

SPOUSES MANUEL AND SALVACION DEL CAMPO, PETITIONERS, VS. HON. COURT OF APPEALS AND HEIRS OF JOSE REGALADO, SR., RESPONDENTS.

G.R. No. 108228. February 01, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review on certiorari of a decision of the Court of Appeals which affirmed the judgment of the Regional Trial Court of Roxas City, Branch 15 in Civil Case No. V-5369, ordering the dismissal of the action for repartition, resurvey and reconveyance filed by petitioners.

Pure questions of law are raised in this appeal as the following factual antecedents are undisputed:

Salome, Consorcia, Alfredo, Maria, Rosalia, Jose, Quirico and Julita, all surnamed Bornales, were the original co-owners of Lot 162 of the Cadastral Survey of Pontevedra, Capiz under Original Certificate of Title No. 18047. As appearing therein, the lot, which consisted of a total area of 27,179 square meters was divided in aliquot shares among the eight (8) co-owners as follows:

Salome Bornales

4/16

Consorcia Bornales

4/16

Alfredo Bornales

2/16

Maria Bornales

2/16

Jose Bornales

1/16

Quirico Bornales

1/16

Rosalia Bornales

1/16

Julita Bornales

1/16

On July 14, 1940, Salome sold part of her 4/16 share in Lot 162 for P200.00 to Soledad Daynolo. In the Deed of Absolute Sale signed by Salome and two other co-owners, Consorcia and Alfredo, the portion of Lot 162 sold to Soledad was described as having more or less the following measurements:

63-1/2 meters from point "9" to "10", 35 meters from point "10" to point "11", 30 meters from point "11" to a certain point parallel to a line drawn from points "9" to "10"; and then from this "Certain Point" to point "9" and as shown in the accompanying sketch, and made an integral part of this deed, to SOLEDAD DAYNOLO, her heirs and assigns.[1]

Thereafter, Soledad Daynolo immediately took possession of the land described above and built a house thereon. A few years later, Soledad and her husband, Simplicio Distajo, mortgaged the subject portion of Lot 162 as security for a P400.00 debt to Jose Regalado, Sr. This transaction was evidenced by a Deed of Mortgage[2] dated May 1, 1947.

On April 14, 1948, three of the eight co-owners of Lot 162, specifically, Salome, Consorcia and Alfredo, sold 24,993 square meters of said lot to Jose Regalado, Sr.

On May 4, 1951, Simplicio Distajo, heir of Soledad Daynolo who had since died, paid the mortgage debt and redeemed the mortgaged portion of Lot 162 from Jose Regalado, Sr. The latter, in turn, executed a Deed of Discharge of Mortgage[3] in favor of Soledad's heirs, namely: Simplicio Distajo, Rafael Distajo and Teresita Distajo-Regalado. On same date, the said heirs sold the redeemed portion of Lot 162 for P1,500.00 to herein petitioners, the spouses Manuel Del Campo and Salvacion Quiachon.

Meanwhile, Jose Regalado, Sr. caused the reconstitution of Original Certificate of Title No. 18047. The reconstituted OCT No. RO-4541 initially reflected the shares of the original co-owners in Lot 162. However, title was transferred later to Jose Regalado, Sr. who subdivided the entire property into smaller lots, each covered by a respective title in his name. One of these small lots is Lot No. 162-C-6 with an area of 11,732 square meters which was registered on February 24, 1977 under TCT No. 14566.

In 1987, petitioners Manuel and Salvacion del Campo brought this complaint for "repartition, resurvey and reconveyance" against the heirs of the now deceased Jose Regalado, Sr. Petitioners claimed that they owned an area of 1,544 square meters located within Lot 162-C-6 which was erroneously included in TCT No. 14566 in the name of Regalado. Petitioners alleged that they occupied the disputed area as residential dwelling ever since they purchased the property from the Distajos way back in 1951. They also declared the land for taxation purposes and paid the corresponding taxes.

On April 1, 1987, summons were served on Regalado's widow, Josefina Buenvenida, and two of her children, Rosemarie and Antonio. Josefina and Rosemarie were declared in default on May 10, 1989 because only Antonio filed an answer to the complaint.

During trial, petitioners presented the Deed of Absolute Sale[4] executed between Soledad Daynolo and Salome Bornaes as well as the Deed of Mortgage[5] and Deed of Discharge[6] signed by Jose Regalado, Sr. The Deed of Absolute Sale[7] showing the purchase by the Del Campos of the property from the Distajos was likewise given in evidence.

Despite the filing of an answer, Antonio failed to present any evidence to refute the claim of petitioners. Thus, after considering Antonio to have waived his opportunity to present evidence, the trial court deemed the case submitted for decision.

On November 20, 1990, the trial court rendered judgment dismissing the complaint. It held that while Salome could alienate her pro-indiviso share in Lot 162, she could not validly sell an undivided part thereof by metes and bounds to Soledad, from whom petitioners derived their title. The trial court also reasoned that petitioners could not have a better right to the property even if they were in physical possession of the same and declared the property for taxation purposes, because mere possession cannot defeat the right of the Regalados who had a Torrens title over the land.

On appeal, the Court of Appeals affirmed the trial court's judgment, with no pronouncement as to costs.[8]

Petitioners now seek relief from this Court and maintain that:

I.

THE FACT THAT THE SALE OF THE SUBJECT PORTION CONSTITUTES A SALE OF A CONCRETE OR DEFINITE PORTION OF LAND OWNED IN COMMON DOES NOT ABSOLUTELY DEPRIVE HEREIN PETITIONERS OF ANY RIGHT OR TITLE THERETO;

II.

IN ANY EVENT, HEREIN PRIVATE RESPONDENTS ARE ALL ESTOPPED FROM DENYING THE RIGHT AND TITLE OF HEREIN PETITIONERS.[9]

In resolving petitioners' appeal, we must answer the following questions: Would the sale by a co-owner of a physical portion of an undivided property held in common be valid? Is respondent estopped from denying petitioners' right and title over the disputed area? Under the facts and circumstances duly established by the evidence, are petitioners entitled to 'repartition, resurvey and reconveyance' of the property in question?

On the first issue, it seems plain to us that the trial court concluded that petitioners could not have acquired ownership of the subject land which originally formed part of Lot 162, on the ground that their alleged right springs from a void sale transaction between Salome and Soledad. The mere fact that Salome purportedly transferred a definite portion of the co-owned lot by metes and bounds to Soledad, however, does not per se render the sale a nullity. This much is evident under Article 493[10] of the Civil Code and pertinent jurisprudence on the matter. More particularly in *Lopez vs. Vda. De Cuaycong, et.al.*[11] which we find relevant, the Court, speaking through Mr. Justice Bocobo, held that:

...The fact that the agreement in question purported to sell a concrete portion of the hacienda does not render the sale void, for it is a 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." (When a thing is of no force as I do it, it shall have as much force as it can have.)[12]

Applying this principle to the instant case, there can be no doubt that the transaction entered into by Salome and Soledad could be legally recognized in its entirety since the object of the sale did not even exceed the ideal shares held by the former in the co-ownership. As a matter of fact, the deed of sale executed between the parties expressly stipulated that the portion of Lot 162 sold to Soledad would be taken from Salome's 4/16 undivided interest in said lot, which the latter could validly transfer in whole or in part even without the consent of the other co-owners. Salome's right to sell part of her undivided interest in the co-owned property is absolute in accordance 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[13] Since Salome's clear intention was to sell merely part of her aliquot share in Lot 162, in our view no valid objection can be made against it and the sale can be given effect to the full extent.

We are not unaware of the principle that a co-owner cannot rightfully dispose of a particular portion of a

co-owned property prior to partition among all the co-owners. However, this should not signify that the vendee does not acquire anything at all in case a physically segregated area of the co-owned lot is in fact sold to him. Since the co-owner/vendor's undivided interest could properly be the object of the contract of sale between the parties, what the vendee obtains by virtue of such a sale are the same rights as the vendor had as co-owner, in an ideal share equivalent to the consideration given under their transaction. In other words, the vendee steps into the shoes of the vendor as co-owner and acquires a proportionate abstract share in the property held in common.

Resultantly, Soledad became a co-owner of Lot 162 as of the year 1940 when the sale was made in her favor. It follows that Salome, Consorcia and Alfredo could not have sold the entire Lot 162 to Jose Regalado, Sr. on April 14, 1948 because at that time, the ideal shares held by the three co-owners/vendors were equivalent to only 10/16 of the undivided property less the aliquot share previously sold by Salome to Soledad. Based on the principle that "no one can give what he does not have,"[14] Salome, Consorcia and Alfredo could not legally sell the shares pertaining to Soledad since a co-owner cannot alienate more than his share in the co-ownership. We have ruled many times 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. Since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner will only transfer the rights of said co-owner to the buyer, thereby making the buyer a co-owner of the property.[15]

In this case, Regalado merely became a new co-owner of Lot 162 to the extent of the shares which Salome, Consorcia and Alfredo could validly convey. Soledad retained her rights as co-owner and could validly transfer her share to petitioners in 1951. The logical effect of the second disposition is to substitute petitioners in the rights of Soledad as co-owner of the land. Needless to say, these rights are preserved notwithstanding the issuance of TCT No. 14566 in Regalado's name in 1977.

Be that as it may, we find that the area subject matter of this petition had already been effectively segregated from the 'mother lot' even before title was issued in favor of Regalado. It must be noted that 26 years had lapsed from the time petitioners bought and took possession of the property in 1951 until Regalado procured the issuance of TCT No. 14566. Additionally, the intervening years between the date of petitioners' purchase of the property and 1987 when petitioners filed the instant complaint, comprise all of 36 years. However, at no instance during this time did respondents or Regalado, for that matter, question petitioners' right over the land in dispute. In the case of *Vda. de Cabrera vs. Court of Appeals*,[16] we had occasion to hold that where the transferees of an undivided portion of the land allowed a co-owner of the property to occupy a definite portion thereof and had not disturbed the same for a period too long to be ignored, the possessor is in a better condition or right than said transferees. (*Potior est condition possidentis*). Such undisturbed possession had the effect of a partial partition of the co-owned property which entitles the possessor to the definite portion which he occupies. Conformably, petitioners are entitled to the disputed land, having enjoyed uninterrupted possession thereof for a total of 49 years up to the present.

The lower court's reliance on the doctrine that mere possession cannot defeat the right of a holder of a registered Torrens title over property is misplaced, considering that petitioners were deprived of their dominical rights over the said lot through fraud and with evident bad faith on the part of Regalado. Failure and intentional omission to disclose the fact of actual physical possession by another person during registration proceedings constitutes actual fraud. Likewise, it is fraud to knowingly omit or conceal a fact, upon which benefit is obtained to the prejudice of a third person.[17] In this case, we are convinced that Regalado knew of the fact that he did not have a title to the entire lot and could not, therefore, have validly registered the same in his name alone because he was aware of petitioners' possession of the subject portion as well as the sale between Salome and Soledad.

That Regalado had notice of the fact that the disputed portion of Lot 162 was under claim of ownership by

petitioners and the latter's predecessor is beyond question. Records show that the particular area subject of this case was mortgaged by Soledad and her husband to Jose Regalado, Sr. as early as May 1, 1947 or one year prior to the alienation of the whole lot in favor of the latter. Regalado never questioned the ownership of the lot given by Soledad as security for the P400.00 debt and he must have at least known that Soledad bought the subject portion from Salome since he could not have reasonably accepted the lot as security for the mortgage debt if such were not the case. By accepting the said portion of Lot 162 as security for the mortgage obligation, Regalado had in fact recognized Soledad's ownership of this definite portion of Lot 162. Regalado could not have been ignorant of the fact that the disputed portion is being claimed by Soledad and subsequently, by petitioners, since Regalado even executed a Release of Mortgage on May 4, 1951, three years after the entire property was supposedly sold to him. It would certainly be illogical for any mortgagee to accept property as security, purchase the mortgaged property and, thereafter, claim the very same property as his own while the mortgage was still subsisting.

Consequently, respondents are estopped from asserting that they own the subject land in view of the Deed of Mortgage and Discharge of Mortgage executed between Regalado and petitioners' predecessor-in-interest. As petitioners correctly contend, respondents are barred from making this assertion under the equitable principle of estoppel by deed, whereby a party to a deed and his privies are precluded from asserting as against the other and his privies any right or title in derogation of the deed, or from denying the truth of any material fact asserted in it.[18] A perusal of the documents evidencing the mortgage would readily reveal that Soledad, as mortgagor, had declared herself absolute owner of the piece of land now being litigated. This declaration of fact was accepted by Regalado as mortgagee and accordingly, his heirs cannot now be permitted to deny it.

Although Regalado's certificate of title became indefeasible after the lapse of one year from the date of the decree of registration, the attendance of fraud in its issuance created an implied trust in favor of petitioners and gave them the right to seek reconveyance of the parcel wrongfully obtained by the former. An action for reconveyance based on an implied trust ordinarily prescribes in ten years. But when the right of the true and real owner is recognized, expressly or implicitly such as when he remains undisturbed in his possession, the said action is imprescriptible, it being in the nature of a suit for quieting of title.[19] Having established by clear and convincing evidence that they are the legal owners of the litigated portion included in TCT No. 14566, it is only proper that reconveyance of the property be ordered in favor of petitioners. The alleged incontrovertibility of Regalado's title cannot be successfully invoked by respondents because certificates of title merely confirm or record title already existing and cannot be used to protect a usurper from the true owner or be used as a shield for the commission of fraud.[20]

WHEREFORE, the petition is GRANTED. The assailed decision of the Court of Appeals in CA-G.R. CV No. 30438 is REVERSED and SET ASIDE. The parties are directed to cause a SURVEY for exact determination of their respective portions in Lot 162-C-6. Transfer Certificate of Title No. 14566 is declared CANCELLED and the Register of Deeds of Capiz is ordered to ISSUE a new title in accordance with said survey, upon finality of this decision.

Costs against respondents.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 46-47.

[2] Id. at 49.

[3] Id. at 51.

[4] Id. at 46-48.

[5] Supra, note 2.

[6] Supra, note 3.

[7] Supra, note 1 at 52.

[8] Id. at 17.

[9] Id. at 27 & 31.

[10] 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.

[11] 74 Phils. 601 (1944).

[12] Id. at 609 (Italics ours).

[13] Nufable vs. Nufable, 309 SCRA 692, 700 (1999).

[14] Ibid.

[15] Tomas Claudio Memorial College, Inc. vs. Court of Appeals, et al., 316 SCRA 502, 509 (1999).

[16] 267 SCRA 339, 357 (1997).

[17] Heirs of Manuel A. Roxas vs. Court of Appeals, 270 SCRA 309, 320 (1997).

[18] Civil Code of the Philippines Annotated, 1989 Edition, Edgardo L. Paras, p. 776 citing 31 CJS 195.

[19] David, et al. vs. Malay, et al., G. R. No. 132644, November 19, 1999, pp. 8-10 citing: Armamento vs. Guerrero, 96 SCRA 178 (1980); Javier vs. CA, 231 SCRA 498 (1994); Alzona, et. al. vs. Capunitan & Reyes, 114 Phil. 377 (1962); Gonzales vs. Jimenez, Sr., 13 SCRA 80 (1965); Cuaycong, et. al. vs. Cuaycong, et. al., 21 SCRA 1192 (1967); Faja vs. CA, 75 SCRA 441 (1977) & Heirs of Jose Olviga vs. CA, 227 SCRA 330 (1993).

[20] Esquivias vs. Court of Appeals, 272 SCRA 803, 816 (1997).

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