

LUCIA MILAGROS BARRETTO, PETITIONER, VS. THE HON.COURT OF APPEALS AND RICARDO M. GUTIERREZ, RESPONDENTS.

G.R. No. L-38295. March 05, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This petition seeks a review of the decision dated February 15, 1974 of the Court of Appeals in CA-G.R. No. 30978-R entitled, "Ricardo M. Gutierrez vs. Lucia Milagros Barretto," reversing the Order of the Court of First Instance (now Regional Trial Court), Branch IV-Manila, in Special Proceedings No. 5002 which the private respondent had filed against the petitioner.

The case involves a fishpond with an area of 471 hectares, 38 ares and 95 centares, situated in Barrio Dalayap, Macabebe, Pampanga, covered by Transfer Certificate of Title No. 5002-Pampanga, owned pro-indiviso in the proportion of 371 hectares for Bibiano Barretto, married to Maria Gerardo-Barretto, and 100 hectares, 38 ares and 95 centares for the sisters Hermogena and Consorcia Crisostomo.

Desiring to lease the entire 471-hectare-fishpond, Ricardo Gutierrez entered into two contracts of lease: (1) dated June 5, 1935 with Bibiano Barretto and (2) dated April 10, 1936 with the Crisostomo sisters. Both leases were to begin on May 1, 1936 and to continue for a period of six (6) years or until May 1, 1942.

The lease contract entitled "Kasulatan Buisan" (Exhibit "A") between Gutierrez and Bibiano Barretto reads:

"Ikatlo. b)

Na ang halaga ng buis sa bawat taon ay LABING ANIM NA LIBONG PISO (P16,000.00) Kuartang Pilipino, o kaya'y SIYAM NA PU'T ANIM NA LIBONG PISO (P96,000.00), Kuartang Pilipino, sa anim na taon, na babayaran ng ikalawang bahagi sa Unang Bahagi sang-ayon sa talaang sumusunod:

"SAMPUNG LIBONG PISO (P10,000.00), Kuartang Pilipino sa paglagda ng kasulatang ito;

"DALAWAMPU'T DALAWANG LIBONG PISO (P22,000.00), Kuartang Pilipino sa Ika-2 ng Oktubre, ng taong 1936;

"WALONG LIBONG PISO (P8,000.00), Kuartang Pilipino, sa loob ng buan ng Septiembre ng taong 1936;

"LABING ANIM NA LIBONG PISO (P16,000.00), Kuartang Pilipino sa Mayo 1, 1937; at

"LABING ANIM NA LIBONG PISO (P16,000.00) Kuartang Pilipino, sa Mayo 1, 1939; at kung saka-sakali't hindi mabayaran ng ikalawang bahagi ang alin man sa bawa't isa sa mga halagang dito'y nabanggit sa loob ng taning na labing limang (15) araw pagkatapos ng takdang kapanahunang dapat ipagbayad, ang kasulatang ito ay mawawalan ng bisa; ang pagbubuwis ay kapagkarakang matatapos; isasauli kaagad ng ikalawang bahagi ang pamomosesion ng lupa na kasama ang mga halagang naibayad ni G. Gutierrez kay G. Barretto at ang mga isdang nasasa-palaisdaan ay magiging tunay na pag-aari at mauuwi sa kapakinabangan nitong huli at ang nauuna ay walang karapatang maghabol sa mga isda ni sa anomang halagang kanyang mga naibayad." (pp. 19-20, Record on Appeal.)

"Ikalima. -

Upang liwanaging mabuti ang kahulugan ng pinagkasunduan ng Unang Bahagi sa Ikalawang Bahagi sa letra (o) ng pangkat o parafo Tatlo ng kasulatang ito, aming isinasaysay ang sumusunod: Na ang Unang Bahagi ay magsasadya sa palaisdaang binubuisan sa ika-sampu ng Diciembre ng taong 1941, at kinakailangang sa nabanggit na fecha ang palaisdaang binubuisan, mga pilapil, prinsa, at kubo ay nasa mabuti nang kaayusan at kalagayan; nguni't kung sa nabanggit na araw, Diciembre 10, 1941, ay may mga kasiraang makapipinsala sa palaisdaan, gaya ng mga kasiraan sa mga pilapil, prinsa at kubo, na hindi pa naayos, ang Unang Bahagi ay may karapatang kunin ang pamomosesion ng palaisdaan sa Ikalawang Bahagi, na kasama ang mga isdang doo'y nalalaman, bilang daños y perjuicios dahil sa hindi pagtupad ng Ikalawang Bahagi sa kanyang katungkulan sangayon sa pangkat na ito. Ang tungkol sa mga damo, ang Ikalawang Bahagi ay may kapahintulutang ipalinis ang lupang binubuisan bago mag Diciembre ng taong 1941 at ang lahat ng magugugol niya hanggang sa halagang P300.00 ay babayaran sa kanya ng Unang Bahagi." (pp. 22-23, Record on Appeal).

On February 18, 1936, Bibiano Barretto died. On July 12, 1940 or more than one year before the expiration of Gutierrez's lease on May 1, 1942, the widow, Maria Gerardo Vda. de Barretto, acting alone, executed a second contract of lease (Exh. B) in favor of Ricardo Gutierrez over the same fishpond, extending the lease for five (5) years, i.e., from May 1, 1942 to May 1, 1947.

On November 1, 1941, the Government, through the Department of Public Works and Communications, pursuant to a final court order, forcibly opened the dikes of the fishpond and ordered their demolition, owing to the supposed presence of certain public rivers and creeks within the leased fishpond. The destruction of the dikes rendered some portions of the fishpond unsuitable for fish culture.

To prevent the escape of the fish, Gutierrez requested, and was allowed, by the government agents to lay fishtraps at the dike openings. A month later, World War II broke out. Doña Maria and her children evacuated to other parts of Bulacan and did not return until 1943. Finding the fishpond abandoned and dilapidated, she spent a sizeable sum for repairs. On April 8, 1943, Gutierrez filed Civil Case No. 96 in the Court of First Instance of Bulacan against the Crisostomo sisters to recover damages which he suffered as a result of the forcible opening of the fishpond dikes in November 1941. On May 6, 1946, he impleaded Doña Maria Vda. de Barretto as a co-defendant in the action.

Maria Barretto died on March 5, 1948. She was survived by her only daughter and heir, Lucia Milagros Barretto (herein petitioner), who filed on March 30, 1948 a petition for the probate of her mother's will dated March 14, 1946. Over the opposition of one Tirso T. Reyes, the trial court admitted the will to probate. Reyes appealed the

decision to this Court which upheld the assailed order.

On September 11, 1951, Gutierrez's damage suit (Civil Case No. 96) was dismissed by the Court of First Instance of Bulacan for lack of jurisdiction. Gutierrez appealed the decision, but lost on appeal.

On June 5, 1956, Gutierrez filed a claim against the estate of Maria Gerardo Vda. de Barretto in Special Proceedings No. 5002 in the Court of First Instance of Manila, Branch IV, on the basis of the same cause of action that arose in 1941, praying for the return of the sum of P32,000 representing rentals which he allegedly paid, with legal rate of interest, plus P60,000 as damages.

On August 28, 1956, letters testamentary were issued to Lucia as executrix of her mother's will. On July 8, 1957, Gutierrez refiled his claim but in the amount of P32,000 only. He alleged that the destruction of the dikes in November, 1941 was a violation of the conditions of the lease and of the lessor's (Barretto's) obligation to maintain him in the peaceful occupation and enjoyment of the leased fishpond. He further alleged that he had paid the Barrettos the total sum of P112,000 (P96,000 under the original lease contract and P16,000 under the second) or an overpayment of P32,000, because he should have paid only a total of P80,000 since the disturbance in his possession of the leased fishponds took place on November 1, 1941. The first lease had ran for only 5-1/2 years at an annual rental of P16,000.

The petitioner opposed the claim on the grounds that:

1. the claimant has no cause of action;
2. the forcible opening of the dikes by order of the government constituted force majeure. In any event, the claim should be directed against the government.
3. The claimant was fully aware of the existence of rivers and streams surrounding the leased fishpond, hence, he knowingly assumed the risk; and
4. the claim is barred by prior judgment, prescription, and laches.

On December 15, 1961, the Court of First Instance of Manila disallowed the claim. It held that the second lease contract (Exh. B) was "worthless under the Rules of Court." because of unexplained material, substantial and extensive irregularities and alterations on the face of the document, which raised doubts concerning the documents authenticity and genuineness. The court believed that the document did not appear to be the best evidence of the supposed agreement with the deceased Maria Gerardo whose lips were forever sealed by death and who could no longer explain the circumstances surrounding the transaction in question.

Gutierrez appealed the decision to the Court of Appeals in CA-G.R. No. 30978-R, entitled "Ricardo M. Gutierrez vs. Lucia Milagros Barretto." The Court of Appeals reversed the order of the trial court and directed the executrix-appellee to pay the claim of Gutierrez in the sum of P32,000 with interest at the rate of 6% per annum from July 9, 1957 until fully paid, plus the costs of suit (p. 75, Rollo).

Lucia filed a motion for reconsideration but it was denied in a resolution dated March 12, 1973 of the Court of Appeals. She filed an amplified motion for reconsideration on March 15, 1973, which was also denied. Hence, this petition for review in which she alleges that the Court of Appeals erred in not holding that:

1. the lease contract executed by Maria Gerardo alone without the concurrence of the other co-owners (Crisostomo sisters) was null and void;
2. the rentals (including the P32,000) paid under the original lease contracts belonged to all the co-owners in proportion to their share in the co-ownership hence, any disposition of the sum of P32,000 made by Maria

Gerardo without the consent of the other co-owners who were prejudiced thereby was null and void;

3. the second lease never took effect;

4. although Exhibit B was a public document, it should be treated merely as a private document pursuant to Art. 1223 of the Civil Code, because it was defective in form and was admitted by the trial court, not as an independent documentary evidence but only as part of the testimony of a witness;

5. an unregistered lease contract involving real property registered under the Land Registration Act does not bind the land nor constitute delivery of possession; and

6. Gutierrez' claim had already prescribed.

There is no merit in the petition.

Petitioner contends that this is a case in which the Supreme Court should make its own findings of fact independently of the Court of Appeals, which in its questioned decision departed from the accepted and usual judicial appellate practice of adopting the trial court's findings of fact when the evidence is conflicting; that the respondent court made conclusions of fact based only on speculations, surmises and conjectures unsubstantiated by evidence.

Generally, a review of factual findings of the Court of Appeals under Rule 45 of the Rules of Court is not a function of the Supreme Court (*Amurao vs. CA*, 168 SCRA 734). But the rule admits of some exceptions, such as: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd and impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; and (5) when the court, in making its findings, went beyond the issues of the case and the same are contrary to the admission of both the appellant and the appellee (*Bunag vs. CA*, 158 SCRA 299; *Vallarta vs. IAC*, 151 SCRA 680; *Moran, Jr. vs. CA*, 133 SCRA 88). In *Manero vs. CA*, 102 SCRA 817, we stated additional exceptions, such as: (1) the findings of fact of the CA are contrary to those of the trial court; (2) said findings of fact are conclusions without citation of specific evidence on which they are based; (3) when there is grave abuse of discretion. However, it is not necessary, for the resolution of this petition for review, to enter into an investigation of the facts of this case. We only need to pass upon questions of law raised by the petitioner.

On the validity of the second lease contract (Exh. B) there is no question that the leased fishpond was co-ownership property of the late Bibiano Barretto and the Crisostomo sisters. Each had a right only to an ideal or undivided share of the entire property. Bibiano's share was an undivided 371 hectares out of a total area of 471 hectares. Upon his demise, his share devolved upon his legal heirs, his widow, Doña Maria, and their only child, Lucia. As a mere co-owner, Doña Maria did not have the authority to dispose of Don Bibiano's share, much less of the entire fishpond, without the consent of the two co-owners: her daughter Lucia and the Crisostomo sisters. She had no authority to extend the lease nor dispose of P32,000 paid by Gutierrez under the first contract and treat it as a guaranty deposit fund for the second contract, without the consent of the Crisostomo sisters and Lucia who had a proportionate interest in the rental income of the fishpond. The contract (Exh. B) which she made with Gutierrez was null and void.

"Before the partition of a land or thing held in common, no individual co-owner can claim title to any definite portion thereof." (*Oliveros, et al. vs. Lopez*, 168 SCRA 431.)

"A person can sell only what he owns or is authorized to sell, and the buyer can acquire no more than what the seller can transfer legally." (*Segura vs. Segura*, 165 SCRA 368.)

"Even if a co-owner sells the whole property as his, the sale will affect his own share but not those of other co-owners who did not consent to the sale." (Bailon-Casilao vs. CA, 160 SCRA 738.)

"For co-ownership to exist the co-owner must have a spiritual part of a thing which is not physically divided." (Hernandez vs. Quitain, 168 SCRA 92.)

Moreover, the original lease was to expire on May 1, 1942 yet, hence, the second lease (Exh. B) which Doña Maria gave Gutierrez on July 12, 1940 had no valid existence for that contract would take effect only after the expiration of the first lease contract on May 1, 1942.

The Court of Appeals found that Gutierrez returned the fishpond to the lessors in November, 1941, or six (6) months before the original lease was to expire on May 1, 1942. There had been, in effect a rescission of the first lease by the lessee (Art. 1191, Civil Code). By his unilateral act of returning the fishpond, he terminated the lease. Consequently, there was no more lease to be extended under the second contract (Exh. B). Apart from its invalidity by reason of a defect in the authority of one of the contracting parties (Doña Maria), the second contract which she made in favor of Gutierrez never took effect; it never became operative.

Since the lease agreement was rescinded upon the return of the fishpond to the lessor, the latter should return to the lessee, Gutierrez, the advance rental of P32,000 that he paid on the second lease contract which never took effect, for rescission creates the obligation to return the things which were the object of the contract together with their fruits and the price with its interest (Art. 1385, Civil Code; De Erquiaga vs. CA, 178 SCRA 1; Tan vs. CA, 175 SCRA 656).

WHEREFORE, the petition for review is denied. The Court affirms the decision of the Court of Appeals in CA-G.R. No. 30978-R ordering the petitioner to pay to the private respondent, Ricardo M. Gutierrez, the sum of P32,000 with interest of six per cent (6%) per annum from July 9, 1957, when the claim was filed against the estate of Maria Gerardo Vda. de Barretto, until it is fully paid. Costs against the petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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