

**SPOUSES ARNULFO AND NENITA BIAZON AND SPOUSES
HERMOGENES AND MILDRED INTON REPRESENTED BY THEIR
ATTORNEY-IN-FACT NORBERTO S. CASILANG,
PLAINTIFFS-APPELLANTS, VS. PASCUAL ESPIRIT...**

Ponente: BARRIOS, J.

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BARRIOS, J.:

Challenged in this appeal is the Decision dated July 8, 2004 of the Regional Trial Court in Morong, Rizal, in a suit for Specific Performance with Damages, the decretal portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

- Dismissing the plaintiffs' Complaint for Specific Performance with Damages filed against the defendants as the Deed of Sale With Mortgage and Supplementary Agreement both dated August 20, 1985 are hereby declared as unenforceable.
- Ordering the defendants and/or the legal heirs of the defendants who are parties to the Deed of Sale with Mortgage and the Supplementary Agreement to jointly and solidarily reimburse to the plaintiffs the amount of P237,948.00 with interest at the rate of 6% per annum computed from the date of the filing of this Complaint until fully paid, and thereafter, after judgment has become final and executory and the said amount has not yet been fully paid, with interest at the rate of 12% per annum until the same has been fully satisfied, subject to the provisions of the Rules of Court with respect to the share of deceased defendants Pascual Espiritu Santo and Osmundo Alejo.

Defendants' Counterclaim is likewise DISMISSED. (pp. 55-56, rollo)

In their complaint, the appellants spouses Arnulfo and Nenita Biazon and the spouses Hermogenes and Mildred Inton (or the appellants for brevity) claimed that they bought from the appellees a 39,658 square meters parcel of land that they co-owned, described as Lot 4843-D of Plan Psd-328809, covered by OCT No. 3624 in that Deed of Sale with Mortgage executed on August 20, 1985. Coeval to its execution, a Supplementary Agreement was also entered into by the parties where because payment made was not in full, it was stipulated that should the appellants fail to pay in full the purchase price within the agreed period, they shall be entitled to only one-half of the property subject of the Deed of Sale with Mortgage. Said one-half refers to the eastern portion of the property with an area of 19,829 square meters. It was further stipulated that the vendors shall not exercise their right of foreclosure and they shall then cause the subdivision of the subject parcel of land. The pertinent portion of this Supplementary Agreement provides:

That, however, the parties hereto have hereunto agreed that in the remote possibility that the balance of the purchase price shall not be paid within the period stipulated, the PARTY OF THE SECOND PART shall be entitled only to one-half of the property sold (Lot 4843-D), or 19,829 sqm., on the easternpart thereof, the purchase price of which (P237,948.00) has been fully paid; that in said eventuality, the PARTY OF THE FIRST

PART shall not exercise his right of foreclosure as provided for in the Deed of sale with Mortgage; that said Lot 4843-D shall be caused to be subdivided so as to segregate the eastern portion thereof with an area of 19,829 sqm., to be retained by the PARTY OF THE FIRST PART (Heirs of the late Luis Espiritu Santo), the western portion thereof with an area of 19,829 sqm.; and that for this purpose, the PARTY OF THE SECOND PART shall shoulder the expenses, including documentation, subdivision survey, registration and all other expenses relative thereto. (p. 13, record)

The appellants failed to pay the balance of the purchase price within the agreed period, and opted to enforce the Supplementary Agreement for the conveyance of one-half of the property or 19,829 square meters on the eastern portion of Lot 4843-D. They then demanded that the vendors cause the subdivision or segregation of the property purchased by them, but the vendors failed and refused to comply with the demand. Thus, appellants filed on October 29, 1998 a complaint for Specific Performance with Damages against the appellees.

In their Answer with Counterclaim, the appellees Bernardo Salvador, Donata Salvador Alegre, Narcisa ES Santiago, Toriana L. Espiritu Santo, Adela San Jose-Espiritu Santo, Sabino Santos, Marietta S. Santos and Cely Santos-Rita alleged that they are among the co-owners and vendors of the subject property. They claimed however that the appellants have no cause of action against them because the said Supplementary Agreement was executed without the consent of all the co-owners of the subject property. They also claimed that the other vendors Pascual Espiritu Santo, Valentina ES Fernando, Osmundo Alejo and Tiburcio Alejo were already deceased and the action should have been instituted against their estate or legal heirs. The appellees further asserted that the appellants violated the Deed of Sale with Mortgage when they failed to pay in full the consideration for the subject property, thus they have no right to demand for the conveyance of a portion of the subject property.

On March 1, 1999, the trial court issued an Order declaring Pascual Espiritu Santo, Valentina ES. Fernando, Eleudaisy ES. Campo, Osmundo Alejo, Tiburcio Alejo, Avelina S. Concio, Sevilla Santos, Roberto Santos and Aida Santos in default for failure to file their answer to the complaint.

On July 8, 2004, the trial court rendered the assailed Decision, hence this appeal with the appellants assigning as the reversible errors committed that:

I

THE COURT A QUO ERRED IN DECLARING NON-ANSWERING DEFENDANTS IN DEFAULT, THEN SUBSEQUENTLY HOLDING/RULING THAT NO COMPLETE DETERMINATION OF ISSUES/RELIEF MAY BE HAD BY REASON OF THE NON-INCLUSION OF INDISPENSABLE PARTIES.

II

THE COURT A QUO GRAVELY ERRED IN DECLARING THE DEED OF SALE WITH MORTGAGE AND SUPPLEMENTARY AGREEMENT BOTH DATED 20 AUGUST 1985 AS UNENFORCEABLE. (pp. 15-16, rollo)

For reasons not known, no Appellee's Brief was filed.

The appeal is meritorious.

An examination of the records reveals that Lot 4843-D was inherited by the vendors from the late Luis Espiritu Santo which they set down in that Deed of Extrajudicial Settlement of Estate dated April 15, 1985. On August 14, 1985 the vendors executed a Special Power of Attorney authorizing Pascual Espiritu Santo to sell Lot 4843-D. On

August 20, 1985, the Deed of Sale with Mortgage and the Supplementary Agreement affecting Lot 4843-D was executed by the appellants and Pascual Espiritu Santo acting for himself and his co-owners. The appellees do not deny the execution of these deeds but their main defenses are that these were executed without the consent of all the co-owners of the subject property, the appellants themselves breached the agreement in failing to pay the balance, and that the others named as defendants were already dead.

The defense that not all the co-owners were signatories to the sale agreements is a blatant falsity. The co-owners were the Heirs of Luis Espiritu Santo and all are bound by the Deed of Sale with Mortgage and the Supplementary Agreement which was signed for them by Pascual Espiritu whom they have authorized for that purpose in a Special Power of Attorney. His signatures thereon are as good as theirs. Equally useless is the defense that the appellants are barred for they themselves violated the sale for their failure to pay the full purchase price. The Supplementary Agreement clearly allowed the appellants to buy only one-half (1/2) of the area with one-half (1/2) of the consideration which they have already paid, and forego the rest by simply not paying the remaining one-half (1/2) of the price. The exercise of an allowed option cannot be deemed a breach of the agreement.

But when this case was filed, Pascual Espiritu Santo, Valentina ES. Fernando, Osmundo Alejo and Tiburcio Alejo were already deceased. This fact was known to the appellants and the trial court too because this was alleged by the appellees in their Answer with Counterclaim. The appellants should have amended their complaint to implead the legal heirs or representatives of these deceased. Unfortunately the appellants did not, and the trial court compounded this by declaring these deceased in default and ultimately rendering judgment against them instead of ordering first the inclusion of necessary parties.

But this does not make legally impossible the partition prayed for by the appellants even though jurisdiction was acquired only on most but not all of the co-owners. This is in line with the well-settled doctrine that a co-owner has full ownership of his pro-indiviso share and has the right to alienate, assign or mortgage it, and substitute another person in its enjoyment (Del Campo vs. Court of Appeals, 351 SCRA 1). In short not all acts affecting a co-owned property must involve all the co-owners, and a segregation affecting only the aliquot portions of the appellees may be effected.

WHEREFORE, the appeal is GRANTED and the assailed Decision is REVERSED and SET ASIDE. In its stead judgment is rendered directing the appellees to perform their obligations under the Deed of Sale with Mortgage and the Supplementary Agreement by conveying to the appellants their respective and proportionate shares in the 19,829 square meters eastern portion of Lot 4843-D.

SO ORDERED.

Guariña, III and Romilla-Lontok, JJ., concur.

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