

**ALEJANDRA ROSAL MENTES, LEONARDO ROSAL, AND ANITO
TISADO (HEIR OF NARCISA ROSAL), PLAINTIFFS-APPELLEES, VS.
ANACORITA ALBIOR, PABLITA BENASBAS AND WILLY ALBIOR,
DEFENDANTS-APPEL...**

Ponente: LOPEZ, J.

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LOPEZ, J.:

Before Us is an Original Appeal[1] from the Decision[2] of the Regional Trial Court, Branch 10, Abuyog Leyte dated August 2, 2011 in Civil Case No. 319 for Recovery of Possession, Ownership, Accounting and Damages with Preliminary Injunction which declared that the plaintiffs-appellees are the lawful possessors and owners of the property in question.

The Facts

On January 26, 1977, spouses Susano Albior and Agrifina Ramoneda Albior executed a document denominated as Partition Inter Vivos,[3] which contained the following:

We, SUSANO ALBIOR and AGRIFINA RAMONEDA ALBIOR, spouses, Filipinos of legal age, and residents of Liwayway, Macarthur, Leyte, Philippines, are the absolute conjugal owners of the following described real properties:

Parcel One:

xxx containing an area of 3.3056 hectares, more or less, and covered by Tax Declaration No. 7622 (1971) in the name of Agrifina Ramoneda.

Parcel Two:

xxx containing an area of 5.3117 hectares, more or less, and covered by Tax Declaration No. 5328 (1966) in the name of Agrifina Ramoneda.

Parcel Three:

xxx containing an area of 2.0435 hectares, more or less and covered by Tax Declaration No. 9824 (1949) in the name of Agrifina Ramoneda.

Parcel Four:

xxx containing an area of 1.0078 hectares, more or less and covered by Tax Declaration No. 7039 in the name of Agrifina Ramoneda.

Parcel Five:

xxx containing an area of .8715 hectare, more or less and covered by Tax Declaration No. 6223 (1967) in the name of Agrifina Ramoneda.

Considering our old age and to preserve the harmony and close family ties among our children and heirs, it is

our desire to partition, as we hereby partition, pursuant to Article 1080 of the Civil Code, the above-described properties among our children (namely: Eutropia Albior, married to Samson Aling; Concordio Albior, married; Alejandra Albior, single; Patricio Albior, married to Anacita Basinillo; and Hugo Albior, married to Adelaida Hurnales) and our grandchildren (namely: Narcisa Rosal; Alejandra Rosal, and Leonardo Rosal) in representation of our deceased child, Juana Albior Rosal, in the following manner:

a) Parcel One, as above-described, is hereby partitioned as follows:

- One-fourth (1/4) share to Alejandra Albior;
- One-fourth (1/4) share to Eutropia Albior;
- One-fourth (1/4) share to Hugo Albior;
- One-fourth (1/4) share to the children of the deceased Juana Albior, namely: Narcisa Rosal, Alejandra Rosal, and Leonardo Rosal;

b) PARCEL TWO, as above-described, is hereby partitioned as follows:

- One-fourth (1/4) share to Concordio Albior;
- One-fourth (1/4) share to Patricio Albior;
- One-fourth (1/4) share to Eutropia Albior;
- One-fourth (1/4) share to Hugo Albior;

c) PARCEL THREE, as above-described, is hereby partitioned as follows:

- One-sixth (1/6) share to Eutropia Albior;
- One-sixth (1/6) share to Concordio Albior;
- One-sixth (1/6) share to Alejandra Albior;
- One-sixth (1/6) share to Patricio Albior;
- One-sixth (1/6) share to Hugo Albior;
- One-sixth (1/6) share to the children of the deceased Juana Albior, namely: Narcisa Rosal, Alejandra Rosal, and Leonardo Rosal;

d) PARCEL FOUR, as above-described, is hereby partitioned as follows:

- One-half (1/2) share to Alejandra Albior;
- One-half (1/2) share to the children of the deceased Juana Albior, namely: Narcisa Rosal, Alejandra Rosal, and Leonardo Rosal;

e.) PARCEL FIVE, as above-described, is hereby adjudicated to Hugo Albior alone.

That the partition shall take effect when both of us shall have died and the possession and control of the above-described real properties shall remain in us while we are still alive xxx

Plaintiffs-appellees filed a Complaint[4] dated February 9, 1993, alleging that plaintiffs and defendants, among others, are the legal heirs of the late spouses Susano Albior and Agrifina Ramoneda Albior; that Susano Albior and Agrifina Ramoneda Albior died sometime in July 1977 and March 1982, respectively; that one-fourth (¼) share of the lot covered by Tax Declaration No. 7622 (Parcel One) was allotted to Juana Albior as her share,

represented by her children, the plaintiffs Alejandra Mentes and Leonardo Rosal; that the defendants-appellants are the heirs (widow and children) of Concordio Albior and the share of Concordio Albior is indicated in the Parcel Two of the Partition Inter Vivos under Tax Declaration No. 5328; that after the death of the spouses Susano and Agrifina, the children took possession of their respective shares as indicated in the Partition Inter Vivos and plaintiffs together with Alejandra Albior, Eutropia Albior took possession of their respective shares in Parcel One and begun enjoying the fruits and produce of the coconuts.[5]

Further, the plaintiffs-appellees alleged that sometime in 1989, the defendants by means of stealth, force and strategy entered and occupied the share of plaintiffs of the coconut land and divested plaintiffs of the peaceful possession of their shares; that defendants harvested and gathered the coconut fruits against the plaintiffs' will and processed the coconuts into copra and appropriated the proceeds unto themselves.[6]

In their Answer with Counterclaim,[7] defendants-appellants alleged that plaintiffs' mother, the late Juana Albior, was merely a stepdaughter of the late Susano Albior, she being the natural daughter of the late Agrifina Ramoneda-Albior by a man surnamed Abecia; that at the time Agrifina met Susano sometime in the 1920's, Juana Albior was already seven years old; that Juana Albior was considered by Susano Albior as his own daughter although the former had never been legally adopted by the latter.[8]

As Special and Affirmative Defenses, defendants-appellants alleged that while it appears that on January 26, 1997, the spouses Susano Albior and Agrifina Ramoneda-Albior executed a Partition Inter Vivos over five (5) parcels of land, their legitimate children and the defendants did not come to know about it until May 1987; that ignorant of such instrument, the legitimate children of said spouses orally partitioned the said five (5) parcels of land among themselves, together with herein plaintiffs sometime in December 1985; that the parcel of land covered by Tax Declaration No. 7622 (which turned out to be Parcel One in the Partition Inter Vivos) was allotted to Concordio Albior (father of defendants Wilfredo "Willy" Albior and Pablita A. Binasbas), Hugo Albior, Alejandra Albior and Eutropia Albior; that the whole of the parcel of land covered by Tax Declaration No. 7039 (which turned out to be Parcel Four in the Partition Inter Vivos) was allotted to the children of the late Juana Albior, namely: Narcisa Rosal, Alejandra Rosal and Leonardo Rosal; that the three (3) other parcels of land were also allotted among the legitimate children of the deceased spouses Susano Albior and Agrifina Albior; that after the oral partition, the parties took actual possession and control of their respective shares.[9]

According to the defendants-appellants, the controversy started sometime in 1987 when plaintiffs showed to the legitimate children of the deceased spouses Susano Albior and Agrifina Ramoneda-Albior a copy of the Partition Inter Vivos; that knowing that the one-fourth ($\frac{1}{4}$) of the parcel of land covered by Tax Declaration No. 7622 (denominated in the Partition Inter Vivos as Parcel One) was allotted to them and their sister Narcisa, plaintiffs began to claim the same to the extent of ventilating their claim before the Citizens Legal Assistance Office in Tacloban City; that the legitimate children of the deceased spouses Susano Albior and Agrifina Ramoneda-Albior naturally resisted the claim, considering that in the said oral partition, plaintiffs even received a much bigger share; that it was then brought out that sometime in 1980 when Agrifina Ramoneda-Albior was still living, she called all her children and plaintiffs and informed all of them that the late Juana Albior was her illegitimate child by another man and that should there be a partition of properties, the children of Juana Albior should receive a lesser share; that consequently, the plaintiffs desisted from their claim (based on the Partition Inter Vivos).[10]

Defendants-appellants further alleged that plaintiffs revived their claim to one-fourth ($\frac{1}{4}$) of Parcel One based on the Partition Inter Vivos which culminated the filing of the present case. Defendants-appellants assert that the Partition Inter Vivos cannot be implemented on the ground that it impairs the legitime of the legitimate children of the deceased spouses Susano and Agrifina.[11]

By way of Counterclaim, defendants-appellants prayed that the Partition Inter Vivos must be disregarded and instead a new partition be made among the heirs of the said spouses in accordance with the law on intestate succession.[12]

In their Memorandum,[13] plaintiffs admitted that their mother, Juana Albior is the child of Agrifina Ramoneda before the latter married Susano Albior. They argued that the Partition Inter Vivos may be implemented because the legitime of the compulsory heirs are not prejudiced; that the total area of the estate of Susano Albior and Agripina Ramoneda is 12.5401 hectares; that one-half of the estate of 12.5401 is 6.2700 hectares representing the legitime of the legal heirs of the spouses; that since the spouses have five (5) legitimate children out of their marriage, $6.2700/5$ equals 1.2540 hectares is the legitime of each of the compulsory heir; that the other one-half ($1/2$) of the estate of Susana Albior and Agripina Ramoneda is the free portion where the share of Juana Albior an illegitimate child of Agripina Ramoneda shall be taken on the proportion of $1/2$ of the legitime of each of the legitimate children or descendants based on Article 895 of the Civil Code; that the legitime of Juana Albior, mother of plaintiffs shall be taken from the free portion of the 6.2700 hectares which is one-half of the legitime of each legitimate child ($1.2540/2$) which is .6270 hectare; that 6.2700 (free portion) minus .6270 equals 5.6430 hectares is the balance of the free portion which is at the disposal of the testator according to his wishes.

Plaintiffs maintain that based on the mathematical computation, the legitime of each legitimate child is 1.254 hectares; that in the Partition Inter Vivos, each legitimate child received more than what the law provides, to wit:

1. Alejandro Albior – .8264 hectares (parcel one)

.3406 hectares (parcel three)

.5039 hectares (parcel four)

1.6709 hectares

2. Eutropia Albior - .8264 hectares (parcel one)

1.3279 hectares (parcel two)

.3406 hectares (parcel three)

2.4949 hectares

3. Hugo Albior - .8264 hectares (parcel one)

1.3279 hectares (parcel two)

.3406 hectares (parcel three)

.8715 hectares (parcel five)

3.3664 hectares

4. Juana Albior - .8264 hectares (parcel one)

.3406 hectares (parcel three)

.5039 hectares (parcel four)

1.6709 hectares

5. Patricio Albior- 1.3279 hectares (parcel two)

[.3406] hectares (parcel three)

1.6685 hectares

6. Concordio Albior- 1.3279 hectares (parcel two)

.3406 hectares (parcel three)

1.6685 hectares[14]

Plaintiffs-appellees also claimed that after the legitime was given to the heirs, the testator has the right to distribute the free portion at his disposal to any of the heirs according to his wishes; that this is what happened to the partition inter vivos of Susano Albior and Agrifina Ramoneda; that aside from the legitime of Juana Albior fixed by law, the spouses had given her additional shares taken from the free portion of the estate at the disposal of the spouses.

On August 2, 2011, the RTC rendered the assailed Decision,[15] the dispositive portion of which states:

WHEREFORE, judgment is hereby rendered in favor of the Plaintiffs and against defendants:

- Declaring the plaintiffs the lawful possessors and owners of the property in question, and ordering Defendants to return to Plaintiffs possession to them, particularly PORTION of the property described under Paragraph 5 of the Amended Complaint in relation to the prayer in Plaintiff's Memorandum, the disputed $\frac{1}{4}$ portion of Parcel One under Partition Inter Vivos.
- To pay plaintiffs the amount of Php 7,200.00 per year as actual damages computed from 1989, and the same is terminated [sic].
- To pay plaintiffs the amount of P40,000 as moral damages.
- To pay plaintiffs the amount of Php 5,000.00 as litigation expenses.

SO ORDERED.

Hence, this appeal with the following Assignment of Errors:[16]

(1) THE LOWER COURT ERRED IN RULING THAT THE ORAL PARTITION DOES NOT INVALIDATE THE PREVIOUSLY EXECUTED PARTITION INTER VIVOS.

(2) THE LOWER COURT ERRED IN NOT DECLARING THAT THE DEFENDANTS HAD ALREADY ACQUIRED THE LAND IN QUESTION BY ORDINARY ACQUISITIVE PRESCRIPTION.

(3) THE LOWER COURT ERRED IN IMPOSING UPON THE DEFENDANTS ACTUAL AND MORAL DAMAGES AND ATTORNEY'S FEES.

(4) THE LOWER COURT ERRED IN NOT ORDERING THE PLAINTIFFS TO PAY THE DEFENDANTS ACTUAL DAMAGES.

Defendants-Appellants' Arguments

Defendants-appellants argue that a partition inter vivos, being merely a physical determination of the part to be given to each heir, may be ignored by the heirs themselves just like a will which can be ignored/set aside by the heirs themselves voluntarily; that in a will, the heirs, by voluntary agreement, may opt to ignore it by not submitting it to probate and, instead, voluntarily agree among themselves to partition the property/properties of

the decedent in a manner they see fit; that the same is true with partition inter vivos which can be ignored/set aside by oral partition among the heirs.[17]

Defendants-appellants contend that plaintiffs-appellees Alejandra Rosal-Mentes and Leonardo Rosal participated in the oral partition made sometime in December 1985; that the oral partition was coupled with delivery not only of the respective shares of the legitimate children of the deceased spouses Susano Albior and Agrifina Ramoneda, but also the delivery of the share allotted to Alejandra Rosal-Mentes, Leonardo Rosal and Anito Tisado (heir of Narcisa Rosal impleaded as party plaintiff in the Amended Complaint in the court below).[18]

Defendants-appellants also argue that the oral partition took place in December 1985; that when the plaintiffs filed the case on February 20, 1998, more than ten (10) years had already elapsed from the time of the oral partition; that by that time, the defendants, therefore, had already acquired the land in question by acquisitive prescription pursuant to Article 1134 of the Civil Code;[19] that corollarily, the plaintiffs are also guilty of laches because it was allegedly in 1987 or 1989 that they were deprived possession of the land in question but it was only on February 20, 1998 that they filed the present action.[20]

Defendants-appellants contend that there is no evidence that the three defendants ever dispossessed the plaintiffs of the land in question or harvested coconuts therefrom in 1989 and thereafter; that otherwise stated, there is absolutely no evidence that the defendants Anacorita Albior, Pablita Binasbas and Willy Albior ever harvested coconuts from the land in question since 1989 or forcibly evicted the plaintiffs therefrom; that in 1989, defendant Pablita Binasbas was residing in Metro Manila while defendant Willy Albior was residing in Cebu City, and they have been residing in those places until the filing of the present action on February 20, 1998; that the truth is that from 1989 until 1999, the land had been in the peaceful possession of Concordio Albior, Hugo Albior, Alejandra Albior and Eutopia Albior, it being their share in the oral partition of the properties of the deceased Susano Albior and Agrifina Ramoneda sometime in December 1985; that the plaintiffs were the ones harvesting coconuts from the land since 1999 and during the pendency of the case; that this fact is evidenced by entries in the barangay blotter of Brgy. Liwayway and in the police blotter of MacArthur, Leyte; that in sum, there is no evidence to support the plaintiffs' claim for actual and moral damages.[21]

Plaintiffs-Appellees' Arguments

Plaintiffs-appellees argue that the Partition Inter Vivos executed by Spouses Albior and Agrifina Ramoneda during their lifetime is valid and binding upon the heirs;[22] that it derives its binding force on the heirs from the respect due to the will of the owner of the property, limited only by his creditors and the intangibility of the legitime of the forced heirs; that defendants did not present any defect on the partition inter vivos; that they however assert that it was superseded by an oral partition.[23]

Plaintiffs-appellees assert that defendants-appellants can never acquire the subject property by acquisitive prescription because they failed to prove that their possession of the parcel of land, designated to be plaintiffs-appellees' share under the partition inter vivos, is in good faith; that the existence of the oral partition was not duly proven, thus, the partition inter vivos prevails.[24]

The Court's Ruling.

The appeal is meritorious.

The crux of the problem is the validity of the Partition Inter Vivos relied upon by the plaintiffs-appellees in this case.

The computation made by the plaintiffs-appellees regarding the shares of the heirs of spouses Susano Albior and Agrifina Ramoneda is erroneous. Juana Albior Rosal, daughter of Agrifina Ramoneda from another man, has no

right to inherit from Susano Albior. She was neither legally adopted nor was she instituted as a voluntary heir in a will. Hence, We first determine the inheritance of Susano Albior's heirs, namely his wife Agrifina Ramoneda and his legitimate children: Eutropia, Concordio, Alejandra, Patricio and Hugo Albior.

The entire estate of spouses Susano and Agrifina is 12.5401 hectares based on the properties mentioned in the Partition Inter Vivos. Upon Susano's death, one half (1/2) of the 12.5401 hectares (or 6.27005 hectares) goes to his wife as the latter's conjugal share in the estate and the other half shall be divided among the following:

LEGITIME: The legitime of legitimate children consists of one-half (1/2) of the hereditary estate[25] of Susano Albior ($6.27005/2 = 3.135025$ hectares). 3.135025 hectares shall be divided equally among his five children ($3.135025/5 = .627005$ hectare). Hence, the legitime of each of his children would be .627005 hectare. The legitime of Agrifina shall be equivalent to the legitime of each of the legitimate children which must be taken from the free portion of the hereditary estate.[26] Hence, Agrifina shall be entitled to .627005 hectare as her legitime.

LEGAL/INTESTATE SUCCESSION: The remaining portion which is 2.50802 hectares shall be distributed equally to his children and Agrifina based on intestate succession ($2.50802 \text{ hectares}/6 = .41800333$ hectare).[27]

Based on the above computation Agrifina Ramoneda shall have a total of 7.31505833 hectares (6.27005 hectares which is her conjugal share + .627005 hectare (legitime) + .41800333 hectare (intestate share)). Upon Agrifina's death in 1982, her successors would be her five legitimate children and Juana Albior Rosal who was her illegitimate child.

In the instant case, the determination of whether or not the Partition Inter Vivos may be enforced depends on whether or not the shares of the legitimate children from their father plus their legitime from their mother, is not impaired. From the above computation, each legitimate child shall inherit 1.04500833 hectares ($.627005 + .41800333$) from their father. Upon the death of Agrifina, they are entitled to their legitime which is .73150583 hectare ($7.31505833/2 = .73150583$). From their inheritance from their father (1.04500833 hectares) and their legitime from their mother (.73150583 hectare), each of the legitimate children is entitled to 1.77651416 hectares. From the distribution in the Partition Inter Vivos, the shares received by the children including the children of Juana Albior Rosal are as follows:

1. Alejandro Albior - 1.6709 hectares
2. Eutropia Albior - 2.4949 hectares
3. Hugo Albior - 3.3664 hectares
4. Patricio Albior - 1.6685 hectares
5. Concordio Albior - 1.6685 hectares[28]

(Emphasis on shares impaired).

Based on the foregoing, the distribution in the Partition Inter Vivos cannot be enforced because it impaired the shares of the legitimate children from their father and their legitime from their mother. Again, Juana Albior Rosal had no right to inherit from Susano Albior.

Article 1080 of the Civil Code of the Philippines provides: "Should a person make a partition of his estate by an act inter vivos, or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs..." The partition will of course be effective only after death. It does not necessarily require the formalities of a will for after all it is not the partition that is the mode of acquiring ownership. Neither will the formalities of a donation be required since donation will not be the mode of acquiring the ownership here after

death; since no will has been made it follows that the mode will be succession (intestate succession). Besides, the partition here is merely the physical determination of the part to be given to each heir.[29]

Partition merely makes a physical division of the hereditary property. If there is a will, then it is in pursuance of the disposition in the will; if there is no will, it is to be presumed that the intention is that the partition must be in conformity with the rules laid down by law in case of intestacy, so that the mode of transmission is not the partition but intestate succession. Obviously, a person cannot make a partition inter vivos which favors a stranger without institution or designation of the stranger in a will, a stranger being without right to inherit intestate, except when the disposition is intended to take effect during life, in which case the formalities of ordinary donation must be observed.[30]

Since Juana Albior Rosal only inherits from her mother, her inheritance, which is passed on to her children (the plaintiffs-appellees in this case) would only be her share in the legitime (.36575292 hectare; this is one-half (1/2) of the legitime of each of the legitimate children) and her intestate share from her mother's hereditary estate (.29925238 hectare; this is one-half (1/2) of the intestate share of each of the legitimate children) for a total of .6650053 hectare. In the Partition Inter Vivos, Juana Albior, through her children, was given a total of 1.6709 hectares which is way beyond what she is entitled. If Juana Albior will be given more than the share that she is entitled, it must be contained in a donation or in a testamentary provision which is absent in the present case.

In view of the above discussion, the plaintiffs-appellees' action for recovery of possession of their share in Parcel One based on the Partition Inter Vivos cannot prosper. We deem it unnecessary to discuss the other matters. However, Our determination is only on the validity of the Partition Inter Vivos. Hence, the present adjudication is without prejudice to any judicial or extrajudicial settlement of the estate of the spouses Susano Albior and Agrifina Ramoneda Albior.

WHEREFORE, the instant appeal is GRANTED. The assailed Decision of the Regional Trial Court in Civil Case No. 319 is REVERSED. Plaintiffs-appellees' Complaint is Dismissed.

SO ORDERED.

Delos Santos, E.L., Chairperson., and Lagura-Yap, M.B., JJ., concur.

[1] Rule 44, The 1997 Rules of Civil Procedure.

[2] Rollo, pp. 75-86.

[3] Exhibit "A," Main Record, pp. 6-8.

[4] Main Record, pp. 1-5.

[5] Id. at pp. 1-3.

[6] Id. at p. 3.

[7] Id. at pp. 36-43.

[8] Id. at pp. 36-37.

[9] Id. at pp. 39-40.

[10] Id. at pp. 40-41.

[11] Id. at p. 41.

[12] Id. at p. 41.

[13] Id. at pp. 99-104; 449-454.

[14] Id. at pp. 452-453.

[15] Rollo, pp. 75-86.

[16] Id. at pp. 55-56.

[17] Id. at p. 64.

[18] Id. at p. 66.

[19] Art. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

[20] Rollo, p. 67.

[21] Id. at pp. 69-71.

[22] Id. at p. 91.

[23] Id. at p. 92.

[24] Id. at pp. 93-94.

[25] Article 888, Civil Code of the Philippines.

[26] Article 897, *supra*.

[27] Article 996. – If a widow or widower and legitimate children or descendant are left, the surviving spouse has in the succession the same share as that of each of the children.

[28] Main Record, pp. 452-453.

[29] J.L.T. Agro, Inc. v. Antonio Balansag, G.R. No. 141882, March 11, 2005.

[30] Hector S. De Leon, *Comments and Cases on Succession* (Manila: Rex Book Store, 2012), 650-651.

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