

ARSENIO TABASONDRA, FERNANDO TABASONDRA, CORNELIO TABASONDRA, JR., MIRASOL TABASONDRA-MARIANO, FAUSTA TABASONDRA-TAPACIO, GUILLERMO TABASONDRA, MYRASOL TABASONDRA-ROMERO, AND MA...

G.R. No. 196403. December 07, 2016

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

This case for partition and accounting concerns a property owned in common, and focuses on the right of two of the co-owners to alienate their shares before the actual division of the property.

The Case

Under appeal is the adverse decision promulgated on November 30, 2010[1] whereby the Court of Appeals (CA) modified the judgment rendered on September 22, 2008 by the Regional Trial Court (RTC), Branch 64, in Tarlac City ordering the partition of all the three parcels of land owned in common among the parties.[2] The modification by the CA, which expressly recognized the alienation by the two co-owners of their shares, consisted in limiting the partition of the property owned in common to only the unsold portion with an area of 33,450.66 square meters.

Antecedents

The parties herein were the children of the late Cornelio Tabasondra from two marriages. The respondents Tarcila Tabasondra-Constantino and the late Sebastian Tabasondra were the children of Cornelio by his first wife, Severina; the petitioners, namely: Arsenio Tabasondra, Fernando Tabasondra, Cornelio Tabasondra, Jr., Mirasol Tabasondra-Mariano, Fausta Tabasondra-Tapacio, Myrasol Tabasondra-Romero, Marlene Tabasondra-Maniquil, and Guillermo Tabasondra, were children of Cornelio by his second wife, Sotera.

The CA summarized the undisputed factual findings and procedural antecedents as follows:

Cornelio, Valentina, and Valeriana, all surnamed Tabasondra, were siblings. They were also the registered owners of the three (3) parcels of land located at Dalayap, Tarlac City, identified as Lot No. 2536, containing an area of seventy-seven thousand one hundred and forty-seven (77,147) sq. m.; Lot No. 3155, with an area of thirteen thousand six hundred fifty-nine (13,659) sq. m.; and, Lot No. 3159, with an area of nine thousand five hundred forty-six (9,546) sq. m., covered by Transfer Certificate of Title (TCT) No. 106012.

x x x x

Cornelio died on March 15, 1991, while Valentina and Valeriana both died single on August 19, 1990 and August 4, 1998, respectively. They all died intestate and without partitioning the property covered by TCT No. 106012. Thus, the Plaintiffs-Appellees and the Defendants-Appellants, as descendants of Cornelio, possessed and occupied the property.

The Controversy:

On August 22, 2002, the Plaintiffs-Appellees filed the complaint below against the Defendants-Appellants. In essence, they claimed that the parcels of land are owned in common by them and the Defendants-Appellants but the latter does not give them any share in the fruits thereof. Hence, they asked for partition but the Defendants-Appellants refused without valid reasons. They maintained that they tried to amicably settle the dispute before the Lupon, but to no avail. Thus, their filing of the suit praying that the subject land be partitioned, that new titles be issued in their respective names, that the Defendants-Appellants be ordered to render an accounting on the fruits thereon, and that such fruits also be partitioned.

In their Answer, the Defendants-Appellants averred that they do not object to a partition provided that the same should be made only with respect to Cornelio's share. They contended that they already own the shares of Valentina and Valeriana in the subject land by virtue of the Deed of Absolute Sale that the said sisters executed in their favor on August 18, 1982. Moreover, they alleged that the Plaintiffs-Appellees are the ones who should account for the profits of the property because it is the latter who enjoy the fruits thereof. By way of counterclaim, they, thus, prayed that the Plaintiffs-Appellees be ordered to render an accounting and to pay for damages.

After the issues were joined and the pre-trial conference was conducted, a full blown trial followed in view of the parties' failure to settle amicably.

On September 22, 2008, the RTC rendered the assailed disposition, the fallo of which reads:

WHEREFORE, on the basis of the foregoing considerations, judgment is hereby rendered in favor of the plaintiffs, ordering [the] partition of the three (3) parcels of land covered by TCT No. 16012 among the compulsory and legal heirs of Cornelio, Valentina[,] and Valeriana, all surnamed Tabasondra. Sotero Duenas Tabasondra shall be entitled to 3,040 square meters while plaintiffs and defendants shall be entitled to 6,690 square meters each.

SO ORDERED.[3]

Dissatisfied, the respondents appealed the judgment of the RTC to the CA, assigning the following as the reversible errors, to wit:

I.

THE HONORABLE COURT A- [sic] QUO GRAVELY ERRED AND COMMITTED A REVERSIBLE ERROR IN NOT CONSIDERING AND APPRECIATING THE FACT THAT THE DEED OF ABSOLUTE SALE EXECUTED BY THE DECEASED VALENTINA TABASONDRA AND VALERIANA TABASONDRA, IN FAVOR OF DEFENDANTS TARCILA TABASONDRA AND SEBASTIAN TABASONDRA, WAS VALID AND SUBSISTING AT THE TIME THE COURT CONSIDERED IT TO HAVE NO VALID LEGAL FORCE AND EFFECT[.]

II.

THE HONORABLE COURT A-[sic] QUO GRAVELY ERRED AND COMMITTED A REVERSIBLE ERROR IN ORDERING FOR THE PARTITION OF THE PROPERTY IN QUESTION WITHOUT ANY LEGAL AND VALID GROUNDS[.][4]

On November 30, 2010, the CA promulgated the decision under review,[5] disposing:

WHEREFORE, the appeal is GRANTED. The assailed disposition is AFFIRMED with MODIFICATION in that the partition and the accounting is ordered to be made only with respect to a thirty-three thousand four hundred fifty point sixty-six (33,450.66) sq.m. portion of the property. With costs.

SO ORDERED.[6]

The petitioners moved for reconsideration,[7] but the CA denied their motion on April 4, 2011.[8]

Hence, this appeal.

Issues

The petitioners submit in support of their appeal:

- THAT THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN SUMMARILY DISMISSING THE NEW MATTERS OF SUBSTANCE RAISED IN MOTION FOR RECONSIDERATION
- THAT THE COURT OF APPEALS IN SUMMARILY DISMISSING MOTION FOR RECONSIDERATION OF PLAINTIFFS-PETITIONERS RENEGED IN ITS DUTY TO RESOLVE LEGAL AND FACTUAL ISSUES OF SUBSTANCE IN A WAY NOT PROBABLY IN ACCORD WITH LAW OR APPLICABLE DECISIONS OF THE SUPREME COURT;
- THAT THE COURT OF APPEALS DECISION IN DECLARING THE QUESTIONED DEED OF SALE VALID AND IN SUMMARILY DISMISSING PLAINTIFFS-PETITIONERS['] MOTION FOR RECONSIDERATION RAISING NEW ARGUMENTS AND MATTERS OF SUBSTANCE NOT RAISED IN THE APPEAL BY DEFENDANTS-RESPONDENTS, ARE CONTRARY TO LAW, JURISPRUDENCE, ADMISSIONS OF FACTS/TESTIMONY OF TARCILA TABASONDRA, ONLY WITNESS FOR DEFENDANTS-RESPONDENTS AND EVIDENCE PRESENTED BY PLAINTIFFS-PETITIONERS AT THE TRIAL;
- THAT SUCH COURSE OF ACTION TAKEN BY THE COURT OF APPEALS OR DEPARTURE THEREFROM IN EXERCISING OR FAILING TO EXERCISE ITS POWER OF JUDICIAL REVIEW CERTAINLY CALLS FOR THE EXERCISE BY THE SUPREME COURT OF ITS POWER OF JUDICIAL REVIEW TO AFFORD COMPLETE RELIEF TO PARTIES IN THIS CASE AND TO AVOID MULTIPLICITY OF SUITS.[9]

In other words, did the CA correctly order the partition and accounting with respect to only 33,450.66 square meters of the property registered under TCT No. 10612?

Ruling of the Court

The appeal lacks merit.

There is no question that the total area of the three lots owned in common by Cornelio, Valentina and Valeriana was 100,352 square meters; and that each of the co-owners had the right to one-third of such total area.

It was established that Valentina and Valeriana executed the Deed of Absolute Sale,[10] whereby they specifically disposed of their shares in the property registered under TCT No. 10612 in favor of Sebastian Tabasondra and Tarcila Tabasondra as follows:

NOW, THEREFORE, for and in consideration of the sum of TEN THOUSAND PESOS (10,000.00), Philippine Currency, to us in hand paid, receipt whereof is hereby acknowledged in full to our entire satisfaction, by SEBASTIAN TABASONDRA and TARCILA TABASONDRA, married to Pacita Arellano and Conrado Constantino, respectively, both of legal ages, Filipinos, and residents of Dalayap, Tarlac, Tarlac, we do hereby SELL, CEDE, TRANSFER and CONVEY, by way of ABSOLUTE SALE, unto the said Sebastian Tabasondra and Tarcila Tabasondra, their heirs and assigns, all our shares, rights, interests and participations in the above-described parcel of land free from liens and incumbrances. That we hereby certify that the herein VENDEES are the actual tillers or tenants of the above-described parcel of land subject matter of this deed of absolute sale and, as such, have the prior right of pre-emption and redemption, under the Land

Reform Code. (Bold underscoring supplied for emphasis)

We uphold the right of Valentina and Valeriana to thereby alienate their pro indiviso shares to Sebastian and Tarcila even without the knowledge or consent of their co-owner Cornelio because the alienation covered the disposition of only their respective interests in the common property. According to Article 493 of the Civil Code, each co-owner "shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved," but "the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership." Hence, the petitioners as the successors-in-interest of Cornelio could not validly assail the alienation by Valentina and Valeriana of their shares in favor of the respondents.[11]

Accordingly, the Court declares the following disposition by the CA to be correct and in full accord with law, to wit:

x x x [T]here is no dispute that the subject property was owned in common by the siblings Cornelio, Valentina, and Valeria. Corollarily, the records at bench glaringly show that the genuineness and due execution of the Deed of Absolute Sale executed by Valeriana and Valentina in favor of the Defendants-Appellants was not rebutted by the Plaintiffs-Appellees. A fortiori, such deed is prima facie evidence that a contract of sale was, indeed, entered into and consummated between Valeriana and Valentina as sellers and the Defendants-Appellants as vendors.

The foregoing facts, juxtaposed with the laws and the jurisprudential precepts mentioned elsewhere herein, lead to no other conclusion but that the sale by Valeriana and Valentina of their pro indiviso shares in favor of the Defendants-Appellants is valid. As enunciated by the Supreme Court in *Aleandrino v. CA, et al.*:

x x x Under a co-owners/tip, the ownership of an undivided thing or right belongs to different persons. Each co-owner of property which is held pro indiviso exercises his rights over the whole property and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co-owners. The underlying rationale is that until a division is made, the respective share of each cannot be determined and every co-owner exercises, together with his co-participants, joint ownership over the pro indiviso property, in addition to his use and enjoyment of the same.

Although the right of a heir over the property of the decedent is inchoate as long as the estate has not been fully settled and partitioned, the law allows a co-owner to exercise rights of ownership over such inchoate right. Thus, the Civil Code provides:

Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

With respect to properties shared in common by virtue of inheritance, alienation of a pro indiviso portion thereof is specifically governed by Article 1088 that provides:

Art. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor.

In the instant case, Laurencia was within her hereditary rights in selling her pro indiviso share in Lot No. 2798. However, because the property had not yet been partitioned in accordance with the Rules of Court, no particular

portion of the property could be identified as yet and delineated as the object of the sale. Thus, interpreting Article 493 of the Civil Code providing that an alienation of a co-owned property "shall be limited to the portion which may be allotted to (the seller) in the division upon the termination of the co-ownership, the Court said:

... (p)ursuant to this law, a co-owner has the right to alienate his pro-indiviso share in the co-owned property even without the consent of the other co-owners. x x x

Using the foregoing disquisitions as guidelines, there is no denying that the RTC erred in granting the complaint and ordering a partition without qualifying that such should not include the shares previously pertaining to Valeria and Valentina. Simply put, since the aggregate area of the subject property is one hundred thousand three hundred fifty-two (100,352) sq.m., it follows that Cornelio, Valentina, and Valeriana each has a share equivalent to thirty-three thousand four hundred fifty point sixty-six (33,450.66) sq. m. portion thereof. Accordingly, when Valentina and Valeriana sold their shares, the Defendants-Appellants became co-owners with Cornelio. Perforce, upon Cornelio's death, the only area that his heirs, that is, the Plaintiffs-Appellees and the Defendants-Appellants, are entitled to and which may be made subject of partition is only a thirty-three thousand four hundred fifty point sixty-six (33,450.66) sq.m. portion of the property.

All told, finding the RTC's conclusions to be not in accord with the law and jurisprudence, necessarily, the same cannot be sustained.[12]

As a result of Valentina and Valeriana's alienation in favor of Sebastian and Tarcila of their pro indiviso shares in the three lots, Sebastian and Tarcila became co-owners of the 100,352-square meter property with Cornelio (later on, with the petitioners who were the successors-in-interest of Cornelio). In effect, Sebastian and Tarcila were co-owners of two-thirds of the property, with each of them having one-third pro indiviso share in the three lots, while the remaining one-third was co-owned by the heirs of Cornelio, namely, Sebastian, Tarcila and the petitioners.

Nonetheless, we underscore that this was a case for partition and accounting. According to *Vda. de Daffon v. Court of Appeals*,[13] an action for partition is at once an action for declaration of co-ownership and for segregation and conveyance of a determinate portion of the properties involved. If the trial court should find after trial the existence of co-ownership among the parties, it may and should order the partition of the properties in the same action.[14]

Although the CA correctly identified the co-owners of the three lots, it did not segregate the 100,352-square meter property into determinate portions among the several co-owners. To do so, the CA should have followed the manner set in Section 11, Rule 69 of the Rules of Court, to wit:

Section 11. The judgment and its effect; copy to be recorded in registry of deeds. If actual partition of property is made, the judgment shall state definitely, by metes and bounds and adequate description, the particular portion of the real estate assigned to each party, and the effect of the judgment shall be to vest in each party to the action in severalty the portion of the real estate assigned to him. **xxxs (Bold emphasis supplied.)**

Accordingly, there is a need to remand the case to the court of origin for the purpose of identifying and segregating, by metes and bounds, the specific portions of the three lots assigned to the co-owners, and to effect the physical partition of the property in the following proportions: Tarcila, one-third; the heirs of Sebastian, one-third; and the petitioners (individually), along with Tarcila and the heirs of Sebastian (collectively), one-third. That physical partition was required, but the RTC and the CA uncharacteristically did not require it. Upon remand, therefore, the RTC should comply with the express terms of Section 2, Rule 69 of the Rules of Court, which provides:

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)

A final order decreeing partition and accounting may be appealed by any party aggrieved thereby. (n)

Should the parties be unable to agree on the partition, the next step for the RTC will be to appoint not more than three competent and disinterested persons as commissioners to make the partition, and to command such commissioners to set off to each party in interest the part and proportion of the property as directed in this decision.[15]

Moreover, with the Court having determined that the petitioners had no right in the two-thirds portion that had been validly alienated to Sebastian and Tarcila, the accounting of the fruits shall only involve the one-third portion of the property inherited from Cornelio. For this purpose, the RTC shall apply the pertinent provisions of the Civil Code, particularly Article 500 and Article 1087 of the Civil Code, viz.:

Article 500. Upon partition, there shall be a mutual accounting for benefits received and reimbursements for expenses made. Likewise, each co-owner shall pay for damages caused by reason of his negligence or fraud. (n)

Article 1087. In the partition the co-heirs shall reimburse one another for the income and fruits which each one of them may have received from any property of the estate, for any useful and necessary expenses made upon such property, and for any damage thereto through malice or neglect. (1063)

WHEREFORE, the Court AFFIRMS WITH MODIFICATION the decision of the Court of Appeals promulgated on November 30, 2010 in CA-G.R. CV No. 92920 in that the accounting is to be made only with respect to the fruits of the one-third portion of the property still under the co-ownership of all the parties; REMANDS the case to the Regional Trial Court, Branch 64, in Tarlac City for further proceedings in accordance with this decision, and to determine the technical metes and bounds and description of the proper share of each co-owner of the property covered by Transfer Certificate of Title No. 10612, including the improvements thereon, in accordance with the Civil Code and Rule 69 of the Rules of Court; and ORDERS the petitioners to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Perlas-Bernabe, and Caguioa, JJ., concur.

[*] Also spelled as Tarsila in some parts of the record, including the decision under review.

[1] Rollo, 74-84; penned by Associate Justice Normandie B. Pizarro, with Associate Justice Amelita G. Tolentino (retired) and Associate Justice Ruben C. Ayson (retired) concurring.

[2] Id. at 85-93; penned by Presiding Judge Domingo C. San Jose, Jr.

[3] Id. at 75-77.

[4] Id. at 97.

[5] Supra note 1.

[6] Rollo, p. 83

[7] Id. at 30-43.

[8] Id. at 28-29.

[9] Id. at 14-15.

[10] Records, p. 81.

[11] *Torres v. Lapinid*, G.R. No. 187987, November 26, 2014, 742 SCRA 646, 652.

[12] Rollo, pp. 80-83.

[13] G.R. No. 129017, August 20, 2002, 387 SCRA 427.

[14] Id. at 433-434.

[15] Section 3, Rule 69 of the Rules of Court states:

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)

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