

**SPOUSES ANTONIO AND SOLIDAD DIVINAGRACIA, JUDITH TULOD,
CRESENCIO TAUTOAN, VICENTE TAUTOAN, MARIA BEATRIZ
PAREJA, FABIAN MASONG, MACARIO MASONG, APOLINARIA
MASONG, EPIFANIA MASO...**

G.R. NO. 159660. February 20, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a petition for review on certiorari questioning the Decision[1] of the Court of Appeals dated 21 May 2003 reversing the Decision of the Regional Trial Court (RTC), Branch 61 of Bogu, Cebu, in Civil Case No. BOGO-00099, for quieting of title, declaration of nullity of extra-judicial partition, transfer certificate of title and tax declarations. Being questioned as well is the Resolution[2] dated 28 July 2003 denying petitioners' motion for reconsideration.

The controversy affects parcels of land situated at Bogu, Cebu, specifically, the lots previously known as Lots 3116 and 3108 of the Bogu Cadastre.[3] Petitioners, as plaintiffs before the RTC, claim to be owners of these lands which they acquired from (1) the heirs of Agustin Nuñez, the original owner, who died intestate in 1924 and whose properties, including the lands in question, were extra judicially partitioned by his surviving spouse Sofia and his legal heirs in October 1928; and (2) from third persons who acquired the lands, as partitioned, from Agustin's heirs. Petitioners assert that they and their predecessors-in-interest are in actual, peaceful adverse and continuous possession of their shares in the parcels of land for more than 60 years until they were disturbed in their possession by respondents.[4]

Respondents, as defendants before the RTC, are the sole living heirs of seven of the parties to the 1928 partition. On 26 February 1992, they executed a document entitled, "Extrajudicial Declaration of Heirs and Confirmation of a Previous Oral Partition" affecting the two properties followed a year later by an "Extrajudicial Partition of the Estate of Deceased Person Among Heirs" (1992-1993 partition for brevity).

The findings of fact of the Court of Appeals shed light into the events that transpired after the 1992-1993 partition, thus:

One of these two lands, Lot 3116, was issued an Original Certificate of Title RO-13176 (O-13175) in which the third deed of partition was registered specifying the following shares of the heirs:

Lot 3116-A to Conchita Nuñez, with 9,681 sq. m.

Lot 3116-B to Miguel Bunsocan, with 9,683 sq. m.

Lot 3116-C to Josisimo Arcadio, with 9,682 sq. m.

Lot 3116-D to Luis Nuñez to 9,682 sq. m.

Lot 3116-E to Segundo Nuñez with 9,683 sq. m.

Lot 3116-F to Leonidisa N. Cometa, Leopoldo Nuñez

Marlyn Nuñez and Demetrio Nuñez, Jr., with 9,682 sq. m.

Lot 3116-G to Sabina Sinoy, with 9,683 sq. m.

As a result of this instrument, OCT RO-13176 (0-13175) was cancelled and in lieu thereof, Transfer Certificates of Title Nos. T-84670 to T-84676 were issued in May 1994.

The other land, Lot 3108, was covered by Original Certificate of Title RO-13177 (0-13173). The 1993 partition agreement also adjudicated this property to the heirs, as follows:

- Lot 3108-A to Sabina Sinoy, with 10,330 sq. m.
- Lot 3108-B to Leonidisa Cometa, Leopoldo Nuñez, Marlyn Nuñez and Demetrio Nuñez Jr. with 10,330 sq. m.
- Lot 3108-C to Segundo Nuñez, with 10,330 sq. m.
- Lot 3108-D to Luis Nuñez with 10,330 sq. m.
- Lot 3108-E to Conchita Nuñez, with 10,331 sq. m.
- Lot 3108-F to Miguel Bunsocan, with 10,330 sq. m.
- Lot 3108-G to Josisimo Arcadio, with 10,330 sq. m.

Accordingly, OCT RO-3177 (0-13173) was cancelled and replaced on the same date by Transfer Certificates of Title No. T-84677 to T-84683.

The plaintiffs in this case claim that they acquired these lots from Agustin's heirs and from third persons who acquired from those heirs. Relying on the superiority of the 1928 partition, prius in tempore potior in jure, they filed an action against these adjudicatees for the declaration of nullity of the subsequent extrajudicial declaration of heirs made in 1992 and all the titles issued by virtue thereof. The complaint was docketed as CEB-16645 and raffled to branch 22 of the RTC of Cebu.

In time, the defendants filed their answer. They disclaimed knowledge of the 1928 instrument which was not registered, and argued that their partition was legal because they were the heirs of the parties to the 1928 instrument and their right to the properties commenced from the time of the death of their grandparents. They accordingly had the right to partition the property or confirm a previous oral partition, and the efficacy of their acts had been firmed up by the issuance in their names of subsequent transfer certificates of title. It is alleged that the plaintiffs are not heirs of the parties to the partition and have not shown the legal mode by which they acquired the properties. They are allegedly guilty of laches for not enforcing their rights over an uncommonly long period of time.

Before pre-trial went underway, the brothers Alberto and Hilario Tudtud intervened as the purchasers of several of the lots into which the two properties were divided. Through separate deeds of sale, Alberto had acquired Lot 3116-A from Conchita Nuñez, 3116-F from Leonidisa Cometa, et al., and 3116-G from Sabina Sinoy. These conveyances led to the transfer of titles to Alberto Tudtud under T-90737, T-90735 and T-90738, respectively. Hilario, on the other hand, acquired Lot 3116-D from Luis Nuñez, 3108-A from Sabina Sinoy, 3108-B from Leonidisa Cometa, et. al., 3108-C from Segundo Nuñez, 3108-D from Luis Nuñez and 3108-E from Conchita Nuñez. The acquisitions were also covered by deeds of sale, but as far as the evidence shows, only the titles to Lot 3116-D and 3108-B were transferred to him under T-90736 and T-90739.[5]

In a decision dated 18 August 1998, the trial court ruled in favor of herein petitioners, the dispositive portion of which reads:

WHEREFORE, premises considered judgment is hereby rendered in favor of the plaintiffs and against the defendants and Intervenor, declaring the extra-judicial declaration of heirs and confirmation of the oral sale as well as TCT Nos. 84670 to 84683 in the name of defendants as null and void and ordering defendants and intervenors to jointly and severally pay the plaintiffs the sum of P50,000.00 as attorney's fee and P10,000.00 as litigation expenses.[6]

On appeal, the Court of Appeals reversed the trial court decision and dismissed the case. Petitioners' motion for reconsideration having been denied, they are now before us with the following arguments:

I.

THE COURT OF APPEALS ERRED IN NOT AFFIRMING THE FINDING OF THE TRIAL COURT THAT EXTRAJUDICIAL DECLARATION OF HEIRS AND CONFIRMATION OF A PREVIOUS ORAL PARTITION, EXHIBIT "A" AND EXTRAJUDICIAL PARTITION OF THE ESTATE OF DECEASED PERSON AMONG HEIRS, EXHIBIT "B", WERE NULL AND VOID.

II.

THE COURT OF APPEALS ERRED IN NOT AFFIRMING THE FINDING OF THE LOWER COURT THAT THE RESPONDENTS (INTERVENORS) WERE PURCHASERS IN BAD FAITH AND THAT THE DEEDS OF SALE EXECUTED IN THEIR FAVOR WERE NULL AND VOID.

III.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE PETITIONERS HAVE NOT PRESENTED ANY PROOF THAT THEY HAVE LEGAL AND EQUITABLE INTEREST IN THE PROPERTIES IN LITIGATION.[7]

We do not find any justification to disturb the findings of the Court of Appeals. We agree that petitioners have not proved by preponderance of evidence their legal or equitable title or interest in the properties in litigation.

The action to quiet title to property or to remove a cloud thereon is a remedy or form of proceeding originating in equity jurisprudence.[8] The plaintiff in such an action seeks for adjudication that any adverse claim of title or interest in the property in question is invalid, so that the plaintiff and those claiming under him or her may forever be free from any danger of the hostile claim.[9] However, in order to maintain an action to quiet title or remove a cloud thereon, the plaintiff must have a legal or equitable title to the property in question or some interest therein. Thus, Article 477 of the Civil Code prescribes that:

Art. 477. The plaintiff must have legal or equitable title to, or interest in the real property which is the subject-matter of the action. He need not be in possession of said property.

In the case under consideration, petitioners maintain that although they do not have legal, i.e., registered,[10] title over the subject parcels of land, they have equitable or beneficial ownership having obtained these properties from the parties to the 1928 partition and/or from third persons who acquired from these parties.

Of the 12[11] petitioners, however, only one testified as to her alleged acquisition of rights over the subject properties. The 11 other petitioners chose to remain silent. Not only did they not bother to take the witness stand, neither did they present any document other than the 1928 partition that could prove their beneficial ownership over the subject properties. What is clear only is that they are possessors/occupants of these properties. However, since it is equally clear that petitioners are not heirs of the parties to the 1928 partition, it was incumbent upon them to show, by documentary and testimonial evidence, the link that connects their possession to the 1928 partition without which their mission must necessarily flounder and fail. The Court of Appeals thus correctly ruled that –

With less reason may We uphold the case of the other plaintiffs. It was only Cuambot who has come forward with her evidence, and although scrappy, it was only intended to prove her claim and not the claims of the others who never bothered to appear. Under these circumstances, the burden has not shifted to the defendants to prove their own rights to the disputed properties, and to the intervenors to justify their acquisitions from the

defendants. In fine, We agree with the appellants that the plaintiffs have failed to prove their cause of action.[12]

Petitioners insist, however, that they need not take the witness stand as their co-petitioner, Epifania Masong-Cuambot, testified in their behalf. Unfortunately for petitioners, we are far from swayed by this argument.

Cuambot testified on 28 May 1996. The purpose of her testimony was “to prove that she is the owner of a parcel of land located at Binabag, Bogo, Cebu based on a deed of extra judicial settlement of the estate of Agustin Muñoz, dated October 3, 1928.”[13] Her testimony was never offered to prove that her interest in subject properties was shared in common with her co-petitioners and that she was, in fact, testifying in their behalf. This being the case, petitioners cannot now insist that Cuambot’s testimony and documents are proof of their own claims. Verily, courts cannot consider any evidence which has not been formally offered.[14]

Besides, consistent with the purpose of her testimony, Cuambot endeavored to prove only her title to subject properties. The sole reference she made to her 11 co-petitioners was when she stated that they likewise owned properties in Binabag, Bogo, and that all of them executed affidavits of adverse claim when they learned that other people were claiming their land.[15] By no stretch of the imagination can we consider such testimony as proof of petitioners’ ownership over subject properties.

That the 11 petitioners’ efforts were futile begs the question of whether or not the 12th petitioner, Cuambot, has succeeded where they have failed.

To this question, the Court of Appeals has the answer, thus:

In their appeal brief, the plaintiffs cited the testimony of Epifania Masong Cuambot for evidence of her acquisition of rights. Epifania is the only one among the 12 plaintiffs who testified, and in her testimony, she identified the lands she was claiming to be those that she inherited from her parents Dalmacio and Maria Masong, and those she bought from her sister Justina Masong. The properties that she bought from Justina in 1974 were covered by a notarized deed of sale, in which one parcel located at Bogo was described as Lot 3176 and the other was said to be located at Mabuli, Tabogon. The intervenors have correctly pointed out that Lot 3176 was a different property from the subject of the 1992-1993 partition, Lot 3116 and 3108, while the identity of the Mabuli, Tabogon property remained unclear. This could only mean that Cuambot failed in showing that these properties were among the lands subsequently partitioned and registered by the defendants. Another deed of sale was earlier executed by Guillermo and Sabina Pepito in 1962 in favor of Cuambot’s parents, but the lot covered by the transaction was also part of the selfsame Lot 3176 that was not adjudicated in the 1992-1993 partition.

There remains the June 1950 deed of sale in which the (sic) Epifania’s parents bought three parcels of land located at Binabag, Bogo and San Remigio from Miguel Bogsukan. This document now traces the properties to its very source. It says that the lands were acquired by Bogsukan from Roman Nuñez who acquired them in turn from his father Agustin Nuñez by virtue of the 1928 partition.

If we go by this instrument, the existence of which as we have noted was affirmed by the trial court, there were three parcels allotted to Roman from Agustin’s estate. The location and description of these properties tally with those of the lots covered by the sale to Cuambot’s parents. The properties that eventually went to them as recorded in the 1950 deed of sale were, therefore, those that came from Roman and ultimately from Agustin. We are satisfied that this particular plaintiff has proven her right to lands covered by the 1928 partition.

When the defendants, who were all descendants of Agustin, effected the 1992-1993 partition of the same lands, they were doing nothing more than disregarding the 1928 partition. They could do this if they were the only

surviving heirs and the rights of third parties had not intervened. But it may now be argued that Cuambot's rights would be unavoidably affected by such act.

The pivotal question is whether the lands claimed by Cuambot are among those adjudicated by the defendants and covered by the titles sought to be nullified. This is where the difficulty in her case already becomes intractable. We have gone to extreme length in searching the records for even the slightest clues of a connection. But there are none. The acquisitions of the Tudtuds could not be traced to the original patrimony of Cuambot's ancestor Roman Nuñez. All the lots acquired by the intervenors came from his co-heirs. The lands allotted to Roman under the 1928 partition are identified in a manner that also tells us they could not be the properties that went to the defendants under the 1992-93 partition. We looked into how the properties under these two partitions, separated by 64 years, were described, and they simply do not coincide. This observation may be inconclusive, but it must be borne in mind that under the civil law, as we have earlier mentioned, it is the plaintiff who must prove the identity of the land he is claiming. Cuambot has miserably failed in this duty, and as a result, her case falls. This Court cannot be, as Justice Cardozo once put it in striking metaphor, a knight errant that roams the countryside at will for its own ideals of truth and beauty. Under our adversarial system of justice, the parties must put their case before the court assisted by legal advocates of their choice, and the court adjudicates only on such evidence as are presented to it. As it is, the paper trail we have pursued in this case already goes beyond the ken of the inquiry courts are wont to do.[16]

Summarizing the foregoing, the Court of Appeals held that although Cuambot succeeded in showing that she owns properties that can be traced to Roman Nuñez, a party to the 1928 partition, still, she has failed to show that these properties are the very same ones partitioned by respondents in 1992 and 1993.

We agree. We find it baffling that Cuambot and the rest of the petitioners have not bothered to identify the exact locations of their properties. Thus, we ask, is Cuambot occupying and claiming title over all the parcels of land which are now covered by TCT Nos. T-84670 to T-84683, or is she claiming only certain portions thereof? Which of the properties, now covered by TCT Nos. T-84670 to T-84683, originally belonged to Roman Nuñez?

Although Cuambot can trace her rights ultimately to Roman Nuñez, one of Agustin's heirs, it does not appear that the properties of Roman Nuñez were included in the 1992-1993 partition. The 1992-1993 partition pertains only to the properties of the other parties to the 1928 partition, in particular, Tomas, Mariano, Isidra, Catalina, Encarnacion, Leon and Pedro, all surnamed Nuñez.

The failure of Cuambot to identify with certainty the parcels of land she is claiming is a fatal omission on her part. In *Sese v. Intermediate Appellate Court*,^[17] we emphasized that "in order to maintain an action to recover ownership of real property, the person who claims that he has a better right to the property must prove not only his ownership of the same, but first, he must satisfactorily prove the identity thereof."

Considering that there is paucity of proof that petitioners have real or equitable title or interest over the subject properties, there is no longer any need to resolve the two other issues in this case, i.e., whether or not the 1992-1993 partition was void and whether or not the intervenors were buyers in bad faith.

WHEREFORE, premises considered, the instant petition is DENIED. The Decision and Resolution of the Court of Appeals, dated 21 May 2003 and 28 July 2003, respectively, are AFFIRMED. No costs.

SO ORDERED.

Panganiban, C.J., (Chairman), Ynares-Santiago and Austria-Martinez, JJ., concur.

Callejo, Sr., J., On leave.

[1] Penned by Associate Justice Mario L. Guariña III with Associate Justices Eubulo G. Verzola and Martin S. Villarama, Jr., concurring (Rollo, pp. 76-82).

[2] Rollo, p. 96.

[3] The parties have consistently referred to subject parcels of land as Lots 3116 and 3108 of the Bogo Cadastre. Lot 3116, however, was actually issued an Original Certificate of Title (OCT No. RO-13176 [O-13175] of the Registry of Deeds of Cebu Province) as early as 14 December 1925 as evidenced by respondents' Exhibit "1." As for Lot 3108, if we go by respondents' Answer dated 26 December 1994, it was issued OCT No. 13173. Said OCT No. 13173, or a copy thereof, was not presented in court. Suffice it to say that there is no dispute that Lots 3116 and 3108 are registered lands.

[4] Records, pp. 1-7.

[5] Rollo, pp. 77-77(a).

[6]Id., p. 74.

[7] d., p. 12.

[8] A.M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. II, p. 137 (1983 ed.); Baricuatro, Jr. v. Court of Appeals, 382 Phil. 15, 25 (2000).

[9] Id.

[10]Gapacan v. Omipet, 436 Phil. 177, 187 (2002).

[11] We have adopted the Court of Appeals' treatment of the spouses Antonio and Solidad Divinagracia as one entity.

[12] Rollo, p. 81.

[13]TSN, 28 May 1996, p. 11.

[14] Section 34, Rule 132, Rules of Court. Offer of evidence. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[15] TSN, 28 May 1996, pp. 19-20.

[16] Rollo, pp. 79-81.

[17]G.R. No. L-66186, 31 July 1987, 152 SCRA 585, 591 (citations omitted); See also Heirs of Vencilao v. Court of Appeals, 351 Phil. 815, 824 (1998).

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