ANITA UNGAB-VALEROSO, JOINED IN BY HER HUSBAND, RUSELO VALEROSO, PETITIONERS, VS. AMANCIA UNGAB-GRADO, FELIX UNGAB, REPRESENTED BY HIS SON ROSENDO UNGAB, ESPENILA UNGAB-JAICTIN ...

G.R. NO. 163081. June 15, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails both the Decision[1] dated September 19, 2003 of the Court of Appeals in CA-G.R. CV No. 68895 and its Resolution[2] dated March 2, 2004, which denied petitioners' motion for reconsideration. The Court of Appeals had affirmed with modification the Decision[3] dated December 20, 1999 of the Regional Trial Court (RTC) of Iligan City, Branch 3, in Civil Case No. 4048.

The antecedent facts, borne by the records, are as follows:

Subject of this case is a 14.3375-hectare land in Binuni, Kolambugan, Lanao (now Binuni, Bacolod, Lanao del Norte) registered in the name of Timoteo Ungab under Original Certificate of Title (OCT) No. (P-41)-1,550.[4] Petitioner Anita Ungab is the only child of Timoteo, now deceased. Respondent Felix Ungab is the brother of Timoteo while the other respondents are the heirs of Timoteo's other brothers and sisters, namely Simeona, Eugenia, Lorenzo, Lazaro, and Margarito.

In 1972, the heirs of Ciriaco Ungab filed a complaint docketed as Civil Case No. II-74 in the Court of First Instance (CFI) of Iligan City, Lanao del Norte against the brothers, sisters and heirs of Timoteo for the partition, accounting and reconveyance of the subject land. When the case was called for trial, the parties submitted a written compromise agreement.

On February 15, 1973, the CFI rendered judgment adopting in toto the compromise agreement. The decretal portion reads:

> WHEREFORE, judgment is hereby rendered as follows: (1) that the plaintiffs will be given an area of 4,779 square meters of the coconut land which is a portion of the titled land in the name of Heirs of Timoteo Ungab, under Original Certificate of Title No. T-41 (should be P-41), Homestead Patent No. V-4777, located at Binoni, Bacolod, Lanao del Norte (formerly Kolambugan, Lanao); (2) that defendants are entitled to an area of 138,596 square meters (13.8596 Has.) from said titled land abovementioned; (3) that the expenses for segregation survey of the 4,779 square meters will be shouldered equally among the nine (9) heirs – 3 heirs representing the plaintiffs and the 6 heirs representing the defendants; (4) that the squatters of the above-described titled parcels of land to wit: (a) Dioscoro Buco, (b) Porferio Sugabo, (c) heirs of Severo Buco, (d) Jesus Buco, (e) and others inside the said titled land will be ejected with damages thru Court action, all expenses will be borne equally among the heirs aforementioned, for each recovery; and whatever damages that will be awarded by the court in said ejectment action will be equally divided among the nine sets of heirs, as well as the produce of the income of the squatted area; (5) that meantime that the squatters on the land will not

> be as yet finally ejected, the 4,779 square meters of the plaintiffs' will not as yet be segregated and plaintiffs cannot as yet enjoy the produce, and income thereof, until the squatters will be ejected; and all expenses of the ejectment suits against the squatters will be borne by Margarito Ungab and his wife, subject to the reimbursement with receipts upon the final ejectment of the squatters by all nine sets of heirs aforementioned; (6) the portion pertaining to Simona Ungab is acknowledged to have been sold under Pacto de Retro for the sum of P3,000.00 more or less (the Pacto de Retro Sale consideration controls) unto Margarito Ungab and wife which should be paid likewise by the nine sets of heirs both plaintiffs and defendants; (8) all other prayers and remedies invoked in the complaint and counter-complaint are hereby denied, and (9) no costs is adjudged in this proceeding.
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> SO ORDERED.[5]

The parties did not have the land partitioned but divided the proceeds of the land in accordance with the decision. However, in December 1996, Anita refused to give respondents their respective shares. Respondents then filed against petitioners Anita and her husband Ruselo Valeroso, a complaint for recovery of possession, partition, enforcement of compromise agreement and damages docketed as Civil Case No. 4048 with the RTC of Iligan City.

During the pre-trial, respondents presented in court the affidavit dated March 13, 1939 of Timoteo acknowledging that he co-owned with his brothers and sisters, Simeona, Eugenia, Lorenzo, Lazaro, Felix and Margarito, a parcel of land with an area of 18.8993 hectares in Binuni, Kolambugan, Lanao under Homestead Application No. 218565.[6] Respondents also presented the Affidavit of Acknowledgment dated August 4, 1960 of Anita Ungab and her mother Aurelia Ungab acknowledging the rights of Simeona, Eugenia, Lorenzo, Lazaro, Felix and Margarito as co-owners of the land.[7]

In their defense, the Spouses Anita and Ruselo claimed that Anita exclusively owns the land as sole heir of Timoteo. They maintained that the decision in Civil Case No. II-74 had become dormant and could no longer be executed. Besides, they aver, Anita was not privy to the compromise agreement, which led to the decision in Civil Case No. II-74.

On December 1999, the RTC held that the compromise agreement bound all the parties thereto including their heirs and assigns, and Timoteo's affidavit whose presumption of regularity petitioners failed to overcome, and the compromise agreement created an express trust which has not yet prescribed. The RTC ruled as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs (herein respondents) and against the defendant, Anita Ungab-Valeroso ordering the latter:
>
> 1) To have the property, OCT No. (P-41)-1,550, partitioned for her to retain only one-seventh (1/7) share; another one-seventh (1/7) to Felix Ungab and the remaining 5/7 to the heirs of Simeona, Eugenia, Lorenzo, Lazaro, and Margarito, all surnamed Ungab;
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> 2) To reimburse Amancia Ungab-Grado and Espenila Ungab Jaictin the sum of P24,000.00 for their shares for three (3) years at a rate of P2,000.00 per harvest in every three (3) months; the sum of P24,000.00 for plaintiff Felix Ungab and another P24,000.00 for Rusticina Ungab-Tamala;
>
> 3) To pay plaintiffs attorney's fees and appearance fees of P30,000.00.
>
> SO ORDERED.[8]

Petitioners elevated the case to the Court of Appeals, which affirmed the trial court's decision but deleted the award of attorney's fees. It held there is evidence showing that the land under OCT No. (P-41)-1,550 was owned in common by the parties, and that Anita is estopped by her own act of signing the Affidavit of Acknowledgment

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dated August 4, 1960 from denying the co-ownership.

The dispositive portion of the decision dated September 19, 2003 of the Court of Appeals states:

> WHEREFORE, premises considered, the decision dated December 20, 1999, of the Regional Trial Court of Iligan City, Twelfth Judicial Region, Branch 3, in Civil Case No. 4048 is hereby AFFIRMED with MODIFICATION as to attorney's fees, the award thereof is deleted. Costs against the appellants.
>
> SO ORDERED.[9]

Petitioners moved for reconsideration but it was denied in the Resolution dated March 2, 2004. Petitioners now come before us raising the following issues:

> I.
>
> WHETHER OR NOT RESPONDENTS ARE CO-OWNERS OF THE PARCEL OF LAND COVERED BY OCT No. (P-41)-1,550;
>
> II.
>
> WHETHER OR NOT RESPONDENTS' SUIT FOR PARTITION IN THE COURT BELOW IS LEGALLY PROPER.[10]

The main issue before us is: Did the Court of Appeals commit a reversible error of law which merits review by this Court under Rule 45 of the Rules of Court?

We rule in the negative.

Petitioners point that the property was registered in the name of Timoteo. They assert that by the law of intestate succession, Anita, being the sole heir of Timoteo, is the sole owner of the land. Petitioners maintain that respondents could not base their claim on Timoteo's affidavit dated March 13, 1939 because this referred to a different parcel of land. Considering that the description of the property in the OCT and in Timoteo's affidavit differed, petitioners maintain that respondents bear the burden of proving that these lots in the affidavit are the same as those under OCT No. (P-41)-1,550. However, according to petitioners, respondents failed to discharge this burden.

Respondents counter that the case is not about succession. They are not claiming as heirs of Timoteo, but as his co-owners. They assert that where one does not have any rightful claim over real property, the Torrens system of registration can confirm or record nothing. They claim that the land was already governed by a state of co-ownership even before the title was issued. According to respondents, this fact is shown by the Affidavit of Acknowledgment signed by Anita herself.

At the outset, we agree that the instant case does not involve successional rights as correctly pointed out by respondents, who are claiming an alleged right of co-ownership existing prior to the issuance of the land title in the name of Timoteo. The threshold issue is whether respondents are truly co-owners of the land.

The records lack evidence sufficiently showing that the land covered by Homestead Application No. 218565 referred to in the Affidavit of Timoteo is the same land covered by OCT No. (P-41)-1,550 which originated from Homestead Patent No. V-4777. The records do not show whether Homestead Application No. 218565 was the one granted in Homestead Patent No. V-4777. The court cannot just fill in the deficiency in the evidence submitted by the concerned parties.

We note, however, that even without the Affidavit of Timoteo, there is still evidence on record proving that the respondents and Timoteo indeed own the land in common. For one, there is the Affidavit of Acknowledgment

dated August 4, 1960.

Petitioners contend that respondents cannot use the Affidavit of Acknowledgment signed by Anita and her mother as Anita was misled in signing it. A question involving the due execution of the Affidavit of Acknowledgment would require an inquiry into the appreciation of evidence by the trial court, a matter which this Court cannot do in a petition for review on certiorari under Rule 45.[11] The truth or falsehood of the Affidavit of Acknowledgment is a question of fact, of which this Court cannot take cognizance.[12] Moreover, the Affidavit of Acknowledgment, being a notarized document, enjoys the presumption of regularity.[13] Petitioners' mere allegation that Anita was misled by her mother into signing the affidavit could not overcome this presumption.

Petitioners claim that by respondents' failure to execute the judgment within the ten-year prescription period, the judgment had prescribed. It could not be used to convey any right. This claim, in our view, is unmeritorious. When the parties started sharing the proceeds of the land, they had in effect partially executed the compromise agreement and the judgment in Civil Case No. II-74. Such partial execution weighs heavily as evidence that they agreed on the co-ownership arrangement. Note also that the judgment did not explicitly order the partition of the land itself, but merely identified the rights to and respective shares of the parties in said land.

Petitioners argue that the co-ownership was already extinguished because the Civil Code provides that an agreement to keep a thing undivided shall not exceed ten years. Indeed, the law limits the term of a co-ownership to ten years, but this term limit may nevertheless be extended.[14] The action to reconvey does not prescribe so long as the property stands in the name of the trustee. To allow prescription would be tantamount to allowing a trustee to acquire title against his principal and true owner.[15]

Moreover, as properly held by the trial and appellate courts, the execution of the Affidavit of Acknowledgment and the compromise agreement established an express trust wherein the respondents, as trustors, reposed their confidence on petitioner Anita and her mother, as trustees, that they will hold the land subject of the co-ownership. There are no particular words required in the creation of an express trust, it being sufficient that a trust is clearly intended.[16] This express trust is shown in the two documents. Express trusts do not prescribe except when the trustee repudiates the trust.[17]

Petitioners contend that an affidavit of acknowledgment is not one of the modes of acquiring ownership recognized under the Civil Code. They cite Acap v. Court of Appeals,[18] where we held that a stranger to succession cannot conclusively claim ownership over a lot on the sole basis of a waiver document which does not cite the elements of any of the derivative modes of acquiring ownership.

But we find that the ruling in Acap is not applicable to this case. In Acap, the claim of a right over the property was based on a "declaration of heirship and waiver of rights," and a notice of adverse claim. Therein we held that the "declaration of heirship and waiver of rights" relates to an abdication of a right in favor of other persons who are co-heirs in the succession. A stranger to a succession cannot conclusively claim ownership over the property on the sole basis thereof. We also held that a notice of adverse claim is nothing but a notice of claim adverse to the registered owner, the validity of which is yet to be established in court. Hence, the "declaration of heirship and waiver of rights" and a notice of adverse claim did not sufficiently show how a stranger to the succession acquired ownership of the property. In the present case, the Affidavit of Acknowledgment and the compromise agreement were presented not to show how respondents acquired their rights over the property but as proof that their rights therein exist.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated September 19, 2003 and the Resolution dated March 2, 2004 of the Court of Appeals in CA-G.R. CV No. 68895 are AFFIRMED.

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Costs against petitioners.

SO ORDERED.

Carpio, Tinga, and Velasco, Jr., JJ., concur.
Carpio Morales, J., on official leave.

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[1] Rollo, pp. 59-75A. Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Eugenio S. Labitoria and Rosmari D. Carandang concurring.

[2] Id. at 88-89.

[3] Id. at 127-143. Penned by Acting Presiding Judge Moslemen T. Macarambon.

[4] Records, pp. 126-127.

[5] Id. at 122-123.

[6] Id. at 124.

[7] Id. at 125.

[8] Id. at 258-259.

[9] Rollo, p. 75A.

[10] Id. at 218.

[11] Pacific Airways Corporation v. Tonda, 441 Phil. 156, 162 (2002).

[12] Towne & City Development Corporation v. Court of Appeals, G.R. No. 135043, July 14, 2004, 434 SCRA 356, 360.

[13] Macaspac v. Puyat, Jr., G.R. No. 150736, April 29, 2005, 457 SCRA 632, 644.

[14] CIVIL CODE, Art. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

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[15] Ringor v. Ringor, G.R. No. 147863, August 13, 2004, 436 SCRA 484, 500.

[16] Civil Code, Art. 1444.

[17] See Vda. de Esconde v. Court of Appeals, G.R. No. 103635, February 1, 1996, 253 SCRA 66, 75.

[18] 321 Phil. 381 (1995).

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