

JOSEPH CUA, PETITIONER, VS. GLORIA A. VARGAS, AURORA VARGAS, RAMON VARGAS, MARITES VARGAS, EDELINA VARGAS AND GEMMA VARGAS, RESPONDENTS.

G.R. NO. 156536. October 31, 2006

Ponente: AZCUNA, J.

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AZCUNA, J.:

This is a petition for review under Rule 45 of the Rules of Court seeking the reversal of the decision[1] dated March 26, 2002, and the resolution[2] dated December 17, 2002, of the Court of Appeals in CA-G.R. SP No. 59869 entitled "Gloria A. Vargas, Aurora Vargas, Ramon Vargas, Marites Vargas, Edelina Vargas and Gemma Vargas v. Joseph Cua."

The facts are as follows:

A parcel of residential land with an area of 99 square meters located in San Juan, Virac, Catanduanes was left behind by the late Paulina Vargas. On February 4, 1994, a notarized Extra Judicial Settlement Among Heirs was executed by and among Paulina Vargas' heirs, namely Ester Vargas, Visitacion Vargas, Juan Vargas, Zenaida V. Matienzo, Rosario V. Forteza, Andres Vargas, Gloria Vargas, Antonina Vargas and Florentino Vargas, partitioning and adjudicating unto themselves the lot in question, each one of them getting a share of 11 square meters. Florentino, Andres, Antonina and Gloria, however, did not sign the document. Only Ester, Visitacion, Juan, Zenaida and Rosario signed it. The Extra Judicial Settlement Among Heirs was published in the Catanduanes Tribune for three consecutive weeks.[3]

On November 15, 1994, an Extra Judicial Settlement Among Heirs with Sale[4] was again executed by and among the same heirs over the same property and also with the same sharings. Once more, only Ester, Visitacion, Juan, Zenaida and Rosario signed the document and their respective shares totaling 55 square meters were sold to Joseph Cua, petitioner herein.

According to Gloria Vargas, the widow of Santiago Vargas and one of respondents herein, she came to know of the Extra Judicial Settlement Among Heirs with Sale dated November 16, 1994 only when the original house built on the lot was being demolished sometime in May 1995.[5] She likewise claimed she was unaware that an earlier Extra Judicial Settlement Among Heirs dated February 4, 1994 involving the same property had been published in the Catanduanes Tribune.[6]

After knowing of the sale of the 55 square meters to petitioner, Gloria Vargas tried to redeem the property, with the following letter[7] sent to petitioner on her behalf:

29th June 1995

Mr. Joseph Cua
Capilihan, Virac, Catanduanes

Sir:

This is in behalf of my client, Ms. Aurora Vargas,[8] (c/o Atty. Prospero V. Tablizo) one of the lawful heirs of the late Paulina Vargas, original owner of Lot No. 214 of Virac, Poblacion covered by ARP No. 031-0031 in her name.

I understand that a document "Extra Judicial Settlement Among Heirs with Sale" was executed by some of my client's co-heirs and alleged representatives of other co-heirs, by virtue of which document you acquired by purchase from the signatories to the said document, five (5) shares with a total area of fifty-five square meters of the above-described land.

This is to serve you notice that my client shall exercise her right of legal redemption of said five (5) shares as well as other shares which you may likewise have acquired by purchase. And you are hereby given an option to agree to legal redemption within a period of fifteen (15) days from your receipt hereof.

Should you fail to convey to me your agreement within said 15-day-period, proper legal action shall be taken by my client to redeem said shares.

Thank you.

Very truly yours,

(Sgd.)

JUAN G. ATENCIA

When the offer to redeem was refused and after having failed to reach an amicable settlement at the barangay level,[9] Gloria Vargas filed a case for annulment of Extra Judicial Settlement and Legal Redemption of the lot with the Municipal Trial Court (MTC) of Virac, Catanduanes against petitioner and consigned the amount of P100,000 which is the amount of the purchase with the Clerk of Court on May 20, 1996.[10] Joining her in the action were her children with Santiago, namely, Aurora, Ramon, Marites, Edelina and Gemma, all surnamed Vargas.

Subsequently, Carlos Gianan, Jr. and Gloria Arcilla, heirs of the alleged primitive owner of the lot in question, Pedro Lakandula, intervened in the case.[11]

Respondents claimed that as co-owners of the property, they may be subrogated to the rights of the purchaser by reimbursing him the price of the sale. They likewise alleged that the 30-day period following a written notice by the vendors to their co-owners for them to exercise the right of redemption of the property had not yet set in as no written notice was sent to them. In effect, they claimed that the Extra Judicial Settlement Among Heirs and the Extra Judicial Settlement Among Heirs with Sale were null and void and had no legal and binding effect on them.[12]

After trial on the merits, the MTC rendered a decision[13] in favor of petitioner, dismissing the complaint as well as the complaint-in-intervention for lack of merit, and declaring the Deed of Extra Judicial Settlement Among Heirs with Sale valid and binding. The MTC upheld the sale to petitioner because the transaction purportedly occurred after the partition of the property among the co-owner heirs. The MTC opined that the other heirs could validly dispose of their respective shares. Moreover, the MTC found that although there was a failure to strictly comply with the requirements under Article 1088 of the Civil Code[14] for a written notice of sale to be served upon respondents by the vendors prior to the exercise of the former's right of redemption, this deficiency was cured by respondents' actual knowledge of the sale, which was more than 30 days before the filing of their complaint, and their consignment of the purchase price with the Clerk of Court, so that the latter action came too late. Finally, the MTC ruled that respondents failed to establish by competent proof petitioner's bad faith in purchasing the portion of the property owned by respondents' co-heirs.[15]

On appeal, the Regional Trial Court (RTC), Branch 42, of Virac, Catanduanes affirmed the MTC decision in a judgment dated November 25, 1999. The matter was thereafter raised to the Court of Appeals (CA).

The CA reversed the ruling of both lower courts in the assailed decision dated March 26, 2002, declaring that the Extra Judicial Settlement Among Heirs and the Extra Judicial Settlement Among Heirs with Sale, dated February 4, 1994 and November 15, 1994, respectively, were void and without any legal effect. The CA held that, pursuant to Section 1, Rule 74 of the Rules of Court, [16] the extrajudicial settlement made by the other co-heirs is not binding upon respondents considering the latter never participated in it nor did they ever signify their consent to the same.

His motion for reconsideration having been denied, petitioner filed the present petition for review.

The issues are:

Whether heirs are deemed constructively notified and bound, regardless of their failure to participate therein, by an extrajudicial settlement and partition of estate when the extrajudicial settlement and partition has been duly published; and,

Assuming a published extrajudicial settlement and partition does not bind persons who did not participate therein, whether the written notice required to be served by an heir to his co-heirs in connection with the sale of hereditary rights to a stranger before partition under Article 1088 of the Civil Code[17] can be dispensed with when such co-heirs have actual knowledge of the sale such that the 30-day period within which a co-heir can exercise the right to be subrogated to the rights of a purchaser shall commence from the date of actual knowledge of the sale.

Petitioner argues, as follows:

Firstly, the acquisition by petitioner of the subject property subsequent to the extrajudicial partition was valid because the partition was duly published. The publication of the same constitutes due notice to respondents and signifies their implied acquiescence thereon. Respondents are therefore estopped from denying the validity of the partition and sale at this late stage. Considering that the partition was valid, respondents no longer have the right to redeem the property.

Secondly, petitioner is a possessor and builder in good faith.

Thirdly, the MTC had no jurisdiction over the complaint because its subject matter was incapable of pecuniary estimation. The complaint should have been filed with the RTC.

Fourthly, there was a non-joinder of indispensable parties, the co-heirs who sold their interest in the subject property not having been impleaded by respondents.

Fifthly, the appeal to the CA should have been dismissed as it was not properly verified by respondents. Gloria Vargas failed to indicate that she was authorized to represent the other respondents (petitioners therein) to initiate the petition. Moreover, the verification was inadequate because it did not state the basis of the alleged truth and/or correctness of the material allegations in the petition.

The petition lacks merit.

The procedure outlined in Section 1 of Rule 74 is an ex parte proceeding. The rule plainly states, however, that persons who do not participate or had no notice of an extrajudicial settlement will not be bound thereby.[18] It contemplates a notice that has been sent out or issued before any deed of settlement and/or partition is agreed upon (i.e., a notice calling all interested parties to participate in the said deed of extrajudicial settlement and partition), and not after such an agreement has already been executed[19] as what happened in the instant case

with the publication of the first deed of extrajudicial settlement among heirs.

The publication of the settlement does not constitute constructive notice to the heirs who had no knowledge or did not take part in it because the same was notice after the fact of execution. The requirement of publication is geared for the protection of creditors and was never intended to deprive heirs of their lawful participation in the decedent's estate. In this connection, the records of the present case confirm that respondents never signed either of the settlement documents, having discovered their existence only shortly before the filing of the present complaint. Following Rule 74, these extrajudicial settlements do not bind respondents, and the partition made without their knowledge and consent is invalid insofar as they are concerned.

This is not to say, though, that respondents' co-heirs cannot validly sell their hereditary rights to third persons even before the partition of the estate. The heirs who actually participated in the execution of the extrajudicial settlements, which included the sale to petitioner of their pro indiviso shares in the subject property, are bound by the same. Nevertheless, respondents are given the right to redeem these shares pursuant to Article 1088 of the Civil Code. The right to redeem was never lost because respondents were never notified in writing of the actual sale by their co-heirs. Based on the provision, there is a need for written notice to start the period of redemption, thus:

Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor. (Emphasis supplied.)

It bears emphasis that the period of one month shall be reckoned from the time that a co-heir is notified in writing by the vendor of the actual sale. Written notice is indispensable and mandatory,[20] actual knowledge of the sale acquired in some other manner by the redemptioner notwithstanding. It cannot be counted from the time advance notice is given of an impending or contemplated sale. The law gives the co-heir thirty days from the time written notice of the actual sale within which to make up his or her mind and decide to repurchase or effect the redemption.[21]

Though the Code does not prescribe any particular form of written notice nor any distinctive method for written notification of redemption, the method of notification remains exclusive, there being no alternative provided by law.[22] This proceeds from the very purpose of Article 1088, which is to keep strangers to the family out of a joint ownership, if, as is often the case, the presence of outsiders be undesirable and the other heir or heirs be willing and in a position to repurchase the share sold.[23]

It should be kept in mind that the obligation to serve written notice devolves upon the vendor co-heirs because the latter are in the best position to know the other co-owners who, under the law, must be notified of the sale.[24] This will remove all uncertainty as to the fact of the sale, its terms and its perfection and validity, and quiet any doubt that the alienation is not definitive.[25] As a result, the party notified need not entertain doubt that the seller may still contest the alienation. [26]

Considering, therefore, that respondents' co-heirs failed to comply with this requirement, there is no legal impediment to allowing respondents to redeem the shares sold to petitioner given the former's obvious willingness and capacity to do so.

Likewise untenable is petitioner's contention that he is a builder in good faith. Good faith consists in the belief of the builder that the land the latter is building on is one's own without knowledge of any defect or flaw in one's title.[27] Petitioner derived his title from the Extra Judicial Settlement Among Heirs With Sale dated November 15, 1994. He was very much aware that not all of the heirs participated therein as it was evident on the face of the

document itself. Because the property had not yet been partitioned in accordance with the Rules of Court, no particular portion of the property could have been identified as yet and delineated as the object of the sale. This is because the alienation made by respondents' co-heirs was limited to the portion which may be allotted to them in the division upon the termination of the co-ownership. Despite this glaring fact, and over the protests of respondents, petitioner still constructed improvements on the property. For this reason, his claim of good faith lacks credence.

As to the issue of lack of jurisdiction, petitioner is estopped from raising the same for the first time on appeal. Petitioner actively participated in the proceedings below and sought affirmative ruling from the lower courts to uphold the validity of the sale to him of a portion of the subject property embodied in the extrajudicial settlement among heirs. Having failed to seasonably raise this defense, he cannot, under the peculiar circumstances of this case, be permitted to challenge the jurisdiction of the lower court at this late stage. While it is a rule that a jurisdictional question may be raised at any time, an exception arises where estoppel has already supervened.

Estoppel sets in when a party participates in all stages of a case before challenging the jurisdiction of the lower court. One cannot belatedly reject or repudiate its decision after voluntarily submitting to its jurisdiction, just to secure affirmative relief against one's opponent or after failing to obtain such relief. The Court has, time and again, frowned upon the undesirable practice of a party submitting a case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction when adverse.[28]

Petitioner's fourth argument, that there is a non-joinder of indispensable parties, similarly lacks merit. An indispensable party is a party-in-interest without whom there can be no final determination of an action and who is required to be joined as either plaintiff or defendant.[29] The party's interest in the subject matter of the suit and in the relief sought is so inextricably intertwined with the other parties that the former's legal presence as a party to the proceeding is an absolute necessity. Hence, an indispensable party is one whose interest will be directly affected by the court's action in the litigation. In the absence of such indispensable party, there cannot be a resolution of the controversy before the court which is effective, complete, or equitable.[30]

In relation to this, it must be kept in mind that the complaint filed by respondents ultimately prayed that they be allowed to redeem the shares in the property sold by their co-heirs. Significantly, the right of the other heirs to sell their undivided share in the property to petitioner is not in dispute. Respondents concede that the other heirs acted within their hereditary rights in doing so to the effect that the latter completely and effectively relinquished their interests in the property in favor of petitioner. Petitioner

thus stepped into the shoes of the other heirs to become a co-owner of the property with respondents. As a result, only petitioner's presence is absolutely required for a complete and final determination of the controversy because what respondents seek is to be subrogated to his rights as a purchaser.

Finally, petitioner contends that the petition filed by respondents with the CA should have been dismissed because the verification and certificate of non-forum shopping appended to it were defective, citing specifically the failure of respondent Gloria Vargas to: (1) indicate that she was authorized to represent her co-respondents in the petition, and (2) state the basis of the alleged truth of the allegations.

The general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs or petitioners in a case and the signature of only one of them is insufficient.[31] Nevertheless, the rules on forum shopping, which were designed to promote and facilitate the orderly administration of justice, should not be interpreted with such absolute literalness as to subvert their own ultimate and legitimate objective. Strict compliance with the provisions regarding the certificate of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded.[32] Under justifiable

circumstances, the Court has relaxed the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional.[33]

Thus, when all the petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the rules.[34] The co-respondents of respondent Gloria Vargas in this case were her children. In order not to defeat the ends of justice, the Court deems it sufficient that she signed the petition on their behalf and as their representative.

WHEREFORE, the petition is DENIED for lack of merit. Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] CA Rollo, pp. 193-209.

[2] Id. at 331.

[3] Records (MTC), p. 5.

[4] Id. at 170-172.

[5] Transcript of Stenographic Notes (TSN) dated January 16, 1997, pp. 9-10; TSN dated January 17, 1997, pp. 2-4.

[6] TSN dated January 17, 1997, p. 4.

[7] Records (MTC), p. 166.

[8] Aurora Vargas is the daughter of Gloria Vargas.

[9] After the conciliation proceedings between the parties failed, a Certification to File Action was issued by the Lupon Chairman of Barangay San Juan, Virac, Catanduanes on November 14, 1995.

[10] Records (MTC), p. 176.

[11] Id. at 34-57.

[12] Records (RTC), pp. 86-87.

[13] Records (MTC), pp. 380-396.

[14] CIVIL CODE, Article 1088:

Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor.

[15] Records (MTC), pp. 391-395.

[16] RULES OF COURT, Section 1. Extra judicial settlement by agreement between heirs:

If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition. x x x

The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under section 4 of this rule. x x x The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.

[17] Supra note 14.

[18] RULES OF COURT, Rule 74, Section 1-

x x x

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof .

[19] Pedrosa v. CA, G.R. No. 118680, March 5, 2001, 353 SCRA 620, 628.

[20] Verdad v. CA, G.R. No. 109972, April 29, 1996, 256 SCRA 593.

[21] Tolentino, Arturo M., "Commentaries and Jurisprudence on the Civil Code," Vol. III, pp. 606-607 (2001).

[22] Garcia v. Calaliman, G.R. No. 26855, April 17, 1989, 172 SCRA 201.

[23] Hermoso v. CA, G.R. No. 108580, December 29, 1998, 300 SCRA 516, quoting De Jesus v. Manglapus, 41 Phil. 188 (1948).

[24] De Ape v. CA, G.R. No. 133638, April 15, 2005, 456 SCRA 193.

[25] Verdad v. CA, supra note 20, quoting Cabrera v. Villanueva, G.R. No. L-75069, April 15, 1988, 160 SCRA 672.

[26] De Ape v. CA, supra note 24.

[27] Ongsitco v. CA, G.R. No. 121527, March 29, 1996, 255 SCRA 703, quoting Pleasantville Development Corporation v. CA, G.R. No. 79688, February 1, 1996, 253 SCRA 10, and Floreza v. Evangelista, G.R. No. L-25462, February 21, 1980, 96 SCRA 130.

[28] David v. Cordova, G.R. No. 152992. July 28, 2005, 464 SCRA 384.

[29] RULES OF COURT, Rule 3, Section 7-

Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

[30] PNB v. Milita, G.R. Nos. 164801 and 165165, August 18, 2005, 467 SCRA 377.

[31] Gonzales v. Balikatan Kilusang Bayan sa Pananalapi, Inc., G.R. No. 150859, March 28, 2005, 454 SCRA 111; Andres v. Cuevas, G.R. No. 150869, June 9, 2005, 460 SCRA 38.

[32] San Miguel v. Aballa, G.R. No. 149011, June 28, 2005, 461 SCRA 392.

[33] *Olarte v. Office of the President*, G.R. No. 165821, June 21, 2005, 460 SCRA 561.

[34] *HLC Construction and Development Corporation v. Emily Homes Subdivision Homeowners Association*, G.R. No. 139360, September 23, 2003, 411 SCRA 504.

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