

**SOCORRO CELONES, ENGENIA CELONES, ANITA CELONES, QUIRINO CELONES, JR., NORMA CELONES AND DECEASED CUTTS CELONES, REPRESENTED BY SONIA CELONES, CUTTS CELONES, JR., AND HAYDEE CEL...**

*CV No. 73571, November 29, 2007*

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**Court of Appeals**

This is an appeal from the Decision[1] dated 5 November 2001 rendered by the Regional Trial Court, Fourth Judicial Region, Branch 61 of Gumaca, Quezon, in Civil Case No. 2571-G for Cancellation of Title, Consolidation of Lot, Repartition and Partition of Properties.

The antecedent facts are as follows:

Beatriz de los Santos, widow of Quirino Celones, Sr., died intestate, leaving behind eight children: Rodrigo Celones, Socorro Celones, Eugenia Celones, Anita Celones, Quirino Celones, Jr., Norma Celones, Sonia Celones and Cutts Celones.[2]

The decedent left behind two parcels of land situated in the Municipality of Buenavista, Province of Quezon, particularly described as: (1) Lot D of (LRC) Psd-18380 covered by TCT T-910 with an area of 119,418 square meters and (2) Lot D of (LRC) Psd-17874 covered by TCT T-94744 with an area of 23,339 square meters.

On 31 October 1985, the eight heirs executed a Deed of Extrajudicial Partition.[3] In the execution of the above deed, Norma Celones was allegedly represented by her brother Cutts Celones, who had in his possession a Special Power of Attorney. [4]

Lot D covered by TCT T-910 with an area of 119,418 square meters was subdivided into seven (7) lots<sup>5</sup> for which individual titles<sup>6</sup> were issued and adjudicated in the following manner:

Name Title No. Area Sq.m. Lot No.

Rodrigo Celones T-208775 17,060 D-1

Rodrigo Celones T-207891 17,060 D-2

Quirino Celones, Jr. T-207887 17,060 D-3

Eugenia Celones T-207888 17,060 D-4

Socorro Celones T-207889 17,060 D-5

Anita Celones T-207890 17,060 D-6

Cutts Celones T-207886 17,060 D-7

With Lot-D covered by TCT T-94744 having been allegedly adjudicated in favor of Cesar Celones, the latter was excluded<sup>[7]</sup> in the partition of Lot TCT T-910. The Deed of Extrajudicial Partition contained a waiver of Cesar Celones' share to the 119,418 square meter lot, but no mention was made as to why Norma Celones was not given a share therein.

On 9 June 1998, a Complaint<sup>[8]</sup> for cancellation of title and reconsolidation of Lots D-1, D-2, D-3, D-4, D-5, D-6, and D-7 of Subdivision Plan Psd-40051 (originally Lot D, covered by TCT-910) was filed by plaintiffs-appellees Socorro Celones, Eugenia Celones, Anita Celones, Quirino Celones, Jr., Norma Celones, Cesar Celones and Cutts Celones againsts their brother Rodrigo Celones and the Register of Deeds of Lucena, Quezon claiming that the exclusion of Cesar Celones and Norma Celones in the partition of TCT No. T-910 merited the repartition of their mother's estate into eight equal shares.<sup>[9]</sup> Thus, the prayer for repartition included not only the 119,418 square meter lot but also the 23,339 square meter lot previously adjudicated to Cesar Celones.

It also appears that Cutts Celones, Cesar Celones and Rodrigo Celones, having passed away at the time of the commencement of this action, are herein represented by their respective heirs.<sup>[10]</sup> Impleaded as party defendants, in Rodrigo Celones' stead, were his children, Marissa Celones, Oscar Celones, Cecilia Celones and Rodrigo Celones, Jr.

On 12 August 1998, the heirs of Rodrigo Celones filed their Answer with Compulsory Counterclaim<sup>[11]</sup> alleging that the lot covered by TCT-910 was divided among the heirs as early as 1963 and that the heirs already took possession of their respective shares.

Explaining the exclusion of Norma Celones and Cesar Celones from the partition, defendants-appellants asserted that Cesar Celones was adjudicated the 23,399 square meter lot as his share in the inheritance while the share of Norma Celones was transferred to Rodrigo Celones by way of sale of the former's share to the latter. Claiming that plaintiffs-appellees' cause of action is barred by prescription and estoppel, the heirs of Rodrigo Celones repudiated the existence of co-ownership in their special and affirmative defenses.

In its Pre-Trial Order<sup>[12]</sup> dated 19 January 2002, the trial court identified the following issues, viz:

Plaintiffs: (1) Whether or not the partition into seven lots was valid; (2) Whether or not the reconsolidation of all the titles, description and repartition into eight (8) lots giving Norma Celones a share is proper; (3) Whether or not pending final decision of this case, a judicial administrator/administratrix is necessary; and (4) Whether or not accounting of income from the properties is proper, and for the present parties in possession thereof to be ordered to do so.

Defendants: (1) Whether or not action for partition may still lie in spite of defendants' assertion of ownership over the property sought to be partitioned and repudiation of the co-ownership; (2) Whether or not the action has prescribed; (3) Whether or not plaintiffs are in estoppel; (4) Whether or not plaintiffs' have a cause of action against the defendants; and (5) Who between the parties are entitled to damages, litigation expenses and attorney's fees.

Plaintiffs-appellees presented the testimony of Socorro Celones alleging irregularities in the execution of the Deed

of Extrajudicial Partition. She also testified that she signed the Deed of Extrajudicial Partition before a notary public with only her brothers Rodrigo and Cutts Celones present.[13] Assailing the validity of the Special Power of Attorney that granted Cutts Celones authority to represent Norma Celones, Socorro claimed that her sister's signature in the above document was a forgery.[14] As proof thereof, she presented Norma Celones' passport[15] to show that her sister could not have participated in the extrajudicial partition as she has been out of the country from 1972-1998.[16] She added that the heirs of Rodrigo refused repartition of the properties despite attempts to reach an amicable settlement.

Defendants-appellants' participation in prior attempts to settle the controversy through repartition was corroborated by Efren Capilit, an employee of the engineer who conducted the 1997 amended survey plan for repartition.[17]

Testifying for defendants-appellants, Marissa Celones, the daughter of Rodrigo Celones, clarified that the exclusion of Cesar Celones and Norma Celones from the 119,4[18] square meter lot partition was made pursuant to a prior arrangement among the principal parties. She denied the continued existence of co-ownership<sup>18</sup> over the disputed lots, contending that the heirs of Rodrigo Celones were in possession of Lots D-3, D4 and D-7[19] of the 119,418 square meter lot and have been paying the corresponding taxes[20] thereon. Marissa Celones further testified that defendants-appellants' possession of Lots D-3, D-4[21] and Lot D-7[22] of the disputed property was acquired by virtue of the sale of plaintiffs-appellees' shares to Rodrigo Celones.

After submission of the parties' respective memoranda, the court a quo rendered a decision, the dispositive portion of which reads:

"Wherefore, based on the foregoing premises, the Court hereby renders judgment in favor of the plaintiffs and against the defendants:

- Declaring the eight (8) children, namely Rodrigo, Cutts, Quirino, Jr., Eugenia, Socorro, Anita, Norma and Cesar, all surnamed Celones as co-owners in equal shares of both parcels of land covered by TCT No. T-910 and TCT No. T-94744;

- Declaring the following Transfer Certificates of Title Nos. T-207885 and T-207891 in the name of Rodrigo Celones; T-207886 in the name of Cutts Celones; T-207887 in the name of Quirino Celones, Jr., T-207888 in the name of Eugenia Celones, T-207889 in the name of Socorro Celones; and T-207890 in the name of Anita Celones as null and void and hereby ordering its cancellation.

- Approving Subdivision Plan Psd-359803 and Pcs-31865 and the technical description for each lot to be made as basis of the new Deed of Extrajudicial Partition to be executed by the plaintiffs and defendants;

- Ordering plaintiffs and defendants to execute a new Deed of Partition based on the duly approved Subdivision Plan Pcs-31865 and Psd-359803 and on the corresponding technical description for each lot therein;

- Ordering the Register of Deeds for the Province of Quezon to issue separate transfer of certificates of title to each of the eight (8) heirs in the two (2) parcels of land covered by TCT No. T-910 and TCT No. 94744 and its technical description based on the new Deed of Partition to be executed by both the plaintiffs and defendants without prejudice to shares sold by a co-owner to another co-owner provided the corresponding deed of conveyance shall be presented;

- Declaring Special Power of Attorney (Exh. "D") and Deed of Extrajudicial Partition dated 1985 (Exh. "C") as null and void therefore of no legal force and effect;

- Defendant and other co-heirs who are in possession and enjoyment of the properties are ordered to render and accounting of their use and enjoyment of these 2 parcels of land from the time of filing of complaint to

execution of judgment and to deliver the share that pertains to Norma Celones and other omitted heir after proper accounting; and

- Appointing the Sheriff of Branch 61, Gino Marlowe C. Tiongco as judicial administrator for the said properties pending final distribution of the respective shares to the sole surviving legal heirs as per their new deed of partition and based on Subdivision Plans Psd-359803 and Pcs-31865, duly approved by the Department of Justice, National Land Titles and Deeds Registration Administration.

SO ORDERED."[23]

Hence, the present appeal.

In their appeal, defendants-appellants raise the following assignment of errors:[24]

- THE LOWER COURT ERRED IN NOT HOLDING THAT CUTTS CELONES AND CESAR CELONES, TWO OF THE NAMED PRINCIPAL PLAINTIFFS, AND RODRIGO CELONES, THE NAMED PRINCIPAL DEFENDANT IN THE COMPLAINT ARE NOT REAL PARTIES-IN-INTEREST, AS THEY ARE, AS AVERRED IN THE COMPLAINT, ALREADY DECEASED AND, AS SUCH, THEY DO NOT HAVE JURIDICAL CAPACITY ANYMORE, THE SAME HAVING BEEN LOST THROUGH THEIR DEATH; CONSEQUENTLY, THE LOWER COURT ERRED IN NOT DISMISSING THE CASE ON THE GROUND THAT THE COMPLAINT STATES NO CAUSE OF ACTION AND EVEN ON JURISDICTIONAL GROUND;

- THE LOWER COURT ERRED IN HOLDING THAT ADELAIDA PEREZ-CELONES, SURVIVING SPOUSE OF THE DECEASED RODRIGO CELONES IS NOT AN INDISPENSABLE PARTY AND, THEREFORE, IT ERRED IN NOT, ON THIS SCORE, DISMISSING THE CASE;

- THE LOWER COURT ERRED IN, WHILE UPHOLDING THE GENUINENESS AND AUTHENTICITY OF THE SPECIAL POWER OF ATTORNEY (EXH. "D") EXECUTED BY NORMA CELONES IN FAVOR OF CUTTS CELONES, AUTHORIZING THE LATTER TO, FOR HER AND IN HER NAME, PLACE AND STEAD, EXECUTE PARTICIPATE IN, AND SIGN ANY DEED OF EXTRAJUDICIAL PARTITION OF THE ESTATE OF BEATRIZ DE LOS SANTOS SPECIFICALLY MENTIONED THEREIN, NEVERTHELESS DECLARING THE SAID SPECIAL POWER OF ATTORNEY AND THE DEED OF EXTRAJUDICIAL PARTITION NULL AND VOID AND OF NO LEGAL FORCE AND EFFECT;

- THE LOWER COURT ERRED IN, WHILE FINDING THAT CUTTS CELONES ACTED IN EXCESS OF THE AUTHORITY CONFERRED ON HIM IN THE SPECIAL POWER OF ATTORNEY, HOLDING NEVERTHELESS THAT THE EXTRAJUDICIAL PARTITION WAS NULL AND VOID AND, NOT MERELY UNENFORCEABLE UNLESS RATIFIED;

- THE LOWER COURT ERRED IN FINDING AND, CONSEQUENTLY, IN HOLDING THAT THERE IS NO EVIDENCE SHOWING THAT THE DEED OF EXTRAJUDICIAL PARTITION HAS EVER BEEN RATIFIED;

- THE LOWER COURT ERRED IN HOLDING IN EFFECT, THAT DESPITE THE EXECUTION OF THE DEED OF EXTRAJUDICIAL PARTITION AND THE ISSUANCE OF INDIVIDUAL TRANSFER CERTIFICATES OF TITLE TO THE ADJUDICATEES FOR THE LOTS APPORTIONED TO THEM, DECLARING THEM FOR TAXATION PURPOSES AND PAYING THE REALTY TAXES DUE THEREON, ENJOYING THE FRUITS THEREOF, AND SOME OF THEM EVEN SELLING OR ALIENATING THEIR SHARES, THERE HAS BEEN NO REPUDIATION OF THE ERSTWHILE CO-OWNERSHIP OVER THE PROPERTY PARTITIONED;

- THE LOWER COURT ERRED IN NOT SUSTAINING DEFENDANTS' PLEA OF PRESCRIPTION OF ACTION;

- FINALLY, THE LOWER COURT ERRED IN NOT SUSTAINING DEFENDANTS' COUNTERCLAIM AND GRANTING THE RELIEFS PRAYED FOR THEREIN.

The appeal is meritorious.

Assigned errors I & II raise procedural issues and will be discussed in seriatim.

The general rule under the law on succession is that successional rights are transmitted from the moment of death of the decedent and the compulsory heirs are automatically called upon to succeed by operation of law.[25] Under Article 776 of the New Civil Code, inheritance includes all the properties, rights and obligations of a party, not extinguished by death.[26]

The case at bar is an action to recover real property from the estate, which survives the death of the principal parties. As successors who stepped into the shoes of the decedent, the heirs can commence any action originally pertaining to the decedent. Hence, the heirs of Cutts Celones and Cesar Celones are real parties in interest by virtue of intestate succession.[27]

With regard to the second assigned error, the trial court erred in holding that Adelaida Perez-Celones' interest as a surviving heir was amply protected despite not being impleaded in the case. Applying the aforecited rule, the heirs of defendant Rodrigo Celones are considered parties who have an interest adverse to that of plaintiffs'. Their interest in the property inured by intestacy, thereby making them real parties-in-interest who should be impleaded as defendants, without whom no final determination of the case can be made.[28] Since the widow is a compulsory heir under Article 887[29] of the Civil Code, she must be impleaded as an indispensable party.

Contrary to defendants-appellants' claim, the failure to implead the widow in the present case is merely a procedural defect which can be cured, even on appeal.[30]

We now proceed to resolve the issue of whether or not the Deed of Extrajudicial Partition is null and void.

It is plaintiffs-appellees' staunch position that no valid partition took place. To prove their claim, plaintiffs-appellees cite the disproportionate adjudication of the properties among the heirs and the failure of one of the heirs to participate in the execution of the Deed of Extrajudicial Partition. In fact, the court a quo found the said deed to be "fraudulent and vicious" for having been executed without the knowledge and consent of one of the heirs. Consistent with the above findings, the trial court declared the properties in dispute held in *cestui que trust* and granted the prayer for cancellation of titles and repartition.

We disagree with the findings of the trial court.

Plaintiffs Socorro Celones, Anita Celones, Cesar Celones, Quirino Celones, Jr., Cutts Celones and Eugenia Celones cannot anchor their claim to invalidate the Deed of Extrajudicial Partition on Norma Celones' cause of action. For unlike Norma, who appears to have been excluded, all the above named heirs have participated in the execution of the assailed partition. Verily, the cause of action of the said heirs is based on the allegation of fraud and lack of consent. The genuineness and due execution of the Deed of Extrajudicial Partition is put into question by claimed irregularities in its form and substance.

A careful perusal of the facts on record does not lend credence to plaintiffs-appellees' proposed theory. The testimony of Socorro Celones was self-serving and deserves scant consideration. A notarized Deed of Extrajudicial Partition duly acknowledged before a notary public has, in its favor, the presumption of regularity. It carries with it evidentiary weight with respect to its execution. A public instrument compared to the uncorroborated testimony of an adverse party, enjoys the presumption of authenticity.[31] In the absence of full, clear and convincing evidence of fraud and undue influence that vitiated a party's consent, the presumption of

consent to the contract must prevail.[32]

Granting arguendo that an implied trust was constituted in favor of Norma Celones, acts of dominion exercised by the above named heirs amount to a clear repudiation of the co-ownership and a tacit acceptance of the terms of the partition. It is worth noting that the properties were already divided among seven of the eight Celones heirs, each issued individual titles. The subsequent sale of Lots D-3, D-4 and D-733 by some of the heirs is a clear indicia of ownership. The heirs, as parties to the Deed of Extrajudicial Partition cannot deny the validity thereof after enjoying its benefits without outrage to one's sense of justice and fairness.[34]

The facts on record are bereft of any proof to indicate that the contract was simulated or fraudulent. A Deed of Extrajudicial Partition remains valid and binding as to the heirs who participated and benefited in the execution thereof. Plaintiffs-appellees have no legal right to compel defendants-appellants to submit to a repartition despite their alleged agreement to the conduct of an amended survey.[35] Furthermore, the fact that it took plaintiffs twelve (12) years to file the present action invites suspicion as to the true motive behind the desire to repartition the previously allocated shares of the estate.

Section 1, Rule 74 of the Rules on special proceedings provide the means for heirs to settle the estate of the deceased, to wit:

"Section 1. Extrajudicial settlement by agreement between the heirs.—If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they may see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any claim that may be filed under section 4 of this rule. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation 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." (underscoring supplied)

Anent the claim that the 1985 partition granted disproportionate shares among the Celones siblings, We find that the heirs may disregard the proportions or shares of property that they may be legally entitled to under normal circumstances. The above rule is explicit in that the heirs may enter into an extrajudicial settlement of the estate of the decedent and may "divide the estate among themselves as they see fit" by means of a public instrument. There is no law compelling the co-owners to divide equally among themselves property held in common, if they voluntarily choose to do otherwise.[36]

With regard to Norma Celones' cause of action, the same must be duly proven to the satisfaction of this court. Ei incumbit probatio qui dicit, non qui negat. He who asserts, not he who denies, must prove.[37]

The court a quo upheld the validity of the Special Power of Attorney issued to Cutts Celones but declared the Deed of Extrajudicial Partition void on the ground that the waiver made by Cutts Celones of Norma Celones' share in the estate was beyond the authority that was given to him. This precipitated the trial court's long

disquisition on the creation of an implied trust based on Norma Celones' alleged exclusion from the partition agreement.

A Deed of Extrajudicial Partition excluding one or more heirs, who had no knowledge of and consent to the same, will not prejudice and affect the interest of heirs so excluded. An implied trust, also known as a cestui que trust, is created by operation of law. Under Article 1456 of the Civil Code, any property acquired through mistake or fraud shall be held in trust for the benefit of the person from whom the property comes.

Whether or not Norma Celones was indeed excluded from the execution of the partition agreement therefore becomes a question of fact. Whether or not she consented to or impliedly ratified the Deed of Extrajudicial Partition is a matter of evidence. Allegations in the complaint must be duly proven by competent evidence and the burden of proof is on the party making the allegations. In a civil case, the burden of proof is on the plaintiff to establish his case through a preponderance of evidence.[38]

Plaintiffs-appellees' case relies heavily on the fact of Norma Celones' lack of knowledge or consent to the 1985 partition. Curiously, Norma Celones never took the witness stand. Neither was there any deposition or affidavit to support Socorro Celones' account of Norma Celones' absence in the country or the latter's denial of knowledge of the execution of the deed. The passport presented to evince Norma Celones' claim of being out of the country is inconclusive since the passport was in the name of NORMA SANTOS COGHLAN. There were no attempts on the part of the plaintiffs to definitively show that Norma Celones and the owner of the passport were one and the same person.[39]

Given plaintiffs-appellees' actuations - the unexplained lapse of time before the institution of the present action and the apparent disinterest of the other heirs, specifically Norma Celones, in litigating the case - We are constrained to uphold the validity of the Deed of Extrajudicial Partition.

In light of the foregoing, this Court finds it unnecessary to discuss assigned errors VI, VII and VIII.

WHEREFORE, the appeal is hereby granted. The decision of the trial court is reversed and set aside, and plaintiffs-appellees' complaint is hereby dismissed. Costs against the plaintiffs-appellees.

### **SO ORDERED.**

De Guia-Salvador and De Leon, JJ., concur.

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[1] Records, pp. 254-277; Rollo, pp. 58-81

[2] pp. 4; 32, Records.

[3] pp. 4-8, Folder of Exhibits.

[4] Folder of Exhibits.

[5] p. 36, Folder of Exhibits.

[6] pp. 13-19, Records.

[7] p. 7, Folder of Exhibits.

[8] pp. 2-9, Records.

[9] In accordance with approved Subdivision Plan (LRC) Psd-17874 (Annex "B" of Complaint) with regard to the 23,339 square meter lot and amended plan PCS-31865 (Annex "J" of Complaint) for the 119,418 square meter lot.

[10] Cutts Celones represented by Sonia Celones, Cutts Celones, Jr. and Haydee Celones; Cesar Celones represented by Celso Celones, Carlito Celones, Maria Cesaria, Maria Luisa Celones, Christopher Celones and Madonna Celones; and Rodrigo Celones represented by Marissa Celones, Oscar Celones, Cecilia Celones and Rodrigo Celones, Jr.

[11] pp. 32-39, Records.

[12] pp. 87-89, Records.

[13] p. 7, TSN February 9, 2000.

[14] p. 9, TSN February 9, 2000.

[15] p. 3, TSN 4 April 2000.

[16] Id.

[17] p. 8, TSN 22 May 2000.

[18] pp. 4-5 TSN 23 March 2001.

[19] pp. 5-6 TSN 23 March 2001.

[20] pp. 47-59, Folder of Exhibits.

[21] p. 5 TSN 23 March 2001

[22] pp. 45-46 Folder of Exhibits.

[23] pp. 80-81, Rollo.

[24] pp. 31-32, Rollo.

[25] Article 774 Civil Code.

Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law.

[26] Speed Distributing Corp v. Court of Appeals, 425 SCRA 691, 708 citing Rabadilla v. Court of Appeals, 334 SCRA 522.

[27] Dael v. Teves, 136 SCRA 199,200.

[28] id.

[29] Art. 887. The following are compulsory heirs.

(1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;

(2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants.

(3) The widow or widower.

\* \* \* \* \*

[30] Republic v. SB, 240 SCRA 376, 471.

[31] *Tabas v. Mangabin*, 421 SCRA 141, 146.

[32] *Heirs of William Sevilla v. Sevilla*, 402 SCRA 501, 511.

[33] pp. 43-44 Folder of Exhibits.

[34] *Lim v. Queensland Tokyo Commodities* 373 SCRA 31, 39.

[35] pp. 12-13, TSN February 9, 2000.

[36] LRC Consulta No. 146, *Vda. De Sena v. Register of Deeds of Camarines Norte*, March 7, 1957.

[37] *Heirs of William Sevilla v. Sevilla*, 402 SCRA 501, 511.

[38] *Social Security System v. Chaves*, 440 SCRA 269, 277.

[39] p. 5 TSN, April 4, 2000.

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