

DOMINGA GABAS DE VELAYO AND VALERIANO, PANTALEON, VILLAMOR, BIENVENIDA, AND ROMEO, ALL SURNAMED BALAYONG, PETITIONERS-APPELLANTS, VS. COURT OF APPEALS AND JANUARIO GABAS, RESPON...

G.R. No. L-49933. August 06, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

This is an intra-family litigation among two brothers, a sister and their nephews and niece regarding Lot No. 4232-D of the Ozamiz City cadastre with an area of 18,616 square meters. The Court of Appeals dismissed petitioners' action for partition or reconveyance on the grounds of prescription and laches.

Genoveva Ronquillo, the predecessor-in-interest of the parties who died intestate on March 3, 1964, begot during her first marriage two children named Valeriano (Valerio) Balayong and Adriano Balayong. Adriano, who predeceased Genoveva, was survived by his four children named Pantaleon, Villamor, Bienvenida and Romeo.

Genoveva begot during her second marriage three children named Raymunda, Dominga and Januario, all surnamed Gabas.

The second husband of Genoveva was Tranquilino Gabas who died in 1927 (107 tsn November 15, 1974). Before Tranquilino married Genoveva, he was already the owner of a parcel of land with an area of around 47,918 square meters located at Barrio Dimaluna (now Polot), Misamis (now Ozamiz City), Misamis Occidental, which was declared for tax purposes in his name in 1918 (Exh. 1). That was his capital or separate property (132 tsn December 24, 1974).

During the marriage of Tranquilino and Genoveva, they acquired a parcel of land with an area of around 22,500 square meters, adjacent to the land of Tranquilino. That parcel of land was covered by a tax declaration in Genoveva's name dated June 29, 1929 (Exh. 3; 13-14 tsn August 29, 1974; 106 tsn November 15, 1974).

The two parcels of land became Cadastral Lot No. 4232 with a total area of 60,256 square meters. In Cadastral Case No. 15, G.L.R.O. Record No. 1645, of the Court of First Instance of Misamis Occidental, entitled "Director of Lands vs. Restituta Ababan, et al.", Genoveva Ronquillo filed an answer dated January 19, 1936 wherein she stated that Lot No. 4232 was owned in common by her and her children Raymunda, Dominga and Januario, all surnamed Gabas, and that the house standing on the lot belonged to her (Exh. C or 4).

Genoveva alleged further in that answer that Lot No. 4232 was inherited by her from Tranquilino Gabas.

However, in the later part of that answer, the name of Dominga Gabas was crossed out and it was made to appear that Lot No. 4232 should be registered in the names of Raymunda Gabas and Januario Gabas as co-owners with equal shares.

In other words, in the cadastral proceeding, Genoveva did not claim Lot No. 4232 for herself but for her two

children of the second marriage. In effect, her answer was a cession to Raymunda Gabas and Januario Gabas of Lot No. 4232 or whatever remained of it.

The evidence shows that on January 23, 1936 Genoveva and her son Valerio (Valeriano) sold to Casiano Cabahug a parcel of land located at Maribuhok, Misamis. It is not clear whether that parcel of land was a part of Cadastral Lot No. 4232. However, it was stated in the deed of sale that that land belonged to Genoveva and her son Valerio because it was their "share" (Exh. 5-C).

Simultaneously with that sale, Raymunda, Dominga and Januario (Lunario), Genoveva's children by her second marriage, executed a private writing wherein they certified that the land sold by Genoveva and Valerio, a child of the first marriage, belonged to them as a result of a partition made with Tranquilino Gabas and that, therefore, they (the children of the second marriage) had nothing to do with the said land (Exh. 6-B).

That land was claimed by Cabahug as his own in his answer dated January 24, 1936 in the cadastral case, already mentioned, *Director of Lands vs. Ababan* (Exh. 7 and 7-A).

It would seem that the land acquired by Cabahug was later sold by him to Domingo Barroga because the latter filed in the cadastral case for Lot No. 4232 an answer dated October 1, 1940, wherein he stated that he was the owner of the land "purchased from Casiano Cabahug" (Exh. 8 and 8-B).

Petitioners' (plaintiffs') own evidence shows that on December 19, 1936, Genoveva sold for P174 to her son-in-law, Javier Medina (husband of Raymunda Gabas), a one-hectare portion of Lot No. 4232. She stated in the deed of sale that that portion was her own separate property which she acquired when she was a widow and that, consequently, her five children had no hereditary interest therein.

Four of her five children, namely, Valerio Balayong, Adriano Balayong, Januario Gabas and Dominga Gabas, signed the deed of sale as witnesses. For obvious reasons, the fifth child, Raymunda, the wife of the purchaser, did not sign as a witness to the deed of sale (Exh. E).

Because of that deed of sale, Javier Medina, the purchaser, also filed in the cadastral case for Lot No. 4232 an answer dated October 26, 1938 wherein he claimed the land as his own (Exh. 11 and 11-B).

It is the theory of Januario Gabas that the one-hectare land sold to Medina was the share of Adriano Balayong in Lot No. 4232, although it was Genoveva who signed the deed of sale, with Adriano and his brothers Valerio (Valeriano) and Januario and sister Dominga, acting as instrumental witnesses (22 tsn August 29, 1974; 196 tsn March 6, 1975). Adriano died in 1973 in Midsalip, Zamboanga del Sur (55 tsn November 15, 1974).

That theory was confirmed by Medina, a septuagenarian farmer, who testified that the consideration for the sale was received by Adriano although the sale was made by Genoveva (191-192, 195-196 tsn March 6, 1975).

The record further shows that on May 16, 1938 Genoveva and her three children of the second marriage, Raymunda, Dominga and Januario, sold for P250 to Bonifacio Belayo a one-hectare portion of the land originally pertaining to Tranquilino Gabas as his capital or separate property (Exh. 1 or Tax Declaration No. 7651 issued in 1918). The sale, which was made in a notarial document, was marked as Exhibit 9.

By virtue of that sale, Belayo filed in the cadastral case an answer dated October 25, 1938 wherein he asserted ownership over a portion of the aforementioned Cadastral Lot No. 4232 (Exh. 10 and 10-A).

It is the theory of respondent or defendant Januario Gabas that the one-hectare portion sold to Belayo was the share of Dominga Gabas (20 tsn August 29, 1974) and, for that reason, her name was crossed out in the answer (Exh. C or 4) filed by Genoveva in the cadastral case (24-25 tsn August 29, 1974; 64-65 tsn November 15, 1974). On this point, Januario Gabas testified:

"You know, this land was declared in the name of our mother, Genoveva Ronquillo and at that time, Dominga Gabas requested my mother that she wanted to receive her share. She needed money and you know, the vendee will not consent if only Dominga Gabas will sell the land because the land was declared in the name of Genoveva Ronquillo.

"That was the reason why my mother executed that deed of sale with our conformity. Because of that sale, Dominga Gabas received money and she used it in buying her lands at Molave (Salog). (10 tsn December 9, 1974.)

As already noted, the remainder of Lot No. 4232, which remainder, identified as Lot No. 4232-D, has an area of 18,616 square meters, was allocated by Genoveva to Raymunda Gabas and Januario Gabas (59-60 tsn November 15, 1974). Januario testified:

"The name of Dominga Gabas here in this cadastral answer (Exh. C or 4) was cancelled because when my mother noticed the name of Dominga Gabas appearing in her cadastral answer, she had it cancelled because the share of Dominga Gabas was already sold (Exh. 9) and that the land here in this cadastral answer was intended by my mother to be divided only among us three, Raymunda Gabas, my mother and I of which the share of my mother would be given to me." (64-65 tsn November 15, 1974.)

On the basis of the answers in the cadastral case for Lot No. 4232 filed by Genoveva Ronquillo and the vendees named Domingo Barroga, Bonifacio Belayo and Javier Medina, the four portions of Lot No. 4232 were adjudicated by the cadastral court in its decision of October 17, 1940 as follows (Exh. 12):

Lot No. 4232-A to Domingo Barroga.

Lot No. 4232-B to Bonifacio Belayo.

Lot No. 4232-C to Javier Medina and

Lot No. 4232-D to Raymunda Gabas and Januario Gabas in equal shares.

As already stated, Lot No. 4232-D, with an area of 18,616 square meters, is the land in litigation herein.

It should be noted that as early as 1938 Lot No. 4232-D was declared for tax purposes in the name of Januario Gabas with Genoveva as administratrix (Exh. D or 13). In 1970 another tax declaration was issued in his name for Lot No. 4232-D (Exh. 14). He paid the taxes due on said lot continuously from February 25, 1946 to 1974 (Exh. 15 to 15-K).

Januario has been in possession of Lot No. 4232-D. He planted coconuts in that land. He supported his mother and defrayed the expenses of her last illness and her funeral (72-75 tsn November 15, 1974).

The record does not show whether his co-owner, Raymunda Gabas, transferred her one-half share to him.

On May 14, 1974, or more than thirty-three years after the cadastral court awarded Lot No. 4232-D to Raymunda Gabas and Januario Gabas and more than ten years after the death of Genoveva Ronquillo, the petitioners, namely, Domingo Gabas, Valeriano Balayong and the four children of the deceased Adriano Balayong, sued Januario for the recovery of the three-fifths portion of the said lot and for damages. Raymunda was not impleaded as a defendant.

Januario pleaded as defenses prescription and laches and the fact that the plaintiffs had already received their shares of Lot No. 4232 and that they had sold the said shares as follows: the share of Dominga Gabas was sold to Bonifacio Belayo; the share of Valeriano (Valerio) Balayong was sold to Nazario Jureidini, and the share of Adriano Balayong (father of petitioners Pantaleon, Villamor, Bienvenida and Romeo) was sold to Javier Medina.

Januario further alleged in his answer that the remainder of Lot No. 4232, as the share of Genoveva, or Lot No.

4232-D, was given to him in 1936.

The trial court in its decision dated August 1, 1975 held that Lot No. 4232-D is owned in common by the parties herein "in the proportion provided for by law".

Januario Gabas appealed to the Court of Appeals which its decision of January 2, 1979 reversed the trial court's decision and dismissed the complaint. The petitioners, Dominga Gabas de Velayo, et al., appealed to this Court.

Respondent-appellee Januario Gabas raises the preliminary question that the brief of petitioners-appellants was filed out of time because their motion for extension of time to file their brief was allegedly filed after September 28, 1979, the last day of the thirty-day reglementary period for filing the brief.

That observation is not correct because the petitioner mailed (by registered mail) on that last day, September 28, 1979, their motion for an extension of twenty days within which to file their brief. The date of mailing is regarded as the date of the filing of the motion.

The appellee also noted that petitioners' brief does not contain any statement of facts and assignment of errors. That is true. However, to do justice in this case, we may ignore the deficiencies in petitioners' four-page brief which they tried to remedy by means of their reply brief. Anyway, the petition itself contains the statement of facts and contentions of the petitioners which they did not repeat in their appellants' brief.

The trial court and the Court of Appeals did not bother to summarize the documentary and oral evidence of the parties. Hence, it was necessary to examine the folio of exhibits and to read the transcripts of testimony.

The Court of Appeals in dismissing the complaint on the ground of prescription held that the action was filed after the expiration of ten years from the death of Genoveva Ronquillo. It further held that the petitioners were guilty of laches or delay in filing their action.

The petitioners have not shown in their petition and brief that their action for partition or reconveyance had not prescribed. They merely rely on the ruling that "co-ownership is a form of trust and every co-owner is a trustee for the others" and that "as a general rule, no one of them may acquire exclusive ownership of the common property through prescription, for possession by one trustee alone is not deemed adverse to the rest" (Castrillo vs. Court of Appeals, 119 Phil. 822, 828).

What the petitioners are really invoking are the codal provisions that each co-owner "may, at any time, demand the partition of the thing held in common" and that "as between co-heirs, co-owners, proprietors of adjacent estates, the action to demand the partition of the inheritance or of the thing held in common, or the survey of the adjacent properties, does not prescribe" (Arts. 400 and 1965, Old Civil Code).

Article 494 of the present Civil Code provides that "no prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership".

Those legal provisions have no application to this case because since the rendition of the judgment of the cadastral court on October 17, 1940 the disputed lot became the property of Raymunda Gabas and Januario Gabas. It ceased to be the property of Genoveva Ronquillo. The petitioners cannot be regarded as co-owners thereof.

Petitioners' action is predicated on the assumption that the disputed Lot No. 4232-D belonged to Genoveva's estate and that upon her death her heirs became the co-owners thereof. That assumption is wrong.

Even during her lifetime, Genoveva had ceased to be the owner of Lot No. 4232-D by reason of the adjudication made in the cadastral court's decision (Exh. 12). When she died on March 3, 1964, she had no more estate that could be inherited by her heirs.

But then the petitioners contend that "the cadastral decision" is void ab initio without explaining why it should be regarded as such. They argue that the striking out of the name of Dominga Gabas in the answer of Genoveva Ronquillo in the cadastral case (Exh. C or 4) amounted to fraud.

As observed by the Court of Appeals, there is no evidence that respondent-appellee Januario Gabas was responsible for the crossing out of the name of Dominga Gabas.

It may be repeated that appellee's evidence indicates that the name of Dominga Gabas was crossed out because her one-hectare share in Lot No. 4232 was sold by her to Bonifacio Belayo on May 16, 1938. The sale was made in a public document thumbmarked by Genoveva Ronquillo and signed by her children Dominga, Raymunda and Januario, all surnamed Gabas (Exh. 9).

Because of that sale, Belayo in his answer in the cadastral proceeding claimed as his own the share of Dominga Gabas, identified as Lot No. 4232-B (Exh. 10 and 12), and the name of Dominga Gabas was crossed out as a claimant in the answer filed by Genoveva Ronquillo in that same cadastral case.

In rebuttal, Dominga Gabas testified that it was her mother who sold the one-hectare portion to Belayo and who received the proceeds of the sale (7 tsn February 18, 1975).

But Dominga did not categorically deny that the one-hectare portion sold was her own share in Lot No. 4232 and that her mother turned over to her the proceeds of the sale amounting to two hundred fifty pesos (Exh. 9).

The preponderance of evidence is in favor of respondent Januario Gabas. It sustains his claim that Dominga had received her share of Lot No. 4232, which was Lot No. 4232-B, and that the remainder of Lot No. 4232, or Lot No. 4232-D, with an area of less than two hectares, was adjudicated to Dominga's brother and sister, Januario and Raymunda.

The decision of the cadastral court as to the ownership of the four subdivision lots of Lot No. 4232 has the force of res judicata. The cadastral proceeding, as a proceeding in rem, is binding on the whole world including the petitioners.

The 1940 decision is valid and is not vitiated by any infirmity. It is conclusive upon the title to the four portions of Lot No. 4232 (See *Cano vs. De Camacho*, L-28172, February 29, 1972, 43 SCRA 390, 395-6).

We find no merit in the appeal. The judgment of the Court of Appeals is affirmed. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Guerrero,[*] and De Castro,[*] JJ., concur.

[*] Were designated to sit in the Second Division.

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