

MANUEL T. DE GUIA, PETITIONER, VS. COURT OF APPEALS (FORMER SIXTH DIVISION) AND JOSE B. ABEJO, REPRESENTED BY HIS ATTORNEY-IN-FACT, HERMENEGILDA ABEJO-RIVERA, RESPONDENTS.

G.R. No. 120864. October 08, 2003

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a Petition for Review on Certiorari[1] assailing the 22 August 1994 Decision[2] as well as the 27 June 1995 Resolution of the Court of Appeals in CA-G.R. CV No. 39875. The Court of Appeals affirmed the Decision[3] of the Regional Trial Court ("trial court") of Malolos, Bulacan, Branch 16, in Civil Case No. 8796-M. The trial court's Decision ordered petitioner Manuel T. De Guia ("DE GUIA") to turn over to private respondent Jose B. Abejo ("ABEJO") possession of the one half (½) undivided portion of a fishpond and to pay actual damages and attorney's fees.

The Antecedents

On 12 May 1986, ABEJO[4] instituted an action for recovery of possession with damages against DE GUIA. In his complaint, ABEJO alleged that he is the owner of the ½ undivided portion of a property used as a fishpond ("FISHPOND") situated in Meycauayan, Bulacan and covered by TCT No. T-6358 of the Bulacan Register of Deeds. He alleged ownership over approximately 39,611 square meters out of the FISHPOND's total area of 79,220 square meters. ABEJO further averred that DE GUIA continues to possess and use the FISHPOND without any contract and without paying rent to ABEJO's damage and prejudice. ABEJO also complained that DE GUIA refuses to surrender ownership and possession of the FISHPOND despite repeated demands to do so after DE GUIA's sublease contract over the FISHPOND had expired. ABEJO asked the trial court to order DE GUIA to vacate an approximate area of 39,611 square meters as well as pay damages.

DE GUIA, a lawyer by profession, appeared on his own behalf. He filed his Answer on 12 January 1990 after the Court of Appeals resolved several issues concerning the validity of the service of summons on him. In his Answer, DE GUIA alleged that the complaint does not state a cause of action and has prescribed. He claimed that the FISHPOND was originally owned by Maxima Termulo who died intestate with Primitiva Lejano as her only heir. According to him, ABEJO is not the owner of the entire FISHPOND but the heirs of Primitiva Lejano who authorized him to possess the entire FISHPOND. He assailed ABEJO's ownership of the ½ undivided portion of the FISHPOND as void and claimed ownership over an undivided half portion of the FISHPOND for himself. DE GUIA sought payment of damages and reimbursement for the improvements he introduced as a builder in good faith.

The trial court set the pre-trial and required the parties to file their pre-trial briefs. ABEJO filed his pre-trial

brief[5] on 05 April 1990. DE GUIA filed his pre-trial brief[6] on 31 July 1990. DE GUIA's pre-trial brief raised as the only issue in the case the amount of damages in the form of rent that DE GUIA should pay ABEJO. DE GUIA also submitted an Offer to Compromise,[7] offering to settle ABEJO's claim for P300,000 and to lease the entire FISHPOND to any party of ABEJO's choice.

Hearing commenced on 30 July 1990. ABEJO rested his case on 4 December 1990. DE GUIA's last witness completed her testimony on 22 November 1991. The trial court summarized the evidence presented by ABEJO and DE GUIA as follows:

Evidence adduced from plaintiff shows that there are two parcels of land covering a fishpond with a total area of 79,220 sq. m. more or less, situated at Ubihan, Meycauayan, Bulacan and covered by TCT No. 6358 equally owned by Primitiva Lejano and Lorenza Araniego married to Juan Abejo (Exh. A). The one half undivided portion owned by Lorenza Araniego corresponding to 39,611 sq. m. was later purchased by plaintiff from his father Teofilo Abejo (Exh. B), the only heir of the original owner on November 22, 1983. Prior to this sale on July 30, 1974 the whole fishpond (79,220) was the subject of a "Salin ng Pamumusisyon ng Palaisdaan" executed by the heirs of Primitiva Lejano with the knowledge and consent of Teofilo A. Abejo in favor of one Aniano Victa and defendant. The contract provided that the period of lease shall be until November 30, 1979. When the contract expired and defendant failed to surrender the fishpond, written demands the last of which was on November 27, 1983 were made for defendants to pay back rental and to vacate the premises in question (Exh. D & E). Defendant refused to deliver possession and also to pay the rentals due. In anticipation, however, that defendant will vacate the fishpond, plaintiff, on December 21, 1983 entered into a two year "Kasunduan ng Buwisan ng Palaisdaan" with Ruperto C. Villarico for a consideration of P50,000.00 (Exh. G). This contract, despite its execution and even already notarized, had to be cancelled and the amount of P50,000.00 returned by plaintiff to Villarico when the defendant did not heed the demand to vacate the fishpond. For unpaid rental, actual as well as moral and exemplary damages, plaintiff asks payment of P450,000.00 and P20,000.00 attorney's fees.

On the other hand, defendant's evidence tends to show that the entire fishpond with an area of 79,200 sq. m. was leased to him by the heirs of Primitiva Lejano. Subsequently, defendant became the absolute owner of one half of the undivided area of the fishpond and he questioned plaintiff's ownership of the other half as void and fraudulent. As to the area pertaining to plaintiff, defendant claimed that he introduced improvements worth P500,000 and being in good faith, he asked that he should be reimbursed by plaintiff. In his pre-trial brief, however, defendant raised the only issue which is the amount of damages plaintiff is entitled to in the form of rental. Hence, the thrust of the testimonies of defendant's witnesses particularly Ben Ruben Camargo and Marta Fernando Peña was the amount of rental of fishponds in the same locality as the fishpond in question at a given time. However, the documentary evidence (Exhs. 1 and 2) in support of their testimony were not offered as evidence.[8]

The trial court rendered its decision on 8 June 1992, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant and hereby orders that:

- Defendant shall turn over possession to plaintiff one half undivided portion of the 79,200 sq. m. fishpond who shall enjoy the benefits and fruits in equal share with the defendant effective immediately until such time that partition of the property is effected;
- Defendant shall pay to plaintiff the amount of P262,500.00 by way of actual or compensatory damages;
- Defendant shall pay plaintiff P20,000.00 as and for attorney's fees; and
- To pay the costs.

SO ORDERED.[9]

Aggrieved, DE GUIA went to the Court of Appeals insisting the trial court erred in ordering him to vacate and surrender possession of the $\frac{1}{2}$ undivided portion of the FISHPOND and to pay actual damages and attorney's fees. The Court of Appeals found DE GUIA's appeal without merit and affirmed the trial court's decision. Upon DE GUIA's motion for reconsideration, the appellate court reduced the compensatory damages from P262,500 to P212,500.

Hence, the instant petition.

The undisputed facts as found by the trial court and adopted in toto by the Court of Appeals are restated as follows:

- The subject of the dispute are two undivided parcels of land used as a fishpond situated in Barrio Ubihan, Meycauayan, Bulacan, originally co-owned by Primitiva Lejano and Lorenza Araniego married to Juan Abejo.

- The FISHPOND is registered under the names of Primitiva Lejano and Lorenza Araniego under TCT No. 6358 of the Bulacan Register of Deeds as follows:

PRIMITIVA LEJANO, Filipina, of legal age, single - $\frac{1}{2}$ share; and LORENZA ARANIEGO, Filipina, of legal age, married to Juan Abejo, $\frac{1}{2}$ share, ---

- The FISHPOND has a total land area of approximately 79,220 square meters. ABEJO is seeking to recover possession of the $\frac{1}{2}$ undivided portion of the FISHPOND containing 39,611 square meters.

- DE GUIA (along with a certain Aniano Victa) acquired possession of the entire FISHPOND by virtue of a document captioned Salin ng Pamumutisyon ng Palaisdaan ("Lease Contract") executed between him and the heirs of Primitiva Lejano. The Lease Contract was effective from 30 July 1974 up to 30 November 1979 for a consideration of P100,000.

- The Lease Contract was executed with the knowledge and consent of Teofilo Abejo, sole heir of Lorenza Araniego Abejo. Teofilo Abejo acquired Lorenza Araniego Abejo's $\frac{1}{2}$ undivided share in the FISHPOND by intestate succession.

- Teofilo Abejo (now deceased) sold his $\frac{1}{2}$ undivided share in the FISHPOND to his son, ABEJO, on 22 November 1983.

- DE GUIA continues to possess the entire FISHPOND and to derive income from the property despite the expiration of the Lease Contract and several demands to vacate made by Teofilo Abejo and by his successor-in-interest, ABEJO. The last demand letter was dated 27 November 1983.

- ABEJO filed his complaint for recovery of possession with damages against DE GUIA on 12 May 1986.

- DE GUIA's claim of ownership over the other $\frac{1}{2}$ undivided portion of the FISHPOND has not been finally adjudicated for or against him.

DE GUIA offers the verified Complaint for Annulment of Real Estate Mortgage and Contract of Lease with Preliminary Injunction signed by the heirs of Primitiva Lejano as proof of his ownership of the other undivided half portion of the FISHPOND. Records show that DE GUIA filed the complaint for himself and as attorney-in-fact of the heirs of Primitiva Lejano ("Lejano Heirs")^[10] against Spouses Teofilo Morte and Angelina Villarico, Spouses Ruperto and Milagros Villarico, et al. ("Defendants"). The case was raffled to Branch 12 of the Regional Trial Court of Malolos, Bulacan, and docketed as Civil Case. No. 86-27-M. The complaint alleged that DE GUIA acquired his $\frac{1}{2}$ undivided share in the FISHPOND from the Lejano Heirs in February 1986. DE GUIA and the

Lejano Heirs sought to annul the Kasulatan ng Sanglaan and Kasulatan ng Pagbubuwis ng Palaisdaan, executed on 10 November 1979 by Primitiva Lejano in favor of the Defendants. DE GUIA and the Lejano Heirs claimed that Primitiva Lejano signed these documents under duress and without consideration.

The trial court rendered judgment[11] on 28 February 1992 against DE GUIA and the Lejano Heirs as follows:

WHEREFORE, the evidence having shown the plaintiffs, particularly Manuel De Guia, their successor-in-interest, not entitled upon the facts and the law to the relief prayed for in the amended complaint, the same is hereby DISMISSED with costs against said plaintiff. Instead, as prayed for by defendants, judgment is hereby rendered:

- - Declaring the "Kasulatan ng Sanglaan" (Exhs. "A" & "1") dated November 10, 1979, and the "Kasulatan ng Pagbubuwis ng Palaisdaan" (Exhs. "C" & "3") also dated November 10, 1979, as valid for all legal intents and purposes;
- - Ordering the Ex-Officio Sheriff, RTC, Bulacan, to proceed with the extrajudicial foreclosure of the subject real estate mortgage; and
- - Ordering plaintiffs to pay defendants attorney's fees in the amount of P20,000.00.

SO ORDERED.[12]

The Court of Appeals affirmed the trial court in a Decision dated 30 August 2002 in CA-G.R. CV No. 38031. The Court of Appeals found the claim of force and intimidation in the execution of the documents as highly improbable since Primitiva Lejano's son, Renato Davis, witnessed the signing of the documents and found nothing irregular at the time. The appellate court also held that assuming Defendants threatened DE GUIA and the Lejano Heirs with immediate foreclosure, Defendants were merely exercising their legitimate right of foreclosing the mortgaged property for non-payment of the loan. In addition, Primitiva Lejano's lawyer and notary public, Atty. Mamerto Abaño, testified that the parties appeared before him to affirm the contents of the documents. He also stated that he was present when Defendants paid Primitiva Lejano Davis and her son Renato. As of this writing, DE GUIA has a pending motion for reconsideration before the Court of Appeals. In the event the Court of Appeals' Decision attains finality, DE GUIA may lose whatever right he claims over the FISHPOND.

The Trial Court's Ruling

The trial court ruled that ABEJO has the right to demand that DE GUIA vacate and surrender an area equivalent to ABEJO's $\frac{1}{2}$ undivided share in the FISHPOND. The trial court explained that DE GUIA's sublease contract expired in 1979 and ABEJO acquired his father's share in 1983. However, the trial court pointed out that ABEJO failed to present evidence of the judicial or extra-judicial partition of the FISHPOND. The identification of the specific area pertaining to ABEJO and his co-owner is vital in an action to recover possession of real property. Nevertheless, the trial court declared that pending partition, it is only just that DE GUIA pay ABEJO a reasonable amount as rental for the use of ABEJO's share in the FISHPOND. DE GUIA admitted this obligation when he raised as sole issue in his pre-trial brief how much rent he should pay ABEJO. DE GUIA even proposed P300,000 as the reasonable amount but under certain conditions which ABEJO found unacceptable.

In determining the reasonable rent due to ABEJO, the trial court considered the Lease Contract between ABEJO and a certain Ruperto C. Villarico which provided for a yearly rent of P25,000 for $\frac{1}{2}$ undivided portion of the FISHPOND. The trial court declared that the total amount of rent due is P212,500, computed from November 1983 when ABEJO became a co-owner of the FISHPOND up to 1991[13] or a period of eight and one half years. The trial court further ordered DE GUIA to pay an additional P50,000 which represents the amount ABEJO returned to Ruperto C. Villarico when they cancelled the Lease Contract between them due to DE GUIA's refusal

to vacate the FISHPOND.

Lastly, the trial court ruled that pending partition, ABEJO as co-owner has the right to possess the FISHPOND and to receive an equal share in the benefits from the FISHPOND effective immediately. Until there is a partition, and while there is no contract of lease, the Civil Code provisions on co-ownership shall govern the rights of the parties.

The Court of Appeals' Ruling

The Court of Appeals affirmed the trial court's decision. The Court of Appeals debunked DE GUIA's claim that partition and not recovery of possession was the proper remedy under the circumstances. The Court of Appeals pointed out that DE GUIA's failure to respect ABEJO's right over his $\frac{1}{2}$ undivided share in the FISHPOND justifies the action for recovery of possession. The trial court's decision effectively enforces ABEJO's right over the property which DE GUIA violated by possession and use without paying compensation. According to the Court of Appeals, partition would constitute a mechanical aspect of the decision just like accounting when necessary.

The Court of Appeals likewise rejected DE GUIA's claim that the award of compensatory damages of P242,000, computed based on the rent stipulated in the Lease Contract between ABEJO and Ruperto C. Villarico, is grossly exorbitant. The Court of Appeals clarified that the amount the trial court awarded was P262,500 and not P242,000 as erroneously alleged by DE GUIA. The Court of Appeals pointed out that the notarized Lease Contract between ABEJO and Ruperto C. Villarico carries more evidentiary weight than the testimonies of DE GUIA's witnesses, Ben Ruben Camargo and Marta Fernando Peña. The Court of Appeals also upheld the award of attorney's fees since the parties could have avoided litigation had DE GUIA heeded the justifiable demands of ABEJO.

On motion for reconsideration, the Court of Appeals reduced the compensatory damages from P262,500 to P212,500. The Court of Appeals explained that the trial court correctly computed the total amount of rent due at P212,500. The trial court erred, however, in adding the sum of P50,000 representing the rent for 1983 and 1984 which ABEJO returned to Ruperto C. Villarico. The appellate court clarified that the sum of P212,500 was arrived at by multiplying the rent of P25,000 by $8\frac{1}{2}$ years. The $8\frac{1}{2}$ year period already included the two months rent received from and then subsequently reimbursed to Ruperto C. Villarico.

The Issues

DE GUIA raises the following issues in his Memorandum:

I.

THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S DECISION DENYING PETITIONER'S PLEA FOR DISMISSAL OF THE COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION;

II.

THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S ORDER DIRECTING PETITIONER TO TURN OVER THE ONE-HALF UNDIVIDED PORTION OF THE FISHPOND WHICH IS STILL UNDER A STATE OF CO-OWNERSHIP;

III.

THE COURT OF APPEALS ERRED IN AFFIRMING, IN PART, THE AWARD OF ACTUAL OR COMPENSATORY DAMAGES DESPITE LACK OF CREDIBLE EVIDENCE TO SUPPORT THE SAME;

IV.

THE COURT OF APPEALS ERRED IN AFFIRMING THE AWARD OF ATTORNEY'S FEES IN PRIVATE RESPONDENT'S FAVOR.[14]

In essence, this Court is asked to resolve: (1) whether an action for recovery of possession and turn-over of the ½ undivided portion of a common property is proper before partition; and (2) whether there is sufficient basis for the award of compensatory damages and attorney's fees.

The Court's Ruling

The petition is partly meritorious.

First and Second Issues: Cause of Action and Turn-Over of Possession

DE GUIA contends that a co-owner cannot claim a definite portion from the property owned in common until there is a partition. DE GUIA argues that ABEJO should have filed an action for partition instead of recovery of possession since the court cannot implement any decision in the latter case without first a partition. DE GUIA contends that an action for recovery of possession cannot prosper when the property subject of the action is part of an undivided, co-owned property. The procedural mode adopted by ABEJO, which is recovery of possession, makes enforcement difficult if not impossible since there is still no partition of the subject property.

Under Article 484 of the Civil Code, "there is co-ownership whenever the ownership of an undivided thing or right belongs to different persons." A co-owner of an undivided parcel of land is an "owner of the whole, and over the whole he exercises the right of dominion, but he is at the same time the owner of a portion which is truly abstract." [15] On the other hand, there is no co-ownership when the different portions owned by different people are already concretely determined and separately identifiable, even if not yet technically described. [16]

Article 487 of the Civil Code provides, "[a]ny one of the co-owners may bring an action in ejectment." This article covers all kinds of actions for the recovery of possession. Article 487 includes forcible entry and unlawful detainer (accion interdical), recovery of possession (accion publiciana), and recovery of ownership (accion de reivindicacion). The summary actions of forcible entry and unlawful detainer seek the recovery of physical possession only. These actions are brought before municipal trial courts within one year from dispossession. However, accion publiciana, which is a plenary action for recovery of the right to possess, falls under the jurisdiction of the proper regional trial court when the dispossession has lasted for more than one year. Accion de reivindicacion, which seeks the recovery of ownership, also falls under the jurisdiction of the proper regional trial court. [17]

Any co-owner may file an action under Article 487 not only against a third person, but also against another co-owner who takes exclusive possession and asserts exclusive ownership of the property. [18] In the latter case, however, the only purpose of the action is to obtain recognition of the co-ownership. The plaintiff cannot seek exclusion of the defendant from the property because as co-owner he has a right of possession. The plaintiff cannot recover any material or determinate part of the property. [19]

In *Hermogena G. Engreso with Spouse Jose Engreso v. Nestoria De La Cruz and Herminio De La Cruz*, [20] we reiterated the rule that a co-owner cannot recover a material or determinate part of a common property prior to partition as follows:

It is a basic principle in civil law that before a property owned in common is actually partitioned, all that the co-owner has is an ideal or abstract quota or proportionate share in the entire property. A co-owner has no right to demand a concrete, specific or determinate part of the thing owned in common because until division is

effected his right over the thing is represented only by an ideal portion.

As such, the only effect of an action brought by a co-owner against a co-owner will be to obtain recognition of the co-ownership; the defendant cannot be excluded from a specific portion of the property because as a co-owner he has a right to possess and the plaintiff cannot recover any material or determinate part of the property. Thus, the courts a quo erred when they ordered the delivery of one-half ($\frac{1}{2}$) of the building in favor of private respondent.

Indisputably, DE GUIA has been in exclusive possession of the entire FISHPOND since July 1974. Initially, DE GUIA disputed ABEJO's claim of ownership over the $\frac{1}{2}$ undivided portion of the FISHPOND. Subsequently, he implicitly recognized ABEJO's $\frac{1}{2}$ undivided share by offering to settle the case for P300,000 and to vacate the property. During the trial proper, neither DE GUIA nor ABEJO asserted or manifested a claim of absolute and exclusive ownership over the entire FISHPOND. Before this Court, DE GUIA limits the issues to the propriety of bringing an action for recovery of possession and the recovery of compensatory damages.

Following the inherent and peculiar features of co-ownership, while ABEJO and DE GUIA have equal shares in the FISHPOND quantitatively speaking, they have the same right in a qualitative sense as co-owners. Simply stated, ABEJO and DE GUIA are owners of the whole and over the whole, they exercise the right of dominion. However, they are at the same time individual owners of a $\frac{1}{2}$ portion, which is truly abstract because until there is partition, such portion remains indeterminate or unidentified.[21] As co-owners, ABEJO and DE GUIA may jointly exercise the right of dominion over the entire FISHPOND until they partition the FISHPOND by identifying or segregating their respective portions.

Since a co-ownership subsists between ABEJO and DE GUIA, judicial or extra-judicial partition is the proper recourse. An action to demand partition is imprescriptible and not subject to laches.[22] Each co-owner may demand at any time the partition of the common property unless a co-owner has repudiated the co-ownership under certain conditions.[23] Neither ABEJO nor DE GUIA has repudiated the co-ownership under the conditions set by law.

To recapitulate, we rule that a co-owner may file an action for recovery of possession against a co-owner who takes exclusive possession of the entire co-owned property. However, the only effect of such action is a recognition of the co-ownership. The courts cannot proceed with the actual partitioning of the co-owned property. Thus, judicial or extra-judicial partition is necessary to effect physical division of the FISHPOND between ABEJO and DE GUIA. An action for partition is also the proper forum for accounting the profits received by DE GUIA from the FISHPOND. However, as a necessary consequence of such recognition, ABEJO shall exercise an equal right to possess, use and enjoy the entire FISHPOND.

DE GUIA further claims that the trial and appellate courts erred when they ordered the recovery of rent when the exact identity of the portion in question had not yet been clearly defined and delineated. According to DE GUIA, an order to pay damages in the form of rent is premature before partition.

We disagree.

The right of enjoyment by each co-owner is limited by a similar right of the other co-owners. A co-owner cannot devote common property to his exclusive use to the prejudice of the co-ownership.[24] Hence, if the subject is a residential house, all the co-owners may live there with their respective families to the extent possible. However, if one co-owner alone occupies the entire house without opposition from the other co-owners, and there is no lease agreement, the other co-owners cannot demand the payment of rent. Conversely, if there is an agreement to lease the house, the co-owners can demand rent from the co-owner who dwells in the house.

The co-owners can either exercise an equal right to live in the house, or agree to lease it. If they fail to exercise any of these options, they must bear the consequences. It would be unjust to require the co-owner to pay rent after the co-owners by their silence have allowed him to use the property.[25]

In case the co-owners agree to lease a building owned in common, a co-owner cannot retain it for his use without paying the proper rent.[26] Moreover, where part of the property is occupied exclusively by some co-owners for the exploitation of an industry, the other co-owners become co-participants in the accessions of the property and should share in its net profits.[27]

The Lejano Heirs and Teofilo Abejo agreed to lease the entire FISHPOND to DE GUIA. After DE GUIA's lease expired in 1979, he could no longer use the entire FISHPOND without paying rent. To allow DE GUIA to continue using the entire FISHPOND without paying rent would prejudice ABEJO's right to receive rent, which would have accrued to his $\frac{1}{2}$ share in the FISHPOND had it been leased to others.[28] Since ABEJO acquired his $\frac{1}{2}$ undivided share in the FISHPOND on 22 November 1983, DE GUIA should pay ABEJO reasonable rent for his possession and use of ABEJO's portion beginning from that date. The compensatory damages of P25,000 per year awarded to ABEJO is the fair rental value or the reasonable compensation for the use and occupation of the leased property,[29] considering the circumstances at that time. DE GUIA shall continue to pay ABEJO a yearly rent of P25,000 corresponding to ABEJO's $\frac{1}{2}$ undivided share in the FISHPOND. However, ABEJO has the option either to exercise an equal right to occupy the FISHPOND, or to file a new petition before the trial court to fix a new rental rate in view of changed circumstances in the last 20 years.

ABEJO made an extrajudicial demand on DE GUIA by sending the 27 November 1983 demand letter. Thus, the rent in arrears should earn interest at 6% per annum from 27 November 1983 until finality of this decision pursuant to Article 2209[30] of the Civil Code. Thereafter, the interest rate is 12% per annum from finality of this decision until full payment.[31]

Third Issue: Lack of Credible Evidence to Support Award of Compensatory Damages

DE GUIA contends the P212,500 in rent awarded to ABEJO is exorbitant. He assails as doubtful and self-serving evidence the Lease Contract between ABEJO and Ruperto C. Villarico that served as basis for the yearly rent of P25,000 for ABEJO's share in the FISHPOND.

DE GUIA says the trial and appellate courts should have given credence to the testimonies of his witnesses, Ben Ruben Camargo ("Camargo") and Marta Fernando Peña ("Peña") that rentals of fishponds in the same vicinity are for much lesser considerations.

This issue involves calibration of the whole evidence considering mainly the credibility of witnesses. As a rule, a party may raise only questions of law in an appeal by certiorari under Rule 45 of the Rules of Court. The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below.[32] More so in the instant case, where the Court of Appeals affirmed the factual findings of the trial court.[33]

It is not true that the trial court disregarded the testimonies of Camargo and Peña because DE GUIA failed to present documentary evidence to support their testimonies. Actually, the trial and appellate courts found the testimonies of Camargo and Peña unconvincing. Judges cannot be expected to rely on the testimonies of every witness. In ascertaining the facts, they determine who are credible and who are not. In doing so, they consider all the evidence before them.[34]

We find no cogent reason to overturn the trial and appellate courts' evaluation of the witnesses' testimonies. We likewise find reasonable the P25,000 yearly compensation for ABEJO's $\frac{1}{2}$ undivided share in the FISHPOND. Indeed, being a question of fact, it is for the trial and appellate courts to decide and this Court will not disturb their

findings unless clearly baseless or irrational. The exception does not obtain in this case.

Fourth Issue: Attorney's Fees

The trial court did not err in imposing attorney's fees of P20,000. Attorney's fees can be awarded in the cases enumerated in Article 2208 of the Civil Code specifically:

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(2) Where the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

xxx

DE GUIA is a lawyer and he should have known that a co-owner could not take exclusive possession of a common property. Although DE GUIA offered to settle the case out of court, such offer was made under conditions not acceptable to ABEJO. Certainly, ABEJO was still put to unnecessary expense and trouble to protect his interest under paragraph (2), Article 2208 of the Civil Code.

WHEREFORE, the Decision dated 22 August 1994 and Resolution dated 27 June 1995 of the Court of Appeals in CA-G.R. CV No. 39875 is AFFIRMED with respect to that portion ordering Manuel T. De Guia to pay Jose B. Abejo compensatory damages of P212,500 and attorney's fees of P20,000, and MODIFIED as follows:

- The co-ownership between Manuel T. De Guia and Jose B. Abejo over the entire FISHPOND covered by TCT No. 6358 of the Bulacan Register of Deeds is recognized without prejudice to the outcome of CA-G.R. CV No. 38031 pending before the Court of Appeals and other cases involving the same property;
- Manuel T. De Guia and Jose B. Abejo shall equally enjoy possession and use of the entire FISHPOND prior to partition;
- The compensatory damages of P25,000 per annum representing rent from 27 November 1983 until May 1992 shall earn interest at 6% per annum from 27 November 1983 until finality of this decision, and thereafter at 12% per annum until full payment;
- Manuel T. de Guia shall pay Jose B. Abejo a yearly rent of P25,000 from June 1992 until finality of this decision, with interest at 6% per annum during the same period, and thereafter at 12% interest per annum until full payment;
- After finality of this decision and for as long as Manuel T. de Guia exclusively possesses the entire FISHPOND, he shall pay Jose B. Abejo a yearly rental of P25,000 for the latter's ½ undivided share in the FISHPOND, unless Jose B. Abejo secures from the proper court an order fixing a different rental rate in view of possible changed circumstances.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, Ynares-Santiago and Azcuna, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Serafin V.C. Guingona, with Associate Justices Gloria C. Paras and Eubolo G. Verzola concurring.

[3] Penned by Judge Elpidio M. Catungal, Sr.

- [4] Represented by his Attorney-in-Fact Hermenegilda Abejo-Rivera.
- [5] Records, Vol. I, pp. 182-183.
- [6] Ibid., Vol. II, pp. 212-213.
- [7] Ibid., p. 214.
- [8] CA Rollo, pp. 11-12.
- [9] Ibid., pp. 14-15.
- [10] Fe Davis Maramba, Renato Davis, Flordeliza D. Yeh, Jocelyn D. Queblatin and Betty Davis.
- [11] Penned by Judge Crisanto C. Concepcion.
- [12] CA Rollo, pp. 72-73.
- [13] Should be 1992. The 8½ period is counted from November 1983 up to May 1992.
- [14] Rollo, pp. 172-173.
- [15] Si v. Court of Appeals, G.R. No. 122047, 12 October 2000, 342 SCRA 653.
- [16] Ibid.
- [17] Javier v. Veridiano II, G.R. No. 48050, 10 October 1994, 237 SCRA 565.
- [18] ARTURO M. TOLENTINO, Civil Code of the Philippines, Vol. II, 1992, Ed.
- [19] Ibid.
- [20] G.R. No.148727, 9 April 2003.
- [21] Villanueva v. Florendo, No. L-33158, 17 October 1985, 139 SCRA 329.
- [22] Article 494 of the Civil Code states, "[p]rescription does not run in favor of a co-owner or co-heir against his co-owners or his co-heirs so long as he expressly or impliedly recognizes the co-ownership."
- [23] Prescription as a mode of terminating a relation of co-ownership must have been preceded by repudiation in this manner (1) a co-owner repudiates the co-ownership; (2) such an act of repudiation is clearly made known to the other co-owners; (3) the evidence of repudiation is clear and conclusive; (4) he has been in open, continuous, exclusive and notorious possession of the property for the period required by law. Santos v. Santos, G.R. No. 139524, 12 October 2000, 342 SCRA 753.
- [24] TOLENTINO, supra, note 18.
- [25] Ibid.
- [26] Ibid.
- [27] Ibid.
- [28] Pardell v. Bartolome, 23 Phil 450 (1912).
- [29] Araos v. Court of Appeals, G.R. No. 107057, 2 June 1994, 232 SCRA 770.
- [30] Article 2209 of the Civil Code provides, "[i]f the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the

payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum."

[31] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, 12 July 1994, 234 SCRA 78.

[32] *Roble v. Arbasa*, 414 Phil. 343 (2001).

[33] *Reyes v. Court of Appeals*, 415 Phil. 258 (2001).

[34] *Baritua v. Mercader*, G.R. No. 136048, 23 January 2001, 350 SCRA 86.

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