

PERLA G. PATRICIO, PETITIONER, VS. MARCELINO G. DARIO III AND THE HONORABLE COURT OF APPEALS, SECOND DIVISION, RESPONDENTS.

G.R. NO. 170829. November 20, 2006

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-170829/>

YNARES-SANTIAGO, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court seeks to annul and set aside the Resolution of the Court of Appeals dated December 9, 2005[1] in CA-G.R. CV No. 80680, which dismissed the complaint for partition filed by petitioner for being contrary to law and evidence.

On July 5, 1987, Marcelino V. Dario died intestate. He was survived by his wife, petitioner Perla G. Patricio and their two sons, Marcelino Marc Dario and private respondent Marcelino G. Dario III. Among the properties he left was a parcel of land with a residential house and a pre-school building built thereon situated at 91 Oxford corner Ermin Garcia Streets in Cubao, Quezon City, as evidenced by Transfer Certificate of Title (TCT) No. RT-30731 (175992) of the Quezon City Registry of Deeds, covering an area of seven hundred fifty five (755) square meters, more or less.[2]

On August 10, 1987, petitioner, Marcelino Marc and private respondent, extrajudicially settled the estate of Marcelino V. Dario. Accordingly, TCT No. RT-30731 (175992) was cancelled and TCT No. R-213963 was issued in the names of petitioner, private respondent and Marcelino Marc.

Thereafter, petitioner and Marcelino Marc formally advised private respondent of their intention to partition the subject property and terminate the co-ownership. Private respondent refused to partition the property hence petitioner and Marcelino Marc instituted an action for partition before the Regional Trial Court of Quezon City which was docketed as Civil Case No. Q-01-44038 and raffled to Branch 78.

On October 3, 2002,[3] the trial court ordered the partition of the subject property in the following manner: Perla G. Patricio, 4/6; Marcelino Marc G. Dario, 1/6; and Marcelino G. Dario III, 1/6. The trial court also ordered the sale of the property by public auction wherein all parties concerned may put up their bids. In case of failure, the subject property should be distributed accordingly in the aforestated manner.[4]

Private respondent filed a motion for reconsideration which was denied by the trial court on August 11, 2003,[5] hence he appealed before the Court of Appeals, which denied the same on October 19, 2005. However, upon a motion for reconsideration filed by private respondent on December 9, 2005, the appellate court partially reconsidered the October 19, 2005 Decision. In the now assailed Resolution, the Court of Appeals dismissed the complaint for partition filed by petitioner and Marcelino Marc for lack of merit. It held that the family home should continue despite the death of one or both spouses as long as there is a minor beneficiary thereof. The heirs could not partition the property unless the court found compelling reasons to rule otherwise. The appellate court also held that the minor son of private respondent, who is a grandson of spouses Marcelino V. Dario and Perla G. Patricio, was a minor beneficiary of the family home.[6]

Hence, the instant petition on the following issues:

I.

THE HONORABLE COURT OF APPEALS PATENTLY ERRED IN REVERSING ITS EARLIER DECISION OF OCTOBER 19, 2005 WHICH AFFIRMED IN TOTO THE DECISION OF THE TRIAL COURT DATED 03 OCTOBER 2002 GRANTING THE PARTITION AND SALE BY PUBLIC AUCTION OF THE SUBJECT PROPERTY.

II.

COROLLARILY, THE HONORABLE COURT OF APPEALS PATENTLY ERRED IN APPLYING ARTICLE 159 IN RELATION TO ARTICLE 154 OF THE FAMILY CODE ON FAMILY HOME INSTEAD OF ARTICLE 494 IN RELATION TO ARTICLES 495 AND 498 OF THE NEW CIVIL CODE ON CO-OWNERSHIP.[7]

The sole issue is whether partition of the family home is proper where one of the co-owners refuse to accede to such partition on the ground that a minor beneficiary still resides in the said home.

Private respondent claims that the subject property which is the family home duly constituted by spouses Marcelino and Perla Dario cannot be partitioned while a minor beneficiary is still living therein namely, his 12-year-old son, who is the grandson of the decedent. He argues that as long as the minor is living in the family home, the same continues as such until the beneficiary becomes of age. Private respondent insists that even after the expiration of ten years from the date of death of Marcelino on July 5, 1987, i.e., even after July 1997, the subject property continues to be considered as the family home considering that his minor son, Marcelino Lorenzo R. Dario IV, who is a beneficiary of the said family home, still resides in the premises.

On the other hand, petitioner alleges that the subject property remained as a family home of the surviving heirs of the late Marcelino V. Dario only up to July 5, 1997, which was the 10th year from the date of death of the decedent. Petitioner argues that the brothers Marcelino Marc and private respondent Marcelino III were already of age at the time of the death of their father,[8] hence there is no more minor beneficiary to speak of.

The family home is a sacred symbol of family love and is the repository of cherished memories that last during one's lifetime.[9] It is the dwelling house where husband and wife, or by an unmarried head of a family, reside, including the land on which it is situated.[10] It is constituted jointly by the husband and the wife or by an unmarried head of a family.[11] The family home is deemed constituted from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.[12]

The law explicitly provides that occupancy of the family home either by the owner thereof or by "any of its beneficiaries" must be actual. That which is "actual" is something real, or actually existing, as opposed to something merely possible, or to something which is presumptive or constructive. Actual occupancy, however, need not be by the owner of the house specifically. Rather, the property may be occupied by the "beneficiaries" enumerated in Article 154 of the Family Code, which may include the in-laws where the family home is constituted jointly by the husband and wife. But the law definitely excludes maids and overseers. They are not the beneficiaries contemplated by the Code.[13]

Article 154 of the Family Code enumerates who are the beneficiaries of a family home: (1) The husband and wife, or an unmarried person who is the head of a family; and (2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend

upon the head of the family for legal support.

To be a beneficiary of the family home, three requisites must concur: (1) they must be among the relationships enumerated in Art. 154 of the Family Code; (2) they live in the family home; and (3) they are dependent for legal support upon the head of the family.

Moreover, Article 159 of the Family Code provides that the family home shall continue despite the death of one or both spouses or of the unmarried head of the family for a period of 10 years or for as long as there is a minor beneficiary, and the heirs cannot partition the same unless the court finds compelling reasons therefor. This rule shall apply regardless of whoever owns the property or constituted the family home.

Article 159 of the Family Code applies in situations where death occurs to persons who constituted the family home. Dr. Arturo M. Tolentino comments on the effect of death of one or both spouses or the unmarried head of a family on the continuing existence of the family home:

Upon the death of the spouses or the unmarried family head who constituted the family home, or of the spouse who consented to the constitution of his or her separate property as family home, the property will remain as family home for ten years or for as long as there is a minor beneficiary living in it. If there is no more beneficiary left at the time of death, we believe the family home will be dissolved or cease, because there is no more reason for its existence. If there are beneficiaries who survive living in the family home, it will continue for ten years, unless at the expiration of the ten years, there is still a minor beneficiary, in which case the family home continues until that beneficiary becomes of age.

After these periods lapse, the property may be partitioned by the heirs. May the heirs who are beneficiaries of the family home keep it intact by not partitioning the property after the period provided by this article? We believe that although the heirs will continue in ownership by not partitioning the property, it will cease to be a family home.[14] (Emphasis supplied)

Prof. Ernesto L. Pineda further explains the import of Art. 159 in this manner:

The family home shall continue to exist despite the death of one or both spouses or of the unmarried head of the family. Thereafter, the length of its continued existence is dependent upon whether there is still a minor-beneficiary residing therein. For as long as there is one beneficiary even if the head of the family or both spouses are already dead, the family home will continue to exist (Arts. 153, 159). If there is no minor-beneficiary, it will subsist until 10 years and within this period, the heirs cannot partition the same except when there are compelling reasons which will justify the partition. This rule applies regardless of whoever owns the property or who constituted the family home.[15] (Emphasis supplied)

The rule in Article 159 of the Family Code may thus be expressed in this wise: If there are beneficiaries who survive and are living in the family home, it will continue for 10 years, unless at the expiration of 10 years, there is still a minor beneficiary, in which case the family home continues until that beneficiary becomes of age.

It may be deduced from the view of Dr. Tolentino that as a general rule, the family home may be preserved for a minimum of 10 years following the death of the spouses or the unmarried family head who constituted the family home, or of the spouse who consented to the constitution of his or her separate property as family home. After 10 years and a minor beneficiary still lives therein, the family home shall be preserved only until that minor beneficiary reaches the age of majority. The intention of the law is to safeguard and protect the interests of the minor beneficiary until he reaches legal age and would now be capable of supporting himself. However, three requisites must concur before a minor beneficiary is entitled to the benefits of Art. 159: (1) the relationship enumerated in Art. 154 of the Family Code; (2) they live in the family home, and (3) they are dependent for legal support upon the head of the family.

Thus, the issue for resolution now is whether Marcelino Lorenzo R. Dario IV, the minor son of private respondent, can be considered as a beneficiary under Article 154 of the Family Code.

As to the first requisite, the beneficiaries of the family home are: (1) The husband and wife, or an unmarried person who is the head of a family; and (2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate. The term "descendants" contemplates all descendants of the person or persons who constituted the family home without distinction; hence, it must necessarily include the grandchildren and great grandchildren of the spouses who constitute a family home. *Ubi lex non distinguit nec nos distinguere debemos*. Where the law does not distinguish, we should not distinguish. Thus, private respondent's minor son, who is also the grandchild of deceased Marcelino V. Dario satisfies the first requisite.

As to the second requisite, minor beneficiaries must be actually living in the family home to avail of the benefits derived from Art. 159. Marcelino Lorenzo R. Dario IV, also known as Ino, the son of private respondent and grandson of the decedent Marcelino V. Dario, has been living in the family home since 1994, or within 10 years from the death of the decedent, hence, he satisfies the second requisite.

However, as to the third requisite, Marcelino Lorenzo R. Dario IV cannot demand support from his paternal grandmother if he has parents who are capable of supporting him. The liability for legal support falls primarily on Marcelino Lorenzo R. Dario IV's parents, especially his father, herein private respondent who is the head of his immediate family. The law first imposes the obligation of legal support upon the shoulders of the parents, especially the father, and only in their default is the obligation imposed on the grandparents.

Marcelino Lorenzo R. Dario IV is dependent on legal support not from his grandmother, but from his father. Thus, despite residing in the family home and his being a descendant of Marcelino V. Dario, Marcelino Lorenzo R. Dario IV cannot be considered as beneficiary contemplated under Article 154 because he did not fulfill the third requisite of being dependent on his grandmother for legal support. It is his father whom he is dependent on legal support, and who must now establish his own family home separate and distinct from that of his parents, being of legal age.

Legal support, also known as family support, is that which is provided by law, comprising everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.[16] Legal support has the following characteristics: (1) It is personal, based on family ties which bind the obligor and the obligee; (2) It is intransmissible; (3) It cannot be renounced; (4) It cannot be compromised; (5) It is free from attachment or execution; (6) It is reciprocal; (7) It is variable in amount.[17]

Professor Pineda is of the view that grandchildren cannot demand support directly from their grandparents if they have parents (ascendants of nearest degree) who are capable of supporting them. This is so because we have to follow the order of support under Art. 199.[18] We agree with this view.

The reasons behind Art. 199 as explained by Pineda and Tolentino: the closer the relationship of the relatives, the stronger the tie that binds them. Thus, the obligation to support under Art. 199 which outlines the order of liability for support is imposed first upon the shoulders of the closer relatives and only in their default is the obligation moved to the next nearer relatives and so on.

There is no showing that private respondent is without means to support his son; neither is there any evidence to prove that petitioner, as the paternal grandmother, was willing to voluntarily provide for her grandson's legal support. On the contrary, herein petitioner filed for the partition of the property which shows an intention to dissolve the family home, since there is no more reason for its existence after the 10-year period ended in 1997.

With this finding, there is no legal impediment to partition the subject property.

The law does not encourage co-ownerships among individuals as oftentimes it results in inequitable situations such as in the instant case. Co-owners should be afforded every available opportunity to divide their co-owned property to prevent these situations from arising.

As we ruled in *Santos v. Santos*,^[19] no co-owner ought to be compelled to stay in a co-ownership indefinitely, and may insist on partition on the common property at any time. An action to demand partition is imprescriptible or cannot be barred by laches. Each co-owner may demand at any time the partition of the common property.^[20]

Since the parties were unable to agree on a partition, the court a quo should have ordered a partition by commissioners pursuant to Section 3, Rule 69 of the Rules of Court. Not more than three competent and disinterested persons should be appointed as commissioners to make the partition, commanding them to set off to the plaintiff and to each party in interest such part and proportion of the property as the court shall direct.

When it is made to appear to the commissioners that the real estate, or a portion thereof, cannot be divided without great prejudice to the interest of the parties, the court may order it assigned to one of the parties willing to take the same, provided he pays to the other parties such sum or sums of money as the commissioners deem equitable, unless one of the parties interested ask that the property be sold instead of being so assigned, in which case the court shall order the commissioners to sell the real estate at public sale, and the commissioners shall sell the same accordingly.^[21]

The partition of the subject property should be made in accordance with the rule embodied in Art. 996 of the Civil Code.^[22] Under the law of intestate succession, if the widow and legitimate children survive, the widow has the same share as that of each of the children. However, since only one-half of the conjugal proper

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.