

**DOLORES LAHORA VDA. DE CASTRO, ARSENIO DE CASTRO, JR.,
WILFREDO DE CASTRO, IRINEO DE CASTRO AND VIRGINIA DE
CASTRO ALEJANDRO, (IN SUBSTITUTION FOR THE DECEASED
DEFENDANT-APPELLA...**

G.R. No. L-25014. October 17, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court rejects petitioners' appeal as without merit and affirms the judgment of the appellate court. Petitioners' predecessor-in-interest as co-owner of an undivided one-half interest in the fishpond could validly lease his interest to a third party, respondent Atienza, independently of his co-owner (although said coowner had also leased his other undivided one-half interest to the same third party) and could likewise by mutual agreement independently cancel his lease agreement with said third party. Said predecessor-in-interest (and petitioners who have substituted him as his heirs) therefore stands liable on his express undertaking to refund the advance rental paid to him by the lessee on the cancelled lease and cannot invoke the non-cancellation of the co-owner's lease to elude such liability.

The Court of Appeals, in its decision affirming in toto the judgment of the Manila court of first instance ordering therein defendant-appellant Arsenio de Castro, Sr. (now deceased and substituted by above-named petitioners as his heirs) "to return to the plaintiff (respondent) Gregorio Atienza the sum of P2,500.00 with legal interest from the date of the filing of the complaint until fully paid plus the sum of P250.00 as attorney's fees and the costs of the suit", found the following facts to be undisputed:

"On January 24, 1956 the brothers Tomas de Castro and Arsenio de Castro, Sr. leased to plaintiff a fishpond containing an area of 26 hectares situated in Polo, Bulacan and forming part of a bigger parcel of land covered by Transfer Certificate of Title No. 196450 of the registry of the property of Bulacan. The lessors are co-owners in equal shares of the leased property.

"According to the contract of lease (Exh. 1) the term of the lease was for five years from January 24, 1956 at a rental of P5,000 a year, the first year's rental to be paid on February 1, 1956, the second on February 1, 1957 and the rental for the last three years on February 1, 1958. The first year's rental was paid on time.

"In the meantime, Tomas de Castro died.

"In the month of November, 1956, plaintiff as lessee and defendant Arsenio de Castro, Sr. as one of the lessors, agreed to set aside and annul the contract of lease and for this purpose an agreement (Exh. A) was signed by them, Exhibit A as signed by plaintiff and defendant shows that Felisa Cruz Vda. de Castro, widow of Tomas de Castro, was intended to be made a party thereof in her capacity as representative of the heirs of Tomas de Castro.

"Condition No. 2 of Exhibit A reads as follows:

""2. Na sa pamamagitan nito ay pinawawalang kabuluhan namin ang nasabing kasulatan at nagkasundo kami

na ang bawat isa sa amin ni Arsenio de Castro at Felisa Cruz Vda. de Castro ay isauli kay GREGORIO ATIENZA ang tig P2,500.00 o kabuuang halagang P5,000.00 na paunang naibigay nito alinsunod sa nasabing kasulatan; na ang nasabing tig P2,500.00 ay isasauli ng bawat isa sa amin sa o bago dumating ang Dec. 30, 1956.'

"Felisa Cruz Vda. de Castro refused to sign Exhibit A. Defendant did not pay the P2,500.00 which under the above-quoted paragraph of Exhibit A, he should have paid on December 30, 1956. Demand for payment was made by plaintiff's counsel on January 7, 1957 but to no avail, hence the present action."

On the conflicting contentions between the parties as to who between them would attend to securing the signature of Mrs. Felisa Cruz Vda. de Castro (widow of Tomas de Castro) to the agreement of cancellation of the lease with respondent Atienza, the appellate court found that "the testimony of the defendant (Arsenio de Castro, Sr.) .. supports the contention of the plaintiff (Atienza) "that it was the defendant Arsenio who was interested and undertook to do so, citing Arsenio's own declaration that "I agreed to sign this document (referring to the cancellation) because of my desire to cancel our original agreement" and that his purpose in obtaining the cancellation of said lease agreement with plaintiff Atienza was "(B)ecause I had the intention of having said fishpond leased to other persons and I cannot lease it to third parties unless I can secure the signature of Felisa Vda. de Castro."

The appellate court thus held in effect that as Arsenio "was the one interested in cancelling the lease (Exh. 1), it stands to reason that he most probably undertook to obtain the signature of Mrs. Castro [widow and successor-in-interest of his brother Tomas]" and that he could not invoke his own failure to obtain such signature to elude his own undertaking and liability to refund respondent (plaintiff) his share of the rental paid in advance by respondent on the cancelled lease in the sum of P2,500.00.

The appellate court furthermore correctly held that the consent or concurrence of Felisa Vda. de Castro (as co-owner in succession of Tomas) was not an essential condition to the validity and effectivity of the agreement of cancellation of the lease (Exhibit A) as between Arsenio and respondent-lessee, contrary to petitioners' claim, holding that "(S)ince there is no specific provision in Exhibit A supporting defendant's claim, we are not prepared to supply such condition unless the same can be deduced from other evidence or unless the terms of Exhibit A cannot be performed by plaintiff and defendant without Mrs. Castro being bound as a party thereto."

The issue is simply reduced to whether Arsenio as co-owner of the fishpond owned pro-indiviso by him with his brother Tomas (succeeded by Felisa Vda. de Castro) could validly lease his half-interest to a third party (respondent Atienza) independently of his co-owner, and in case his co-owner also leased his other half interest to the same third party, whether Arsenio could cancel his own lease agreement with said third party?

The appellate court correctly resolved the issue thus: "Our view of the contract of lease Exhibit 1 is that each of the Castro brothers, leased his undivided one-half interest in the fishpond they owned in common to the plaintiff. Could one of them have validly leased his interest without the other co-owner leasing his own? The answer to this is given by appellant in his own brief (p. 14) when he said that it would result in a partnership between the lessee and the owner of the other undivided half. If the lease could be entered into partially by one of the co-owners, insofar as his interest is concerned, then the lease, Exhibit 1, can also be cancelled partially as between plaintiff and defendant. Therefore, we conclude that the consent of Mrs. Felisa Cruz Vda. de Castro is not essential for the cancellation of the lease of defendant's one-half undivided share in the fishpond to plaintiff."

The appellate court's judgment is fully supported by the Civil Code provisions on the rights and prerogatives of co-owners, and specifically by Article 493 which expressly provides that

"Art. 493. 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."[*]

ACCORDINGLY, the appealed judgment is hereby affirmed with costs against petitioners.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[*] Emphasis supplied.

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