VERONA PADA-KILARIO AND RICARDO KILARIO PETITIONERS, VS. COURT OF APPEALS AND SILVERIO PADA, RESPONDENTS.

G.R. No. 134329. January 19, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

The victory[1] of petitioner spouses Ricardo and Verona Kilario in the Municipal Circuit Trial Court[2] in an ejectment suit[3] filed against them by private respondent Silverio Pada, was foiled by its reversal[4] by the Regional Trial Court[5] on appeal. They elevated their cause[6] to respondent Court of Appeals[7] which, however, promulgated a Decision[8] on May 20, 1998, affirming the Decision of the Regional Trial Court.

The following facts are undisputed:

One Jacinto Pada had six (6) children, namely, Marciano, Ananias, Amador, Higino, Valentina and Ruperta. He died intestate. His estate included a parcel of land of residential and coconut land located at Poblacion, Matalom, Leyte, denominated as Cadastral Lot No. 5581 with an area of 1,301.92 square meters. It is the northern portion of Cadastral Lot No. 5581 which is the subject of the instant controversy.

During the lifetime of Jacinto Pada, his half-brother, Feliciano Pada, obtained permission from him to build a house on the northern portion of Cadastral Lot No. 5581. When Feliciano died, his son, Pastor, continued living in the house together with his eight children. Petitioner Verona Pada-Kilario, one of Pastor's children, has been living in that house since 1960.

Sometime in May, 1951, the heirs of Jacinto Pada entered into an extra-judicial partition of his estate. For this purpose, they executed a private document which they, however, never registered in the Office of the Registrar of Deeds of Leyte.

At the execution of the extra-judicial partition, Ananias was himself present while his other brothers were represented by their children. Their sisters, Valentina and Ruperta, both died without any issue. Marciano was represented by his daughter, Maria; Amador was represented by his daughter, Concordia; and Higino was represented by his son, Silverio who is the private respondent in this case. It was to both Ananias and Marciano, represented by his daughter, Maria, that Cadastral Lot No. 5581 was allocated during the said partition. When Ananias died, his daughter, Juanita, succeeded to his right as co-owner of said property.

On June 14, 1978, Juanita Pada sold to Engr. Ernesto Paderes, the right of his father, Ananias, as co-owner of Cadastral Lot No. 5881.

On November 17, 1993, it was the turn of Maria Pada to sell the co-ownership right of his father, Marciano. Private respondent, who is the first cousin of Maria, was the buyer.

Thereafter, private respondent demanded that petitioner spouses vacate the northern portion of Cadastral Lot No. 5581 so his family can utilize the said area. They went through a series of meetings with the barangay officials

concerned for the purpose of amicable settlement, but all earnest efforts toward that end, failed.

On June 26, 1995, private respondent filed in the Municipal Circuit Trial Court of Matalom, Leyte, a complaint for ejectment with prayer for damages against petitioner spouses.

On July 24, 1995, the heirs of Amador Pada, namely, Esperanza Pada-Pavo, Concordia Pada-Bartolome, and Angelito Pada, executed a Deed of Donation[9] transferring to petitioner Verona Pada-Kilario, their respective shares as co-owners of Cadastral Lot No. 5581.

On February 12, 1996, petitioner spouses filed their Answer averring that the northern portion of Cadastral Lot No. 5581 had already been donated to them by the heirs of Amador Pada. They contended that the extra-judicial partition of the estate of Jacinto Pada executed in 1951 was invalid and ineffectual since no special power of attorney was executed by either Marciano, Amador or Higino in favor of their respective children who represented them in the extra-judicial partition. Moreover, it was effectuated only through a private document that was never registered in the office of the Registrar of Deeds of Leyte.

The Municipal Circuit Trial Court rendered judgment in favor of petitioner spouses. It made the following findings:

> "After a careful study of the evidence submitted by both parties, the court finds that the evidence adduced by plaintiff failed to establish his ownership over x x x Cadastral Lot No. 5581 x x x while defendants has [sic] successfully proved by preponderance of evidence that said property is still under a community of ownership among the heirs of the late Jacinto Pada who died intestate. If there was some truth that Marciano Pada and Ananias Pada has [sic] been adjudicated jointly of [sic] the above-described residential property x x x as their share of the inheritance on the basis of the alleged extra judicial settlement, how come that since 1951, the date of partition, the share of the late Marciano Pada was not transferred in the name of his heirs, one of them Maria Pada-Pavo and still remain [sic] in the name of Jacinto Pada up to the present while the part pertaining to the share of Ananias Pada was easily transferred in the name of his heirs x x x.
>
> "The alleged extra judicial settlement was made in private writing and the genuineness and due execution of said document was assailed as doubtful and it appears that most of the heirs were not participants and signatories of said settlement, and there was lack of special power of attorney to [sic] those who claimed to have represented their co-heirs in the participation [sic] and signing of the said extra judicial statement.
>
> "Defendants were already occupying the northern portion of the above-described property long before the sale of said property on November 17, 1993 was executed between Maria Pada-Pavo, as vendor and the plaintiff, as vendee. They are in possession of said portion of the above-described property since the year 1960 with the consent of some of the heirs of Jacinto Pada and up to the [sic] present some of the heirs of Jacinto Pada has [sic] donated x x x their share of [sic] the above-described property to them, virtually converting defendants' standing as co-owners of the land under controversy. Thus, defendants as co-owners became the undivided owners of the whole estate x x x. As co-owners of x x x Cadastral Lot No. 5581 x x x their possession in the northern portion is being [sic] lawful."[10]

From the foregoing decision, private respondent appealed to the Regional Trial Court. On November 6, 1997, it rendered a judgment of reversal. It held:

> "x x x [T]he said conveyances executed by Juanita Pada and Maria Pada Pavo were never questioned or assailed by their co-heirs for more than 40 years, thereby lending credence on [sic] the fact that the two vendors were indeed legal and lawful owners of properties ceded or sold. x x x At any rate, granting that the co-heirs of Juanita Pada and Maria Pada Pavo have some interests on the very lot assigned to Marciano and Ananias, nevertheless, said interests had long been sadly lost by prescription, if not laches or estoppel.
>
> "It is true that an action for partition does not prescribe, as a general rule, but this doctrine of imprescriptibility

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> cannot be invoked when one of the heirs possessed the property as an owner and for a period sufficient to acquire it by prescription because from the moment one of the co-heirs claim [sic] that he is the absolute owner and denies the rest their share of the community property, the question then involved is no longer one for partition but of ownership. x x x Since [sic] 1951 up to 1993 covers a period of 42 long years. Clearly, whatever right some of the co-heirs may have, was long extinguished by laches, estoppel or prescription.
>
> "x x x
>
> "x x x [T]he deed of donation executed by the Heirs of Amador Pada, a brother of Marciano Pada, took place only during the inception of the case or after the lapse of more than 40 years reckoned from the time the extrajudicial partition was made in 1951. Therefore, said donation is illegal and invalid [sic] the donors, among others, were absolutely bereft of any right in donating the very property in question."[11]

The dispositive portion of the decision of the Regional Trial Court reads as follows:

> "WHEREFORE, a judgment is hereby rendered, reversing the judgment earlier promulgated by the Municipal Circuit Trial Court of Matalom, Leyte, [sic] consequently, defendants-appellees are hereby ordered:
>
> "1. To vacate the premises in issue and return peaceful possession to the appellant, being the lawful possessor in concept of owner;
>
> "2. To remove their house at their expense unless appellant exercises the option of acquiring the same, in which case the pertinent provisions of the New Civil Code has to be applied;
>
> "3. Ordering the defendants-appellees to pay monthly rental for their occupancy and use of the portion of the land in question in the sum of P100.00 commencing on June 26, 1995 when the case was filed and until the termination of the present case;
>
> "4. Ordering the defendants to pay to the appellant the sum of P5,000.00 as moral damages and the further sum of P5,000.00 as attorney's fees;
>
> "5. Taxing defendants to pay the costs of suit."[12]

Petitioners filed in the Court of Appeals a petition for review of the foregoing decision of the Regional Trial Court.

On May 20, 1998, respondent Court of Appeals rendered judgment dismissing said petition. It explained:

> "Well-settled is the rule that in an ejectment suit, the only issue is possession de facto or physical or material possession and not de jure. Hence, even if the question of ownership is raised in the pleadings, the court may pass upon such issue but only to determine the question of possession, specially if the former is inseparably linked with the latter. It cannot dispose with finality the issue of ownership, such issue being inutile in an ejectment suit except to throw light on the question of possession x x x.
>
> "Private respondent Silverio Pada anchors his claim to the portion of the land possessed by petitioners on the Deed of Sale executed in his favor by vendor Maria Pada-Pavo, a daughter of Marciano, son of Jacinto Pada who was the registered owner of the subject lot. The right of vendee Maria Pada to sell the property was derived from the extra-judicial partition executed in May 1951 among the heirs of Jacinto Pada, which was written in a Bisayan dialect signed by the heirs, wherein the subject land was adjudicated to Marciano, Maria Pavo's father, and Ananias Pada. Although the authenticity and genuineness of the extra-judicial partition is now being questioned by the heirs of Amador Pada, no action was ever previously filed in court to question the validity of such partition.
>
> "Notably, petitioners in their petition admitted among the antecedent facts that Maria Pavo is one of the co-owners of the property originally owned by Jacinto Pada x x x and that the disputed lot was adjudicated to

> Marciano (father of Maria Pavo) and Ananias, and upon the death of Marciano and Ananias, their heirs took possession of said lot, i.e. Maria Pavo the vendor for Marciano's share and Juanita for Ananias' share x x x. Moreover, petitioners do not dispute the findings of the respondent court that during the cadastral survey of Matalom, Leyte, the share of Maria Pada Pavo was denominated as Lot No. 5581, while the share of Juanita Pada was denominated as Lot No. 6047, and that both Maria Pada Pavo and Juanita were in possession of their respective hereditary shares. Further, petitioners in their Answer admitted that they have been occupying a portion of Lot No. 5581, now in dispute without paying any rental owing to the liberality of the plaintiff x x x. Petitioners cannot now impugn the aforestated extrajudicial partition executed by the heirs in 1951. As owner and possessor of the disputed property, Maria Pada, and her vendee, private respondent, is entitled to possession. A voluntary division of the estate of the deceased by the heirs among themselves is conclusive and confers upon said heirs exclusive ownership of the respective portions assigned to them x x x.
>
> "The equally belated donation of a portion of the property in dispute made by the heirs of Amador Pada, namely, Concordia, Esperanza and Angelito, in favor of petitioner Verona Pada is a futile attempt to confer upon the latter the status of co-owner, since the donors had no interest nor right to transfer. x x x This gesture appears to be a mere afterthought to help petitioners to prolong their stay in the premises. Furthermore, the respondent court correctly pointed out that the equitable principle of laches and estoppel come into play due to the donors' failure to assert their claims and alleged ownership for more than forty (40) years x x x. Accordingly, private respondent was subrogated to the rights of the vendor over Lot No. 5581 which include [sic] the portion occupied by petitioners."[13]

Petitioner spouses filed a Motion for Reconsideration of the foregoing decision.

On June 16, 1998, respondent Court of Appeals issued a Resolution denying said motion.

Hence this petition raising the following issues:

> "I.
>
> WHETHER THE COURT OF APPEALS ERRED IN NOT RULING THAT PETITIONERS, AS CO-OWNERS, CANNOT BE EJECTED FROM THE PREMISES CONSIDERING THAT THE HEIRS OF JACINTO PADA DONATED TO THEM THEIR UNDIVIDED INTEREST IN THE PROPERTY IN DISPUTE.
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> "II.
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> WHETHER THE COURT OF APPEALS ERRED IN NOT RULING THAT WHAT MARIA PADA SOLD WAS HER UNDIVIDED SHARE IN THE PROPERTY IN DISPUTE.
>
> "III.
>
> WHETHER OR NOT THE PETITIONERS ARE BUILDERS IN GOOD FAITH."[14]

There is no merit to the instant petition.

First. We hold that the extrajudicial partition of the estate of Jacinto Pada among his heirs made in 1951 is valid, albeit executed in an unregistered private document. No law requires partition among heirs to be in writing and be registered in order to be valid.[15] The requirement in Sec. 1, Rule 74 of the Revised Rules of Court that a partition be put in a public document and registered, has for its purpose the protection of creditors and the heirs themselves against tardy claims.[16] The object of registration is to serve as constructive notice to others. It follows then that the intrinsic validity of partition not executed with the prescribed formalities is not undermined when no creditors are involved.[17] Without creditors to take into consideration, it is competent for the heirs of an estate to enter into an agreement for distribution thereof in a manner and upon a plan different from those provided by the rules from which, in the first place, nothing can be inferred that a writing or other formality is

essential for the partition to be valid.[18] The partition of inherited property need not be embodied in a public document so as to be effective as regards the heirs that participated therein.[19] The requirement of Article 1358 of the Civil Code that acts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property, must appear in a public instrument, is only for convenience, non-compliance with which does not affect the validity or enforceability of the acts of the parties as among themselves.[20] And neither does the Statute of Frauds under Article 1403 of the New Civil Code apply because partition among heirs is not legally deemed a conveyance of real property, considering that it involves not a transfer of property from one to the other but rather, a confirmation or ratification of title or right of property that an heir is renouncing in favor of another heir who accepts and receives the inheritance.[21] The 1951 extrajudicial partition of Jacinto Pada's estate being legal and effective as among his heirs, Juanita and Maria Pada validly transferred their ownership rights over Cadastral Lot No. 5581 to Engr. Paderes and private respondent, respectively.[22]

Second. The extrajudicial partition which the heirs of Jacinto Pada executed voluntarily and spontaneously in 1951 has produced a legal status.[23] When they discussed and agreed on the division of the estate of Jacinto Pada, it is presumed that they did so in furtherance of their mutual interests. As such, their division is conclusive, unless and until it is shown that there were debts existing against the estate which had not been paid.[24] No showing, however, has been made of any unpaid charges against the estate of Jacinto Pada. Thus, there is no reason why the heirs should not be bound by their voluntary acts.

The belated act of Concordia, Esperanza and Angelito, who are the heirs of Amador Pada, of donating the subject property to petitioners after forty four (44) years of never having disputed the validity of the 1951 extrajudicial partition that allocated the subject property to Marciano and Ananias, produced no legal effect. In the said partition, what was allocated to Amador Pada was not the subject property which was a parcel of residential land in Sto. Nino, Matalom, Leyte, but rather, one-half of a parcel of coconut land in the interior of Sto. Nino St., Sabang, Matalom, Leyte and one-half of a parcel of rice land in Itum, Sta. Fe, Matalom, Leyte. The donation made by his heirs to petitioners of the subject property, thus, is void for they were not the owners thereof. At any rate it is too late in the day for the heirs of Amador Pada to repudiate the legal effects of the 1951 extrajudicial partition as prescription and laches have equally set in.

Third. Petitioners are estopped from impugning the extrajudicial partition executed by the heirs of Jacinto Pada after explicitly admitting in their Answer that they had been occupying the subject property since 1960 without ever paying any rental as they only relied on the liberality and tolerance of the Pada family.[25] Their admissions are evidence of a high order and bind them insofar as the character of their possession of the subject property is concerned.

Considering that petitioners were in possession of the subject property by sheer tolerance of its owners, they knew that their occupation of the premises may be terminated any time. Persons who occupy the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that they will vacate the same upon demand, failing in which a summary action for ejectment is the proper remedy against them.[26] Thus, they cannot be considered possessors nor builders in good faith. It is well-settled that both Article 448[27] and Article 546[28] of the New Civil Code which allow full reimbursement of useful improvements and retention of the premises until reimbursement is made, apply only to a possessor in good faith, i.e., one who builds on land with the belief that he is the owner thereof.[29] Verily, persons whose occupation of a realty is by sheer tolerance of its owners are not possessors in good faith. Neither did the promise of Concordia, Esperanza and Angelito Pada that they were going to donate the premises to petitioners convert them into builders in good faith for at the time the improvements were built on the premises, such promise was not yet fulfilled, i.e.,

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it was a mere expectancy of ownership that may or may not be realized.[30] More importantly, even as that promise was fulfilled, the donation is void for Concordia, Esperanza and Angelito Pada were not the owners of Cadastral Lot No. 5581. As such, petitioners cannot be said to be entitled to the value of the improvements that they built on the said lot.

WHEREFORE, the petition for review is HEREBY DENIED.

Costs against petitioners.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

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[1] Decision of the Municipal Circuit Trial Court promulgated on February 29, 1996 and penned by Judge Venancio E. Rances, Rollo, pp. 23-29.

[2] 9th Municipal Circuit Trial Court, 8th Judicial Region, Branch XVIII, Bato-Matalom, Leyte.

[3] Civil Case No. 91.

[4] In a Decision dated November 6, 1997 copy of which however does not appear in the Rollo.

[5] Regional Trial Court, 8th Judicial Region, Branch 18, Hilongos, Leyte.

[6] In a Petition for Review docketed as CA-G.R. SP No. 46101.

[7] Fourth Division.

[8] Penned by then Court of Appeals, now Supreme Court, Associate Justice Minerva P. Gonzaga-Reyes and concurred in by Associate Justices Ramon A. Barcelona and Demetrio G. Demetria, Rollo, pp. 31-41.

[9] Annex "D" of the Petition for Review on Certiorari dated August 11, 1998, Rollo, p. 44.

[10] Decision of the Municipal Circuit Trial Court dated February 29, 1996, pp. 4-6, Rollo, pp. 26-28.

[11] Decision of the Court of Appeals, pp. 8-9, Rollo, pp. 38-39.

[12] Id., p. 4, Rollo, p. 34.

[13] Decision of the Court of Appeals, pp. 6-8, Rollo, pp. 36-38. Emphasis supplied by the Court of Appeals.

[14] Petition supra, p. 6, rollo, p. 13.

[15] Vda. de Reyes v. Court of Appeals, 199 SCRA 646, 659 (1991), citing Madamba v. Magno, et al., 10 Phil. 86, 88 (1908); De Guzman, et al. v. Pangilinan and Azarcon, 28 Phil. 322, 325 (1914); and De Garces, et al. v. Broce, et al., 23 SCRA 612, 615-616 (1968)

[16] Id., citing Hernandez v. Andal, 78 Phil. 196, 205, 208 (1946)

[17] Id., citing Hernandez, supra, p. 209.

[18] Ibid.

[19] Alejandrino v. Court of Appeals, 295 SCRA 536, 552 (1998)

[20] Vda. de Reyes v. Court of Appeals, 199 SCRA 646, 657 (1991), citing Thunga Chui v. Que Bentec, 2 Phil.

561, 563-564 (1903)

[21] Id., p. 659, citing Barcelona, et al. v. Barcelona and Court of Appeals, 100 Phil. 251, 255 (1956)

[22] Id., p. 553.

[23] Leaño v. Leaño, 25 Phil. 180, 183-184 (1913)

[24] Ibid.; De Garces, supra, pp. 615-617 (1968)

[25] Decision of the Court of Appeals, p. 7, Rollo, p. 37.

[26] Refugia v. Court of Appeals, 258 SCRA 347, 370 (1996)

[27] "Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the owner who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof."

[28] "Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof."

[29] Geminiano v. Court of Appeals, 259 SCRA 344, 351 (1996)

[30] Id., p. 352.

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