JOSEFINA V. RENTURA, MIRIAM R. GENAYAS, JULIANA R. MANAPSAL, EUSTAQUIA RENTURA, ANTONIA RENTURA, AND ROMANA RENTURA, PLAINTIFFS-APPELLANTS, VS. HEIRS OF EUGENIO RENTURA, SHIENA ...

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

In this appeal[1] under Rule 41 of the Rules of Court, herein plaintiffs-appellants assail the Decision[2] dated December 21, 2011 of the Regional Trial Court, Branch 14, Cebu City in Civil Case No. CEB-35685, the dispositive portion of which reads as follows:

> "WHEREFORE, the foregoing considered, judgment is rendered:
>
> 1. Declaring the document, Extra-judicial Settlement, Declaration of Heirs with Waiver of Rights marked in evidence as plaintiffs' Exh. "B", as inexistent and is of no legal effect as far as the aliquot share of plaintiffs Juliana Rentura Manapsal; Eustaquia Rentura; Antonia Rentura and Romana Rentura to Lot No. 10992, located at Sangat, San Fernando, Cebu, which property is the subject of this action;
>
> 2. Declaring the Deed of Absolute Sale executed by defendant Eugenio Rentura in favor of his co-defendants Sheina V. Delgado and Melanie V. Ayade, as null and void, as far as the aliquot 4/12 portion or 1/3 aliquot portion representing the successional share of plaintiffs Juliana Rentura Manapsal; Eustaquia Rentura; Antonia Rentura and Romana Rentura over Lot No. 10992, subject of this litigation;
>
> 3. Ordering the Municipal Assessor of San Fernando Cebu to amend Tax Declaration No. 018876 issued in the name of defendants Sheina V. Delgado and Melanie V. Ayade to exclude therefrom the ideal 1/3 portion of Lot No. 10992 belonging to plaintiffs Juliana Rentura Manapsal; Eustaquia Rentura; Antonia Rentura and Romana Rentura;
>
> 4. As to the share properly appertaining to defendant Eugenio Rentura, the same shall remain as effectively conveyed to his co-defendants Sheina V. Delgado and Melanie V. Ayade;
>
> 5. Defendant Eugenio Rentura is condemned to pay unto plaintiffs Juliana, Eustaquia, Antonia and Romana the sum of P20,000.00 as attorney's fees;
>
> 6. Defendants' Delgado and Ayade's cross-claim against their co-defendant Eugenio Rentura, said defendant Eugenio Rentura is condemned to:
> a) pay back his co-defendants Delgado and Ayade the sum of four over twelve (4/12) of the amount of Two Hundred Thousand (4/12 of P200,000.00) Pesos he received from his co-defendants representing the purchase value of the lot. This is corresponding to the four (4) shares belonging to plaintiffs Juliana, Eustaquia, Antonia and Romana which defendant Eugenio sold without authority to his co-defendants.

The rest of the portion of the property shall remain with the two answering defendants Delgado and Ayade, in the

meantime that nobody has shown a more superior rights (sic) that what the two defendants have.

SO ORDERED."[3]

The antecedents of the instant case involve the following undisputed facts:

Sometime in August 2003, an Extra-judicial Settlement, Declaration of Heirs with Waiver of Rights[4] (Extra-judicial Settlement with Waiver) was executed among the following persons: Eugenio Rentura, German Rentura, Ezequel Rentura, Antonia Rentura, and Romana Rentura, who declared in such instrument that they were the heirs of Cosme Rentura and Aurelia Villaver (spouses Rentura) and adjudicated among themselves the estate of the said spouses Rentura, which solely include Lot No. 10992 situated in Sangat, San Fernando, Cebu, and more particularly described as follows (subject property):

> "A parcel of land cad lot no. 10992 baring (sic) Tax Dec. no. 0137 8198, located of (sic) Sangat, San Fernando, Cebu; bounded; north; lot no. 10961, east; lot no. 10993, south; lot no. 10958 part 10994, west; lot no. 10986 an area of 10,040 has more or less, assessed value of P9000.00 as per record of the new assessment of Municipal Assessor of San Fernando and province of Cebu;"[5]

In the same instrument, the heirs of spouses Rentura waived their rights over the said property in favor of their brother Eugenio Rentura.

By virtue of this instrument, which, in effect, declares him as the sole owner of Lot No. 10992, Eugenio Rentura (Eugenio) was able to transfer in his own name the tax declaration[6] covering the subject property.

On April 15, 2009, Eugenio sold the subject property to Shiena V. Delgado and Melanie V. Ayade (appellees Delgado and Ayade) under a Deed of Absolute Sale.[7] Thereafter, appellees Delgado and Ayade secured the issuance of a tax declaration over such property in their own names.[8]

Upon learning that there was a sale to Delgado and Ayade of the subject property, Antonia Rentura (appellant Antonia) and Romana Rentura Satusil (appellant Romana), whose names and signatures appeared in the Extra-judicial Settlement with Waiver, executed a Joint Affidavit[9] wherein they disowned their signatures appearing on the Extra-judicial Settlement with Waiver and averred that they never signed such instrument and never appeared before a notary public for the notarization of the same. They also claimed that their parents, spouses Rentura, had twelve children and not only five as stated in the Extra-judicial Settlement with Waiver. They enumerated the following persons as the heirs of spouses Rentura:

1. Cresenciano Rentura,
2. Salvador Rentura,
3. Simproso Rentura,
4. Macaria Rentura Sinangoti,
5. Juliana Rentura Manapsal,
6. Pilipinas Rentura Sasutil,
7. Eustaquia Rentura,
8. German Rentura,
9. Ezequel Rentura,
10. Antonia Rentura,
11. Romana Rentura, and
12. Eugenio Rentura.

Thus, in July 2009, appellants Romana and Antonia, together with Juliana Manapsal, Eustaquia Rentura, Josefina Rentura (wife of Eugenio) and Miriam Genayas (daughter of Eugenio) (plaintiffs-appellants) filed a

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complaint[10] for declaration of nullity of the Extra-judicial Settlement with Waiver, the Deed of Absolute Sale and the Tax Declarations issued in the name of Delgado and Ayade.

In their Answer,[11] appellees Delgado and Ayade raised that they were buyers in good faith as they did not have any knowledge that other persons had interests in the property. They argued that the property was once mortgaged by Eugenio alone to a bank, and after the same was redeemed, they bought it from Eugenio with a full and fair price. They also contended that the plaintiffs were already estopped from questioning the Extra-judicial Settlement with Waiver because they had full knowledge of the same. They claimed that the inaction of plaintiffs to enforce their right even after having knowledge of the Extra-judicial Settlement with Waiver signified their implied consent thereto.

Eugenio, on his part, failed to file his own Answer. And, during the course of the proceedings, the court was notified of Eugenio's death on November 12, 2009.[12]

After the parties' presentation of their respective pieces of evidence, the trial court ruled that the Extra-judicial Settlement with Waiver and the Deed of Absolute Sale were void but only to the extent of the share pertaining to the plaintiffs Juliana Rentura Manapsal; Eustaquia Rentura; Antonia Rentura and Romana Rentura, that is, the one-third (1/3) portion of the subject property. The rest of the portion of the such property transmitted to Eugenio through the Extra-judicial Settlement with Waiver was declared valid; consequently, this valid portion was properly sold to appellees Delgado and Ayade.[13]

Arguing that the trial court should have declared the Extra-judicial Settlement with Waiver and the Deed of Absolute Sale as total nullity, the plaintiffs-appellants filed this appeal and submitted the required appellants' brief.[14] Appellees Delgado and Ayade and Appellees Heirs of Eugenio Rentura, on their part, failed to file their brief despite notice.[15]

In their brief, plaintiffs-appellants assigned the following errors to the trial court court:

> “First Error – The Lower Court erred in declaring the Extra-judicial Settlement of Heirs with Waiver of Rights inexistent only in so far as the share of plaintiffs Juliana Rentura Manapsal, Eustaquia Rentura, Antonia Rentura, and Romana Rentura.
>
> Second Error – The Lower Court erred in declaring the Deed of Absolute Sale executed in favour of the Defendants as null and void as to the 4/12 portion only.”[16]

Based on the above assigned errors, plaintiffs-appellants' appeal present this issue: whether or not the Extra-judicial Settlement with Waiver and the Deed of Absolute Sale are void in its entirety and should produce no effect.

It is undisputed that the heirs of spouses Rentura should have been twelve and not only five as alleged in the Extra-judicial Settlement with Waiver, they are:

1. Cresenciano Rentura,
2. Salvador Rentura,
3. Simproso Rentura,
4. Macaria Rentura Sinangoti,
5. Juliana Rentura Manapsal,
6. Pilipinas Rentura Sasutil,
7. Eustaquia Rentura,
8. German Rentura,
9. Ezequel Rentura,
10. Antonia Rentura,

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11. Romana Rentura, and
12. Eugenio Rentura.

To recall, the Extra-judicial Settlement with Waiver shows that only the following executed the same: 1) Eugenio Rentura, 2) German Rentura, 3) Ezequel Rentura, 4) Antonia Rentura, and 5) Romana Rentura. Such instrument also stipulated that German, Ezequel, Antonia, and Romana waived their rights or interest over the subject property in favor of Eugenio. But, Antonia and Romana then came forward and disowned their signatures appearing therein. In effect, the instrument was executed only by three of the twelve heirs.

Upon the death of spouses Rentura, their twelve children, being the heirs, would acquire the subject property, as the spouses' estate, through inheritance. Under the law,[17] they inherit the property in equal shares. Each of the heir would be entitled to one-twelfth (1/12) pro indiviso share in the whole estate. And, they are considered co-owners of the said property.

Hence, in the execution of the Extra-judicial Settlement with Waiver, all the twelve heirs of spouses Rentura should have participated. Considering that nine heirs were admittedly excluded from the execution thereof, the settlement is considered not valid and binding upon those who were excluded and, consequently, a total nullity.

The applicable rule is Section 1, Rule 74 of the Rules of Court, which provides:

> Section 1. Extrajudicial settlement by agreement between heirs. – x x x
>
> The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.

It has been held that the effect of excluding the heirs in the settlement of estate makes the extra-judicial settlement invalid or void; the partition is thus a total nullity and did not affect the excluded heirs.[18]

A void or inexistent contract is one which has no force and effect from the beginning, as if it has never been entered into, and which cannot be validated either by time or ratification. A void contract produces no effect whatsoever either against or in favor of anyone; it does not create, modify or extinguish the juridical relation to which it refers.[19]

The Extra-judicial Settlement with Waiver, being void, cannot create further rights in favor of Eugenio. Thus, the trial court erred in declaring void only in so far as the shares of Juliana, Eustaquia, Antonia, and Romana are concerned. The instrument should have been declared as a total nullity that produces no effect whatsoever.

In the case of De Jesus v. Court of Appeals,[20] the Supreme Court reversed the finding of the Court of Appeals when the latter held the contract void with respect only to the portion of the heir whose signature was forged and declared the rest valid, thus:

> “Since the signatures of Fermin were forged, the Deed of Sale is effectively nullified. The document should not be annulled only with respect to Fermin’s share. The document bearing the forged signatures is in fact an extrajudicial settlement which requires the assent of all the heirs to the extrajudicial partition. It is not binding upon any person who has not participated therein or had notice thereof.”[21]

While the settlement of the estate is null and void, the subsequent sale, however, of the subject property made by Eugenio in favor of Delgado and Ayade is valid but only with respect to his proportionate share therein.

Being co-owners of the subject property, each heir of spouses Rentura is entitled to a pro indiviso share in the same. Until partition, what Eugenio, or even the other heirs for that matter, had is only an ideal or aliquot share in the property. As such, while Eugenio owns one-twelfth (1/12) of the subject property, he could not claim title to

any definite portion of the co-owned property until its actual partition by agreement or judicial decree.

Nevertheless, as a co-owner of the property, Eugenio has the right to sell his undivided share thereof as provided by Article 493 of the Civil Code, thus:

> "Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership."

In this case, however, what Eugenio sold was the whole subject property and not only his aliquot share therein. In cases like this, the Supreme Court held the sale valid but only to the extent of the aliquot share of the co-owner in application of the principle, quando res non valet ut ago, valeat quantum valere potest – the binding force of a contract must be recognized as far as it is legally possible to do so.

Thus, in Acabal v. Acabal,[22] the Supreme Court ruled, thus:

> "Thus, every co-owner has absolute ownership of his undivided interest in the co-owned property and is free to alienate, assign or mortgage his interest except as to purely personal rights. While a co-owner has the right to freely sell and dispose of his undivided interest, nevertheless, as a co-owner, he cannot alienate the shares of his other co-owners – nemo dat qui non habet.
>
> Villaner, however, sold the entire property without obtaining the consent of the other co-owners. Following the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so – quando res non valet ut ago, valeat quantum valere potest – the disposition affects only Villaner's share pro indiviso, and the transferee gets only what corresponds to his grantor's share in the partition of the property owned in common.
>
> As early as 1923, this Court has ruled that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale. This is because under the aforementioned codal provision, the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to this grantor in the partition of the thing owned in common. Consequently, by virtue of the sales made by Rosalia and Gaudencio Bailon which are valid with respect to their proportionate shares, and the subsequent transfers which culminated in the sale to private respondent Celestino Afable, the said Afable thereby became a co-owner of the disputed parcel of land as correctly held by the lower court since the sales produced the effect of substituting the buyers in the enjoyment thereof.
>
> From the foregoing, it may be deduced that since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void. However, only the rights of the co-owner-seller are transferred., thereby making the buyer a co-owner of the property.[23]
>
> The proper action in cases like this is not for the nullification of the sale or the recovery of possession of the thing owned in common from the third person who substituted the co-owner or co-owners who alienated their shares, but the DIVISION of the common property as if it continued to remain in the possession of the co-owners who possessed and administered it."(italicization original).

Applying the above ruling, We hold that the sale between Eugenio and the buyers, appellees Delgado and Ayade, is valid only to the extent of the one-twelfth (1/12) aliquot share of Eugenio in the subject property.

Appellees Delgado and Ayade are, thus, entitled only to the one-twelfth (1/12) portion of the subject property, and they are now considered as one of the co-owners of the subject property.

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Prescinding from the foregoing, it is but fair that Appellees Delgado and Ayade be entitled to the return of a proportionate amount of the purchase price as they should pay only for an amount equivalent to one-twelfth (1/12) part of the property. Since the total purchase price is Two Hundred Thousand Pesos (P200,000.00), they should have paid only one-twelfth (1/12) of the total, that is, Sixteen Thousand Six Hundred Sixty Six Pesos and Sixty Seven Centavos (P16,666.67). Hence, the amount of One Hundred Eighty Three Thousand Three Hundred Thirty Three Pesos and Thirty Three Centavos (P183,333.33), representing the excess of the payment, should be returned to Delgado and Ayade with legal interest. The same amount can be claimed from Eugenio's estate.

Meanwhile, appellees Delgado, Ayade, and the rest of spouses Rentura's heirs, being co-owners, may opt to divide the subject property by agreement or judicial decree to allocate among themselves distinct portions of such property.

WHEREFORE, the instant appeal is GRANTED. The December 21, 2011 Decision of the Regional Trial Court, Branch 14, Cebu City in Civil Case No. CEB-35685 is REVERSED and SET ASIDE and a new judgment is entered:

> 1. Declaring the Extra-judicial Settlement, Declaration of Heirs with Waiver of Rights entirely NULL and VOID;
>
> 2. Declaring the Deed of Absolute Sale of a Parcel of Land in favor of Shiena V. Delgado and Melanie V. Ayade as regards the one-tweltfh (1/12) share of Eugenio Rentura in Lot No. 10992 VALID;
>
> 3. Declaring Shiena V. Delgado and Melanie V. Ayade as co-owners of Lot No. 10992, together with the heirs of Cosme and Aurelia Rentura, but only to the extent of the one-twelfth (1/12) aliquot share of Eugenio Rentura in Lot No. 10992;
>
> 4. Ordering the Municipal Assessor to amend the tax declaration issued in the names of Shiena V. Delgado and Melanie V. Ayade for Lot No. 10992 by reverting the same in the name of Cosme Rentura married to Aurelia Villaver; and,
>
> 5. Ordering the estate of Eugenio Rentura to return to Shiena V. Delgado and Melanie V. Ayade the amount paid corresponding to the eleven over twelve (11/12) of the total purchase price of Lot No. 10992 in the total amount of One Hundred Eighty Three Thousand Three Hundred Thirty Three Pesos and Thirty Three Centavos (P183,333.33) with legal interest at six percent (6%) per annum computed from the time of payment of the total purchase price until finality of this decision and twelve percent (12%) per annum thereafter until fully paid.

SO ORDERED.

Ingles,[*] and Azcarraga-Jacob, JJ., concur.

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[*] Acting Chairperson per Office Order No. 14-14-GTI dated June 26, 2014.

[1] Records, pp. 156-157.

[2] Records, pp. 141-147.

[3] Records, pp. 146-147.

[4] Records, pp. 91-92.

[5] Records, p. 91.

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[6] Records, p. 126.

[7] Records, p. 96 and p. 124.

[8] Records, p. 122.

[9] Records, pp. 94-95.

[10] Records, pp. 1-5.

[11] Records, pp. 21-27.

[12] See Order dated June 9, 2010, Records, p. 67.

[13] See Decision dated December 21, 2011, Records, pp. 141-147.

[14] Rollo, pp. 10-19.

[15] See Resolution dated September 17, 2013, Rollo, pp. 87-88.

[16] Rollo, p. 12.

[17] Civil Code, Art. 980. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

[18] Segura v. Segura, G.R. No. L-29320, September 19, 1988.

[19] Heirs of Ureta, Sr. v. Heirs of Ureta, G.R. No. 165748 & G.R. No. 165930, September 14, 2011.

[20] G.R. No. 127857, June 20, 2006.

[21] Underscoring supplied.

[22] G.R. No. 148376, March 31, 2005.

[23] Underscoring supplied.

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