

**FELICIDAD DADIZON, ILUMINADA B. MURGIA, PERLA B. MATIGA,
DOMINADOR M. BERNADAS, CIRILO B. DELIS, AND HEIRS OF
MARCELINO BERNADAS, NAMELY: FE BERNADAS-PICARDAL AND
CARMELITO BERN...**

G.R. No. 172367. June 05, 2009

Ponente: PUNO, C.J.

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PUNO, C.J.:

Before us is a Petition for Review on Certiorari[1] filed under Rule 45 of the Rules of Court seeking to set aside the Decision[2] dated December 7, 2005 and the Resolution[3] dated March 15, 2006 of the Court of Appeals (CA), which affirmed the Order[4] dated September 5, 2001 of the Regional Trial Court (RTC), Branch 16 of the 8[th] Judicial Region in Naval, Biliran in Civil Case No. B-1066.

Petitioners and respondents are the children and representatives of the deceased children of the late Diosdado Bernadas, Sr. who died intestate on February 1, 1977, leaving in co-ownership with his then surviving spouse, Eustaquia Bernadas (who died on May 26, 2000), several parcels of agricultural and residential land situated in Naval, Biliran.

On May 14, 1999, respondents filed a Complaint[5] against petitioners to compel the partition of the one-half (1/2) conjugal share of the properties left by their late father (subject properties) based on the Deed of Extrajudicial Partition[6] dated February 24, 1996. Respondents alleged that petitioner Felicidad Dadizon was in possession of the subject properties and refused to heed their demands to cause the partition of the same.

In their Answer,[7] petitioners averred that the Deed of Extrajudicial Partition dated February 24, 1996, which respondents sought to enforce, was revoked by the Deed of Extrajudicial Partition[8] dated February 10, 1999. They argued that certain parcels of land included in respondents' complaint had long been disposed of or extrajudicially partitioned by them. They further claimed that certain parcels of land listed in the Deed of Extrajudicial Partition dated February 24, 1996 as sold to respondent Socorro Bernadas could not go to the latter, since the alleged sales were under annulment in Civil Case No. B-1091 pending before the RTC, Branch 16, Naval, Biliran, a case filed by their mother, Eustaquia Bernadas, to revoke the sales of her one-half (1/2) conjugal share on the grounds of lack of consideration, fraud and lack of consent.[9]

In their Reply,[10] respondents contended that the Deed of Extrajudicial Partition dated February 10, 1999 was a product of malice directed against respondent Socorro Bernadas, for not all of the heirs of their late father participated in the execution of the alleged subsequent deed of partition. The sales executed between their mother, Eustaquia Bernadas, and respondent Socorro Bernadas have not been annulled by the court; hence, they remain valid and subsisting.

During trial, on June 13, 2000,[11] both parties manifested that in view of the death of their mother, Eustaquia Bernadas, they have an ongoing negotiation for the extrajudicial partition of the subject properties to end their

differences once and for all.

In the next scheduled hearing, on November 15, 2000,[12] the counsel of respondents asked for postponement on the ground that he was in the process of soliciting the signatures of other heirs to complete a compromise agreement.

On January 30, 2001, the counsel of respondents filed a Project of Partition[13] dated October 23, 2000. However, the same was not signed by all of the heirs.

On the hearing of February 6, 2001,[14] the Project of Partition dated October 23, 2000 was discussed by both parties, and the RTC ordered petitioners to submit their comment thereon within 15 days. Petitioners did not file any comment.

In its Order[15] dated March 22, 2001, the RTC noted that at the last pre-trial conference, both parties informed the court that they already have an extrajudicial partition of the subject properties and ordered both parties to submit the extrajudicial partition for its approval.

On May 31, 2001, the RTC issued another Order[16] reiterating its Order dated March 22, 2001, directing both parties to submit the signed extrajudicial partition.

On July 16, 2001, respondents filed a Compliance[17] submitting the following documents: (1) Project of Partition dated October 23, 2000; (2) Deed of Extrajudicial Partition dated February 24, 1996; and (3) Deed of Extrajudicial Partition[18] dated August 1, 1997 (involving one parcel of land covered by Tax Declaration No. 00181). Respondents prayed that the submitted documents be considered by the RTC relative to the subdivision of the estate left by their late father.

On July 23, 2001, the RTC issued an Order[19] approving the Project of Partition dated October 23, 2000.

Petitioners filed a Motion for Reconsideration[20] of the said Order, but the same was denied by the RTC in its assailed Order[21] dated September 5, 2001. The RTC noted that petitioners had failed to file any comment on or objection to the Project of Partition dated October 23, 2000 despite previously being ordered to do so. Moreover, the parties had already agreed to ask the court for its approval during pre-trial.

Hence, petitioners filed an appeal before the CA alleging, among others, that the RTC erred in finding that their counsel agreed to the approved Project of Partition dated October 23, 2000, and that it should be noted that the said document does not bear the signature of their counsel.[22]

On December 7, 2005, the CA rendered its assailed decision finding the appeal to be without merit. The dispositive portion of the CA decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the appeal filed in this case and AFFIRMING the order dated September 5, 2001 issued by the RTC, Branch 16, of the 8[th] Judicial Region in Naval, Biliran in Civil Case No. B-1066.[23]

Petitioners filed a Motion for Reconsideration[24] of the assailed decision, but the same was denied by the CA in its Resolution dated March 15, 2006.

Hence, this Petition.

Respondent Socorro Bernadas, as substituted by Jeanette B. Alfajardo et al., and respondent Sofia C. Bernadas filed separate comments on the petition.

Before proceeding to the merits of the case, we shall first address a procedural issue raised by respondent Sofia C.

Bernadas.

Respondent Sofia C. Bernadas argues that there is a necessity to implead all indispensable parties who were parties to the original case who do not appear either as petitioners or as respondents in the case before us.

Respondent Sofia C. Bernadas' interpretation of the requirement to implead all indispensable parties under Rule 7, Section 3 of the Rules of Court is misplaced. There is no necessity for impleading all the parties in Civil Case No. B-1066 in this petition.

While it is true that not all the parties in the original case below appear as petitioners or respondents in the case before us, suffice it to say that the mandatory requirement of impleading all indispensable parties applies only to the filing of an original action, but not to an appeal, since it is the party's choice whether to appeal or not, and he or she cannot be compelled to do so.

As to the effect of a reversal of the assailed decision on the parties who did not appeal, the rule is:

We have always recognized the general rule that in appellate proceedings, the reversal of the judgment on appeal is binding only on the parties in the appealed case and does not affect or inure to the benefit of those who did not join or were not made parties to the appeal. An exception to the rule exists, however, where a judgment cannot be reversed as to the party appealing without affecting the rights of his co-debtor, or where the rights and liabilities of the parties appealing are so interwoven and dependent on each other as to be inseparable, in which case a reversal as to one operates as a reversal as to all. This exception which is based on a communality of interest of said parties is recognized in this jurisdiction.[25] (emphasis supplied)

The instant case is such an exception, since the rights and liabilities of all the parties concerned as the heirs of the late Diosdado Bernadas, Sr. are inseparable. Hence, any reversal of the assailed decision will inure to the benefit of those who did not join or were not made parties to the instant case. Consequently, there is no basis for the fear expressed by respondent Sofia C. Bernadas that the respective rights to their inheritance of the persons who were not made parties to the case before us might be forfeited by technicality.

Nonetheless, we note that a review of the records below reveals that the requirement of joining all indispensable parties to the proceedings below has been satisfied.

Now, on the merits.

The issue for our consideration is whether or not the CA erred when it affirmed the Order dated September 5, 2001 of the RTC.

We answer in the affirmative.

There are two stages in every action for partition under Rule 69 of the Rules of Court.

The first stage is the determination of whether or not a co-ownership in fact exists and a partition is proper (i.e., not otherwise legally proscribed) and may be made by voluntary agreement of all the parties interested in the property.[26]

The second stage commences when it appears that "the parties are unable to agree upon the partition" directed by the court. In that event, partition shall be done for the parties by the court with the assistance of not more than three (3) commissioners.[27]

There are, thus, two ways in which a partition can take place under Rule 69: by agreement under Section 2, and through commissioners when such agreement cannot be reached under Sections 3 to 6.

Sections 2 and 3 of Rule 69 provide:

SECTION 2. Order for partition, and partition by agreement thereunder. — If after the trial the court finds that the plaintiff has the right thereto, it shall order the partition of the real estate among all the parties in interest. Thereupon the parties may, if they are able to agree, make the partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by all the parties, and such partition, together with the order of the court confirming the same, shall be recorded in the registry of deeds of the place in which the property is situated. (2a)

x x x

SECTION 3. Commissioners to make partition when parties fail to agree. — If the parties are unable to agree upon the partition, the court shall appoint not more than three (3) competent and disinterested persons 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. (3a) (emphasis supplied)

A careful study of the records of this case reveals that the RTC departed from the foregoing procedure mandated by Rule 69.

In its Order dated July 23, 2001, the RTC noted that both parties filed the Project of Partition dated October 23, 2000 that it approved.[28] In its Order dated September 5, 2001 denying petitioners' motion for reconsideration, the RTC reiterated that both parties filed the same.[29] However, the records show that the Project of Partition dated October 23, 2000 was filed only by respondents' counsel,[30] and that the same was not signed by the respondents or all of the parties.[31]

In its Order dated March 22, 2001, the RTC noted that both parties have already agreed on the manner of partition of the subject properties, and that they are seeking for the court's approval.[32] On the issue of whether the RTC erred in finding that petitioners acceded to the Project of Partition dated October 23, 2000, the CA sustained the RTC's finding and noted that both parties manifested to the RTC that they already have an extrajudicial partition, and that petitioners did not file any comment or suggestion on the manner of distribution of the subject properties despite being required by the RTC.[33]

Even if petitioners did manifest in open court to the RTC that they have already agreed with the respondents on the manner of partition of the subject properties, what is material is that only the respondents filed the Project of Partition dated October 23, 2000 and that the same did not bear the signatures of petitioners because only a document signed by all of the parties can signify that they agree on a partition. Hence, the RTC had no authority to approve the Project of Partition dated October 23, 2000, which did not bear all of the signatures of the parties, on the premise that they had all agreed to the same. Likewise, the failure to file any comment or suggestion as to manner of distribution of the subject properties does not justify the RTC's non-observance of the procedure mandated by Rule 69. When the parties were unable to submit the signed Project of Partition despite being ordered to do so, the RTC should have ordered the appointment of commissioners to make the partition as mandated by Section 3, Rule 69.

In partition proceedings, reference to commissioners is required as a procedural step in the action and is not discretionary on the part of the court.[34] We have held in a number of cases that if the parties are unable to agree on a partition, the trial court should order the appointment of commissioners.

In *De Mesa v. Court of Appeals*,[35] we held that the trial court cannot compel petitioner to sign the extrajudicial deed of partition prepared solely by private respondents for the reason that if the parties are unable to agree on a partition, the trial court must order the appointment of commissioners.

In *Patricio v. Dario III*,[36] we invalidated the order of the trial court ordering the sale by public auction of the property subject of partition on the ground that since the parties were unable to agree on a partition, the trial court

should have ordered a partition by commissioners pursuant to Section 3, Rule 69 of the Rules of Court. It is only after it is made to appear to the latter that the real estate, or a portion thereof, cannot be divided without great prejudice to the interest of the parties, and one of the parties interested asks that the property be sold instead of being assigned to one of the parties, may the court order the commissioners to sell the real estate at public sale.

In *Heirs of Zoilo Llido v. Marquez*,^[37] we sustained the trial court's order appointing commissioners to effect the partition in view of the failure of the parties to submit a project of partition as follows:

It will be recalled that respondent judge, in his decision of January 31, 1973 ordered the partition of the enumerated properties and gave the parties thirty (30) days from notice thereof within which to submit a project of partition.

Having failed to submit said project, the parties were given another twenty (20) days to submit the same, otherwise, commissioners would be appointed to effect the partition.

Again the parties failed to submit a project of partition. Consequently, respondent judge issued his questioned order of April 27, 1973, appointing the commissioners.

Likewise, the records show that the parties were unable to submit a project of partition because the petitioners were unwilling to submit themselves to a partition (Telegrams, Rollo, pp. 105 and 106).

In view of the foregoing, it is evident that the instant petition should be dismissed. Petitioners should not be rewarded for disregarding the orders of respondent judge.

In *Honorio v. Dunuan*,^[38] we struck down the order of the trial court approving a project of partition filed by respondent upon the mere failure of petitioner and his counsel to appear at the hearing and over his subsequent objection and directed the trial court to immediately constitute and appoint commissioners.

In this case, that petitioners insist on a manner of partition contrary to the approved Project of Partition dated October 23, 2000 that was filed and prepared solely by respondents all the way to this Court makes it more manifest that the parties to this case are unable to agree on a partition.

IN VIEW WHEREOF, the petition is **PARTIALLY GRANTED**. The Decision dated December 7, 2005 and the Resolution dated March 15, 2006 of the Court of Appeals in CA-G.R. CV No. 73326 and the Orders dated July 23, 2001 and September 5, 2001 of the Regional Trial Court in Civil Case No. B-1066 are hereby **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Regional Trial Court, Branch 16 of the 8th Judicial Region in Naval, Biliran, which is hereby directed to immediately constitute and appoint the commissioners as provided by Section 3, Rule 69 of the Rules of Court, to effect the partition in accordance with the other provisions of the same rule. No pronouncement as to costs.

SO ORDERED.

Carpio, Corona, Leonardo-De Castro, and Bersamin, JJ., concur.

[1] Rollo, pp. 4-23.

[2] *Id.* at 25-33; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr.

[3] *Id.* at 35-36.

[4] Records, pp. 221-225.

- [5] Id. at 1-5.
- [6] Id. at 14-16.
- [7] Id. at 26-28.
- [8] Id. at 30-32.
- [9] Id. at 27; rollo, pp. 133-134.
- [10] Records, pp. 43-36.
- [11] Id. at 134.
- [12] Id. at 149.
- [13] Id. at 152-158.
- [14] Id. at 177.
- [15] Id. at 179.
- [16] Id. at 180.
- [17] Id. at 196.
- [18] Id. at 173-175.
- [19] Id. at 198-306.
- [20] Id. at 212-214.
- [21] Id. at 221-225.
- [22] CA rollo, pp. 47-48.
- [23] Supra note 2 at 32.
- [24] CA rollo, pp. 328-338.
- [25] Tropical Homes, Inc. v. Fortun, G.R. No. 51554, January 13, 1989, 169 SCRA 81.
- [26] De Mesa v. Court of Appeals, G.R. No. 109387, April 25, 1994, 231 SCRA 773.
- [27] Id.
- [28] Supra note 19.
- [29] Records, pp. 224-225.
- [30] Supra note 17.
- [31] Supra note 13.
- [32] Supra note 15.
- [33] Rollo, p. 31.

[34] REGALADO, REMEDIAL LAW COMPENDIUM, VOL. I, 849 (2005).

[35] Supra note 26 at 782.

[36] G.R. No. 170829, November 20, 2006, 507 SCRA 438, 449.

[37] G.R. No. L-37079, September 29, 1998, 166 SCRA 61, 68.

[38] G.R. No. L-38999, March 9, 1988, 158 SCRA 515.

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