

**JOVENCIO ARCENAS, NEMESIO ACAIN, AND ROSA DIONGSON,
PETITIONERS, VS. HON. ANTONIO D. CINCO, PRESIDING JUDGE,
BRANCH VIII, COURT OF FIRST INS-TANCE OF CEBU, AND TEODORA
VDA. DE A...**

G.R. No. L-29288. November 29, 1976

Ponente: ANTONIO, J.

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ANTONIO, J.:

In this petition for certiorari and mandamus, petitioners seek the nullification of the Order of respondent Judge dated May 18, 1968, dismissing the appeal of petitioners in Civil Case No. P-118,[1] and the issuance of an order for said respondent to approve the Record on Appeal.

On August 11, 1966, respondent Teodora Vda, de Arcenas, widow of the deceased Alfonso Arcenas, filed an action (Civil Case No. P-118) with the Court of First Instance of Cebu against Jovencio Arcenas, Nemesio Acain and Rosa Diongson for the partial annulment of certain deeds of pacto de retro and/or sale executed by her only son, Jovencio Ar-cenas, in favor of Spouses Nemesio Acain and Rosa Diongson insofar as it encroached upon her rights as co-owner; for the return to her of the possess-ion of the portions of the property taken from her by defendants, the accounting by defendants of her share of the produce, and the partition of the pro-perties by the segregation of the portion belonging to her.

On February 24, 1967, the parties in the afore-mentioned civil case submitted a "Stipulation of Facts" stating in substance that Alfonso Arcenas died intestate on March 4, 1962, leaving as his heirs his wife, Teodora Vda. de Arcenas, and his only son, Jovencio Arcenas; that the deceased left to his heirs three (3) real properties, namely: (a) a parcel of agricultural land in Cabangbang, Banta-yan, Cebu, with an area of 77,250 square meters, more or less; (b) a parcel of agricultural land in Sillon, Bantayan, Cebu, containing an area of 18,375 square meters, more or less; and (c) a parcel of land in the Poblacion of Bantayan, Cebu, containing an area of 235 square meters, more or less; that the parcels of land in (a) Cabangbang and (b) Sillon were sold, with right of repurchase, by Jovencio Arcenas to Nemesio Acain and Rosa Diongson sometime on July 5, 1963 and June 26, 1963, respectively, without the knowledge and conformity of Teodora Vda. de Arcenas; that subsequently, on March 23, 1966, Jovencio Arcenas executed a deed of absolute sale of the agricultural land in Sillon in favor of Nemesio Acain and Rosa Diongson who, thereafter, planted thereon about 400 to 500 coconut trees "more or less one year old", aside from fencing the said parcel; that from the date of the pacto de retro sale executed by Jovencio, Teodora Vda. de Arcenas has not received her share of the produce of said property; that Teodora Vda. de Arcenas waives her right to the residential lot in the Poblacion of Bantayan in favor of her son, Jovencio, but "seeks to enforce her rights as heir" on the properties in Cabangbang and Sillon; that Jovencio Arcenas, Neme-sio Acain and Rosa Diongson agreed "to return volun-tarily the share of said Teodora Vda. de Arcenas in the properties" situated at Cabangbang and Sillon, Bantayan, Cebu; that the parties agreed "to parti-tion the properties" situated in Cabangbang and Sillon, "submitting for the decision of the Court the issue in the interpretation of Article 996, New Civil Code, as to the share of the surviving spouse Teodora Vda. de Arcenas", and finally, all the par-ties

waived all their demands "for accounting, re-imbursement of improvements introduced, and any or all claims for damages, attorney's fees or costs."

To assist the court in its determination of the share of the surviving spouse, the parties sub-mitted their respective memoranda. In her memoran-dum, Teodora Vda. de Arcenas contended that in view of the ruling of this Court in *Santillon v. Minan-da*,^[2] the surviving spouse is entitled to a share equivalent to one-half (1/2) of the estate, while her son, Jovencio Arcenas, is entitled to the other half, under Article 996 of the New Civil Code. On the other hand, the herein petitioners claimed that since the surviving spouse survived with one legi-timate son, she is entitled to only one-fourth (1/4) of the entire estate, while her son is entitled to three-fourths (3/4) thereof.

On the basis of the afore-mentioned stipula-tion and memoranda of the parties, the court a quo, on June 9, 1967, rendered judgment declaring the plaintiff, Teodora Vda. de Arcenas, as "the lawful owner in fee simple of an undivided one-half share of the land described in paragraphs 2(a) and 2(b) of the afore-quoted Stipulation of Facts; declaring Jovencio Arcenas the exclusive owner of the land described in paragraph 2(c) of the Stipulation of Facts above-quoted; ordering defendants Nemesio Acain and Rosa Diongson to deliver to the plaintiff the undivided one-half portions of the two parcels of land just described which correspondingly pertain to the surviving spouse, but erroneously ceded by the son, Jovencio, to the Acains." It also ordered the parties to partition the agricultural lands in Cabangbang and Sillon and to "submit the corres-ponding deed of partition to the Court for its ap-proval."

On September 16, 1967, Teodora Vda. de Arcenas, claiming that the decision of June 9, 1967 had become final, moved for the issuance of a Writ of Ex-ecution. This was opposed by petitioners who con-tended that the decision is interlocutory as it did not finally dispose of the action but left something for the parties to do, that is, to partition the property and submit the corresponding agreement of partition to the court for its approval. They likewise prayed that the decision be modified in order that the land situated in Sillon, which was sold to the spouses Nemesio Acain and Rosa Diongson and wherein they have introduced improvements, be award-ed to them, while the land in Cabangbang be given in its entirety to Teodora Vda. de Arcenas. This was opposed by the widow, hence, on September 30, 1967, the respondent Judge appointed Municipal Judge Marcelino M. Escalona of Madridejos, Cebu as Com-missioner to partition the properties and to submit the project of partition to the court for approval.

In his report dated November 29, 1967, Commissioner Escalona recommended to the court that, since the Sillon property, although much smaller, has been improved by the Acain spouses by planting thereon 150 coconut trees, said property should be awarded to them in full, while the Cabangbang land, which is much larger, more productive, and with higher market value, should be awarded to Teodora Vda. de Arcenas. This was opposed by Teodora Vda. de Arcenas, who insisted that it would modify the judgment which ordered a physical division into two parts each of the two parcels, and consequently, the court a quo, on January 6, 1968, directed the Com-missioner to make a "physical division of each of the two properties in the presence of the parties or their representatives" and to make the necessary recommendation as to which half should pertain to Jovencio and which half should pertain to the widow. Thereafter, the Commissioner submitted his second report, informing the court that he had divided the two parcels into two portions, to wit: (1) Cabang-bang A, which is the northern portion of the pro-erty, with an area of 3.7080 hectares, with five (5) bamboo groves, and Cabangbang B, which is the southern portion, with an area of 4.0170 hectares, containing six (6) bamboo groves; and (2) Sillon A, which is the northern half of this land with an area of .91875 hectare, containing 150 coconut trees; and Sillon B, or the southern half of the same pro-erty, with an area of .91875 hectare and having 150 coconut trees planted thereon. He, however, opined that it would be inequitable to award one-half of the Cabangbang property to the Acain spouses considering that the Cabangbang property has been mortgaged by Jovencio Arcenas to the

Bantayan Rural Bank to secure a loan of P2,000.00, with the know-ledge and consent of his mother, Teodora, and the same is about to be foreclosed. Moreover, it would be unfair to deprive the Acain spouses of the Sillon property since they have introduced in good faith valuable improvements thereon by planting about 300 coconut trees. This notwithstanding, the court a quo, on March 27, 1968, issued an Order awarding Cabangbang A and Sillon B to Teodora Vda. de Arce-nas, while Cabangbang B and Sillon A were awarded to Jovencio Arcenas.

On April 25, 1968, petitioners filed with the respondent court their Notice of Appeal, stating that they were appealing the trial court's Orders dated January 6, 1968 and March 27, 1968 to this Court "on questions of law". To show that the ap-peal was filed within the reglementary period, they stated that they received the Order of January 6, 1968 on January 22, 1968, while that of March 27, 1968 was received by them through their counsel on April 4, 1968. After the filing of the Record on Appeal, respondent court, on May 18, 1968, issued an Order dismissing the appeal of petitioners on the ground that the decision of June 9, 1967 had already become final and executory and that the or-ders sought to be reviewed are merely orders issued to implement the afore-mentioned decision. Peti-tioner's motion for reconsideration was denied by the trial court on June 20, 1968, hence, this peti-tion for certiorari and mandamus.

Submitted for resolution is the issue of whe-ther or not the decision of respondent court in Civil Case No. P-118, dated June 9, 1967, is imme-diately executory and, therefore, not appealable.

There is no question that if the parties to the litigation submitted a compromise agreement to the court for approval and in the absence of oppo-sition, the court renders judgment strictly in accordance with such agreement, the judgment rendered is not appealable. It is immediately executory, except that in case a motion to set aside the compromise on the ground of fraud, an order of the court denying such motion may be appealed.[3] The judgment rendered has the authority of resjudicata from the moment it was rendered and is conclusive upon the parties and their privies.[4]

We find, however, that the decision of June 9, 1967 was not a judgment based on a judicial compromise but one based on an agreed statement of facts. A "compromise" under Article 2028 of the Civil Code is a contract whereby the parties in interest, by making reciprocal concessions, avoid a litigation or terminate one already commenced. It is likewise defined as "an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their difficulties by mu-tual consent in the manner which they agree on, and which every one of them prefers to the hope of gain-ing, balanced by the danger of losing." [5]

While the parties in the "Stipulation of Facts" were in agreement that Teodora Vda. de Arcenas had a share in the said properties, they were in dis-agreement as to the extent of the share of said widow. As a matter of fact, in the respective me-moranda of the parties, there was a marked dispa-rity in the view of said parties as to the share of the surviving spouse, the widow insisting on her claim to one-half (1/2) of the estate, while the other party was willing to concede to her only one-fourth (1/4) of said estate. The agreed statement of facts submitted by the parties did not, there-fore, put an end to the lawsuit because it did not definitely determine which specific portion of the property sold by Jovencio Arcenas to the Acain spouses should be returned to the surviving spouse, which was the main purpose of the action instituted by the latter.

(Moreover,) Civil Case No. P-118 is (also)an action of partition, hence, the Order of the court of June 9, 1967, directing the partition of the properties and requiring the parties "to submit the corresponding deed of partition to the Court for its approval", could not be final. It left something more to be done in the trial court for the complete disposition of the case, such as appointment of the commissioner and submission by the latter of his report which must be set for hearing. It is only after said hearing that the court may render a final judgment finally disposing of the action.[6] As a matter of fact, the court a quo, after the parties were unable to agree on the partition, had to

ap-point a commissioner to make the partition. Even assuming that the judgment terminated the action with respect to the claim of the widow for a one-half (1/2) share in the estate, there is no question that the Order of the court of March 27, 1968, approving the project of partition even when considered as incident to the judgment, could still be appealable. According to Moran, "when the terms of the judgment are not entirely clear and there is room for interpretation and the interpretation given is wrong in the opinion of the defeated party, the latter should be allowed to appeal from said order so that the appellate tribunal may pass upon the legality and correctness of the said order." [6-A]

We note, however, that since its inception, this case has been pending in the courts for more than ten (10) years. It appears in the manifestation of the respondents that Teodora Vda. de Arcenas is already 86 years of age. It cannot be denied that if petitioners continue with their appeal, there will be further delays in its termination. It is in the milieu of such circumstance that this Court finds it relevant to make certain observations, in the hope that on the basis thereof, the parties themselves, with the assistance of the respondent court, may be able to resolve their differences in a fair and equitable manner. Thus, on the question regarding the share of the surviving spouse in the estate of the deceased, We note that the trial court was correct in declaring that Teodora Vda. de Arcenas is entitled to one-half (1/2) of the estate. This is in accordance with the rule enunciated by this Court in *Santillon v. Miranda*, supra, to the effect that when intestacy occurs, a surviving spouse concurring with only one legitimate child of the deceased is entitled to one-half (1/2) of the estate of the deceased spouse under Article 996 of the Civil Code. The afore-mentioned court was, nevertheless, in error in insisting that each and every parcel should be physically divided and apportioned to the parties in the manner indicated. Section 4 of Rule 69 of the Rules specifically requires that in making the partition, the commissioners shall (1) view and examine the real estate, after due notice to the parties, to attend at such view and examination; (2) to hear the parties as to their preference in the portion of the property to be set apart to them and the comparative value thereof; and (3) to set apart the same to the several parties in such lots or parcels as will be most advantageous and equitable, having due regard to the improvements, situation and quality of the different parts thereof.

According to the report of the Commissioner, 150 coconut trees were planted by Nemesio Acain on the Sillon parcel, and this land is adjacent to the Acain's property. On the other hand, according to the Commissioner, one-half (1/2) portion of the Cabangbang cannot possibly compensate for the loss which Acain will suffer by losing one-half (1/2) of the Sillon parcel since the Cabangbang land is mortgaged to the Bantayan Rural Bank by Jovencio and "will probably be foreclosed any time now for the loan is now due, and the prospect of the loan to be paid is bleak." These circumstances should have been carefully considered.

It appears to be the settled rule that in an action for partition, where it is practicable to make a division of the property, "the generally if not universally recognized rule is that a court of equity, on ascertaining that one of two or more tenants in common has made permanent and valuable improvements on the property involved, will allot to him that portion on which the improvements are located, or so much thereof as represents his share of the whole tract." [7] Thus, "in keeping with the familiar principle of equity jurisprudence requiring that one who seeks equity must do equity, the rule has been generally adopted that a court of equity should take improvements into account when decreeing partition, and should award to the cotenant in possession who has necessarily and in good faith improved the common property and enhanced its value at his own cost such equitable compensation as will leave only the value of the estate without the improvements to be divided among the tenants in common." [8] Indeed, the rule requires that the properties should be partitioned in a manner that would be most advantageous and equitable to the parties, having "due regard to the improvements, situation and quality of the different parts" of the properties subject of the partition.

ACCORDINGLY, certiorari is granted and respondent Court's Order of May 18, 1968 is hereby set aside, with

costs against the private respondent.

Fernando, (Chairman), Barredo, Aquino, and Concepcion, Jr., JJ., concur.

[1] Entitled "Teodora Vda. de Arcenas, Plaintiff, versus Joven-cio Arcenas, Nemesio Acain and Rosa Diongson, Defendants."

[2] L-19281, June 30, 1965, 14 SCRA 563.

[3] Pianov. Cayanong, 7 SCRA 397; Duñgo v. Lopena, 6 SCRA 1007; Puzon v. Gaerlan, 15 SCRA 678.

[4] As a general rule, "a judgment on compromise is not appealable and is immediately executory unless a motion is filed to set aside the compromise on the ground of fraud, mistake or duress, in which event an appeal may be taken from the order denying the motion." (De los Reyes v. De Ugarte, 75 Phil. 505, 507.) Cf. Enriquez v. Padilla, 77 Phil. 373; Araneta v. Perez, 7 SCRA 923; Serrano v. Miave, 13 SCRA 461; Manique v. Cayco, 15 SCRA 296; Sabino v. Cuba, 18 SCRA 981; Vda. de Guilas v. David, 23 SCRA 763; Republic v. Estenzo, 25 SCRA 122; Vda. de Corpuz v. Phodaca-Ambrosio, 32 SCRA 279.

[5] Rovero v. Amparo, 91 Phil. 229, 235, on Motion for Reconsi-deration; Gonzales v. Gonzales, 81 Phil. 38.

[6] Vda. de Zaldarriaga v. Enriquez, et al., 1 SCRA 1188; Ron v. Mojica, 8 Phil. 328.

[6-A] 2 Moran, Rules of Court, p. 407, 1970 ed.

[7] 59 Am. Jur. 2d 814, at Sec. 55.

[8] 122 A.L.R. 235 .

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