

SULPICIO CARVAJAL, PETITIONER, VS. THE HONORABLE COURT OF APPEALS[]AND EUTQUIANO CAMARILLO AND LIBERATA CACABELOS, RESPONDENTS.

G.R. No. L-44426. February 25, 1982

Ponente: TEEHANKEE, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/42b045b87074/>

TEEHANKEE, J.:

The Court reverses the appellate court's decision affirming in toto the judgment of the Court of First Instance of Pangasinan, declaring plaintiffs-respondents the lawful owners of the land in question and ordering defendant (herein petitioner) to pay P30.00 monthly rentals until possession of the property is surrendered to respondents, for unless there is partition of the estate of the deceased, either extrajudicially or by court order, a co-heir cannot validly claim title to a specific portion of the estate and sell the same. Title to any specific part of the estate does not automatically pass to the heirs by the mere death of the decedent and the effect of any disposition by a co-heir before partition shall be limited to the portion which may be allotted to him upon the dissolution of the communal estate. What a co-heir can validly dispose of is only his hereditary rights.

Private respondents, who are husband and wife, had instituted a complaint before the Court of First Instance for ejectment and recovery of possession against herein petitioner, docketed as Civil Case No. T-1163, alleging that they are the owners in fee simple of a par-cel of commercial land, pro-indiviso, consisting of 150.8 sq. meters, more or less, situated in Poblacion, Tayug, Pangasinan, having bought the same from Evaristo G. Espique by virtue of a Deed of Absolute Sale executed on April 15, 1964. They also demand that petitioner pay a monthly rental for the use of the property at the rate of P40.00 until the property is surrendered to them.

The property in question is a 1/5 portion of a 754 sq. meter land originally owned by Hermogenes Espique and his wife, both dead. After their death, their five children, namely: Maria, Evaristo, Faustina, Estefanio and Tropinia succeeded them in the ownership of the whole lot.

Petitioner presently occupies two-fifths of the whole lot inherited pro-indiviso by the Espique children. Petitioner alleges that he purchased the northern one-half portion of the lot he is occupying (which is also claimed by respondents) from Estefanio Espique and that the southern one-half portion is leased to him by Tropinia Espique. The land subject of the controversy is the most southern portion of the whole lot inherited by the Espique children which petitioner claims he had bought from Estefanio on April 26, 1967 and which respondents claim they had bought from Evaristo on April 15, 1964.

Both sales were made while the petition for partition filed by Evaristo Espique was still pending before the Court of First Instance of Pangasinan, docketed therein as Civil Case No. T-966.

The Court finds merit in the petition for setting aside respondent appellate court's decision finding for respondents-plaintiffs, for the following considerations:

The action for ejectment and recovery of possession instituted by herein respondents in the lower court is

premature, for what must be settled first is the action for partition. Unless a project of partition is effected, each heir cannot claim ownership over a definite portion of the inheritance. Without partition, either by agreement between the parties or by judicial proceeding, a co-heir cannot dispose of a specific portion of the estate. For where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs.[1] Upon the death of a person, each of his heirs becomes the undivided owner of the whole estate left with respect to the part or portion which might be adjudicated to him, a community of ownership being thus formed among the co-owners of the estate or co-heirs while it remains undivided.[2]

While under Article 493 of the New Civil Code, each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto and he may alienate, assign or mortgage it, and even substitute another person in its enjoyment, the effect of the alienation or the mortgage with respect to the co-owners, shall be limited, by mandate of the same article, to the portion which may be allotted to him in the division upon the termination of the co-ownership. He has no right to sell or alienate a concrete, specific, or determinate part of the thing in common to the exclusion of the other co-owners because his right over the thing is represented by an abstract or ideal portion without any physical adjudication.[3] An individual co-owner cannot adjudicate to himself or claim title to any definite portion of the land or thing owned in common until its actual partition by agreement or judicial decree. Prior to that time all that the co-owner has is an ideal or abstract quota or proportionate share in the entire thing owned in common by all the co-owners.[4] What a co-owner may dispose of is only his undivided aliquot share, which shall be limited to the portion that may be allotted to him upon partition.[5] Before partition, a co-heir can only sell his successional rights.[6]

In the case at bar, the fact that the sale executed by Evaristo G. Espique in favor of respondents and the sale executed by Estefanio Espique in favor of petitioner were made before the partition of the property among the co-heirs does not annul or invalidate the deeds of sale and both sales are valid. However, the interests thereby acquired by petitioner and respondents are limited only to the parts that may be ultimately assigned to Estefanio and Evaristo, respectively, upon the partition of the estate[7] subject to provisions on subrogation of the other co-heirs to the rights of the stranger-purchaser provided in Article 1088 of the Civil Code.[8] Respondent court's ruling that the sale by Estefanio in favor of petitioner is not valid because of lack of notice to his co-heirs is erroneous. Such notice in writing is not a re-quisite for the validity of the sale. Its purpose is merely to apprise the co-heirs of the sale of a portion of the estate, for them to exercise their preferential right of subrogation under Article 1088 of the New Civil Code, that is, the right to redeem the property sold within one month from the time they were notified in writing of the sale by a co-heir. (There is nothing in the record to indicate that such right of subrogation was in effect sought to be exercised upon the co-heirs' having learned of the sale, which is not in issue here.)

Thus, respondents have no right to eject petitioners nor demand payment of rentals for the use of the property in dispute. Until the partition of the estate is ordered by the Court of First Instance of Pangasinan in the pending partition proceedings and the share of each co-heir is determined by metes and bounds, neither petitioner nor respondents can rightfully claim that what they bought is the part in dispute.

Accordingly, respondent court's judgment is set aside and judgment is hereby rendered dismissing the complaint of respondents-plaintiffs in the court below. No pronouncement as to costs.

Makasiar, Guerrero, Melencio-Herrera, and Plana, JJ., concur.

Fernandez, J., took no part.

[*] Fifth Division as of promulgation of the decision under review composed of Fernandez, J; Puno, J; concurring in the result and Batacan, J. ponente.

[1] Article 1078, New Civil Code.

[2] 3 Manresa 357; Alcala vs. Alcala, 35 Phil. 679; Jakosalem vs. Rafols, et al., 73 Phil. 628.

[3] Santos vs. Buenconsejo, 14 SCRA 407.

[4] Diversified Credit Corp. vs. Rosado, et al., 26 SCRA 474.

[5] Liwanag vs. Dorian, 32 Phil. 66; Mercado vs. Liwanag, 5 SCRA 472.

[6] Article 1088, New Civil Code; Broce vs. De la Viña, 20 Phil. 423; Wenceslao vs. Calimon, 46 Phil. 906; Hernaez vs. Hernaez, 32 Phil. 214; De Borja vs. Vda. de Borja, 46 SCRA 577.

[7] Jakosalem vs. Rafols, et al. supra; Mercado vs. Viado, 5 SCRA 859.

[8] The text of the cited article reads:

Art. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.