

**ANTONIO MA. CUI AND MERCEDES GUI DE RAMAS, PETITIONERS,
VS. COURT OF APPEALS AND JOSE MA. CUI, RESPONDENTS.***G.R. No. L-24072. July 29, 1968*

Ponente: REYES, J.B.L., J.

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This is a petition for review of a 4 to 1 decision of the Court of Appeals, in its Case CA-G.R. No. 29729-R, remanding the records to the Court of First Instance of Cebu.

For a clear understanding, and correcting certain obvious errors that have crept in the appellate court's decision (as will be later discussed), the background facts may be stated as follows:

1.—Lots Nos. 2312, 2313 and 2319, all situated in the City of Cebu and aggregating an area of 2,658 square meters, were formerly owned, pro-indiviso, by Don Mariano Cui and two of his eight children, Antonio Ma. Cui and Mercedes Cui de Ramas.

2.—Sometime in 1947, said three co-owners executed an agreement entitled "Convenio de Asignacion de Parte"[1] assigning to Don Mariano, as his Vi share in the common property, 900 square meters of Lot No. 2319 facing Calderon street in view of his reluctance to join in the construction of a 12-door building then being erected by Antonio and Mercedes, presumably within the remaining 2/3 portion.

3.—Without fixing its exact metes and bounds, the 900 square meter share of Don Mariano appears to have been assumed by the parties to correspond to the portion of Lot No. 2319 bordering Calderon street and actually occupied by a building owned by the brothers Eulalio and Eulogio Lim. Don Mariano Cui and, later, the administrator of his estate, used to collect P600-a-month rentals from this Lim building which, incidentally, covered not only 900 but some 1,000 square meters.

4.—The Calderon frontage of Lot No. 2319 was not, however, covered entirely by the Lim building. A portion of the lot, abutting on the corner of Calderon and Lincoln streets and containing an area of 69 square meters, was left out. Antonio and Mercedes, who decided to continue the co-ownership, considered and treated this 69 square meters as part and parcel of their 2/3 share in the whole property. They leased the same to a certain Marcelino Godinez who, in turn, subleased the building he had constructed thereon to various tenants. From 1947 to 1959, Antonio and Mercedes collected the rentals paid by Godinez.

5.—In 1959, Don Mariano was declared incompetent. One Victorino Reynes was appointed guardian of his property and, eventually, after the death of Don Mariano, administrator thereof. In 1959, Jesus R. Gaboya took over the position of Reynes as administrator.

6.—As an upshot of the controversy concerning the ownership of the 69 square meters in question, Gaboya submitted for court approval, on 9 October 1959, a Project of Partition[2] dividing Lot No. 2319 into Lot No. 2319-A of 900 square meters and Lot No. 2319-B, the remainder. The first, covering the entire Calderon frontage including the portion being claimed by Antonio and Mercedes and leased to Godinez, was assigned to the estate

of Don Mariano, while Lot 2319-B, including some 100 square meters of it covered by the Lim building, was assigned to Antonio and Mercedes. This was approved on 19 October 1959.

7.—On 11 February 1960, Gaboya filed with the lower court an inventory and appraisal of the estate. Noting that Gaboya did not include the rentals collected by Antonio and Mercedes from Godinez, Jose Qui and several other heirs filed a manifestation in court praying for the surrender and inclusion thereof in the inventory.

8.—Without the inventory having been approved, Gaboya submitted a second Partial Project of Partition, dated 30 April 1960, based on a plan^[3] agreed upon by the heirs dividing Lot No. 2319-A among themselves. Appearing therein is the following proposition:

"It is respectfully submitted that effective as of October 19, 1959 when the partition of Lot No. 2319. was made which adjudicated to the Estate of DON MARIANO CUI Lot No. 2319-A, the rentals due on the aforementioned portion of approximately Sixty-Nine (69) square meters more or less, by the above named individuals should pertain to the estate."

9.—On 3 June 1960, the aforementioned Partial Project of Partition was considered, with the parties agreeing that the collection of rentals from the 69 square meters in question shall start from the time the lease contract with the Lim brothers shall have been cancelled or rescinded, viz.:

"And finally, it has also been agreed, that collection for the rentals from the occupants of Lot No. 2319-A-I, of subdivision plan of Lot No. 2319-A (LRC) Psd-9054, with an area of 69 sq. m., shall begin from the time that the aforementioned contract of lease shall have been cancelled or rescinded; considering that, until then, the Lessees, the Lim Brothers, are still entitled to lease and occupy the 900 sq. m. of Lot No. 2319 belonging to the Estate, and may, in all probability, if this Estate insist on the immediate collection of the rentals since as of October 19, 1959, when the partition of Lot No. 2319 was effected, and the heirs Antonio Ma. Cui and Mercedes Cui de Ramas, who were originally the lessors of this portion of 69 sq. m., now known as Lot No. 2319-A-I, to Marcelino Godinez, in turn demand from the Lim brothers rentals value of the portion of their property on which part of the building of the said lessees now stand after partition, likewise demand of this Estate to make good the contract of lease by delivering to them the said portion of 69 sq. m., to make up the 900 sq. m. subject matter of the lease, and thus enjoy the right to collect the rentals from the actual occupants, also of the same date October 19, 1959." (Italics supplied)

10.—Pursuant to the afore-quoted agreement, Gaboya filed with the lower court a motion, dated 10 June 1960, praying for authority to cancel or rescind the lease contract with the Lim brothers and approval of the Partial Project of Partition.

11.—On 28 June 1960, the lower court authorized the cancellation of the lease contract, but held in abeyance the approval of the Partial Project of Partition. And on 29 August 1960, the Partial Project of Partition itself was also approved. In its Order of approval, the lower court observed that:

"With respect at least to this Lot No. 2319-A, which is the most substantial asset of this Estate, it appears to this Court that the project of partial partition now before it for consideration is the best obtainable under the circumstances, without any serious conflict among the heirs. . . . They may each take possession thereof and lease them directly to whomsoever they prefer. They also stand to participate in the not inconsequential rentals corresponding to Lot No. 2319-A-I, which up to now and until such time as this partial project of partition is not approved, shall continue to correspond only to Antonio Ma. Cui and Mercedes Cui de Ramas, it being their contention that the said portion with an area of 69 sq. m., forms part of their own private property and does not belong to this Estate of Don Mariano Cui."

12.—On 3 January 1961, following the advice of Gaboya, Jose Cui (now respondent herein) filed a motion praying the lower court to resolve that:

"(a) Lot No. 2319-A-I . . . from which the rentals for the year 1947 up to February, 1959, in the total amount of P21,300.00, were collected by Dona Mercedes Cui de Ramas and Atty. Antonio Ma. Cui is the exclusive property of the late Don Mariano Cui;

"(b) That said . . . rentals . . . constitute a trust property . . .; (and),

"(c) That said funds being the property of the estate under administration, the same should be given and delivered into the administrator of the estate . . . who upon receipt thereof, must include the same in the inventory ..."

Gaboya himself, relative to said motion, filed a manifestation narrating in detail the antecedents of the case.[4] This was seasonably followed by the "Opposition" of Antonio and Mercedes controverting the motion.

13.—On 1 March 1961, the lower court issued the Order mentioned at the outset, holding that:

"10. This controversy about the Godinez rentals appears to have already been settled and agreed upon by and between the parties, as is reflected in the transcript of stenographic notes taken during the hearing of this case on June 24, 1960, ...

"It appears quite clear that the motion at bar filed by Jose Ma. Cui to compel his brother and sister, Antonio Ma. Cui and Mercedes Cui de Ramas, to refund to this estate the sum of P21,300.00 is a mere repetition of a similar incident which has already been passed upon by this Court. His lawyer, Atty. Efrain C. Pelaez, acting for and in his behalf as well as those of his other brothers and sisters, Jesus, Rosario, Serafin, and Jorge, all surnamed Cui, already agreed that these Godinez rentals would only begin to correspond to this Estate of Don Mariano Cui commencing from August 24, 1960, or 60 days from the date of that deliberation in open court made on June 24, 1960.

". . . These two (Antonio and Mercedes), who are the owners of the remaining undivided two-thirds portion of Lot 2319, have every legal right to make use of the remaining portion of Lot 2319, excluding that portion corresponding to Don Mariano. The fact is they have not been able to make use of their entire undivided two-thirds portion of Lot 2319 since 1947 because an area of about 100 square meters was encroached upon and occupied by Eulalio and Eulogio Lim under a contract of lease they had with this Estate of Don Mariano Cui. Antonio Ma. Cui and Mercedes Cui de Ramas could even have asked the Estate of Don Mariano to pay them the proportionate share of the rentals paid by the Lim Brothers, tenants of this estate, corresponding to the area in excess of the correct share belonging to Don Mariano. But they have not done so. It would be adding insult to injury to make them pay to this estate what rentals they have received for leasing portions of the property which rightfully they occupied as part of their undivided 2/3 portion of the entire property before actual subdivision has been finally effected.

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the motion at bar is hereby DENIED.

"SO ORDERED." (*Italics Supplied*) (Record on Appeal, pages 58, 63-65)

14.—Jose Cui alone appealed the afore-quoted order to the Court of Appeals, alleging that the lower court erred: (1) in not declaring the 69 square meters part of the 900 square meters assigned to Don Mariano by the "Convenio"; (2) in not declaring the rentals collected therefrom by Antonio and Mercedes trust funds; (3) in holding his motion mere repetition on a similar incident already passed upon by the court; and (4) in denying his prayer to compel Antonio and Mercedes to deliver to the administrator of the estate the sum of P21,300 for inclusion in the inventory.

The Court of Appeals, however, deliberately skipped the issues thus raised and held in abeyance its decision on the merits, all the while avowing that, fundamentally, it had no quarrel with the lower court's order. Reasoning out that a grant or denial of the motion for the return of the P21,300 to the estate, "at this stage of the proceedings,

will not solve the issue or issues" involved, it ordered the remanding of the case to the lower court for further proceedings "to clarify the various aspects of the controversy," to wit:

(1)"(T)he determination or identification as well as delimitation of the respective 69 and 100 square-meter portions which had gone astray, and pass upon the need for their return or re-delivery to their corresponding owners, as well as;

(2)"(T)he determination of how much has been received as total rentals of the estate of Don Mariano and those of Antonio and Mercedes besides the P21,300 in question — for corresponding accounting and delivery of the rightful share which should belong to each group."

This is the decision now before us on appeal.

Petitioners-appellants properly call attention to certain errors in the findings of fact of the Court of Appeals:

(a) In page 2 of said decision, the statement that the 1/3 share of Don Mariano Cui was agreed to be "that portion fronting or abutting Calderon and Lincoln streets, Cebu City", is manifestly incorrect. The agreement between Don Mariano Cui and petitioners herein does not mention Lincoln street at all;

(b) In pages 4-5 of the decision, the pronouncement that the 12-door building constructed by Mercedes and Antonio Cui with funds borrowed from the Rehabilitation Finance Corporation "actually occupied a 69 square meter space which Antonio and Mercedes had leased to Marcelino Godinez" is, likewise, erroneous, it being a physical impossibility to have a 12-door building on only 69 square meters of land. The truth is that the building was constructed elsewhere.

(c) The 69 square-meter area is Lot No. 2319-A-I and not Lot No. 2319-A, as the appellate court's decision would make it appear in several places therein.

While the errors above-noted are not very important, they do tend to make the appealed decision ambiguous and confusing. The findings of fact of the Court of Appeals are usually not subject to revision, but this Court retains the power to rectify such findings where plainly premised on a misapprehension of fact, as gleaned from the records (*De la Cruz vs. Sos-ing and Court of Appeals*, 94 Phil. 26).

On the merits, We find that the order of remand (for reasons that are not clearly stated) appears premature, if the basis of the appealed order of the Court of First Instance of Cebu is not passed upon and decided. It will be recalled that the motion of respondent Jose Cui was to compel the herein petitioners Antonio and Mercedes Cui to turn over to the Administrator of their father's estate the sum of P21,300.00 allegedly received from Godinez as rentals of Lot No. 2319-A-I of 69 square meters, from 1947 to 1959. This motion was denied by the Court of origin for the reason that the attorney for Jose Cui and his group had already agreed —

' that these Godinez rentals would only begin to correspond to this Estate of Don Mariano Cui commencing from August 24, 1960, or 60 days from the date of that deliberation in open court made on June 24, 1960" (Record on Appeal, page 63), and this pronouncement would seem to be borne out by the order of approval of the Partial Project of Partition, dated August 29, 1960, stating that the —

". . . rentals corresponding to Lot 2319-A-I, which up to now and until such time as this partial project of partition is approved shall continue to correspond only to Antonio Ma Cui and Mercedes Cui de Ramas . . ." (Record on Appeal, pages 62-63) (*Italics supplied*)

If any such agreement and order did exist and had become final, then the denial of the motion of Jose Cui would have to be affirmed, since the rentals he sought to have turned over to the estate were those that accrued prior to 1960.

Petitioners herein-further contended that the 900 square meters allocated to the late Don Mariano Cui in the agreement of 1947, entitled "Convenio de Asignacion de Parte", was limited to the space occupied by the building constructed by the lessees Eulalio and Eulogio Lim, who paid the rent directly and exclusively to Don Mariano Cui; that Lot No. 2319-A-I is outside said building, and hence corresponded to the share of herein petitioners-appellants as owners, until they assented to the partition of 1960, that considered said Lot No. 2319-A-I to be part of the share of Don Mariano Cui. If this contention is true and correct, then the rentals sought by Jose Cui, on behalf of his father's estate should rightfully belong to petitioners-appellants.

Plainly these two issues must be first considered and decided by the Court of Appeals. Only in the event that it should decide them against the petitioners-appellants, Antonio and Mercedes, would the Court of Appeals be justified in ordering a remand for an accounting of the rentals.

A third point that should be considered by the Court of Appeals is that there is no disagreement between the parties that the 69 square-meter lot allotted to the Estate of Mariano Cui (Lot No. 2319-A-I) in the partial partition of 1960 is that one shown in the plan, Exhibit "F-Motion", of Jose Cui. Neither is there controversy that the 100 square-meter lot assigned to Antonio and Mercedes Cui (Lot No. 2319-B), but which was improperly covered by the building of Eulalio and Eulogio Lim, is that one delimited by the shaded lines shown in the plan, Exhibit "G-Motion". Hence the order of remand for identification and delimitation of the 69 and 100 square-meter lots, referred to in the proceedings, appears unnecessary-

IN VIEW OF THE FOREGOING, the appealed decision of the Court of Appeals, in its Case G.R. No. 29729-R, is hereby set aside, and the records are ordered remanded to said court with instructions to render a new decision and determination on the merits, as indicated in this opinion. Without pronouncement as to costs.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Appealed judgment of the Court of Appeals set aside and records ordered remanded to it for rendition of a decision on the merits.

[1] The text of the agreement reads:

"QUE COMO QUIERA QUE, las partes aqui, son conduenos absolutos de un parcela de terreno de 2,658 metros cuadrados en partes iguales, situando en las Calle Manalili y Calderon y mas particularmente descrita en la Transferencia de Titulos de la Provincia de Cebu:

"QUE COMO QUIERA QUE, la propiedad arriba descrita esta actualmente hipotecada a la Rehabilitation Finance Corporation para garantizar la construction que mis conduenos construyeron en la parte que los correspondc;

"Y COMO QUIERA QUE, el Sr. Don Mariano Cui, lino de los conduenos, no ha querido unirse en la construccion de dicho edificio, y desea que le correspondc sea la 'A' que este dando frente a la calle Calderon;

"POR CONSIGUIENTE, las partes aqui, siendo todo; mayores de edad y con suficiente capacidad para contraer obligaciones, convieren mutua y voluntariamente, como aqui se convienen, a partir y adjudgear 900 metros cuadrados de dicha lote No. 2319, que da frente a la calle Calderon, a su dueño Mariano Cui, como su ('/j) parte de dicha propiedad perteneciente hasta ahora, a los tres conjuntos;

"QUEDANDO por consiguiente de esta manera 2/3 partes no divididas que continuaran pro-indiviso a los dos

condueños Antonio Ma. Cui y Mercedes Cui de Ramas, donde el edificio está ahora levantado y su bodega.'

[2] See Exhibit F-Motion

[3] See Exhibit G-Motion; also Record on Appeal pages 34 and 35.

[4] See Record on Appeal, pages 23-38.

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