

**LILIA SANCHEZ, PETITIONER, VS COURT OF APPEALS, HON.
VICTORINO S. ALVARO AS PRESIDING JUDGE, RTC-BR. 120,
CALOOCAN CITY, AND VIRGINIA TERIA, RESPONDENTS.**

G.R. No. 152766. June 20, 2003

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a Special Civil Action for Certiorari under Rule 65 of the Rules of Court to annul and set aside the Decision of the Court of Appeals dated 23 May 2001 as well as its Resolution dated 8 January 2002 in CA-G.R. SP No. 59182.

Lilia Sanchez, petitioner, constructed a house on a 76-square meter lot owned by her parents-in-law. The lot was registered under TCT No. 263624 with the following co-owners: Eliseo Sanchez married to Celia Sanchez, Marilyn Sanchez married to Nicanor Montalban, Lilian Sanchez, widow, Nenita Sanchez, single, Susana Sanchez married to Fernando Ramos, and Felipe Sanchez.[1] On 20 February 1995, the lot was registered under TCT No. 289216 in the name of private respondent Virginia Teria by virtue of a Deed of Absolute Sale supposed to have been executed on 23 June 1995[2] by all six (6) co-owners in her favor.[3] Petitioner claimed that she did not affix her signature on the document and subsequently refused to vacate the lot, thus prompting private respondent Virginia Teria to file an action for recovery of possession of the aforesaid lot with the Metropolitan Trial Court (MeTC) of Caloocan City sometime in September 1995, subsequently raffled to Br. 49 of that court.

On 12 February 1998, the MeTC-Br. 49 of Caloocan City ruled in favor of private respondent declaring that the sale was valid only to the extent of 5/6 of the lot and the other 1/6 remaining as the property of petitioner, on account of her signature in the Deed of Absolute Sale having been established as a forgery.

Petitioner then elevated her appeal to the Regional Trial Court of Caloocan City, subsequently assigned to Br. 120, which ordered the parties to file their respective memoranda of appeal. Counsel for petitioner did not comply with this order, nor even inform her of the developments in her case. Petitioner not having filed any pleading with the RTC of Caloocan City, the trial court affirmed the 27 July 1998 decision of the MeTC.

On 4 November 1998, the MeTC issued an order for the issuance of a writ of execution in favor of private respondent Virginia Teria, buyer of the property. On 4 November 1999 or a year later, a Notice to Vacate was served by the sheriff upon petitioner who however refused to heed the Notice.

On 28 April 1999 private respondent started demolishing petitioner's house without any special permit of demolition from the court.

Due to the demolition of her house which continued until 24 May 1999 petitioner was forced to inhabit the portion of the premises that used to serve as the house's toilet and laundry area.

On 29 October 1999 petitioner filed her Petition for Relief from Judgment with the RTC on the ground that she was not bound by the inaction of her counsel who failed to submit petitioner's appeal memorandum. However the

RTC denied the Petition and the subsequent Motion for Reconsideration.

On 14 June 2000 petitioner filed her Petition for Certiorari with the Court of Appeals alleging grave abuse of discretion on the part of the court a quo.

On 23 May 2001 the appellate court dismissed the petition for lack of merit. On 18 June 2001 petitioner filed a Motion for Reconsideration but the Court of Appeals denied the motion in its Resolution of 8 January 2002.

The only issue in this case is whether the Court of Appeals committed grave abuse of discretion in dismissing the challenged case before it.

As a matter of policy, the original jurisdiction of this Court to issue the so-called extraordinary writs should generally be exercised relative to actions or proceedings before the Court of Appeals or before constitutional or other tribunals or agencies the acts of which for some reason or other are not controllable by the Court of Appeals. Where the issuance of the extraordinary writ is also within the competence of the Court of Appeals or the Regional Trial Court, it is either of these courts that the specific action for the procurement of the writ must be presented. However, this Court must be convinced thoroughly that two (2) grounds exist before it gives due course to a certiorari petition under Rule 65: (a) The tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction; and (b) There is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.

Despite the procedural lapses present in this case, we are giving due course to this petition as there are matters that require immediate resolution on the merits to effect substantial justice.

The Rules of Court should be liberally construed in order to promote their object of securing a just, speedy and inexpensive disposition of every action or proceeding.[4]

The rules of procedure should be viewed as mere tools designed to aid the courts in the speedy, just and inexpensive determination of the cases before them. Liberal construction of the rules and the pleadings is the controlling principle to effect substantial justice.[5] Litigations should, as much as possible, be decided on their merits and not on mere technicalities.[6]

Verily, the negligence of petitioner's counsel cannot be deemed as negligence of petitioner herself in the case at bar. A notice to a lawyer who appears to have been unconscionably irresponsible cannot be considered as notice to his client.[7] Under the peculiar circumstances of this case, it appears from the records that counsel was negligent in not adequately protecting his client's interest, which necessarily calls for a liberal construction of the Rules.

The rationale for this approach is explained in *Ginete v. Court of Appeals* — [8]

This Court may suspend its own rules or exempt a particular case from its operation where the appellate court failed to obtain jurisdiction over the case owing to appellant's failure to perfect an appeal. Hence, with more reason would this Court suspend its own rules in cases where the appellate court has already obtained jurisdiction over the appealed case. This prerogative to relax procedural rules of the most mandatory character in terms of compliance, such as the period to appeal has been invoked and granted in a considerable number of cases x x x x

Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final, as we are now constrained to do in the instant case

x x x x

The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.

Aside from matters of life, liberty, honor or property which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (a) the existence of special or compelling circumstances, (b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (d) a lack of any showing that the review sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby.[9]

The suspension of the Rules is warranted in this case since the procedural infirmity was not entirely attributable to the fault or negligence of petitioner. Besides, substantial justice requires that we go into the merits of the case to resolve the present controversy that was brought about by the absence of any partition agreement among the parties who were co-owners of the subject lot in question. Hence, giving due course to the instant petition shall put an end to the dispute on the property held in common.

In *People's Homesite and Housing Corporation v. Tiongco*[10] we held:

There should be no dispute regarding the doctrine that normally notice to counsel is notice to parties, and that such doctrine has beneficent effects upon the prompt dispensation of justice. Its application to a given case, however, should be looked into and adopted, according to the surrounding circumstances; otherwise, in the court's desire to make a short-cut of the proceedings, it might foster, wittingly or unwittingly, dangerous collusions to the detriment of justice. It would then be easy for one lawyer to sell one's rights down the river, by just alleging that he just forgot every process of the court affecting his clients, because he was so busy. Under this circumstance, one should not insist that a notice to such irresponsible lawyer is also a notice to his clients.

Thus, we now look into the merits of the petition.

This case overlooks a basic yet significant principle of civil law: co-ownership. Throughout the proceedings from the MeTC to the Court of Appeals, the notion of co-ownership[11] was not sufficiently dealt with. We attempt to address this controversy in the interest of substantial justice. Certiorari should therefore be granted to cure this grave abuse of discretion.

Sanchez Roman defines co-ownership as "the right of common dominion which two or more persons have in a spiritual part of a thing, not materially or physically divided.[12] Manresa defines it as the "manifestation of the private right of ownership, which instead of being exercised by the owner in an exclusive manner over the things subject to it, is exercised by two or more owners and the undivided thing or right to which it refers is one and the same." [13]

The characteristics of co-ownership are: (a) plurality of subjects, who are the co-owners, (b) unity of or material indivision, which means that there is a single object which is not materially divided, and which is the element which binds the subjects, and, (c) the recognition of ideal shares, which determines the rights and obligations of the co-owners.[14]

In co-ownership, the relationship of such co-owner to the other co-owners is fiduciary in character and attribute. Whether established by law or by agreement of the co-owners, the property or thing held pro-indiviso is impressed with a fiducial nature so that each co-owner becomes a trustee for the benefit of his co-owners and he

may not do any act prejudicial to the interest of his co-owners.[15]

Thus, the legal effect of an agreement to preserve the properties in co-ownership is to create an express trust among the heirs as co-owners of the properties. Co-ownership is a form of trust and every co-owner is a trustee for the others.[16]

Before the partition of a land or thing held in common, no individual or co-owner can claim title to any definite portion thereof. All that the co-owner has is an ideal or abstract quota or proportionate share in the entire land or thing.[17]

Article 493 of the Civil Code gives the owner of an undivided interest in the property the right to freely sell and dispose of it, i.e., his undivided interest. He may validly lease his undivided interest to a third party independently of the other co-owners.[18] But he has no right to sell or alienate a concrete, specific or determinate part of the thing owned in common because his right over the thing is represented by a quota or ideal portion without any physical adjudication.[19]

Although assigned an aliquot but abstract part of the property, the metes and bounds of petitioner's lot has not been designated. As she was not a party to the Deed of Absolute Sale voluntarily entered into by the other co-owners, her right to 1/6 of the property must be respected. Partition needs to be effected to protect her right to her definite share and determine the boundaries of her property. Such partition must be done without prejudice to the rights of private respondent Virginia Teria as buyer of the 5/6 portion of the lot under dispute.

WHEREFORE, the Petition is GRANTED. The Decision of the Court of Appeals dated 23 May 2001 as well as its Resolution dated 8 January 2002 in CA-G.R. SP No. 59182 is ANNULLED and SET ASIDE. A survey of the questioned lot with TCT No. 289216 (formerly TCT No. 263624) by a duly licensed geodetic engineer and the PARTITION of the aforesaid lot are ORDERED.

Let the records of this case be REMANDED to MeTC-Br. 49, Caloocan City to effect the aforementioned survey and partition, as well as segregate the 1/6 portion appertaining to petitioner Lilia Sanchez.

The Deed of Absolute Sale by the other co-owners to Virginia Teria shall be RESPECTED insofar as the other undivided 5/6 portion of the property is concerned.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

Austria-Martinez, J., on official leave.

[1] Rollo, p. 19.

[2] Id. at 21.

[3] Id. at 23.

[4] See 1997 Rules of Civil Procedure, Rule 1, par. 6.

[5] Herrera, Comments on the 1997 Rules of Civil Procedure as Amended (1st ed., 1997) at 22, citing *Pacific Asia Overseas Shipping Corporation v. NLRC*, G.R. No. 76595, 6 May 1988, 161 SCRA 122; *International Corporate Bank v. IAC*, G.R. No. 69560, 30 June 1988, 163 SCRA 296.

[6] Ibid.

[7] Bayog v. Natino, G.R. No. 118691, 5 July 1996, 258 SCRA 378, 398.

[8] G.R. No. 127596, 24 September 1998, 296 SCRA 38, 49, 51, 52.

[9] Id. at 53 citing Paulino v. Court of Appeals, No. L-46723, 28 October 1977, 80 SCRA 257.

[10] No. L-18891, 28 November 1964, 12 SCRA 471,476.

[11] Under Art. 484 of the Civil Code, "[t]here is co-ownership whenever the ownership of an undivided thing or right belongs to different persons. In default of contracts, or of special provisions, co-ownership shall be governed by the provisions of this Title."

[12] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. II (4[th] Ed., 1994) at 161 citing 3 Sanchez Roman 162.

[13] Id. at 161 citing 3 Manresa 401.

[14] Id. at 161 citing 1 Camus 377 and 2 Castan 194.

[15] Id. at 161-162.

[16] Id. at 162 citing Sotto v. Teves, No. L-38018, 31 October 1978, 86 SCRA 154.

[17] Id. at 200-201 citing Oliveras v. Lopez, No. L-29727, 14 December 1988, 168 SCRA 431; See Civil Code, Art. 493.

[18] Id. at 201 citing Vda. de Castro v. Atienza, No. L-25014, 17 October 1973, 53 SCRA 264.

[19] Id. at 201 citing 2 Oyuelos 161 and cases.

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