

**NELSON NUFABLE, SILMOR NUFABLE AND AQUILINA NUFABLE  
PETITIONERS, VS. GENEROSA NUFABLE, VILFOR NUFABLE,  
MARCELO NUFABLE, AND THE COURT OF APPEALS, RESPONDENTS.**

*G.R. No. 126950. July 02, 1999*

Ponente: GONZAGA-REYES, J.

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**GONZAGA-REYES, J.:**

This petition for review on certiorari seeks to reverse and set aside the Decision dated November 25, 1995 of the Fifth Division[1] of the Court of Appeals for allegedly being contrary to law.

The following facts as found by the Court of Appeals are undisputed:

"Edras Nufable owned an untitled parcel of land located at Poblacion, Manjuyod, Negros Oriental, consisting of 948 square meters, more or less. He died on August 9, 1965 and was survived by his children, namely: Angel Custodio, Generosa, Vilfor and Marcelo, all surnamed Nufable. Upon petition for probate filed by said heirs and after due publication and hearing, the then Court of First Instance of Negros Oriental (Branch II) issued an Order dated March 30, 1966 admitting to probate the last will and testament executed by the deceased Edras Nufable (Exhs. B, C and C-1).

On June 6, 1966, the same court issued an Order approving the Settlement of Estate submitted by the heirs of the late Esdras Nufable, portions of which read:

`KNOW ALL MEN BY THESE PRESENTS:

We, ANGEL CUSTODIO NUFABLE, GENEROSA NUFABLE, VILFOR NUFABLE, and MARCELO NUFABLE, all of legal ages (sic), Filipinos, and with residence and postal address at Manjuyod, Negros Oriental, Philippines,

`- HEREBY DECLARE AND MAKE MANIFEST -

`1. That on August 9, 1965, Rev. Fr. Esdras Nufable died leaving (a) Last Will and Testament (marked Exh. G) disposing (of) his properties or estate in favor of his four legitimate children, namely: Angel Custodio Nufable, Generosa Nufable, Vilfor Nufable and Marcelo Nufable;

`2. That on March 30, 1966, the said Last Will and Testament was probated by the Honorable Court, Court of First Instance of Negros Oriental, and is embodied in the same order appointing an Administratrix, Generosa Nufable, but to qualify only if she put up a necessary bond of P1,000.00;

`3. That herein legitimate children prefer not to appoint an Administratrix, as agreed upon (by) all the heirs, because they have no objection as to the manner of disposition of their share made by the testator, the expenses of the proceedings and that they have already taken possession of their respective shares in accordance with the will;

`4. That the herein heirs agreed, as they hereby agree to settle the estate in accordance with the terms and condition of the will in the following manner, to wit:

`a) That the parcel of land situated in Poblacion Manjuyod, Negros Oriental remains undivided for community ownership but respecting conditions imposed therein (sic) in the will;

`xxx xxx xxx.'

(Exhs. "E" and "E-1")

Two months earlier, or on March 15, 1966, spouses Angel Custodio and Aquilina Nufable mortgaged the entire property located at Manjuyod to the Development Bank of the Philippines [DBP] (Pre-trial Order, dated January 7, 1992, p. 103, Original Records). Said mortgagors became delinquent for which reason the mortgaged property was foreclosed by DBP on February 26, 1973 (id.).

On January 11, 1980, Nelson Nufable, the son of Angel Custodio Nufable (who died on August 29, 1978 [TSN, Testimony of Nelson Nufable, Hearing of August 18, 1992, p. 17]), purchased said property from DBP (Exh. `1').

Generosa, Vilfor and Marcelo, all surnamed Nufable filed with the lower court a complaint dated July 25, 1985 `To Annul Fraudulent Transactions, to Quiet Title and To Recover Damages' against Nelson Nufable, and wife, Silnor Nufable and his mother Aquilina Nufable. Plaintiffs pray:

`WHEREFORE, plaintiffs pray this Honorable Court that after trial judgment be rendered ordering:

`(a) That the said Deed of Sale (Annex `C') executed by the Development Bank of the Philippines in favor of the defendants be declared null and void as far as the three fourths ( $\frac{3}{4}$ ) rights which belongs (sic) to the plaintiffs are concerned;

'(b) That the said three fourths ( $\frac{3}{4}$ ) rights over the above parcel in question be declared as belonging to the plaintiffs at one fourth right to each of them;

`(c) To order the defendants to pay jointly and severally to the plaintiffs by way of actual and moral damages the amount of P10,000.00 and another P5,000.00 as Attorney's fees, and to pay the costs.

`(d) Plus any other amount which this Court may deem just and equitable.' (p. 6, Original Records)

In their Answer, defendants contend:

`4. Paragraph 4 is denied, the truth being that the late Angel Nufable was the exclusive owner of said property, that as such owner he mortgaged the same to the Development Bank of the Philippines on March 15, 1966, that said mortgage was foreclosed and the DBP became the successful bidder at the auction sale, that ownership was consolidated in the name of the DBP, and that defendant Nelson Nufable bought said property from the DBP thereafter. During this period, the plaintiffs never questioned the transactions which were public, never filed any third party claim nor attempted to redeem said property as redemptioners, and that said Deed of Sale, Annex `B' to the complaint, is fictitious, not being supported by any consideration;' (pp. 20-21, id.)

The Deed of Sale (Annex `B'), referred to by the parties is a notarized Deed of Sale, dated July 12, 1966 (marked as Exhibit `H') by virtue of which, spouses Angel and Aquilina Nufable, as vendors, sold  $\frac{3}{4}$  portion of the subject property to herein plaintiffs for and in consideration of P1,000.00 (Exh. `5')."[2]

On November 29, 1995, the Court of Appeals rendered judgment, the dispositive portion[3] of which reads:

"WHEREFORE, the appealed decision of the lower court is REVERSED and SET ASIDE. A new judgment is hereby entered declaring plaintiffs-appellants as the rightful co-owners of the subject property and entitled to possession of  $\frac{3}{4}$  southern portion thereof; and defendant-appellee Nelson Nufable to  $\frac{1}{4}$  portion.

No award on damages.

No costs."

Defendants-appellees' Motion for Reconsideration was denied for lack of merit in the Resolution of the Court of Appeals[4] dated October 2, 1996.

Hence, the present petition. Petitioners raise the following grounds for the petition:

- "1. The Honorable Court of Appeals erred in considering as controlling the probate of the Last Will and Testament of Esdras Nufable, the probate thereof not being an issue in this case;
2. The Honorable Court of Appeals erred in not considering the fact that the Development Bank of the Philippines became the absolute, exclusive, legal, and rightful owner of the land in question, from whom petitioner Nelson Nufable acquired the same by purchase and that, therefore, no award can be made in favor of private respondents unless and until the Development Bank of the Philippines' title thereto is first declared null and void by the court."

The Court of Appeals, in its decision, stated that the trial court failed to take into consideration the probated will of the late Esdras Nufable bequeathing the subject property to all his four children.[5] In the present petition, petitioners present the issue of whether or not the Last Will and Testament of Esdras Nufable and its subsequent probate are pertinent and material to the question of the right of ownership of petitioner Nelson Nufable who purchased the land in question from, and as acquired property of, the Development Bank of the Philippines (DBP, for short). They contend that the probate of the Last Will and Testament of Esdras Nufable did not determine the ownership of the land in question as against third parties.

As a general rule, courts in probate proceedings are limited only to passing upon the extrinsic validity of the will sought to be probated, the due execution thereof, the testator's testamentary capacity and the compliance with the requisites or solemnities prescribed by law. Said court at this stage of the proceedings is not called upon to rule on the intrinsic validity or efficacy of the provision of the will.[6] The question of the intrinsic validity of a will normally comes only after the court has declared that the will has been duly authenticated.

The records show that upon petition for probate filed by the heirs of the late Esdras Nufable, an Order dated March 30, 1966 was issued by then Court of First Instance of Negros Oriental, Branch II, admitting to probate the last will and testament executed by the decedent.[7] Thereafter, on June 6, 1966, the same court approved the Settlement of Estate submitted by the heirs of the late Esdras Nufable wherein they agreed "(T)hat the parcel land situated in Poblacion Manjuyod, Negros Oriental remains undivided for community ownership but respecting conditions imposed therein (sic) in the will." [8] In paragraph 3 thereof, they stated that "they have no objection as to the manner of disposition of their share made by the testator, the expenses of the proceeding and that they have already taken possession of their respective shares in accordance with the will." Verily, it was the heirs of the late Esdras Nufable who agreed among themselves on the disposition of their shares. The probate court simply approved the agreement among the heirs which approval was necessary for the validity of any disposition of the decedent's estate.[9]

It should likewise be noted that the late Esdras Nufable died on August 9, 1965. When the entire property located at Manjuyod was mortgaged on March 15, 1966 by his son Angel Custodio with DBP, the other heirs of Esdras - namely: Generosa, Vilfor and Marcelo - had already acquired successional rights over the said property. This is so because of the principle contained in Article 777 of the Civil Code to the effect that the rights to the succession are transmitted from the moment of death of the decedent. Accordingly, for the purpose of transmission of rights, it does not matter whether the Last Will and Testament of the late Esdras Nufable was admitted on March 30, 1966 or thereafter or that the Settlement of Estate was approved on June 6, 1966 or months later. It is to be noted that the probated will of the late Esdras Nufable specifically referred to the subject property in stating that "the land situated in the Poblacion, Manjuyod, Negros Oriental, should not be divided because this must remain in

common for them, but it is necessary to allow anyone of them brothers and sisters to construct a house therein." [10] It was therefor the will of the decedent that the subject property should remain undivided, although the restriction should not exceed twenty (20) years pursuant to Article 870 [11] of the Civil Code.

Thus, when Angel Nufable and his spouse mortgaged the subject property to DBP on March 15, 1966, they had no right to mortgage the entire property. Angel's right over the subject property was limited only to  $\frac{1}{4}$  pro indiviso share. As co-owner of the subject property, Angel's right to sell, assign or mortgage is limited to that portion that may be allotted to him upon termination of the co-ownership. Well-entrenched is the rule that a co-owner can only alienate his pro indiviso share in the co-owned property. [12]

The Court of Appeals did not err in ruling that Angel Custodio Nufable "had no right to mortgage the subject property in its entirety. His right to encumber said property was limited only to  $\frac{1}{4}$  pro indiviso share of the property in question." [13] Article 493 of the Civil Code spells out the rights of co-owners over a co-owned property. Pursuant to said Article, a co-owner shall have full ownership of his part and of the fruits and benefits pertaining thereto. He has the right to alienate, assign or mortgage it, and even substitute another person in its enjoyment. 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." [14]

Moreover, respondents stipulated that they were not aware of the mortgage by petitioners of the subject property. [15] This being the case, a co-owner does not lose his part ownership of a co-owned property when his share is mortgaged by another co-owner without the former's knowledge and consent [16] as in the case at bar. It has likewise been ruled that the mortgage of the inherited property is not binding against co-heirs who never benefitted. [17]

Furthermore, the Deed of Sale dated June 17, 1966 marked as Exhibit "H" executed by spouses Angel and Aquilina Nufable in favor of respondents Generosa, Vilfor and Marcelo wherein the former sold, ceded and transferred back to the latter the  $\frac{3}{4}$  portion of the subject property bolsters respondents' claim that there was co-ownership. Petitioner Nelson himself claimed that he was aware of the aforesaid Deed of Sale. [18]

Anent the second ground of the petition, petitioners allege that the Development Bank of the Philippines acquired ownership of the land in question through foreclosure, purchase and consolidation of ownership. Petitioners argue that if petitioner Nelson Nufable had not bought said land from the DBP, private respondents, in order to acquire said property, must sue said bank for the recovery thereof, and in so doing, must allege grounds for the annulment of documents evidencing the bank's ownership thereof. Petitioners contend that since petitioner Nelson Nufable simply bought the whole land from the bank, they cannot be deprived of the ownership of  $\frac{3}{4}$  without making any pronouncement as to the legality or illegality of the bank's ownership of said land. It is argued that there was no evidence to warrant declaration of nullity of the bank's acquisition of said land; and that neither was there a finding by the court that the bank illegally acquired the said property.

As adverted to above, when the subject property was mortgaged by Angel Custodio, he had no right to mortgage the entire property but only with respect to his  $\frac{1}{4}$  pro indiviso share as the property was subject to the successional rights of the other heirs of the late Esdras. Moreover, in case of foreclosure, a sale would result in the transmission of title to the buyer which is feasible only if the seller can be in a position to convey ownership of the things sold. [19] And in one case, [20] it was held that a foreclosure would be ineffective unless the mortgagor has title to the property to be foreclosed. Therefore, as regards the remaining  $\frac{3}{4}$  pro indiviso share, the same was held in trust for the party rightfully entitled thereto, [21] who are the private respondents herein.

Pursuant to Article 1451 of the Civil Code, when land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner.

Likewise, under Article 1456 of the same Code, if property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. In the case of *Noel vs. Court of Appeals*,<sup>[22]</sup> this Court held that "a buyer of a parcel of land at a public auction to satisfy a judgment against a widow acquired only one-half interest on the land corresponding to the share of the widow and the other half belonging to the heirs of her husband became impressed with a constructive trust in behalf of said heirs."

Neither does the fact that DBP succeeded in consolidating ownership over the subject property in its name terminate the existing co-ownership. Registration of property is not a means of acquiring ownership.<sup>[23]</sup> When the subject property was sold to and consolidated in the name of DBP, it being the winning bidder in the public auction, DBP merely held the  $\frac{3}{4}$  portion in trust for the private respondents. When petitioner Nelson purchased the said property, he merely stepped into the shoes of DBP and acquired whatever rights and obligations appertain thereto.

This brings us to the issue of whether or not the DBP should have been impleaded as party-defendant in the case at bar. Petitioners contend that DBP was never impleaded and that due process requires that DBP be impleaded so that it can defend its sale to petitioner Nelson Nufable; and that it was the duty of private respondents, and not of petitioner Nelson, to implead the bank and ask for the annulment of documents evidencing the bank's ownership of the disputed land.

In the Rejoinder to the Reply, private respondents that the non-inclusion of DBP as a "necessary party" was not questioned by petitioners from the time the Complaint was filed until the case was "finished." It was only after the adverse decision by the respondent Court of Appeals that petitioners raised the issue.

At the outset, it should be stated that petitioners never raised this issue in their Answer and pursuant to Section 2, Rule 9 of the Rules of Court, defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.

Nonetheless, the rule is that indispensable parties, i.e., parties in interest without whom no final determination can be had of an action, shall be joined either as plaintiffs or defendants; the inclusion as a party being compulsory.<sup>[24]</sup> On the other hand, in case of proper or necessary parties, i.e., persons who are not indispensable but ought to be parties if complete relief is to be accorded as between those already parties, the court may, in its discretion, proceed in the action without making such persons parties, and the judgment rendered therein shall be without prejudice to the rights of such persons.<sup>[25]</sup> Proper parties, therefore, have been described as parties whose presence is necessary in order to adjudicate the whole controversy, but whose interests are so far separable that a final decree can be made in their absence without affecting them.<sup>[26]</sup> Any claim against a party may be severed and proceeded with separately.<sup>[27]</sup>

The pivotal issue to be determined is whether DBP is an indispensable party in this case.

Private respondents do not question the legality of the foreclosure of the mortgaged property and the subsequent sale of the same to DBP. The subject property was already purchased by petitioner Nelson from DBP and the latter, by such sale, transferred its rights and obligations to the former. Clearly, petitioners' interest in the controversy is distinct and separable from the interest of DBP and a final determination can be had of the action despite the non-inclusion of DBP as party-defendant. Hence, DBP, not being an indispensable party, did not have to be impleaded in this case.

WHEREFORE, there being no reversible error in the decision appealed from, the petition for review on certiorari is hereby DENIED.

**SO ORDERED.**

Vitug, Panganiban, and Purisima, JJ., concur.

Romero, J., (Chairman), on official business leave abroad.

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[1] Penned by Justice Alicia Austria-Martinez, with Justices Pedro A. Ramirez and Bernardo LL. Salas, concurring.

[2] pp. 1-4, CA-Decision, pp. 13-16, Rollo.

[3] p. 4, thereof, p. 21, Rollo.

[4] Composed of Justices Pedro A. Ramirez (chairman), Alicia Austria-Martinez (ponente) and Celia Lipana-Reyes (vice Justice Bernardo LL. Salas who was on leave of absence).

[5] p. 7, thereof, p. 19, Rollo.

[6] *Acain vs. IAC*, 155 SCRA 100.

[7] p. 1, CA-Decision, p. 13, Rollo.

[8] p. 2, CA-Decision, p. 14, Rollo.

[9] *Acebedo vs. Abesamis*, 217 SCRA 186.

[10] p. 7, CA-Decision, p. 19, Rollo.

[11] ART. 870: The dispositions of the testator declaring all or part of the estate inalienable for more than twenty years are void.

[12] *Mercado vs. Court of Appeals*, 240 SCRA 616.

[13] p. 8, CA-Decision, p. 20, Rollo.

[14] *Mercado vs. Court of Appeals*, 240 SCRA 616.

[15] Pre-Trial Order of January 7, 1992, pp. 103-104, Record.

[16] *Ibid*.

[17] *Tan vs. IAC*, 186 SCRA 322.

[18] p. 3, RTC-Decision, p. 147, Record.

[19] Article 1458, Civil Code.

[20] *Castro, Jr. vs. Court of Appeals*, 250 SCRA 661.

[21] *Magallon vs. Montejo*, 146 SCRA 282.

**[22] 240 SCRA 78.**

[23] *Adille vs. Court of Appeals*, 157 SCRA 455.

[24] Section 7, Rule 3.

[25] Section 8, Rule 3.

[26] *Imson vs. Court of Appeals*, 239 SCRA 58; *Servicewide Specialists, Inc. vs. Court of Appeals*, 251 SCRA 70.

[27] Section 11, Rule 3.

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