalia Alfonga on September 4, 1945 and that upon learning thereof, the plaintiffs demanded upon the defendant Justina S. Vda. de Manglapus, within the period provided for by law, to be subrogated to the rights, interests and participation purchased by said Justina S. Vda. de Manglapus from Sixto de Jesus and Natalia Alfonga; but said defendant refused and continues refusing the demands of the herein plaintiffs for subrogation;

SUPPLEMENTAL COMPLAINT

And by way of supplemental complaint, plaintiffs allege:

1. That on November 27, 1945, when plaintiff Paciencia de Jesus called on her brother Sixto de Jesus and

inquired from him of the further details of the aforesaid sale of interests, rights and participation, she learned from Sixto de Jesus that on April 12, 1944, the said Sixto de Jesus in his capacity as heir of the deceased Gavino de Jesus and as attorney-in-fact of his mother, Natalia Alfonga, executed a Deed of Promise to Sell to the defendant Justina S. Vda. de Manglapus, his rights, interests and participation in the said Testate Estate of the late Gavino de Jesus, his father, and the rights, interests and participation therein of his mother, Natalia Alfonga; particularly their rights, interests and participation in the four parcels of land covered by O.C.T. Nos. 1290, 1292, 1299 and 1344 issued by the Office of the Register of Deeds of the Province of Batangas in the name of Gavino de Jesus, containing a total area of 730,652 square meters, more or less, at the rate of P1,950.00, Japanese War Notes, per hectare, said sale to be made after the approval of the Project of Participation;

2. That to that promise to Sell, the said Sixto de Jesus and the defendant, Justina S. Vda. de Manglapus, executed an ADDENDUM wherein it is provided that, in case, on the date the absolute sale and payment of the said interests, rights and participation would be finally executed and paid, the proportionate value of the interests, rights and participation of Sixto de Jesus and Natalia Alfonga, in Philippine Currency, would be less or almost the same as the proportionate assessed value thereof, the proportionate price to be paid by the defendant, Justina S. Vda. de Manglapus, would be based upon Twenty Five Thousand Pesos (P25,000), Philippine Currency, which was the peace time value of the aforesaid four (4) parcels of land;

3. That on August 9, 1944, the defendant Mrs. Manglapus, by promising Sixto de Jesus to pay him Five Thousand Pesos (P5,000), in Philippine Currency, made Sixto de Jesus and Natalia Alfonga execute a deed of absolute sale of the two (2) parcels of land covered by O.C.T. Nos. 1292 and 1344, above referred to, with a total area of 548,707 square meters, more or less, which parcels of land were assigned to said Sixto de Jesus and Natalia Alfonga as their share in the said Testate Estate in the Project of Partition which was already submitted for approval by the Court of First Instance of Batangas and subsequently approved by the said Court;

4. That based on the agreed and aforesaid basic price of P25,000.00 of the above-referred four parcels of land containing a total area of 730,652 square meters, more or less, the reselling price of the aforesaid two parcels of land covered by O.C.T. Nos. 1292 and 1344 containing an area of 548,707 square meters, more or less, should be P18,754.55, in Philippine Currency;

5. That of the aforesaid reselling price of P18,754.55, the sum of P5,000.00 has not as yet been paid, leaving therefore P13,754.55 as the should be reselling price of the two parcels of land purchased by the defendant;

6. That the plaintiffs desire to repurchase the aforesaid two parcels of land covered by O.C.T. Nos. 1292 and 1344 issued by the Office of Register of Deeds of Batangas and described in the original complaint by virtue of their right of legal redemption granted them by Article 1067 of the Civil Code, but the defendant would not resell them for less than P90,000.00, in Philippine Currency;

Wherefore, the undersigned attorney for the plaintiffs respectfully pray that this Honorable Court order the defendant, Dña. Justina S. Vda. de Mancilapus, to resell to the herein plaintiffs the two parcels of land covered by O.C.T. Nos. 1292 and 1344 and described in the original complaint to the herein plaintiffs.

The lower court states, among other reasons for its dismissal of the action, "that before the project of partition was approved by the Court, in accordance with the allegation of facts in both the amended and supplemental complaint, there was no absolute sale yet but merely a promise to sell; and that it was after the project of partition has been duly approved by the Court when the sale of the aforesaid parcels of land above mentioned had been duly consummated,"

It has to be admitted that the complaint leaves much to be desired on the score of clearness. But from its somewhat ambiguous allegations these things are distinctly discernable: (1) that on April 12, 1944, Sixto de Jesus,

for himself and as attorney-in-fact of his mother, Natalia Alfonga, signed an instrument promising to sell their "interests and participation" in four parcels of land belonging to the testate estate of the deceased Gabino de Jesus and "containing a total area of 730,652 square meters;" (2) that on August 9, 1944, Sixto de Jesus and Natalia Alfonga executed "a deed of absolute sale" of two of those parcels, then already allotted to them as their shares in a plan of partition agreed upon among Gabino's heirs; and (3) that at the time of the absolute sale the plan of partition had been submitted to the court for approval, and it was approved on September 4, 1945. These extracts tally with the summary or analysis by plaintiffs' counsel on page 4 of his rebuttal memorandum, where he says that "in this case, (a) there was a sale (b) of two (2) parcels of land (c) from a part of the estate of the deceased (d) by two co-heirs, (e) to whom the two (2) parcels of land were assigned as their share in the estate in the project of partition (f) which was already submitted (g) but not yet approved," From what we can gather out of the appellants' discussions in their brief, the burden of their argument is that before the partition was approved Sixto de Jesus and his mother's shares, lots Nos. 1292 and 1394, continued to be rights, interests and participation in the estate subject to the right of repurchase by the other heirs under Article 1067 of the Civil Code. They contend that the sale of these two parcels "was a sale of rights and interests."

In Special Proceeding G.R. No. L-353, 43 Off. Gaz., 2055, 5053, involving the same land and the same parties, this Court passed upon the same questions raised in the case at bar. Mrs. Manglapus had asked in the testate proceeding for the delivery of the two parcels of land now in question by virtue of the sale thereof to her by Sixto de Jesus and Natalia Alfonga. That motion was granted and the plaintiffs in the present case came to us to pray for the writs of certiorari and mandamus whereby they would have this Court annul the order of the respondent judge dated January 29, 1946, entered in Civil Case No. 3174 of the Court of First Instance of Batangas in the matter of the estate of the deceased Gavino de Jesus, which order petitioners denominate 'a writ of possession', and command the respondent provincial sheriff of Batangas and the respondents Juetina S. Vda. de Manglapus and Gregorio Laynes to return to said petitioners the possession of the two parcels of land covered by original certificates of title Nos. 129S and 1344, issued by the Register of Deeds of Batangas and mentioned in their petition. This Court dismissed the petition saying among other things: "The sale to respondent Justina S. Vda. de Manglapus of the two parcels of land in question by Sixto de Jesus and Natalia Alfonga took place after the project of partition had been approved by the court (order of the probate court of March 11, 1946, in Civil Case No. 3960, the legal redemption case, Appendix 1 of respondents' answer), on account of which Article 1067 of the Civil Code cannot support petitioners' claim, said article referring to a sale by any of the heirs of his hereditary right to a stranger before partition. But even supposing that the approval of the project of partition by the court was made after the sale to respondent Justina S. Vda. de Manglapus of said two parcels of land by Sixto de Jesus and Natalia Alfonga, still that approval related back to the date of the project of partition." And in a resolution on a motion for reconsideration, the Court said: "Besides the reasons stated in our decision, by agreement of the parties, the Kale was not to take effect until and unless thus approved (Civil Code, Article 1114). And this approval came after the approval of the project of partition. Hence, besides the reasons stated in our decision, the foregoing additionally show that we are dealing with a case in which the sale was made after the partition, which means that Article 1067 of the Civil Code is unavailable to petitioners, since said article expressly refers to a sale before the partition."

This ruling controls the present case, not as a direct adjudication of it but as a definition of the scope and extent of an heir's right under Article 1067 of the Civil Code to be subrogated to the rights of a purchaser from other heirs. We adhere to the doctrine thus announced. The right of subrogation, in our opinion, is confined to shares in an undivided estate. Conveyance of an hereditary property owned and possessed in severalty does not fall within the purview of the Civil Code. The purpose of Article 1067 is to keep strangers to the family out of a Joint ownership if, as is of ten the case, the presence of outsiders be undesirable and the other heir or heirs be willing and in a

position to repurchase the share sold.

It is for this reason that, in our judgment, it is immaterial to take up the other points about which so much has been said and there is confusion in the discussions: whether the deed was an absolute sale or a mere promise to sell; whether the sale was made before or after the partition was approved; whether the approval of the sale by the court was a condition precedent or a condition subsequent; or whether the sale was ineffective until or unless approved, or effective until or unless disapproved. In none of these cases does the situation which we have mentioned and which the law gives heirs an opportunity to avoid exist. In none of them was the door open for the admission of the purchaser as co-owner of a common hereditary property. If the sale did not materialize because of non-performance of a condition, there was nothing to be repurchased. In the contrary event, no association or co-ownership between the buyer and the other heirs could result.

The cases cited by the appellants do not support their thesis that property sold after partition and before approval of the partition or of the sale is subject to the provision of Article 1067. On the other contention of the appellants, that the sale of property in the hands of a judicial administrator is null and void, some of the cases cited actually state the contrary. By way of parenthesis, this contention is inconsistent with the theory of the action, which assumes that there was a valid sale.

The allegation that the property in question consists of rights and interests of the vendors in the estate is a conclusion of general import. It is, we think, a mistake to suppose that the insertion of this allegation brings the case within the provision of Article 1067. A conveyance by a tenant in common, of any part of the common property marked out by metes and bounds in a partition does not operate, contrary to the expressed declarations and intension of the parties, to convey an estate in common instead. Of an estate in severalty. (*Kenoye vs. Brown*, 82 Miss. 607, 35 SO., 163, 7 R.C.L. 880-881.) A general conclusion and allegation can not overcome the outstanding fact that the subject matter of the sale were two parcels of land which had been segregated from the mass of property as the vendors' shares. In the face of this fact the words "rights and interests" can not be considered more than as a description or statement of the source of the sellers' title to the two lots conveyed. After all, rights and interests have a broad signification, and rights and interests in an hereditary estate may mean separate as well as undivided shares therein.

The appellants raise technical questions of pleading. One of these is that the motion to dismiss does not state clearly, specifically and definitely the grounds upon which the alleged insufficiency of allegations was founded. An examination of the motion shows that the objection is not well taken. We believe the defendants have pointed out in full and with clarity the reasons urged for the dismissal of the suit.

Similarly, the objection that the defendants' reply to the plaintiffs' answer to the motion for dismissal introduces new grounds of dismissal is not borne out by the context of the said answer. The alleged new grounds are but an enlargement of the argument in support of the motion to dismiss without going beyond the basic proposition of lack of a sufficient cause of action. Moreover the defense of failure to state a cause of action is excepted from the rule that defenses and objections not pleaded in the motion to dismiss or in the answer are deemed waived. Such defense may be alleged in a later pleading, if one be admissible, or by motion for judgment on the pleadings or at the trial on the merits. (*Moran's Commentaries on Rules of Court*, Vol. 1, p. 263.)

In the second assignment of error, the appellants object to the defendants' statement in this motion to dismiss, "that the deed of absolute sale was consummated or confirmed by the lower court on September 4, 1945." It is said that this statement is not in the complaint and "was imported by them (defendants) from the probate proceedings." It is alleged that the court below made use of this circumstance as a basis for dismissing the action. This error, if error it be, however does not vitiate the general conclusion at which we have arrived, based alone on

the fact that a partition had been made and that the lots sold by Sixto de Jesus and his mother were specific parts of the estate adjudicated to them in the agreement.

The appealed decision is correct in its result and it is affirmed with costs.

Paras and Bengzon, JJ., concur.

DISSENTING

PERFECTO, J.:

The controversy in this case calls for the application of Article 1067 of the Civil Code which reads as follows:

"If either of the heirs should sell his hereditary rights to a stranger before the partition, any or all of his co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the purchase price, provided it be done within the period of one month, to be counted from the time they were informed thereof."

In our opinion, upon the facts alleged in the amended and supplemental complaint, plaintiffs are entitled to repurchase the inheritance in question, in accordance with said article, and the lower court erred in issuing the appealed order dated March 11, 1946, dismissing the complaint upon the theory that it does not state facts sufficient to constitute a cause of action against defendant.

According to the allegations of the complaint, on April 12, 1944, the co-heirs of plaintiffs executed a deed of promise to sell to defendant the inheritance in question; that on August 9, 1944 in accordance with the promise to sell, said co-heirs executed a deed of sale of said inheritance, which was specified as parcels of land assigned to said co-heirs in the project of partition which was subsequently approved by the lower court; that plaintiffs learned about said sale only on September 4, 1945; and that it was only on November 27, 1945, that they learned of the deed of promise to sell executed on April 12, 1944.

From the allegations of the complaint, it can be gathered that both the deed of promise to sell and the deed of absolute sale were executed before the approval of the project of partition. Before said approval, there could not be any partition, as it is the court's approval which makes it effective.

Upon the allegations of their complaint, there is no question as to the right of the plaintiffs to repurchase, to which defendant appears to be agreeable, although it requires the payment as purchase price of the sum of P90,000, which is much in excess of the price paid by defendant to plaintiff's co-heirs. Apparently the whole controversy between the parties is circumscribed to the repurchase price which plaintiffs should pay to defendant to give effect to the transaction.

The lower court erred in dismissing the complaint and it should be ordered, as we vote, to proceed to try the case on the merits. If the complaint should appear to be lacking in clarity or contains omissions, such as the date of the approval of the project of partition, the proper procedure is to order the amendment.

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