

**CONCEPCION B. ALCANTARA, HEREIN SUBSTITUTED BY HER SON
DR. ANTONIO B. ALCANTARA, PETITIONER, VS. HILARIA ROBLE DE
TEMPLA, ALBERTO ROBLE, MARIANO ROBLE, ELEODORA ROBLE DE
MOLINO,...**

G.R. No. 160918. April 16, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition[1] for review under Rule 45 of the Rules of Court. The petition challenges the 13 November 2003 Decision[2] of the Court of Appeals in CA-G.R. CV No. 61731. The Court of Appeals affirmed with modification the 15 December 1997 Decision[3] of the Regional Trial Court (RTC), Judicial Region 7, Branch 27, Lapu-Lapu City in Civil Case No. 426-L.

The Facts

Jesusa Booc (Jesusa), Candelario Booc (Candelario), Columba Booc Ycong (Columba), Gervasio Booc (Gervasio), and Concepcion Booc Alcantara (Concepcion) were siblings. They inherited five parcels of land -- Lot Nos. 2464, 2361, 336, 2360 and 2393 (Lots 1 to 5) situated in Lapu-Lapu City. Concepcion watched over the properties since she lived nearby.

Lot 1 was covered by Original Certificate (OCT) No. RO-0571,[4] in the names of Jesusa, Candelario, Columba, Gervasio, and Concepcion. It consisted of 2,017 square meters (sq.m.). On 31 August 1976, the State expropriated 1,575 sq.m. and paid P47,250. Upon the request of Concepcion, the Register of Deeds issued Transfer Certificate of Title (TCT) No. 7849 in the names of Jesusa, the heirs of Columba, Gervasio, and Concepcion. TCT No. 7849 covered the remaining 442 sq.m. On 4 August 1978, Gervasio sold 62 sq.m. to Marienela Rama (Marienela). On 28 September 1978, the heirs of Jesusa and Columba sold 124 sq.m. to Antonio del Prado. On 23 March 1988, Concepcion sold 127 sq.m. to Antonio del Prado.

Lot 2 was covered by OCT No. RO-0570,[5] in the names of Jesusa, Candelario, Columba, Gervasio, and Concepcion. It consisted of 8,895 sq.m. In an extrajudicial settlement[6] dated 27 August 1963, the siblings divided the property -- Jesusa got 945.55 sq.m., Candelario 945.55, Columba 945.55, Gervasio 945.55, and Concepcion 5,112.8. In an affidavit of confirmation and correction dated 29 August 1963, Jesusa and Candelario waived their shares in favor of Concepcion. Candelario signed the document while Jesusa did not. Upon the request of Gervasio, the Register of Deeds issued TCT No. 7747 in his name covering his share. The Register of Deeds also issued TCT No. 7748 in the names of the heirs of Columba covering Columba's share, and TCT No. 1243 in the name of Concepcion covering her total share of 7,003.6 sq.m. Concepcion sold her total share to her son, Antonio Alcantara.

Lot 3 was covered by OCT No. RO-0568,[7] in the name of Adriana Dungog (Adriana). Adriana was the mother of Jesusa, Candelario, Columba, Gervasio, and Concepcion. Lot 3 consisted of 1,947 sq.m. and was available for partition. The heirs of Candelario waived their share in favor of Concepcion.

Lot 4 was covered by OCT No. RO-0569,[8] in the name of Margarita Patalinghug (Margarita). Margarita was the grandmother of Jesusa, Candelario, Columba, Gervasio, and Concepcion. The share of Ceferino Booc in Lot 4 consisted of 3,065 sq.m. Ceferino was the son of Margarita and the father of Jesusa, Candelario, Columba, Gervasio, and Concepcion. The five siblings allegedly divided the property with each getting 613 sq.m. Jesusa and Candelario allegedly waived their shares in favor of Concepcion. Thus, Concepcion got a total share of 1,839 sq.m. Concepcion sold her total share to Antonio Alcantara.

Lot 5 was covered by OCT No. RO-0001,[9] in the name of Adriana. It consisted of 16,669.5 sq.m. In the extrajudicial settlement dated 27 August 1963, the siblings divided the property -- Jesusa, Candelario, Columba, and Gervasio got 4,167.375 sq.m. each.

In a complaint[10] dated 15 September 1979 and filed with the RTC, the heirs of Jesusa, the heirs of Candelario, the heirs of Columba, and Gervasio prayed that Lots 1 to 5 be declared as common properties and partitioned.

In her answer[11] dated 20 June 1981, Concepcion alleged that the only properties available for partition were Lots 1 and 3 and that the action for partition had prescribed.

The RTC's Ruling

In its 15 December 1997 Decision, the RTC held that (1) the claim that the action for partition had prescribed was unmeritorious; (2) only 422 sq.m. of Lot 1 were available for partition -- the portions expropriated by the State and sold to Antonio del Prado were excluded; (3) Jesusa did not waive her share in Lot 2 in favor of Concepcion; and (4) there was no proof that any portion of Lot 4 was partitioned, waived, or sold. The RTC held that:

[A]s against the positive assertion of plaintiffs' demand for partition of the five (5) parcels of land in litigation, the defenses set up by the defendant were suppositions and assumptions bordering on hearsay evidence not admissible in court. The substantial evidence put up by the plaintiffs through and by the testimonies of Hilaria Templa, Julita Booc, Atty. William Garcia of the Ministry of Public Highways, and one Rodelio Pangatungan, an employee of the Register of Deeds of Lapu-lapu City, are adequate to support the claim of the plaintiffs.

Defendant's contention that the claim of the plaintiffs has been barred by acquisitive prescription and laches is without merit. Under the law, "no co-owner shall be obliged to remain in the co-ownership and that such co-owner may demand at any time partition of the thing owned in common insofar as his share is concerned" (Art. 484-501, New Civil Code; *Aguilar vs. Court of Appeals*, 227 SCRA 472). This means that the co-owner may demand at any time the partition of their property which implies therefore that an action to demand a partition is imprescriptible and cannot be barred by laches" [sic] (*Salvador vs. Court of Appeals*, 243 SCRA 239).

The partition however is limited to what is left unencumbered of the parcels of land in litigation. With respect to Parcel I, Lot No. 2464, the Court notes that a portion thereof has long been conveyed for value to a certain Antonio del Prado, evidenced by a duly notarized Deed of Sale (Exhibit "1") showing that Lot No. 2464-B with an area of 124 sq.m., has already been sold on September 28, 1978, by Gala Tablada, Ciriaca Ycong, Hilaria Roble Templa and Eleodora Roble Molino. Also to be excluded from the partition is that portion sold by the heirs to the Republic of the Philippines on August 31, 1976, long before the filing of the present action, consisting of 1,575 sq.m.; [sic]

With respect to Parcel II, Lot 2361, the court notes that only Candelario Booc ceded his interest over the lot, consisting of 945.55 sq.m., in favor of defendant Concepcion Alcantara, evidenced by a Waiver (Exhibit "4")

and the Extrajudicial Settlement (Exhibit "5 [sic]) covering the particular lot. Although Jesusa Roble was mentioned therein, the court observes that she did not affix her signature therein, thus, in no way could she or her successors-in-interest be bound by its contents. There is therefore no hindrance over the partition of the lot in accordance with the Extrajudicial Settlement executed in 1963.

With respect to Parcel III, Lot No. 336, Exhibit "3" shows that Consuelo vda. De Booc, Rogelio Booc, Carmelita Booc and Lourdes Booc, representing themselves as the sole heirs of the late Candelario Booc, waived their interest and participation over Lot No. 336 in favor of Concepcion Alcantara under the Waiver dated August 18, 1971. This waiver however binds only the aforementioned heirs and cannot, in any manner, affect the rights and interests of the other heirs with respect to the said lot. Consequently, the other heirs remain co-owners of the remaining portion not covered by the waiver and hence have the right to demand the partition of the same anytime.

With respect to Lot No. 2360, other than the annotations entered in the title covering the lot, the court notes that there is no showing that the heirs of Margarita Patalinghug, original registered owner of the property, have settled or partitioned the property in accordance with law as no copy of the Extrajudicial Settlement or the sale to Antonio Alcantara have been offered in evidence. The court therefore believes that a partition of the same among the heirs of Margarita Patalinghug, is in order.

Finally, with respect to Lot 2393, it is very clear from the Extrajudicial Settlement (Exhibit "5"), that the said lot was adjudicated to Jesusa Roble, Candelario Booc, Gerva[s]io Booc and Columba Booc Ycong survived by Gala Ycong, Vicenta Ycong, Ciriaca Ycong, Hilario Ycong and Leonardo Ycong, each to have a share of 4,167.375 sq.m. There being no evidence that the said shares have been sold by the said heirs to other persons, the court believes that a partition of the same is in order.[12] (Emphasis supplied)

While the case was pending, Concepcion died. Antonio Alcantara substituted Concepcion. Feeling aggrieved, Antonio Alcantara appealed to the Court of Appeals.

The Court of Appeals' Ruling

In its 13 November 2003 Decision, the Court of Appeals affirmed with modification the 15 December 1997 Decision of the RTC. The Court of Appeals held that (1) an action for partition filed by a co-owner is imprescriptible and cannot be barred by laches; (2) only 129 sq.m. of Lot 1 were available for partition -- the portions expropriated by the State and sold to Marienela and Antonio del Prado were excluded; (3) Jesusa did not waive or sell her share in Lot 2 to Concepcion; and (4) the partition of Lot 4 was void. The Court of Appeals held that:

Prescinding from the foregoing and after a meticulous poring over the contentions of the parties, We rule that with regard to Parcel I, the 442 sq.m. (Lot 2464-B) remaining after the sale 1,575 sq.m. thereof to the government could have been available for partition among the heirs of the late Jesusa, Candelario, Columba, Gerva[s]io and Concepcion had it not been partially conveyed to third persons by said heirs. But before We delve into that, it must be stressed that TCT No. 7849, covering Lot 2464-B is fatally defective inasmuch as it was issued in the names of Jesusa, Columba, Gerva[s]io and Concepcion only to the exclusion of Candelario Booc, who is a co-owner of said lot as evidenced by OCT No. RO-0571, and also because it was issued on the basis of a mere letter-request filed and signed only by Concepcion Alcantara. Suffice it to state that the Register of Deeds of Lapu-Lapu City has no basis in issuing TCT No. 7849 in the names of Jesusa, Columba, Gerva[s]io and Concepcion only because under OCT No. RO-0571, Candelario is a registered co-owner of Lot 2464. In the absence of any document showing that Candelario waived or ceded his rights over the lot in question in favor of the other co-owners, the Register of Deeds is not legally warranted to issue TCT No. 7849 to the exclusion of Candelario Booc. Now, anent the subsequent conveyances, it was earlier mentioned that Lot 2464-B was already partially conveyed by Gerva[s]io to a certain Marienela Rama to the extent of 62 sq.m. on August 4, 1978; by the Heirs of Columba and the Heirs of Jesusa to Antonio del Prado to the extent of 124

sq.m. on September 28, 1978; and by Concepcion Alcantara to Antonio del Prado to the extent of 127 sq.m. on March 23, 1988. Such conveyances are deemed valid considering that the plaintiff-appellees did not come up with sufficient controverting evidence proving that the subsequent purchasers were purchasers in bad faith and that said conveyances were fictitious and simulated. With this, only 129 sq.m. of Lot 2464-B remains free and available for partition. Had there been no previous conveyances involving Lot 2462-B, the 442 sq.m. should have been divided equally among Jesusa, Candelario, Columbia, Gerva[s]io and Concepcion at 88.4 per share. However considering that Lot 2464-B was already conveyed partially to third persons by Gerva[s]io, Concepcion, the Heirs of Columba and the Heirs of Jesusa, the division of the 129 sq.m. Remaining shall in the following computation:

I.) The heirs of Candelario shall get the whole 88.4 sq.m. considering that Candelario did not convey wholly or partially his share in Lot 2464-B to third persons nor ceded or waived his share in favor of the other co-owners;

II.) The heirs of Gerva[s]io, Heirs of Columba and Heirs of Jesusa, considering that each of their predecessor-in-interest have sold 62 sq.m.; they shall only be entitled to 26.4 sq.m. each. But since only 40.6 sq.m. remains after deducting the 88.4 sq.m. share of Candelario, they shall divide it among themselves equally at 13.53 sq.m. each. The deficiency of 12.87 sq.m. to complete their shares of 88.4 sq.m. shall be derived from the share of Concepcion Alcantara in the other parcels of land subject to partition;

III.) The heirs of Concepcion Alcantara shall get nothing from Lot 2464-B considering that Concepcion sold 127 sq.m., which is 38.6 sq.m. in excess of her 88.4 sq.m. share. The 38.6 sq.m. in excess of Concepcion's share shall be deducted from her share in the other parcels of land subject to partition to compensate with the deficiency in the shares of Gerva[s]io, Jesusa and Columba to the extent of 12.87 sq.m. each.

The subsequent deeds of extrajudicial partition of Lot 2464-B executed by and among defendant Concepcion, plaintiffs Gerva[s]io, heirs of Jesusa, heirs of Columba and Antonio del Prado as per annotation on TCT No. 7849 are considered void insofar as the partition of the 129 sq.m. portion is concerned considering that Candelario Booc was not included therein.

Anent Parcel II, We rule that it must be partitioned in accordance with Exhibit "5". Contrary to the assertion of the defendant-appellant that Exhibit "5" was nullified by the court a quo in its decision, it must be stressed that the court a quo was silent on that point. In fact, the court a quo even ordered the partition of Parcel II in accordance with Exhibit "5". In this regard, it is likewise the finding of this Court that Parcel II must be partitioned pursuant to Exhibit 5. It must be stressed that Exhibit "5", being a notarized document; is entitled to full faith and credit on its face. In the absence of clear, strong and convincing evidence showing falsity or fraud, such notarized document is presumed valid. The burden of proof that Exhibit "5" is a forged or fictitious document rests upon the plaintiff-appellees. However, in the instant case, the plaintiff-appellees miserably failed to come up with clear and convincing evidence showing that Exhibit "5" was indeed fictitiously and fraudulently executed by original defendant Concepcion Alcantara. As regards Exhibit "4", it is only valid and binding against Candelario Booc who was the lone signatory thereof. It is not binding against Jesusa Roble because she did not affix her signature thereto. With regard to the deed of sale allegedly executed by Jose and Jesusa Roble over their [share] of 945.55 sq.m. in Lot 2361 in favor of original defendant Concepcion Alcantara on October 26, 1962 as per annotation on OCT No. RO-0570 (Entry 4583-V-I-D.B.), We rule that it is of doubtful authenticity in view of the prima facie finding of falsification committed by Concepcion Alcantara of the City Fiscal of Lapu-Lapu City in a Resolution dated February 29, 1984) [sic]. Furthermore, such alleged deed of sale was not presented in evidence by the defendant-appellant, as such, there could be no way by which the court a quo could examine the authenticity or regularity of said document. Consequently, TCT No. 1243 issued in the name of Concepcion Alcantara is void insofar as the share of Jesusa Roble consisting of 945.5 sq.m. was fraudulently included therein. In the same vein, the sale executed by Concepcion Alcantara of the land covered by TCT No. 1243 in favor of her son Antonio Alcantara on January 26, 1979 is void insofar as it included the share of Jesusa Roble in Lot 2361. In this regard,

the heirs of Jesusa Roble are entitled to their share in Lot 2361 consisting of 945.5 sq.m. Gerva[s]io Booc as well as Columba Booc had already got their respective shares in Lot 2361 consisting of 945.5 each as evidenced by TCT Nos. 7747 and 7748, respectively. The heirs of Concepcion Alcantara shall get their share in accordance with Exhibit "5", that is, 5,112.8 sq.m. plus the share of Candelario Booc consisting of 945.5 sq.m. which was waived by the latter pursuant to Exhibit "4".

With regard to Parcel III consisting of 1,947 sq.m., We concur with the finding of the court a quo that it is still subject to partition (389.4 sq.m. per heir). But considering that the heirs of Candelario Booc executed a waiver of their father's share in said lot in favor of Concepcion Alcantara, they are excluded from the partition thereof. Also, considering that this land is free from liens and conveyances, the deficiency in the shares of Gerva[s]io, Jesusa and Columba to the extent of 12.87 sq.m. each in Parcel I shall be derived from the share of Concepcion Alcantara in this land. Thus, the following partition:

- I.) The heirs of Gerva[s]io Booc shall get 402.27 sq.m. (389.4 sq.m. plus 12.87 sq.m.);
- II.) The heirs of Jesusa Roble shall get 402.27 sq.m. (389.4 sq.m. plus 12.87 sq.m.);
- III.) The heirs of Columba Ycong shall get 402.27 sq.m. (389.4 sq.m. plus 12.87 sq.m.);
- IV.) The heirs of Concepcion Alcantara shall get 740.19 sq.m. (389.4 sq.m. representing Concepcion's share in addition to the share of Candelario Booc consisting of 389.4 sq.m. minus the 38.61 sq.m., representing the deficiency in the shares of Gerva[s]io, Jesusa and Columba in Parcel I)

Anent Parcel IV, it appears that there has already been a partition of said land among the children of Margarita Patalinghug and by which Ceferino Booc got his share of 3,065 sq.m. This shall be the subject of partition among Jesusa, Candelario, Gerva[s]io, Columba and Concepcion. If Ceferino Booc's share would be divided among his five children, each child shall get 613 sq.m. However, as it appeared in the records, only Gerva[s]io, Columba and Concepcion were able to partition the 3,065 sq.m. among themselves, as evidenced by Exhibit "P" (p. 66, O.R.). Jesusa and Candelario were excluded in said partition. With this, We rule that Exhibit "P" is void in so far as it deprived Jesusa and Candelario of their rightful share in their father's estate. Although it was stated in Exhibit "P" that Jesusa and Candelario ceded their shares in favor of Concepcion Alcantara, nevertheless, this was not backed up by document on record. Exhibit "P" is merely self-serving, thus, must be struck down. Resultantly, TCT No. 1526 covering 1,839 sq.m. issued in the name of Concepcion Alcantara is void in so far as the 1226 sq.m. representing the shares of Jesusa and Candelario were included therein. In fine, Concepcion Alcantara shall only get 613 sq.m. The same is also true with Jesusa and Candelario who are entitled to 613 sq.m. each.

Anent Parcel V, it must be partitioned pursuant to Exhibit "5" whereby Jesusa, Gerva[s]io, Columba and Candelario shall get 4,167 sq.m. each. Concepcion Alcantara is no longer entitled to her share in the land considering that she already got her share in relation to Parcel II.[13] (Emphasis supplied)

Hence, the instant petition. Antonio Alcantara alleged that (1) "exhibits 1 to 5" should be given full weight; (2) Concepcion did not commit falsification; (3) he was a buyer in good faith; and (4) there was no co-ownership.

The Court's Ruling

The petition is unmeritorious.

A petition for review under Rule 45 of the Rules of Court should cover only questions of law. Questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt centers on the truth or falsity of the alleged facts.[14]

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative

value of the evidence. The issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact.[15] In *Paterno v. Paterno*,[16] the Court held that:

Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact. Whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight -- all these are issues of fact. Questions like these are not reviewable by this Court which, as a rule, confines its review of cases decided by the Court of Appeals only to questions of law raised in the petition and therein distinctly set forth.

Whether "exhibits 1 to 5" should be given full weight, whether Concepcion committed falsification, whether Antonio Alcantara was a buyer in good faith, and whether a co-ownership existed are all questions of fact. These questions can only be resolved after reviewing the probative value of the evidence. At the least, the Court has to determine what "exhibits 1 to 5" refer to as Antonio Alcantara failed to describe or submit copies of such documents.

The factual findings of the trial court, especially when affirmed by the Court of Appeals, are binding on the Court. The exceptions to this rule are (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioners are not disputed by the respondents; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[17] After a careful review of the records, the Court finds that none of these circumstances is present.

WHEREFORE, the Court DENIES the petition. The Court AFFIRMS the 13 November 2003 Decision of the Court of Appeals in CA-G.R. CV No. 61731.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Rollo, pp. 3-20.

[2] Id. at 24-42. Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Conrado M. Vasquez, Jr. and Arsenio J. Magpale concurring.

[3] CA rollo, pp. 54-59. Penned by Judge Teodoro K. Risos.

[4] Rollo, p. 133.

[5] Id. at 134-135.

[6] Records, pp. 15-16.

[7] Rollo, p. 136.

[8] Id. at 137-138.

[9] Id. at 139.

[10] Records, pp. 1-8.

[11] Id. at 130-138.

[12] CA rollo, pp. 57-58.

[13] Rollo, pp. 36-40.

[14] Microsoft Corp. v. Maxicorp, Inc., 481 Phil. 550, 561 (2004).

[15] Id.

[16] G.R. No. 63680, 23 March 1990, 183 SCRA 630, 636-637.

[17] Ilagan-Mendoza v. Court of Appeals, G.R. No. 171374, 8 April 2008, 550 SCRA 635, 647.

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