

JULITA ROMBAUA PANGANIBAN, PAQUITO ROMBAUA, RUPERTO ROMBAUA, TERESITA ROMBAUA TELAJE and LEONOR ROMBAUA OPIANA, Petitioners, vs. JULITA S. OAMIL, Respondent.

G.R. No. 149313. January 22, 2008

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

Assailed in this petition for review on certiorari are the Decision[1] of the Court of Appeals dated March 2, 2001 in CA-G.R. CV No. 57557, which affirmed in toto the Order dated October 23, 1997 of the Regional Trial Court of Olongapo City, Branch 73, and the Resolution[2] dated July 10, 2001 denying the motion for reconsideration.

The facts as culled from the records are as follows:

On April 26, 1993 Julita Oamil, herein respondent, filed a complaint for specific performance with damages[3] with the Regional Trial Court of Olongapo City, praying that Partenio Rombaua (Partenio) be ordered to execute a final deed of sale over the parcel of land which was the subject of a prior “Agreement to Sell” executed by and between them on May 17, 1990. The property which is alleged to be covered by the said “Agreement to Sell” consists of 204.5 square meters of land located at #11 21st St., East Bajac-Bajac, Olongapo City, and is claimed by respondent Oamil to be Partenio’s conjugal share in a parcel of commercial land (the subject property) with an aggregate area of 409 square meters acquired by Partenio and his deceased first wife Juliana[4] during their marriage.

There are two portions of the subject property in contention: one consisting of 204.5 square meters facing 21st Street (the 21st St. portion), and another consisting of 204.5 square meters facing Canda Street (the Canda St. portion). Petitioners and their father Partenio are acknowledged co-owners of the subject property to the following extent: one-half to Partenio as his conjugal share, and one-sixth each of the remaining half to petitioners and Partenio as the surviving heirs of Juliana.

For failure to file an answer, Partenio was declared in default, and respondent presented her evidence ex parte.

On December 26, 1993, the trial court promulgated its Decision,[5] the dispositive portion of which reads as follows:

WHEREFORE, viewed from all the foregoing, judgment is hereby rendered as follows:

(1) The defendant is hereby ordered to execute a deed of absolute sale over the ½ portion (front) of the realty subject matter of this case in favor of the plaintiff and to surrender the possession thereof to the plaintiff. Failure of the defendant to do so, then the City Assessor of Olongapo is hereby directed to effect the transfer of all rights/interest on the one-half (1/2) front portion of the said realty in the name of the plaintiff, upon the finality of this decision;

(2) Plaintiff, however, is ordered to pay the amount of EIGHT THOUSAND PESOS (P8,000.00) representing the balance of the interests due on the amount of P200,000.00, delinquent for one (1) year computed at 12%

per annum;

(3) Defendant is, likewise, hereby ordered to pay the plaintiff attorney's fees in the amount of TEN THOUSAND PESOS (P10,000.00).

Let a copy of this Decision be furnished the City Assessor of Olongapo City.

SO ORDERED.[6]

Note that the trial court did not specify which portion of the property – the 21[st] St. portion or the Canda St. portion – should be deeded to respondent as buyer of Partenio's conjugal share.

Partenio failed to appeal, and the decision became final and executory on February 4, 1994. Entry of judgment was made on February 8, 1994, and a writ of execution was issued on February 15, 1994 and served upon Partenio on February 21, 1994. The writ was served as well upon the City Assessor of Olongapo City, who caused the transfer of the Tax Declaration covering the 21st St. portion in respondent's name.

In June 1994, petitioners filed a verified petition for relief from the decision of the trial court, grounded on the following: 1) that Partenio's conjugal share in the property, and that of petitioners as well, are being litigated in a judicial partition proceeding[7] (the partition case) which is pending with the Court of Appeals, hence the trial court may not yet render a decision disposing of a definite area of the subject property in respondent's favor; and, (2) that petitioners were unjustly deprived of the opportunity to protect and defend their interest in court because, notwithstanding that they are indispensable parties to the case (being co-owners of the subject property), they were not impleaded in Civil Case No. 140-0-93.

In lieu of a hearing, the parties were directed to submit their respective position papers. Respondent, meanwhile, moved to dismiss the petition, claiming that the stated grounds for relief are not included in the enumeration under Section 2, Rule 38 of the Rules of Court. Petitioners opposed the motion.

In an Order dated January 13, 1995, the trial court denied the petition for relief because the decision in Civil Case No. 140-0-93 had become final and executory. It held that only indispensable parties to the case may participate in the proceedings thereof, and since petitioners may not be considered as indispensable parties because the subject matter of the proceedings involves Partenio's conjugal share in the property, they are precluded from filing a petition for relief from the court's judgment.

Petitioners moved for reconsideration insisting that they are indispensable parties in Civil Case No. 140-0-93 because as co-owners of the subject property by virtue of succession to the rights of their deceased mother, they possess an interest that must be protected. Instead of resolving the motion, the trial court, with the concurrence of the petitioners and the respondent, deferred the proceedings, to await the result of a pending appeal with the Court of Appeals of the decision in Special Civil Action No. 340-0-86,[8] the partition case, where the trial court, in its decision, awarded specifically the Canda St. portion to Partenio as his conjugal share.

In the meantime, or sometime in 1995, a Motion for leave of court to file a Complaint in Intervention was filed by Sotero Gan (Gan), who claims to be the actual and rightful owner of Partenio's conjugal share. Gan claims to have purchased Partenio's conjugal share in the property, and in return, the latter on November 29, 1990 executed a deed of waiver and quitclaim of his possessory rights. Gan likewise claims that the tax declaration covering the portion of the property had been transferred in his name. He thus seeks the dismissal of Civil Case No. 140-0-93 and the reinstatement of his name on the tax declaration which by then had been placed in respondent's name.

The parties submitted their respective oppositions to Gan's motion, the core of their argument being that with the finality of the decision in the case, intervention was no longer proper, and that Gan's cause of action, if any,

should be litigated in a separate proceeding.

The trial court, in an Order dated January 22, 1996, denied Gan's motion for intervention for being filed out of time, considering that the decision of the court had become final and executory in February 1994. Gan moved for reconsideration which was opposed by respondent, citing, among others, an Order dated April 18, 1994 issued by the Department of Environment and Natural Resources (CENRO of Olongapo) which includes a finding that Gan had transferred his rights and interest in the subject property to one Chua Young Bing.

In another Order dated October 23, 1997,[9] the trial court denied Gan's motion for reconsideration, as well as the petitioners' motion for reconsideration of the January 13, 1995 order denying the petition for relief. In said order, the court made reference to the decision in Special Civil Action No. 340-0-86, which by then had become final and executory.[10] The trial court likewise substantially modified its Decision dated December 26, 1993, by awarding specifically the 21st St. portion of the property to Partenio as his conjugal share, despite the pronouncement in Special Civil Action No. 340-0-86 which awards the Canda St. portion to him.

From the foregoing October 23, 1997 order, the petitioners and Gan interposed their separate appeals to the Court of Appeals. Meanwhile, respondent filed a motion for execution pending appeal, which was denied on the ground that there exist no special or compelling reasons to allow it.

On March 2, 2001, the appellate court rendered the herein assailed Decision, which affirmed in toto the appealed October 23, 1997 Order of the trial court.

The appellate court sustained the trial court's ruling that Partenio's conjugal share in the subject property consists of the 21[st] St. portion, thereby disregarding the prior final and executory decision in Special Civil Action No. 340-0-86 which declares that Partenio is entitled to the Canda St. portion. The appellate court based the award of the 21[st] St. portion to respondent on the ground that petitioners have always acknowledged their father Partenio's "acts of ownership" over the 21st St. portion, thus signifying their consent and thereby barring them from questioning the award.

Respondents moved for reconsideration but it was denied.

Petitioners are now before us via the present petition, raising the sole issue of whether petitioners can intervene in the proceedings in Civil Case No. 140-0-93 in order to protect their rights as co-owners of the subject property.

We resolve to GRANT the petition.

Under a co-ownership, the ownership of an undivided thing or right belongs to different persons. During the existence of the co-ownership, no individual can claim title to any definite portion of the community property until the partition thereof; and prior to the partition, all that the co-owner has is an ideal or abstract quota or proportionate share in the entire land or thing.[11] Before partition in a co-ownership, every co-owner has the absolute ownership of his undivided interest in the common property. The co-owner is free to alienate, assign or mortgage this undivided interest, except as to purely personal rights. The effect of any such transfer is limited to the portion which may be awarded to him upon the partition of the property.[12]

Under Article 497 of the Civil Code, in the event of a division or partition of property owned in common, assignees of one or more of the co-owners may take part in the division of the thing owned in common and object to its being effected without their concurrence. But they cannot impugn any partition already executed, unless there has been fraud, or in case it was made notwithstanding a formal opposition presented to prevent it, without prejudice to the right of the debtor or assignor to maintain its validity.

The decision in Special Civil Action No. 340-0-86, which is an action for judicial partition of the subject property,

determines what Partenio, and ultimately, respondent, as his successor-in-interest, is entitled to in Civil Case No. 140-0-93. As Partenio's successor-in-interest to the property, respondent could not acquire any superior right in the property than what Partenio is entitled to or could transfer or alienate after partition. In a contract of sale of co-owned property, what the vendee obtains by virtue of such a sale are the same rights as the vendor had as co-owner, and the vendee merely steps into the shoes of the vendor as co-owner.[13]

As early as May 17, 1990, when respondent and Partenio executed the "Agreement to Sell", the former knew that the property she was purchasing was conjugal property owned in common by Partenio and the heirs of his deceased wife.[14] And while Civil Case No. 140-0-93 (the specific performance case) was pending, respondent was apprised of the pendency of Special Civil Action No. 340-0-86 (the partition case). Yet, respondent did not intervene, nor did she take part, nor enter any formal opposition – as assignee of Partenio's conjugal share in the property – in said partition proceedings. She did not exercise the rights granted her under Article 497 of the Civil Code. Instead, when the court in Civil Case No. 140-0-93 decided to suspend the proceedings and hold the same in abeyance while the appeal in Special Civil Action No. 340-0-86 remained unresolved, the respondent unconditionally agreed to its temporary abatement. In other words, she chose to sit back and await the resolution thereof.

Consequently, when the decision in Special Civil Action No. 340-0-86 became final and executory without the respondent having questioned the same in any manner whatsoever, by appeal or otherwise, the division of property decreed therein may no longer be impugned by her.

Thus said, the trial court in Civil Case No. 140-0-93 could not award the 21st St. portion to Partenio, since the court in Special Civil Action No. 340-0-86 specifically awarded the Canda St. portion to him. The decision in Special Civil Action No. 340-0-86, which became final and executory, should put an end to the co-ownership between Partenio and the respondents, and the award made to each co-owner of specific portions of the property as their share in the co-ownership should be respected.

Since the issue of each of the co-owners' specific portion in the aggregate property has been laid to rest in Special Civil Action No. 340-0-86, the final and executory decision in said proceeding should be conclusive on the issue of which specific portion of the property became the subject matter of the sale between Partenio and the respondent; that is, that Partenio, as declared owner of the Canda St. portion, could have transferred to respondent only that part of the property and not the 21st St. portion. Although Partenio was free to sell or transfer his undivided interest to the respondent, the effect of such transfer is limited to the portion which may be awarded to him upon the partition of the property.

It was likewise error for the appellate court to have considered the alleged acts of ownership exercised upon the 21st St. portion by Partenio as weighing heavily against the decreed partition in Special Civil Action No. 340-0-86. The determination of this issue is beyond the ambit of the trial court in Civil Case No. 140-0-93. As far as it was concerned, it could only award to the respondent, if proper, whatever specific portion Partenio is found to be entitled to in the event of a partition, in accordance with Article 493 of the Civil Code and the procedure outlined in the Rules of Court. It could not, in an ordinary proceeding for specific performance with damages, subject the property to a partial division or partition without the knowledge and participation of the other co-owners, and while a special civil action for partition was simultaneously pending in another court.

The court in Civil Case No. 140-0-93 is not a partition court but one litigating an ordinary civil case, and all evidence of alleged acts of ownership by one co-owner should have been presented in the partition case, there to be threshed out in order that the partition court may arrive at a just division of the property owned in common; it is not for the trial court in the specific performance case to properly appreciate. Being a court trying an ordinary

civil suit, the court in Civil Case No. 140-0-93 had no jurisdiction to act as a partition court. Trial courts trying an ordinary action cannot resolve to perform acts pertaining to a special proceeding because it is subject to specific prescribed rules.[15]

That the trial court suspended the proceedings in Civil Case No. 140-0-93 to make way for the resolution of Special Civil Action No. 340-0-86 was an indication that it intended to abide by whatever would be decreed in the latter case. For, understandably, the resolution of Special Civil Action No. 340-0-86 will settle the issue in Civil Case No. 140-0-93 with respect to which specific portion of the property constitutes the subject matter of the specific performance suit and which would, in any case, be adjudicated to either of the two – the defendant co-owner and seller Partenio or the plaintiff buyer Oamil, the herein respondent. Yet in the end, the trial court ultimately disregarded what had been finally adjudicated and settled in Special Civil Action No. 340-0-86, and instead it took a position that was entirely diametrically opposed to it.

It was likewise irregular for the respondent to have obtained a certificate of title over specific property which has not been partitioned, especially where she concedes awareness of the existing co-ownership which has not been terminated, and recognizes her status as mere successor-in-interest to Partenio. The spring may not rise higher than its source.

In sum, the trial court and the Court of Appeals, by disregarding the final and executory judgment in Special Civil Action No. 340-0-86, certainly ignored the principle of conclusiveness of judgments, which states that –

[A] fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit (*Nabus vs. Court of Appeals*, 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issues.[16]

The ruling in Special Civil Action No. 340-0-86 – that the Canda St. portion shall go to Partenio – became the law of the case and continues to be binding between the parties as well as their successors-in-interest, the decision in said case having become final and executory. Hence, the binding effect and enforceability of that dictum can no longer be relitigated anew in Civil Case No. 140-0-93 since said issue had been resolved and finally laid to rest in the partition case, by conclusiveness of judgment, if not by the principle of *res judicata*. It may not be reversed, modified or altered in any manner by any court.

As a result of the trial court's refusal to abide by the decision in Special Civil Action No. 340-0-86, the rights of the petitioners have been unnecessarily transgressed, thereby giving them the right to seek relief in court in order to annul the October 23, 1997 Order of the trial court which substantially and wrongly modified its original decision in Civil Case No. 140-0-93. It was clear mistake for the trial court to have gone against the final and executory decision in Special Civil Action No. 340-0-86 and its original decision, which does not award a definite portion of the disputed property to Partenio, precisely because, as a court litigating an ordinary civil suit, it is not authorized to partition the subject property but only to determine the rights and obligations of the parties in respect to Partenio's undivided share in the commonly owned property. As a result of this mistake, the petitioners are entitled to relief.

Finally, with respect to Gan's intervention, we affirm the appellate court's finding that the same is no longer proper considering that the decision in Civil Case No. 140-0-93 had become final and executory. Gan moved to intervene only in 1995, when the decision became final and executory in February 1994. Certainly, intervention, being merely collateral or ancillary to the principal action, may no longer be allowed in a case already terminated by final judgment.^[17] Moreover, since Gan did not appeal the herein assailed decision of the appellate court, then the same, as against him, has become final and executory.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals dated March 2, 2001 in CA-G.R. CV No. 57557 and the Resolution dated July 10, 2001 are REVERSED and SET ASIDE, with the exception that the denial of the intervenor Sotero Gan's motion for intervention is AFFIRMED.

The Order dated October 23, 1997 of the Regional Trial Court of Olongapo City in Civil Case No. 140-0-93 is hereby DECLARED of no effect. In all other respects, the Decision of the trial court in Civil Case No. 140-0-93 dated December 26, 1993 is AFFIRMED. The said court is moreover ORDERED to abide by the pronouncement in Special Civil Action No. 340-0-86 with respect to Partenio Rombaua's conjugal share in the disputed property.

SO ORDERED.

Austria-Martinez, Corona, Nachura, and Reyes, JJ., concur.

[1] Rollo, pp. 22-36. Penned by Associate Justice Teodoro P. Regino and concurred in by Associate Justices Delilah Vidallon-Magtolis and Josefina Guevara-Salonga.

[2] Id. at 38-39.

[3] Docketed as Civil Case No. 140-0-93, Regional Trial Court Branch 73 of Olongapo City.

[4] Juliana died in 1976.

[5] Rollo, pp. 40-46. Penned by Judge Alicia L. Santos.

[6] Id. at 46.

[7] Special Civil Action No. 340-0-86 for judicial partition, entitled "Paquito Rombaua, et al. vs. Partenio Rombaua" was filed in the Regional Trial Court of Olongapo City, Branch 75.

The decision dated July 31, 1990 (Rollo, pp. 49-56) in said case annuls the deed of extrajudicial partition and settlement entered into between the plaintiffs (herein petitioners) and their father Partenio, declares spouses Partenio and Juliana Rombaua conjugal owners of the subject property (the whole 409 square meters at No. 11 21st Street, East Bajac-Bajac, Olongapo City), and orders the partition thereof between the plaintiff heirs and their surviving father Partenio in the following manner:

- One half of the lot pertains to defendant Partenio Rombaua as his share in the conjugal assets or a portion with an area of 204.5 square meters;
- One half of the lot with an area of 204.5 square meters to be owned pro indiviso by the defendant Partenio Rombaua and the plaintiffs Paquito Rombaua, Leonor R. Opiana, Ruperto Rombaua, Julita R. Panganiban and Teresita R. Terlaje at 1/6 share each;
- To physically divide the lot in accordance with the sketch Exhibit E prepared by the parties, in such a manner that the conjugal share of the defendant Partenio Rombaua will be that portion presently occupied by him and where the carinderia is erected, with CANDIA ST. as the frontage;

- The one storey building with a floor area of 101 square meters and as described in the complaint to be divided, pro indiviso, in the proportion as indicated above; and

- The income on the building by way of rentals to be divided likewise in such proportion as indicated above. (Emphasis supplied)

[8] See footnote 7. The appeal with the Court of Appeals was docketed therein as CA-G.R. CV No. 34420. Proceedings in said appeal have since been terminated with the entry of judgment, on May 29, 1995, of the appellate court's Decision dated March 31, 1995, which affirmed in toto the trial court's decision declaring that Partenio was entitled to the front portion of the subject property, specifically that portion facing Canda St.

[9] Rollo, pp. 58-68.

[10] See footnote 7.

[11] *City of Mandaluyong v. Aguilar*, G.R. No. 137152, January 29, 2001, 350 SCRA 487, 499; Article 493 of the Civil Code provides that:

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 the mortgage, with respect to the co-owners shall be limited to the portion which may be allotted to him in the division upon termination of the co-ownership.

[12] *Id.* at 500.

[13] *Del Campo v. Court of Appeals*, G.R. No. 108228, February 1, 2001, 351 SCRA 1, 8.

[14] Rollo, p. 60.

[15] *Natcher v. Court of Appeals*, G.R. No. 133000, October 2, 2001, 366 SCRA 385, 392.

[16] *Heirs of Clemencia Parasac v. Republic*, G.R. No. 159910, May 4, 2006, 489 SCRA 498, citing *Calalang v. Register of Deeds of Quezon City*, G.R. Nos. 76265 & 83280, March 11, 1994, 231 SCRA 88, 99-100.

[17] *Looyuko v. Court of Appeals*, G.R. Nos. 102696, 102716, 108257 & 120954, July 12, 2001, 361 SCRA 150, 165.

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