

**REBECCA VIADO NON, JOSE A. NON AND DELIA VIADO,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, ALICIA N.
VIADO, CHERRI VIADO AND FE FIDES VIADO, RESPONDENTS.**

G.R. No. 137287. February 15, 2000

Ponente: VITUG, J.

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VITUG, J.:

Petitioners, in their petition for review on certiorari under Rule 45 of the Rules of Court, seek a reversal of the 29[th] May 1996 decision of the Court of Appeals, basically affirming that rendered on 30 April 1991 by the Regional Trial Court ("RTC") of Quezon City, Branch 23, adjudicating the property subject matter of the litigation to respondents. The case and the factual setting found by the Court of Appeals do not appear to deviate significantly from that made by the trial court.

During their lifetime, the spouses Julian C. Viado and Virginia P. Viado owned several pieces of property, among them a house and lot located at 147 Isarog Street, La Loma, Quezon City, covered by Transfer Certificate of Title No. 42682. Virginia P. Viado died on 20 October 1982. Julian C. Viado died three years later on 15 November 1985. Surviving them were their children -- Nilo Viado, Leah Viado Jacobs, and herein petitioners Rebecca Viado, married to Jose Non, and Delia Viado. Nilo Viado and Leah Viado Jacobs both died on 22 April 1987. Nilo Viado left behind as his own sole heirs herein respondents --- his wife Alicia Viado and their two children Cherri Viado and Fe Fides Viado.

Petitioners and respondents shared, since 1977, a common residence at the Isarog property. Soon, however, tension would appear to have escalated between petitioner Rebecca Viado and respondent Alicia Viado after the former had asked that the property be equally divided between the two families to make room for the growing children. Respondents, forthwith, claimed absolute ownership over the entire property and demanded that petitioners vacate the portion occupied by the latter. On 01 February 1988, petitioners, asserting co-ownership over the property in question, filed a case for partition before the Quezon City RTC (Branch 93).

Respondents predicated their claim of absolute ownership over the subject property on two documents --- a deed of donation executed by the late Julian Viado covering his one-half conjugal share of the Isarog property in favor of Nilo Viado and a deed of extrajudicial settlement in which Julian Viado, Leah Viado Jacobs (through a power of attorney in favor of Nilo Viado) and petitioner Rebecca Viado waived in favor of Nilo Viado their rights and interests over their share of the property inherited from Virginia Viado. Both instruments were executed on 26 August 1983 and registered on 07 January 1988 by virtue of which Transfer Certificate of Title No. 42682 was cancelled and new Transfer Certificate of Title No. 373646 was issued to the heirs of Nilo Viado.

Petitioners, in their action for partition, attacked the validity of the foregoing instruments, contending that the late Nilo Viado employed forgery and undue influence to coerce Julian Viado to execute the deed of donation. Petitioner Rebecca Viado, in her particular case, averred that her brother Nilo Viado employed fraud to procure her signature to the deed of extrajudicial settlement. She added that the exclusion of her retardate sister, Delia

Viado, in the extrajudicial settlement, resulted in the latter's preterition that should warrant its annulment. Finally, petitioners asseverated at the assailed instruments, although executed on 23 August 1983, were registered only five years later, on 07 January 1988, when the three parties thereto, namely, Julian Viado, Nilo Viado and Leah Viado Jacobs had already died.

Assessing the evidence before it, the trial court found for respondents and adjudged Alicia Viado and her children as being the true owners of the disputed property.

On appeal, the Court of Appeals affirmed the decision of the trial court with modification by ordering the remand of the records of the case to the court a quo for further proceedings to determine the value of the property and the amount respondents should pay to petitioner Delia Viado for having been preterited in the deed of extrajudicial settlement.

Petitioners are now before the Supreme Court to seek the reversal of the decision of the Court of Appeals.

The appellate court ruled correctly.

When Virginia P. Viado died intestate in 1982, her part of the conjugal property, the Isarog property in question included, was transmitted to her heirs --- her husband Julian and their children Nilo Viado, Rebecca Viado, Leah Viado and Delia Viado. The inheritance, which vested from the moment of death of the decedent,[1] remained under a co-ownership regime[2] among the heirs until partition.[3] Every act intended to put an end to indivision among co-heirs and legatees or devisees would be a partition although it would purport to be a sale, an exchange, a compromise, a donation or an extrajudicial settlement.[4]

In debunking the continued existence of a co-ownership among the parties hereto, respondents rely on the deed of donation and deed of extrajudicial settlement which consolidated the title solely to Nilo Viado. Petitioners assail the due execution of the documents on the grounds heretofore expressed.

Unfortunately for petitioners, the issues they have raised boil down to the appreciation of the evidence, a matter that has been resolved by both the trial court and the appellate court. The Court of Appeals, in sustaining the court a quo, has found the evidence submitted by petitioners to be utterly wanting, consisting of, by and large, self-serving testimonies. While asserting that Nilo Viado employed fraud, forgery and undue influence in procuring the signatures of the parties to the deeds of donation and of extrajudicial settlement, petitioners are vague, however, on how and in what manner those supposed vices occurred. Neither have petitioners shown proof why Julian Viado should be held incapable of exercising sufficient judgment in ceding his rights and interest over the property to Nilo Viado. The asseveration of petitioner Rebecca Viado that she has signed the deed of extrajudicial settlement on the mistaken belief that the instrument merely pertained to the administration of the property is too tenuous to accept. It is also quite difficult to believe that Rebecca Viado, a teacher by profession, could have misunderstood the tenor of the assailed document.

The fact alone that the two deeds were registered five years after the date of their execution did not adversely affect their validity nor would such circumstance alone be indicative of fraud. The registration of the documents was a ministerial act[5] and merely created a constructive notice of its contents against all third persons.[6] Among the parties, the instruments remained completely valid and binding.

The exclusion of petitioner Delia Viado, alleged to be a retardate, from the deed of extrajudicial settlement verily has had the effect of preterition. This kind of preterition, however, in the absence of proof of fraud and bad faith, does not justify a collateral attack on Transfer Certificate of Title No. 373646. The relief, as so correctly pointed out by the Court of Appeals, instead rests on Article 1104 of the Civil Code to the effect that where the preterition is not attended by bad faith and fraud, the partition shall not be rescinded but the preterited heir shall be paid the

value of the share pertaining to her. Again, the appellate court has thus acted properly in ordering the remand of the case for further proceedings to make the proper valuation of the Isarog property and ascertainment of the amount due petitioner Delia Viado.

WHEREFORE, the instant petition is DENIED, and the decision, dated May 29, 1996, in CA-G.R. No. 37272 of the Court of Appeals is AFFIRMED. No special pronouncement on costs.

SO ORDERED.

Melo, (Chairman), Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] See *Baritua vs. CA*, 183 SCRA 565.

[2] There is co-ownership when the title of an undivided thing or right belongs to different persons (see Article 484, Civil Code).

[3] Partition is the division between two or more persons of real or personal property which they own as co-partners, co-tenants or tenants in common, effected by the setting apart of such interests so that they may enjoy and possess it in severalty. (*Vilamor vs. CA*, 162 SCRA 574.)

[4] see *Favor vs. CA*, 194 SCRA 308.

[5] The registrar of deed is not authorized to determine whether or not fraud was committed in the deed sought to be registered. (*In re Consulta of Vicente J. Francisco on behalf of Cabantog*, 67 Phil. 222.)

[6] *People vs. Reyes*, 175 SCRA 597, 604, citing *Legarda and Prieto vs. Saleeby*, 31 Phil. 590; *Garcia vs. CA*, 95 SCRA 380; *Hongkong and Shanghai Banking Corp. vs. Pauli, et al.*, 161 SCRA 634.

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