

NILO A. MERCADO, PETITIONER, VS. THE COURT OF APPEALS AND AUREA A. MERCADO, RESPONDENTS.

G.R. No. 108592. January 26, 1995

Ponente: PUNO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-108592/>

PUNO, J.:

This is a petition for certiorari to review the Decision of the respondent Court of Appeals dated August 30, 1991 declaring private respondent a co-owner of the lot covered by TCT No. T-123560 of the Register of Deeds of Quezon City. [1]

The facts are well established in the disputed Decision, viz:

“Plaintiff Aurea A. Mercado seeks the partition and reconveyance to her of one-half of a real property located at No. 181 Esteban Abada Street, Quezon City, described as Lot 17-A, Block 40 in Transfer Certificate of Title No 123560 of the Registry of Deeds of Quezon City, containing an area of 1,000 square meters, more or less and registered in the name of defendant Nilo A. Mercado.

Plaintiff Aurea A. Mercado is 69 years old, still single, a professor, holder of a degree in Ph. D. Data of Philosophy, Research, Statistics and Measurement from the University of Maryland, U.S.A. and used to work in the United States. She is a legitimate sister of Nilo A. Mercado.

Before she left for the United States in 1964 where she stayed up to 1984, she gave her brother Nilo cash money to buy a property close to the University of the Philippines. She wanted a property near U.P. because she planned to teach in the said university when she comes back. She was not given any receipt for the money handed to her brother.

Sometime in 1967, she was informed through letters received from the Philippines coming from her mother and sister that her brother Nilo had already purchased a property located at No. 181 Esteban Abada Street, Quezon City. She never saw the title of the property covered by TCT No. 123560.

In 1972, her brother went to the United States and visited her in her house at Jersey City. On this occasion, she asked her brother about the purchase of the property. Her brother responded telling her not to worry for he would give her a paper with respect to that property. In 1978, her brother Nilo sent through their mother an affidavit (Exh. A) wherein Nilo admitted the existence of co-ownership over the property.

Through letters, she communicated with her brother Nilo regarding the subject property. In one of those letters (Exh. B), she told her brother to pay her for the lot. In two other letters (Exh. C & D), the same property was the subject matter. She did not receive any reply so she started calling him through the telephone, insisting on the partition of the property because she committed the land as payment to the contractor, Mr. Escora, who constructed her school building in Davao City.

Nilo A. Medina (sic), defendant herein, is 57 years old, a graduate of law UP Class 1957 and a businessman by

occupation. He testified that the plaintiff is his sister.

In 1967, he decided to buy a house and lot worth P95,000.00 located at 181 Esteban Abada Street, Quezon City from the spouses Francisco Vargas and Teresita Vargas. Out of his personal savings, money borrowed from his mother and sister Esmeralda and P20,000.00 borrowed from his sister Aurea, he was able to pay the downpayment of P38,000.00 to spouses Vargas. It was only upon his tender of the downpayment that the spouses executed a Deed of Conditional Sale (Exh. 5). He applied for a housing loan with the Social Security System (System for short) and upon its approval by the System, a Deed of Absolute Sale was executed between him and the spouses Vargas (Exhs. 1, 2, 3, 4 & 6).

He paid the amortization for the loan (Exh. 11). However, due to financial reverses, the property was foreclosed by the System (Exh. 9). Fortunately, he was able to redeem the property from the System in 1980 out of the insurance proceeds of his burned property in Davao. A certificate of redemption (Exh. 10) was issued to him and he caused the cancellation of the mortgage with the System.

As proof of his ownership, he has the tax declaration (Exh. 8), Transfer Certificate of Title No. 123560 in his name (Exh. 7) and real property tax bill receipts evidencing payment of real estate taxes on the property (Exhs. 13, 13-a)."

The petition for certiorari was initially denied by this Court [2] in its Resolution of May 17, 1993 for non-compliance with our Revised Circular 1-88, for raising factual issues and for lack of reversible error committed by the respondent Court of Appeals. [3] The Court also denied with finality petitioner's Motion for Reconsideration in a Resolution dated July 14, 1993. The motion raised no substantial argument and the Court found no compelling reason to grant it.

On August 23, 1993, however, petitioner filed a Motion for Leave to file a Second Motion for Reconsideration. He argued, among others, that even assuming the correctness of the factual findings of the respondent Court of Appeals, still, there could not be any co-ownership of the subject property. The Court required private respondent to comment and, in its Resolution of August 22, 1994, granted the Motion "in the interest of justice and considering the crucial importance of the issue of extinguishment of co-ownership" and gave due course to the petition. [4] Extensive memoranda were then filed by the parties.

We find no merit in the petition.

We sustain the finding of the respondent court that the subject property is co-owned by petitioner and private respondent. This finding is based on the admission made by petitioner himself in his Affidavit (Exh. "A") dated March 2, 1973, which states:

"A F F I D A V I T

"That I, NILO A. MERCADO, of legal age, married, Filipino and a resident of Davao City, Philippines, after having been duly sworn to in accordance with law, depose and say the following:

"That I am the co-owner of a residential land, including all the improvements existing thereon, located at 81 E. Abada, Loyola Heights, Quezon City, with my sister Aurea A. Mercado;

"That being co-owners, we share equally over the above-mentioned properties, including all the encumbrances and its obligations and liabilities to the Social Security System and other governmental agencies;

"That I am executing this affidavit to inform the proper authorities concerned that the parcel of residential land, including the residential house, together with all its liabilities, is owned by me in co-ownership with Aurea A. Mercado.

“That I am executing this affidavit freely and voluntarily without any force or intimidation imposed upon me.

“IN WITNESS WHEREOF, I have hereunto set my hand this 2(nd) day of March, 1973, at the City of Davao City, Philippines.

“(Sgd.) NILO A. MERCADO
Affiant”

This affidavit is high quality evidence. It contains admissions against interest on the part of petitioner. As a lawyer, petitioner cannot pretend that the plain meaning of his admission eluded his mind.

We now come to the issue of whether the mortgage of the subject property to the SSS, its foreclosure and subsequent redemption by the petitioner extinguished private respondent’s co-ownership. The applicable law is Article 493 of the New Civil Code which spells out the rights of co-owners over a co-owned property, viz:

“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 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.” (emphasis ours)

Pursuant to this law, a co-owner has the right to alienate his pro-indiviso share in the co-owned property even without the consent of the other co-owners. Nevertheless, as a mere part owner, he cannot alienate the shares of the other co-owners. The prohibition is premised on the elementary rule that “no one can give what he does not have” (Nemo dat quod non habet). Thus, we held in *Bailon-Casilao vs. Court of Appeals*, [5] viz:

“x x x 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.

“The proper action in cases like this is not for the nullification of the sale or for 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 of the co-owners who possessed and administered it.”

In the case at bench, it is established that petitioner, for his own benefit, borrowed money from the SSS and mortgaged the subject property to the SSS on June 5, 1967 without the knowledge and consent of his co-owner, herein private respondent. Necessarily, private respondent could not have helped in the payment of the SSS loan nor could she have redeemed the subject property from the SSS. Under these circumstances, it will not accord with the letter and intent of Article 493 of the Civil Code to rule that private respondent lost her part ownership of the subject property. Her right cannot be forfeited especially in favor of petitioner whose act of mortgaging the whole of the subject property finds no warrant both in law and in equity. It will be the height of absurdity to reward petitioner for his illegal act of appropriating the share of private respondent in the subject property.

Prescinding from these premises, petitioner’s reliance in the case of *Tan vs. Court of Appeals* [6] is misplaced.

In *Tan*, the disputed property was mortgaged by spouses Tan Tiong Tick and Tan Ong Hun to China Bank. Tan Tiong Tick died. He was survived by his widow and six children, including D. Annie Tan. Meanwhile, China Bank foreclosed the mortgage. It was the highest bidder at the public auction. Thereafter, the heirs of Tan Tiong Tick sought to nullify the real estate mortgage and the foreclosure sale before the defunct CFI of Manila. The widow, Tan Ong Hun, died.

The one-year redemption period lapsed on July 6, 1973, but the heirs of the spouses Tan failed to redeem the property. China Bank then consolidated its ownership over the disputed property and a new title was issued in its

name. In the meantime, a compromise agreement was forged between China Bank and the Tan heirs. The Bank allowed the heirs to repurchase the property on or before August 31, 1974, otherwise, it would dispose of the property to another party. Within the agreed period, or on August 30, 1974, only petitioner D. Annie Tan repurchased the entire property using her own funds. The bank, however, insisted that the repurchase be made for or in behalf of the other heirs as well. Left without any choice, D. Annie Tan acceded. Later on, D. Annie Tan filed an action in court, asserting her exclusive ownership over the property on the ground that the co-ownership between her and her brothers and sisters had already been extinguished. We sustained her contention and ruled:

“The first question which arises is the correctness of the assumption that there was a co-ownership among the children of Tan Tiong Tick and Tan Ong Hun when the petitioner purchased the property.

“Since the lot and its improvements were mortgaged by the deceased parents, there can be no question that a co-ownership existed among the heirs during the period given by law to redeem the foreclosed property. Redemption by one during this period would have inured to the benefit of all x x x.

“The records show, however, that when petitioner purchased the disputed property on August 30, 1974, any co-ownership among the brothers and sisters no longer existed. The period to redeem had expired more than one year earlier, on July 6, 1973. The respondent China Bank consolidated its ownership and a new title was issued in the bank’s name. When the heirs allowed the one year period to expire without redeeming their parent’s former property and permitted the consolidation of ownership and the issuance of a new title, the co-ownership was extinguished. The challenged ruling of the respondent court is, therefore, based on erroneous premises.

“Under Section 63-B of Presidential Decree No. 1529, the Property Registration Decree, in case of non-redemption, the purchaser at the foreclosure sale, meaning the respondent Bank in this case, is entitled to a new certificate of title in his name after filing the necessary papers with the Register of Deeds. (Spouses Teofisto and Eulalia Verceles v. Court of First Instance of Rizal, et al., G.R. No. 62219, February 28, 1989). It becomes a ministerial duty to place the buyer in possession of the property he now owns. (Banco Filipino v. Intermediate Appellate Court, G.R. No. 68878, 142 SCRA 44 [1986]). Ownership, therefore, passed to China Bank and there was no more co-ownership among the heirs.”

It is thus obvious that the Tan ruling is propped on a different factual setting and hence, is inapplicable to the case at bench. In Tan, ". . . the heirs (i.e., the co-owners) allowed the one year redemption period to expire without redeeming their parents’ former property and permitted the consolidation of ownership and the issuance of a new title x x x” [7] in favor of China Bank. By their knowing acts of omission and commission, the heirs in the Tan case allowed the extinction of their co-ownership. As aforesaid, private respondent did not know of the mortgage of their co-owned property in favor of the SSS and the expiry date of its period of redemption. In other words, private respondent did not voluntarily relinquish at any period of time her pro-indiviso share in the subject property.

IN VIEW WHEREOF, the Decision of the respondent Court of Appeals dated August 30, 1991 and its Resolution dated January 29, 1993, are affirmed. Costs against petitioner.

SO ORDERED.

Narvasa, C.J., (Chairman), and Regalado, J., concur.
Mendoza, J., no part.

[1] Respondent court also denied petitioner's Motion for Reconsideration in a Resolution dated January 29, 1993.

[2] More specifically, the First Division of this Court.

[3] Ninth Division composed of Associate Justice Serafin V.C. Guingona (ponente), Associate Justices Luis A. Javellana and Jorge Imperial, concurring.

[4] The case was re-raffled to the Second Division of this Court on November 22, 1994.

[5] GR No. L-78178, April 15, 1988, 160 SCRA 738, 745.

[6] GR No. 79899, April 24, 1989, 172 SCRA 660.

[7] 172 SCRA 669.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.