

LUISA LIBRE-ARBOLARIO, GUADALUPE LIBRE-TAGUAN, PERFECTA LIBRE-DE LA CRUZ, JULIA LIBRE-BENAYAS, SEVERINO LIBRE, AND MAGDALENO LIBRE, PLAINTIFFS-APPELLANTS, VS. SPOUSES SOLOMON AN...

Ponente: HERNANDO, J.

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HERNANDO, J.:

Before Us is an appeal[1] from the Orders dated June 29, 2010[2] and September 20, 2010[3], respectively, rendered by the Regional Trial Court (RTC), Branch 61 of Kabankalan City, Negros Occidental in Civil Case No. 1108, an action for Recovery of Real Property with Damages. The questioned June 29, 2010 Order granted defendants' Demurrer to Evidence and dismissed plaintiff's Complaint for lack of cause of action. The assailed September 20, 2010 Order, on the other hand, denied plaintiffs' Motion for Reconsideration on the June 29, 2010 Order.

The Antecedents:

Culled from the records are the following material facts:

Subject of the case is Lot 2735 of Cauayan Cadastral Survey originally owned by Pedro Libre and Sabina Hisona as evidenced by the Original Certificate of Title No. RO-11284 (N.A)[4].

On January 23, 1974, the heirs of Pedro Libre and Sabina Hisona, namely, Encarnacion, Conrado, Magdaleno and Agrifina, all surnamed Libre, executed a Declaration of Heirship and Deed of Sale in favor of their co-heir, Agrifina, over the subject lot. Said deed was annotated[5] at the back of the original title. Subsequently, the original title was then canceled and in lieu thereof, Transfer Certificate of Title (TCT) No. T-73870[6] was issued in Agrifina's name. Thereafter, the latter mortgaged the subject lot with the Development Bank of the Philippines on February 25, 1976 and the same was released on January 3, 1995.

After the death of Agrifina, her heirs, namely, defendants Alejandra Tomagos, Reynaldo and Julio Malinao, executed a Declaration of Heirship and Deed of Absolute Sale in favor of defendants Spouses Solomon and Merlita Ulgasan. Said deed was annotated[7] at the back of TCT No. T-73870. Thereafter, defendants Spouses Solomon and Merlita Ulgasan caused the titling of the subject lot in their favor, resulting in the issuance of TCT No. T-176039[8] in their name.

On June 17, 2002, plaintiffs Luisa Libre-Arbolario, Guadalupe Libre-Taguan, Perfecta Libre-Dela Cruz, Julia Libre-Benayas, Severino Libre and Magdaleno Libre, who claimed to be legal heirs of the original owners, deceased spouses Pedro Libre and Sabina Hisona, filed a Complaint for Recovery of Real Property with Damages involving the subject lot against defendants Spouses Solomon and Merlita Ulgasan, as well as the heirs of their sibling, Agrifina, namely, Alejandra Malinao Tamagos, Reynaldo Malinao and Julio Malinao before the RTC of Kabankalan City, Negros Occidental.

Plaintiffs questioned the authenticity and their exclusion from the Declaration of Heirship and Deed of Sale dated

January 23, 1974 which was executed by only four (4) of the twelve (12) heirs of spouses Libre. They maintained that they filed the complaint in their own behalf and that of the other lawful heirs of spouses Libre who were allegedly excluded from the execution of the questioned deed.

In their Complaint[9], plaintiffs alleged that Sabina Hisona died in 1946 while Pedro Libre died in 1950. The two had twelve children, namely, Agrifina, Encarnacion, Conrado, Guadalupe, Nicolasa, Leovigilda, Luisa, Apolonio, Julia, Severino, Magdaleno and Perfecta. According to them, after the death of their father, Pedro, the subject lot was occupied by the unmarried children, namely, Julia, Severino, Magdaleno and Perfecta. The orphans lived therein until each of them got married and transferred somewhere except for Severino's family who continuously lived in the subject lot until they were unlawfully ejected therefrom in 1995 by defendant Spouses Solomon and Merlita Ulgasan. All the while, the siblings never bothered to either divide or transfer Lot 2735 in their name, as it was often agreed in many family gatherings to preserve said lot being their heritage from their parents. However, Agrifina, their eldest and custodian of the papers pertaining to the subject Lot, surreptitiously and without the knowledge of the other heirs, caused the transfer of the lot title in her own name in 1974.

Plaintiffs maintained that they never had any knowledge of the alleged Declaration of Heirship and Deed of Sale. Neither did their neighbors know about it. In fact, plaintiffs pointed out that Agrifina herself, before her death, borrowed money from a neighbor in the amount of Php5,000.00 and mortgaged her share of the subject property in order to defray expenses for her failing health. Said loan was paid after her death by her brother, Severino, to prevent claims against the property.

Plaintiff Magdaleno, who was named as one of the executors of the questioned Declaration of Heirship and Deed of Sale, denied any involvement or participation in the execution thereof. In fact, upon learning in 1994 that the subject lot was already transferred in favor of his sister, Agrifina Libre, he immediately asked his wife, Rose Bison Libre, to take steps to protect their rights. Accordingly, on February 1, 1995, an Affidavit of Adverse Claim was immediately annotated in Agrifina's title (TCT No. T-73870).

Thereafter, a case was filed before the Municipal Trial Court (MTC) of Cauayan for the recovery of property and a Notice of Lis Pendens was forthwith registered on March 8, 1995. The case was, however, dismissed for lack of jurisdiction on the part of the MTC.

Plaintiffs further declared that almost all of the Libre siblings were still alive at the time that the Declaration of Heirship and Deed of Sale was supposedly executed but that they were totally disregarded. They, thus, asserted that the questioned document is fictitious, simulated and was done in bad faith with the intent to prejudice the other heirs. Accordingly, it is null and void ab initio and has no effect whatsoever.

Plaintiffs claimed that they had actual knowledge of the sale of the subject property only in 1995. They also averred that at the time that Lot 2735 was sold to defendants Spouses Solomon and Merlita Ulgasan, the notice of adverse claim was already annotated in the title. Despite this, defendants spouses pursued with the purchase of the subject lot on February 20, 1995. Likewise, defendants were allegedly aware that the lot was co-owned by several persons as in fact it was possessed by Severino and his daughters who were not among the sellers. They also pointed out that the mother of defendant Solomon Ulgasan was even personally informed by Severino that he was occupying the subject lot in the concept of an owner when the former demanded the latter to vacate the subject place. In any event, plaintiffs asserted that the buyer spouses lived in the same barangay where the lot is located, hence, it would be highly improbable not to know the status of the land. Accordingly, plaintiffs alleged that defendants spouses Ulgasan cannot claim to be buyers in good faith and that the right of defendants spouses, if any, is only as assigns of the part belonging to Agrifina.

Plaintiffs thus prayed, among others, for the revocation of TCT No. T-176039 in the name of defendants spouses

Solomon Ulgasan and Merlita Gesolgon-Ulgasan and that the ownership of the subject lot be restored to the heirs of Pedro Libre and Sabina Hisona, or their assigns.

For their part, defendants argued in their Answer[10] that plaintiffs should have filed a case for the annulment of the title of Agrifina Libre.

Further, they asserted that plaintiffs failed to claim their rights and interest over the subject lot within two (2) years from the time the heirs of Pedro Libre and Sabina Hisona executed the January 23, 1974 Declaration of Heirship and Deed of Absolute Sale in favor of Agrifina, as well as the February 20, 1995 Declaration of Heirship and Deed of Absolute Sale executed by the heirs of Estanislao Malinao and Agrifina Libre. Hence, plaintiffs' claims are now barred by laches and prescription.

Also, defendants averred that the adverse claim filed by plaintiffs on February 1, 1995 and Notice of Lis Pendens on March 7, 1995 were directed against the heirs of Agrifina Libre and not against them. At any rate, they were ordered dismissed on April 11, 1995 and August 7, 1996, respectively. Hence, said dismissal would work as res judicata against plaintiffs. Defendants Solomon and Merlita Ulgasan further argued that the Complaint stated no cause of action as the alleged previous transactions over the subject property were made without their knowledge and that they were purchasers in good faith and for value; that the cause of action was already barred by prescription and laches and that the present action is only a leverage in a criminal case for qualified theft against the plaintiffs in Criminal Case No. 96-1816 pending before the trial court.

After the pre-trial conference was terminated[11], trial on the merits ensued.

To substantiate the material allegations and to establish their right over the property in question, plaintiffs Magdaleno Libre and Severino Libre testified in court. Jocelyn Ortaneza was also presented to support plaintiffs' assertions.

After the plaintiffs rested their case, defendants, instead of presenting their evidence, submitted a Demurrer to Evidence[12].

On June 29, 2010, the court a quo found merit in defendants' Demurrer to Evidence and dismissed the complaint for lack of cause of action. The court a quo opined that plaintiffs cannot recover possession and ownership of the subject lot from defendants spouses Solomon Ulgasan and Merlito Gesolgon for the latter had validly acquired the same. It ruled that there was a valid transfer of the subject property from the Heirs of Spouses Pedro Libre and Sabina Hisona to Agrifina Libre, from Agrifina to her heirs and finally to spouses Solomon Ulgasan and Merlito Gesolgon. In so ruling, the court a quo gave due weight to the Declaration of Heirship and Deed of Sale executed by the heirs of spouses Pedro Libre and Sabina Hisona, being a duly notarized document. It further declared that plaintiffs' cause of action has already prescribed for having been instituted only on June 17, 2002, or more than four (4) years from the discovery of fraud which should be reckoned from the time the title of the subject property was issued in favor of Agrifina Libre on February 25, 1974. It explained that the registration of the Deed of Sale is considered a constructive notice to the whole world of its contents, and all interests, legal and equitable, included therein. Furthermore, it ruled that even assuming that there was an implied trust, plaintiffs' action was, nonetheless, barred by prescription and laches as an action for reconveyance prescribes in ten (10) years from the issuance of the Torrens Title over the property.

Hence, this appeal by plaintiffs-appellants anchored on the following assignment of errors:

The Assigned Errors[13]:

1. THE HONORABLE COURT ERRED IN FINDING THAT THE 1974 DECLARATION OF HEIRSHIP AND DEED OF SALE IN FAVOR OF AGRIPINA LIBRE IS VALID;

2. THE HONORABLE COURT ERRED IN FINDING THAT THE CAUSE OF ACTION OF THE INSTANT CASE HAS PRESCRIBED;

3. THE HONORABLE COURT ERRED IN FINDING THAT RESPONDENT SPOUSES ULGASAN HAS ACQUIRED A VALID TITLE TO THE SUBJECT LOT.

Court's Ruling:

The appeal is bereft of merit.

Appellants first assail the findings of the lower court with respect to the validity of the lot's transfer in favor of their sibling, Agrifina Libre. They argue that the purported Declaration of Heirship and Deed of Sale was fraudulent and invalid and that they had adduced convincing evidence to prove the same. Firstly, they assert that the questioned deed was executed only by four (4) (who had declared themselves as the only heirs) out of the twelve (12) children of the late spouses Pedro Libre and Sabina Hisona. Secondly, Magdaleno Libre, one of the alleged signatories in said deed, categorically denied any participation thereto.

At first glance, there appears merit in the assertions of appellants. Indeed, extrajudicial settlement presupposes concurrence among all the heirs to the partition of the estate. If there are other heirs that are excluded, the settlement is not valid and binding upon the excluded heirs, and consequently, a total nullity. Section 1, Rule 74 of the Rules of Court provides:

SECTION 1. Extrajudicial settlement by agreement between heirs. –

x x x x x x x x

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof. (Underscoring added)

The effect of excluding the heirs in the settlement of estate was further elucidated in *Segura v. Segura*[14] thus:

It is clear that Section 1 of Rule 74 does not apply to the partition in question which was null and void as far as the plaintiffs were concerned. The rule covers only valid partitions. The partition in the present case was invalid because it excluded six of the nine heirs who were entitled to equal shares in the partitioned property. Under the rule “no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.” As the partition was a total nullity and did not affect the excluded heirs, it was not correct for the trial court to hold that their right to challenge the partition had prescribed after two years from its execution. (Emphasis supplied)

However, in order for the foregoing ruling to be applicable, it must presuppose that the supposed excluded heirs have already established their status as legal heirs and have been declared as such.

Jurisprudence dictates that the determination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property.[15] This must take precedence over the action for recovery of possession and ownership.[16] The Supreme Court has consistently ruled that the trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding.[17] Under Section 3, Rule 1 of the 1997 Revised Rules of Court, a civil action is defined as one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong while a special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact.[18] It is then decisively clear that the declaration of heirship can be made only in a special proceeding inasmuch as the appellants here are seeking the establishment of a status or right.[19]

In the early case of *Litam, et al. v. Rivera*[20], the Supreme Court ruled that the declaration of heirship must be made in a special proceeding, and not in an independent civil action. This doctrine was reiterated in *Solvio v. Court of Appeals* where the High Court held:

xxx where despite the pendency of the special proceedings for the settlement of the intestate estate of the deceased Rafael Litam, the plaintiffs-appellants filed a civil action in which they claimed that they were the children by a previous marriage of the deceased to a Chinese woman, hence, entitled to inherit his one-half share of the conjugal properties acquired during his marriage to Marcosa Rivera, the trial court in the civil case declared that the plaintiffs-appellants were not children of the deceased, that the properties in question were paraphernal properties of his wife, Marcosa Rivera, and that the latter was his only heir. On appeal to this Court, we ruled that 'such declarations (that Marcosa Rivera was the only heir of the decedent) is improper, in Civil Case No. 2071, it being within the exclusive competence of the court in Special Proceedings No. 1537, in which it is not as yet, in issue, and, will not be, ordinarily, in issue until the presentation of the project of partition.

In the more recent case of *Milagros Joaquin v. Lourdes Reyes*[21], the Supreme Court reiterated its ruling that matters relating to the rights of filiation and heirship must be ventilated in the proper probate court in a special proceeding instituted precisely for the purpose of determining such rights. Citing the case of *Agapay v. Palang*, the Supreme Court held that the status of an illegitimate child who claimed to be an heir to a decedent's estate could not be adjudicated in an ordinary civil action which, as in this case, was for the recovery of property.[22]

Accordingly, in view of the forgoing, appellants could not be declared in this action as legal heirs of the deceased spouses, Pedro Libre and Sabina Hisona, as the same must be made in a proper special proceeding instituted for that purpose.

In addition, it bears stressing too that to warrant a reconveyance of the land, there must be clear and convincing evidence of title to the property and the fact of fraud committed by the party who registered the property in his/her name.[23] Here, inasmuch as appellants wanted to recover a property originally owned and whose title was issued in the names of their supposed parents, the fact that they are the latter's legal heirs must first be declared and determined. Thus, with no such declaration, appellants' personality to question the January 23, 1974 Declaration of Heirship and Deed of Sale and the subsequent transfers of the subject property becomes highly doubtful. Consequently, they could not be deemed as real parties in interest.

The Rules of Court provide that only a real party in interest is allowed to prosecute and defend an action in court. A real party in interest is the one who stands to be benefited or injured by the judgment in the suit or the one entitled to the avails thereof. Such interest, to be considered a real interest, must be one which is present and substantial, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest. A plaintiff is a real party in interest when he is the one who has a legal right to enforce or protect, while a defendant is a real party in interest when he is the one who has a correlative legal obligation to redress a wrong done to the plaintiff by reason of the defendant's act or omission which had violated the legal right of the former. The purpose of the rule is to protect persons against undue and unnecessary litigation. It likewise ensures that the court will have the benefit of having before it the real adverse parties in the consideration of a case. Thus, a plaintiff's right to institute an ordinary civil action should be based on his own right to the relief sought.[24]

We stress once again that in cases wherein alleged heirs of a decedent in whose name a property was registered sue to recover the said property through the institution of an ordinary civil action, such as a complaint for reconveyance, as in this case, and partition, or nullification of transfer certificate of titles and other deeds or documents related thereto, the consistent ruling is that a declaration of heirship is improper in an ordinary civil action since the matter is within the exclusive competence of the court in a special proceeding.[25]

This Court, however, is not unaware of some exceptions where the need to institute a separate special proceeding for the determination of heirship may be dispensed with for the sake of practicality, as when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship, and the RTC had consequently rendered judgment thereon, or when a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened.[26]

Also, in *Portugal v. Portugal-Beltran*[27], the Supreme Court held that it would be superfluous to still subject the estate to administration proceedings since a determination of the parties' status as heirs could be achieved in the ordinary civil case filed because it appeared from the records of the case that the only property left by the decedent was the subject matter of the case and that the parties have already presented evidence to establish their right as heirs of the decedent.

The foregoing exceptions, however, are unavailing in this case.

Firstly, there was no showing from the records that appellants instituted any special proceeding for declaration of heirship and that the same cannot be re-opened. Secondly, from the testimony of Severino Libre, there are two other lots aside from the lot subject of this case, although these two other lots were already disposed. Finally, while appellants attempted to establish their status as legal heirs of the original owners through the testimonies of their witnesses coupled with the pieces of documentary evidence, it is however noteworthy that no ruling on this aspect was made by the trial court. Accordingly, it is not for this Court to make such a declaration. At any rate, We deem it proper not to delve into the evidence presented by the appellants as the same must be threshed out and determined in a proper special proceeding instituted for that purpose.

With the foregoing pronouncement, it is Our considered belief that the dismissal of appellants' complaint for recovery of property with damages is on such ground, that is, there was no special proceeding resorted to by appellants as to their claim of heirship, proper and warranted. As held in *Heirs of Ypon v. Ricaforte* and the Register of Deeds of Toledo City[28], thus:

Verily, while a court usually focuses on the complaint in determining whether the same fails to state a cause of action, a court cannot disregard decisions material to the proper appreciation of the questions before it. Thus, concordant with applicable jurisprudence, since a determination of heirship cannot be made in an ordinary action for recovery of ownership and/or possession, the dismissal of Civil Case No. T-2246 was altogether proper. In this light, it must be pointed out that the RTC erred in ruling on Gaudioso's heirship which should, as herein discussed, be threshed out and determined in the proper special proceeding. As such, the foregoing pronouncement should therefore be devoid of any legal effect.

While it cannot be gainsaid that the matter on declaration of heirship in a special proceeding was not raised as an issue in the present appeal, We nonetheless note that "once a court acquires jurisdiction over a case, it has wide discretion to look upon matters which, although not raised as an issue, would give life and meaning to the law." [29] The Rules of Court recognize the broad discretionary power of an appellate court to consider errors not assigned.[30] Section 8, Rule 51 of the 1997 Rules of Civil Procedure provides:

SEC. 8 Questions that may be decided. No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered, unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

Thus, an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;

(c) matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) matters not assigned as errors on appeal but closely related to an error assigned; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.[31]

In Our considered view the instances cited in letters c, e and f are well-applicable here. Appellants' failure to institute a special proceeding for them to be declared as heirs must be given due consideration and seriously be taken into account as it is necessary in arriving at a just decision and complete resolution of the case and to serve the interest of justice as well as to avoid dispensing piecemeal justice. In like manner, We must stress too that the matter in issue is closely related to appellants' ascribed errors particularly in questioning the validity of the 1974 Declaration of Heirship and Deed of Sale. In fact, whether or not the execution of this deed is valid or otherwise, is dependent upon finding of whether or not appellants are indeed heirs of the original owners.

WHEREFORE, in view of all the foregoing, the assailed Orders dated June 29, 2010 and September 20, 2012 of the Regional Trial Court, Branch 61 of Kabankalan City, Negros Occidental in Civil Case No. 1108 are hereby **AFFIRMED** with **MODIFICATION** in that the ground for dismissal is failure of appellants to institute a special proceeding for their declaration as heirs.

SO ORDERED.

Quijano-Padilla, and Azcarraga-Jacob, JJ., concur.

[1] Per Notice of Appeal; Record, pp. 170-171.

[2] Penned by Judge Ulric R. Cañete, Record, pp. 341-350.

[3] Record, p. 169.

[4] Exh. "A"; Record, pp. 13-14.

[5] Ibid, p. 14.

[6] Exh. "B"; Record, pp. 15-16.

[7] Ibid, p. 16.

[8] Exh. "3"; Record, pp. 34-36.

[9] Record, pp. 1-8.

[10] Record, pp. 24-29.

[11] Per Order dated September 13, 2004; Record. p. 69.

[12] Record, pp. 150-153.

[13] Rollo, Appellants' Brief, p. 63.

[14] G.R. No. L-29320, September 19, 1988 cited in Neri, et. al. v. Heirs of Uy, G.R. No. 194366, October 10, 2012.

[15] Heirs of Ypon v. Ricaforte and the Register of Deeds of Toledo City, G.R. No. 198680, July 8, 2013.

[16] Ibid.

[17] Ibid.

[18] Ibid.

[19] Ibid.

[20] G.R. No. L-7644, November 27, 1956 cited in *Heirs of Gabatan v. Court of Appeals, et. al.*, G.R. No. 150206, March 13, 2009.

[21] Cited in *Heirs of Ypon v. Ricaforte a.k.a*, G.R. No. 198680, July 8, 2013.

[22] Ibid.

[23] *Noblejas and Noblejas, Registration of Land Titles and Deeds*, 2007 Revised Edition, pp. 249-250.

[24] *Reyes, et. al. v. Enriquez, et. al.*, G.R. No. 162956, April 10, 2008.

[25] Ibid.

[26] *Heirs of Ypon v. Ricaforte a.k.a*, G.R. No. 198680, July 8, 2013.

[27] G.R. No. 155555, August 16, 2005 cited in *Reyes, et. al. v. Enriquez*, G.R. No. 162956, April 10, 2008.

[28] G.R. No. 198680, July 8, 2013.

[29] *Comilang v. Burcena and Burcena*, G.R. No. 146853, February 13, 2006.

[30] Ibid.

[31] Ibid.

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