

JOSE MARIA RAMIREZ, PLAINTIFF-APPELLEE, VS. JOSE EUGENIO RAMIREZ, RITA D. RAMIREZ, BELEN T. RAMIREZ, DAVID MARGO-LIES, MANUEL UY & SONS, INC., BANK OF THE PHILIPPINE ISLANDS, ...

G.R. No. L-22621. September 29, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal by the defendants from a decision of the Court of First Instance of Manila.

Plaintiff, Jose Maria Ramirez, brought this action^[1] against defendants Jose Eugenio Ramirez, Rita D. Ramirez, Belen T. Ramirez, David Margolies, Manuel Uy & Sons, Inc., the Estate of the late Jose Vivencio Ramirez, represented by its judicial administrator, the Bank of the Philippine Islands, and Angela M. Butte – hereinafter referred to collectively as de-fendants – for the partition of a parcel of land situated at the Northwestern corner of Escolta street and Plaza Sta. Cruz, Manila – otherwise known as Lot 1 of Block 2120 of the Cadastral Survey of Manila and more particularly described in Transfer Certificate of Title No. 53946 of the Register of Deeds for said City – and belonging pro indiviso to both parties, one sixth (1/6) to the plaintiff and five-sixths (5/6) to the defendants.

Manuel Uy & Sons expressed its conformity to the partition, "if the same can be done without great prejudice to the interests of the parties." Defendant Butte agreed to the partition prayed for. The other defendants objected to the physical partition of the property in question, upon the theory that said partition is "materially and legally" impossible and "would work great harm and prejudice to the co-owners." By agreement of the parties the lower Court referred the matter to Commission completed of:

- (1) Dellin Gawaran, Deputy Clerk of said court, as Chairman,
- (2) Artemio U. Valencia, President of the Manila Board of Realtors as commissioner for plaintiff, and
- (3) Ramon F. Cuervo, President of the Perpetual Investment Corporation, Inc., as commissioner for de-fendants,

to determine whether the property is susceptible of partition, and submit a plan therefor, if feasible, as well as to report thereon. Subsequently, the commissioners submitted their individual reports with their respective plans for the segregation of plaintiff's share.

After due hearing, the Court rendered a decision declaring that plaintiff is entitled to the segregation of his share, and directing that the property be partitioned in accordance with the plan submitted by commissioner Valencia, and that the expenses incident thereto be paid by both parties proportionately. Hence, this appeal by the defendants, except Mrs. Butte. Appellants maintain that the lower court has erred: 1) in holding that said property is legally susceptible of physical division; 2) in accepting the recommendation of commissioner Valencia,

instead of that of commissioner Cuervo, or a proposal made by the very plaintiff; and 3) in not order-ing that the incidental expenses be borne exclusively by him.

We find no merit in the appeal.

With respect to the first alleged error, it is urged that a physical division of the property will cause "inestimable damage" to the interest of the co-owners. No evidence, how-ever, has been introduced, or sought to be introduced, in sup-port of this allegation. Moreover, the same is predicated upon the assumption that a real estate suitable for commer-cial purposes – such as the one herein sought to be parti-tioned – is likely to suffer a proportionately great diminution in value when its area becomes too small. But, then, if plain-tiff's share of 260.26 square meters were segregated from the property in question, there would still remain a lot of 1,301.34 square meters for appellants herein and Mrs. Butte. A real estate of this size, in the very heart of Manila, is not, however inconsequential, in comparison to that of the present property of the community. In other words, we do not believe that its value would be impaired, on account of the segregation of plaintiff's share, to such an extent as to warrant the conclusion that the property is indivisible.

Appellants argue that, instead of making the aforemen-tioned segregation, plaintiff's share should be sold to them. In support of this pretense, they cite the provision of Article 495 of our Civil Code, to the effect that:

"x x x Notwithstanding the provisions of the preceding article, the co-owners cannot demand a physical division of the thing owned in common, when to do so would render it un-ser-viceable for the use for which it is intended. But the co-ownership may be terminated in accordance with article 498."

They apparently assume, once again, that the alleged "inestimable damage" to be suffered by the property, if plaintiff's share were segregated, is equivalent to rendering it "un-ser-viceable for the use for which it is intended." independently of the fact that the minor premise of this syllogism – the alleged "inestimable damage" – has not been established, the conclusion drawn by appellants does not follow necessarily. Indeed, the record shows that there are two (2) buildings on land in question, namely: 1) a two-storey commercial building – known as "Sta. Cruz Building" – abutting, on the one (1) side,² on the Escolta, and, on the other,³ on Plaza Santa Cruz; and 2) a small two-storey residential building, on the Northwestern end of the lot, and behind the first building, adjoining the Estero de la Reina, which constitutes the South-western boundary of the property. There is nothing to shown that, after segregating plaintiff's share, the buildings left on the remaining 1,301.34 square meters, representing defendants' share, would be un-ser-viceable, either for commercial or for residential purposes. On the contrary, it seems ob-vious that plaintiff would not insist upon the partition prayed for, if his share⁴ where un-ser-viceable for either – particularly the commercial – purpose. In fact, every one of the aforementioned commissioners, including the one representing defendants herein, recommended the segregation of plaintiff's share. The commissioners merely failed to agree on the precise configuration thereof.

This brings us to the second issue raised by appellants: whether the lower court should have adopted the plan submitted by their own commissioner, or "in not taking into considera-tion," at least, a proposal made by plaintiff herein. In this connection, it appears that said commissioner⁵ recommended that plaintiff's share be given a frontage of 6.14 lineal meters at Plaza Sta. Cruz, whereas the commissioner for the Court,⁶ favored a frontage of 12.66 square meters at said Plaza; that defendants' main objection to the plan recommended by commissioner Valencia⁷ and adopted by the lower court, is that it left, behind the portion awarded to plaintiff, a lot of 169 square meters, which would have to be divided among the defendants, should they later wish to have their individual shares segregated; and that, in order to offset this objection, plaintiff had expressed – in one of the pre-trials held in the lower court and in order to "facilitate early termination" of the case – the willingness "to buy from the other co-owner the remaining portion of the land behind his lot at P1,000 per square meters."

The record does not show that this offer of the plaintiff had not been "taken into consideration" by the lower court. Moreover, defendants had not accepted it. And neither do they accept it now, for they would want the plaintiff to pay a price higher than that offered by him. Upon the other hand, the disadvantage resulting to the defendants from the ex-istence of said lot of 169 square meters, behind that award-ed to the plaintiff, is offset by the fact that the remaining portion of the land in question – representing defendants' collective shares – has, in addition to a frontage of around 40 meters on Plaza Santa Cruz, a frontage of 24.13 meters on Escolta Street, which apart from being, admittedly, the most valuable one, is totally denied to the plaintiff. Then, again the Cuervo plan giving plaintiff a 6.14 meters front-age at Plaza Sta. Cruz, goes all the way down to the Western of the property, the Estero de la Reina, and would re-quire a partition of the residential building, on that part of the property in question, which the very plaintiff says is in-divisible, because it would render said building "unservice-able for the purpose for which it is intended."⁸

As regards the last alleged error, it is obvious that the segregation of plaintiff's share inures to the benefit, not only of the plaintiff, but, also, of the defendants, and that both should, consequently, defray the incidental ex-penses.

WHEREFORE, the decision appealed from is hereby affirmed, with the costs of this instance against herein defendants-appellants.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Benzon, J., on leave.

[1] Belen T. Ramirez was originally one of the plaintiffs, but she later withdrew as such.

2 The South.

3 The East.

4 Of 260.26 square meters.

5 Mr. Cuervo, representing defendants.

6 Deputy Clerk of Court of Gawaran.

7 Representing the plaintiff.

8 Deputy Clerk Gawaran's plan is more objectionable to the defendants, not only because it gives plaintiff a bigger frontage of 12.66 meters at Plaza Santa Cruz, but, also, be-cause it leaves a bigger backyard lot, of 225 square meters, on the side adjoining the Estero de la Reina, without access to any street.

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