

DOROTEA CONFESOR, ET AL., PETITIONERS, VS. HON. PANTALEON PELAYO, ET AL., RESPONDENTS.*G.R. No. L-14352. March 27, 1961*

Ponente: BAUTISTA ANGELO, J.

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On March 29, 1952, Deogracias Umadhay, et al., respondents herein, filed an action for partition in the Court of First Instance of Iloilo praying that a parcel of land known as Lot No. 3570 of the Cadastral Survey of Sta. Barbara, Iloilo, be partitioned between them and the heirs of Juan Hingco, petitioners herein, in the proportion of one-half each.

Petitioners interposed the defense that they were the absolute and exclusive owners of the entire land and consequently, objected to the requested partition. After trial, the court rejected petitioner's claim of exclusive ownership, and accordingly, ordered that the land be divided into two equal parts, one part to belong to respondents and the other part to petitioners. Since the order is interlocutory and not subject to appeal, the court proceeded forthwith to appoint a commissioner charged with the task of effecting the partition of the land. The commissioner submitted two plans which he identified as Plan No. 1 and Plan No. 2. Plan No. 1 is the subdivision scheme proposed by respondents while Plan No. 2 is the plan proposed by petitioners. Both plans would give respondents the same area as petitioners but the latter would want to give to respondents Lot No. 2 in Plan No. 2, giving to themselves Lot No. 1. The trial court resolved the dispute stating: "Lot No. 1 is hereby adjudicated to plaintiffs (respondents herein) who may in turn divide it by and among themselves. Lot No. 2 is hereby adjudicated to defendants (petitioners herein) who may likewise divide it by and among themselves."

Petitioners took the case to the Court of Appeals which in due time affirmed in toto the ruling of the trial court. This decision having become final, the trial court, upon petition of respondents, issued a writ of execution ordering respondents to be placed in possession of the portion of land adjudicated to them in the partition. To this order petitioners interposed a vigorous objection contending that since in the dispositive part of the decision of both the trial court as well as the Court of Appeals nothing is provided that respondents were to be placed in possession of the lot adjudicated to them the court could not amend the same by adding thereto a new matter as was done by the trial court. Moreover, petitioners have a house of strong materials built on the lot adjudicated to respondents as well as other improvements in the form of crops of which they cannot be deprived without the corresponding indemnity. The trial court having denied the petition for reconsideration petitioners interposed the present petition for certiorari.

In ordering respondents to be placed in possession of the lot adjudicated to them even if the decision is silent in this respect, the trial court made the following comment:

"The court believes that the opposition is without merit. This action is a special civil action for partition as prescribed by Rule 71 of the Rules of Court. There is nothing in the said Rule from which we can infer that after the approval by the court of the report of the commissioner another action should be maintained for the delivery to plaintiffs of the portion of the property that has been allotted to them. The case cited by defendants

is not in point because the same was not an action for partition. Apparently it was an action for declaration of ownership. After the approval by the court of the partition made by the commissioner, such party is entitled to the possession of the portion assigned to him in the instrument of partition without the further necessity of instituting another action for possession. When the partition was made by the commissioner as ordered by the court and pursuant to Section 3, Rule 71 of the Rules of Court, said commissioner had taken into account tile improvements existing on the property to be partitioned. Before making the partition, the commissioner had complied with the provisions of Section 4, Rule 71 of the Rules of Court which says that:

'* * * In making the partition, the commissioner shall view and examine the real estate, after due notice to the parties to attend at such view and examination, and shall 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 shall 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.' "

We find the foregoing comment correct. The original action of this case is one of partition. It is the purpose of partition to put an end to the common tenancy of the land or co-ownership. It seeks a severance of the individual interest of each joint owners vesting in each a sole estate in specific property and giving to each one the right to enjoy his estate without supervision or interference from the other. The judgment of the trial court, ordering the partition of the property, as affirmed by the Court of Appeals, seeks to accomplish this very purpose. Said judgment effects to convey to and vest in each party to the action the portion of the estate assigned to him. This is in accord with Section 11, Rule 71, of the Rules of Court, which provides:

"If actual partition of the property is made, the judgment shall state definitely, by metes and bounds and adequate description, the particular portion of the real estate assigned to each party, and the effect of the judgment shall be to vest in each party to the action in severalty the portion of the real estate assigned to him. *

* *'" (Italics supplied.)

It would, therefore, be in accordance with good sense and propriety that even in the absence of a special pronouncement as regards the delivery of the respective shares allotted to each co-owner an execution be issued to effect such delivery in order to carry into full effect the judgment of partition. Indeed, it would be illusory and absurd to have a partition if the same could not be carried out. The delivery is a necessary and indispensable incident to carry into effect the purpose of partition.

True it is that, as petitioners now contend, there are some improvements on the lot allotted in the partition to respondents consisting of a house of strong materials and some standing crop belonging to petitioners, but their cost or value must have already been taken into account by the commissioner in effecting the partition. In fact this is one of the duties of the commissioner. Thus, the rule provides that "In making the partition, the commissioners shall view and examine the real estate, after due notice to the parties to attend at such view and examination and shall 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 shall 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." It is presumed that the Commissioner has done his duty in weighing the equities of both parties as prescribed in this rule. As properly observed by the Court of Appeals with regard to the improvements claimed by petitioner: "The latter plan is more in consonance with equity and justice, calculated to give both lots equal values and utilities. Furthermore, three houses claimed by the appellants (now petitioners) are located in Lot 2 Plan No. 1 which was adjudicated by the court below to the appellants."

With regard to the costs included in the writ of execution, we find nothing improper it appearing that the decision awards costs to respondents. The payment of costs rests upon the discretion of the court, and here the same was properly awarded considering that the defeated party had opposed the action for partition.

In conclusion, we find that the trial court did not abuse its discretion in issuing the order now disputed by petitioners.

Wherefore, petition is denied, with costs against petitioners.

Bengzon, Acting C. J., Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

Padilla, J., concurs in the result.

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