

MARIO T. DE VERA, FLORENCE DE VERA SANICOLAS, TERESITA T. DE VERA, PURISIMA DE VERA ESTRADA, LOURDES T. DE VERA AND ROSALINDA DE VERA PASCUA, BY HERSELF AND AS ATTORNEY-IN-FACT ...

G.R. No. 232437. June 30, 2021

Ponente: LOPEZ, J., J.

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LOPEZ, J., J.:

Even before partition, a co-owner may exercise remedies in order to protect his or her interest in the common property. This includes the filing of an action to recover the common property against third persons who are unlawfully withholding its possession.

The Court resolves the Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated March 16, 2017 and the Resolution[3] dated June 16, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 106781, which affirmed the Decision[4] of the Regional Trial Court (RTC) of Las Piñas City, Branch 275 to dismiss complaint for recovery of possession.

The Facts

Purísima De Vera Estrada, Rosalinda De Vera Pascua (Rosalinda), Teresita T. De Vera and Mario T. De Vera (petitioners) are the surviving children of Bernardo A. De Vera, Sr. (Bernardo).[5] During his lifetime, Bernardo acquired from the National Housing Authority a property described as Block 1-C, Lot 13, Avocado comer Durian Street, CAA, Las Piñas City (property).[6]

Bernardo died in 1993 without completing payment for the property. Meanwhile, in the morning of September 9, 1995, and on the strength of an alleged waiver of rights executed by petitioners' mother, Emelie Moreno Vda. De Vera (Emelie), respondent Virgilio Manzanero (Virgilio) forcibly took possession of the subject property. Virgilio, together with twenty (20) other men, destroyed the structures and house standing on the property, and successfully divested petitioners of possession. At the time, Virgilio was the Barangay Chairman of Barangay CAA, Las Piñas City.[7]

Petitioners initially endured the injustices committed by Virgilio and his men who employed threat and intimidation against them. When they tried to eject them from the property, however, petitioners filed a complaint dated January 6, 2000 for destruction to property with the District-Intelligence and Investigation Division, Southern Police District, Fort Bonifacio, Taguig City. This was followed by a complaint for harassment, forgery, and destruction to private property filed by petitioner Rosalinda against respondents before the Commission on Human Rights on May 13, 2001. In May 2009, Rosalinda also brought charges against respondents before Barangay CAA, Las Piñas City.[8]

On August 28, 2012, petitioners received from NHA a Final Demand of Settlement of Account addressed to Bernardo, giving him a final opportunity to settle his outstanding obligation for the property. On December 26,

2013, petitioners, through Rosalinda, paid the outstanding balance.[9]

On June 19, 2014, petitioners filed a complaint[10] against respondents before the RTC, docketed as Civil-14-0061. Petitioners alleged that several demands to vacate the property were made against respondents, but to no avail.[11] Thus, they prayed that judgment be rendered ordering respondents and all other persons claiming rights under them to vacate the subject property and return its possession to petitioners.[12]

In their Answer,[13] respondents, as defendants therein, argued that the whole property was sold to them by petitioners' mother, Emelie, on April 20, 1994. As supposed evidence of this, they attached a document entitled Affidavit of Waiver[14] executed by Emelie, purportedly transferring a residential house erected at the property to a certain Florentino A. Manzanero, who was described as the nearest kin/relative of Emelie.

Subsequently, respondents filed a motion to dismiss[15] on the ground of non-compliance with the condition precedent under Section 412 of the Local Government Code of 1991, or the prior referral to the barangay lupon for conciliation proceedings. The RTC denied the motion to dismiss, as well as the series of motions for reconsideration filed by respondents.[16]

After petitioners filed their Formal Offer of Evidence,[17] respondents filed a Motion for Leave of Court to File Supplemental Motion to Dismiss with attached Supplemental Motion to Dismiss. The Supplemental Motion to Dismiss was subsequently denied by the RTC, which then ruled that the presentation of evidence by respondents was considered not availed of. Respondents' motion for reconsideration was denied.[18]

On February 15, 2016, the RTC dismissed the complaint filed by petitioners. It ruled that the appropriate course for petitioners is not to file an action for recovery of possession of the property, but to commence an action for judicial partition.[19] The RTC decision states:

As deduced from the plaintiffs' evidence, there is no dispute that Emelie Moreno Vda. De Vera is the surviving spouse of the deceased Bernardo De Vera Sr. Emelie together with the plaintiffs, who are the children of the deceased, are by law entitled to succeed the latter. Prescinding from this premise, the property awarded to Bernardo Sr. by the NHA shall be transmitted to his heirs immediately upon his death. Since no formal agreement or partition was executed between plaintiffs and Emelie, they are considered co-owners pro indiviso of the property. Their relationship is governed by Article 493 of the Civil Code which provides:

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.

Thus, the sale by a co-owner without the consent of the other co-owner is not necessarily void. The selling co-owner has merely transferred his right to the buyer who will substitute him in the enjoyment of the property.

On the allegation of falsity of the purported Deed of Sale, while the evidence shows that the notary public was not commissioned at the time the document was notarized, Emelie has not come to court to disprove the sale allegedly made by her to the defendant Virgilio. She has not even joined the plaintiffs in the latter's pursuit to recover possession of the property. The presumption is Emelie has sold her undivided aliquot share in the property to defendant Virgilio. Before partition, a co-heir can only sell his successional rights.

The irregular notarization of the contract of sale reduces it to a private document. Proofs of authenticity and due execution of the same must be established. Nonetheless, it cannot be gainsaid that as between Emelie and the defendant Virgilio, the contract of sale is binding but only as to the undivided portion that may eventually be given as her share in the entire property. The buyer Virgilio shall substitute Emelie as co-owner of the

property. Virgilio would also become a trustee of the portion that could not be validly sold for the benefit of the other co-owners.

Further to the presumption that Emelie sold her share is the plaintiffs' seeming inaction of allowing the defendants to occupy a portion of the property since 1995 until 2000. Their professed silent suffering of the injustice perpetuated against them by defendants is, on the contrary, suggestive of their acquiescence to the sale made by Emelie. Plaintiffs only initiated a complaint in 2000 when their very possession on the property was also threatened. Rightfully so, the sale of Emelie should not include the portions that may be allotted to the plaintiffs upon partition. Notably, plaintiffs' charges of harassment, destruction of property etc. interposed with several offices against the defendants appeared to have produced no favorable results. The answer must be due to prematurity.

Without an actual partition being first done either by agreement or by judicial decree, no heir could yet assert or claim a specific portion of the property. There could be no means to determine the metes and bounds where possession by the defendants has overlapped to the portion that may ultimately be assigned to the plaintiffs. Therefore the appropriate recourse is not an action for the recovery of possession of the thing owned in common from the defendant who substituted Emelie who alienated her share but to commence an action for judicial partition.[20]

Petitioners filed a Notice of Appeal[21] dated February 22, 2016. On March 16, 2017, the CA affirmed the RTC's dismissal of petitioners' complaint. It found that petitioners and Emelie are the heirs of Bernardo, all of whom inherited the property upon his death. It then agreed with the RTC's holding that as co-owners, petitioners cannot claim title to any specific portion of the property without an actual partition being first done either by agreement or by judicial decree. According to the CA, the appropriate recourse of co-owners in cases where their consent was not secured in a sale of the entire property as well as in a sale merely of undivided shares of some of the co-owners is an action for partition under Rule 69 of the Rules of Court. The CA declared that the question of whether respondents validly acquired Emelie's pro indiviso share in the property, making them co-owners with petitioners, is an issue which can be properly threshed out in an action for partition.[22]

Petitioners filed a motion for reconsideration, which the CA subsequently denied in its assailed Resolution.[23]

The Issues Presented

Before the Court, petitioners raise the following assignment of errors:[24]

I.

WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THE PROPER REMEDY IS TO FILE AN ACTION FOR PARTITION.

II.

WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT RESPONDENTS' VALIDLY POSSESSED THE SUBJECT PROPERTY.

Petitioners argue that their action for recovery of possession was proper to determine whether respondents' possession of the property is valid. They aver that an action for judicial partition under Rule 69 of the Rules of Court is a judicial controversy between persons who, being co-owners or co-parceners of common property, seek to secure a division or partition thereof among themselves, giving to each one of them the part corresponding to him. On the other hand, an action for the recovery of the right to possess is an ordinary civil proceeding to determine the better right of possession of realty independent of title. Considering that their stand is that no co-ownership exists between them and respondents in the first place, petitioners argue that the prior filing of an action for partition would be "paradoxical" to their claim that they and their mother are the sole owners of the

property.[25]

To establish that respondents have no right to possess the property, petitioners contend that: (1) the Affidavit of Waiver executed by Emelie is null and void for being in violation of Section 14 of Republic Act No. 7279,[26] which prohibits the sale, alienation, conveyance, encumbrance, and lease of land for socialized housing by the beneficiaries; and (2) the Affidavit of Waiver is also unenforceable for improper verification. Petitioners refer to the Certification issued by the Integrated Bar of the Philippines stating that no notarial commission was granted in Las Piñas City in 1994. According to petitioners, the lack of notarization makes the Affidavit of Waiver a private document, which under Article 1358 of the Civil Code of the Philippines, is unenforceable against them who are third parties in that document.

Lastly, petitioners argue that even assuming that respondents and petitioners are co-owners, a co-owner may still bring an action for ejectment against a co-owner who takes exclusive possession and asserts exclusive ownership of a common property. Since respondents asserted exclusive ownership of the property, the action for recovery of possession was proper.

In their comment,[27] respondents counter that petitioners must first establish their rightful ownership over the property before their right to possess it can be validly interposed against respondents. According to respondents, the CA correctly ruled that the case for recovery of possession puts in issue the ownership of the subject property and the concomitant right to possess the same as an attribute of ownership. Respondents cite the case of *Domingo v. Sps. Molina*,[28] where the Court held that the appropriate recourse of co-owners in cases where their consent was not secured in a sale of the entire property as well as in a sale merely of undivided shares of some of the co-owners is an action for partition.

The petition is granted.

I.

It is well-settled that only questions of law may be entertained in a Petition for Review on Certiorari under Rule 45 of the Rules of Court.[29] A question of fact arises when the issue presented before the Court is the correctness of the lower courts' appreciation of evidence presented by the parties.[30] Questions of fact are outside the ambit of review of the Court, which is generally bound by the findings of the CA.[31]

There are, however, several established exceptions to this rule, which allow this Court to re-examine and calibrate the evidence on record. In *Cordillera Global Network v. Paje*,[32] the Court reiterated the recognized exceptions, to wit:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures x x x; (2) When the inference made is manifestly mistaken, absurd or impossible x x x; (3) Where there is a grave abuse of discretion x x x; (4) When the judgment is based on a misapprehension of facts x x x; (5) When the findings of fact are conflicting x x x; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee x x x; (7) The findings of the Court of Appeals are contrary to those of the trial court x x x; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based x x x; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents x x x; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record x x x. (Citations omitted)[33]

In the present case, petitioners argue that the CA "overlooked certain relevant facts which if not properly considered would justify a different conclusion." [34] They maintain that there is no co-ownership between them

and respondents. Thus, a prior action for partition would contradict their claim that they are the sole owners of the property.[35]

Upon a careful review, the Court is convinced that this case falls under one of the recognized exceptions, particularly, that the judgment of the CA is "based on a misapprehension of facts." [36]

II.

It is undisputed that Bernardo was survived by his children, petitioners herein, and his wife, Emelie.[37] Upon Bernardo's death, his title and rights to the property immediately passed on to petitioners and Emelie as heirs.[38] Before partition, petitioners and Emelie are considered co-owners of the property.[39]

The CA, in affirming the dismissal of the complaint, agreed with the ruling of the RTC that petitioners, as co-owners, cannot claim title to any specific portion of the property without an actual partition being first done either by agreement or by judicial decree.[40] It declared the proper recourse of co-owners in cases where their consent was not secured in a sale of the entire property as well as in a sale merely of undivided shares of some of the co-owners is an action for partition under Rule 69 of the Rules of Court.[41] According to the CA, the question of whether respondents validly acquired Emelie's pro indiviso share in the property, making them co-owners with petitioners, is an issue which can be properly threshed out in an action for partition.[42] As explained in *Bautista, et al. v. Bautista*: [43]

A special civil action of judicial partition under Rule 69 of the Rules of Court is a judicial controversy between persons who, being co-owners or coparceners of common property, seek to secure a division or partition thereof among themselves, giving to each one of them the part corresponding to him. The object of partition is to enable those who own property as joint tenants, or coparceners, or tenants in common to put an end to the joint tenancy so as to vest in each a sole estate in specific property or an allotment in the lands or tenements.[44] (Citations omitted)

It was an error for the CA to dismiss the complaint of petitioners and rule that their proper recourse was to file an action for partition. First, an action for partition under Rule 69 is "typically brought by a person claiming to be the owner of a specified property against a defendant or defendants whom the plaintiff recognizes to be his co-owners." Based on the allegations of the complaint and the evidence adduced at trial, petitioners sought to recover possession of the entire property on the ground that they are the co-owners of the property, having inherited it from Bernardo. They argued that respondents forcibly deprived them of possession on the strength of a defective and invalid waiver of rights supposedly executed by Emelie. Thus, it would be illogical for petitioners to file an action for partition against respondents whom they do not even recognize as co-owners.

Second, it is true that in an action for judicial partition of the property, the first stage is the determination of the existence of the co-ownership and whether a partition is proper.[45] This does not mean, however, that the action for judicial partition is the only avenue where the existence of co-ownership may be established.

The case of *De Guia v. Court of Appeals* [46] is instructive. There, Abejo filed an action for recovery of possession with damages against De Guia. Abejo alleged that he is the owner of the one-half undivided portion of a property used as a fishpond, which De Guia continues to possess and use without any contract and without paying rent to Abejo. The Court found that Abejo and De Guia have equal shares over the undivided property. The only issue which remained was the propriety of bringing an action for recovery of possession. De Guia argued that Abejo should have filed an action for partition because the action for recovery of possession cannot prosper when the property subject of the action is part of an undivided, co-owned property. In resolving the issue, the Court said:

Article 487 of the Civil Code provides, "[a]ny one of the co-owners may bring an action in ejectment." This

article covers all kinds of actions for the recovery of possession. Article 487 includes forcible entry and unlawful detainer (accion interdictal), recovery of possession (accion publiciana), and recovery of ownership (accion de reivindicacion). The summary actions of forcible entry and unlawful detainer seek the recovery of physical possession only. These actions are brought before municipal trial courts within one year from dispossession. However, accion publiciana, which is a plenary action for recovery of the right to possess, falls under the jurisdiction of the proper regional trial court when the dispossession has lasted for more than one year. Accion de reivindicacion, which seeks the recovery of ownership, also falls under the jurisdiction of the proper regional trial court.

Any co-owner may file an action under Article 487 not only against a third person, but also against another co-owner who takes exclusive possession and asserts exclusive ownership of the property. In the latter case, however, the only purpose of the action is to obtain recognition of the co-ownership. The plaintiff cannot seek exclusion of the defendant from the property because as co-owner he has a right of possession. The plaintiff cannot recover any material or determinate part of the property.

In *Hermogena G. Engreso with Spouse Jose Engreso v. Nestoria De La Cruz and Herminia De La Cruz*, we reiterated the rule that a co-owner cannot recover a material or determinate part of a common property prior to partition as follows:

It is a basic principle in civil law that before a property owned in common is actually partitioned, all that the co-owner has is an ideal or abstract quota or proportionate share in the entire property. A co-owner has no right to demand a concrete, specific or determinate part of the thing owned in common because until division is effected his right over the thing is represented only by an ideal portion.

As such, the only effect of an action brought by a co-owner against a co-owner will be to obtain recognition of the co-ownership; the defendant cannot be excluded from a specific portion of the property because as a co-owner he has a right to possess and the plaintiff cannot recover any material or determinate part of the property. Thus, the courts *quo erred* when they ordered the delivery of one-half (½) of the building in favor of private respondent.

Indisputably, DE GUIA has been in exclusive possession of the entire FISHPOND since July 1974. Initially, DE GUIA disputed ABEJO's claim of ownership over the ½ undivided portion of the FISHPOND. Subsequently, he implicitly recognized ABEJO's ½ undivided share by offering to settle the case for [P]300,000 and to vacate the property. During the trial proper, neither DE GUIA nor ABEJO asserted or manifested a claim of absolute and exclusive ownership over the entire FISHPOND. Before this Court, DE GUIA limits the issues to the propriety of bringing an action for recovery of possession and the recovery of compensatory damages.

Following the inherent and peculiar features of co-ownership, while ABEJO and DE GUIA have equal shares in the FISHPOND quantitatively speaking, they have the same right in a qualitative sense as co-owners. Simply stated, ABEJO and DE GUIA are owners of the whole and over the whole, they exercise the right of dominion. However, they are at the same time individual owners of a ½ portion, which is truly abstract because until there is partition, such portion remains indeterminate or unidentified. As co-owners, ABEJO and DE GUIA may jointly exercise the right of dominion over the entire FISHPOND until they partition the FISHPOND by identifying or segregating their respective portions.

Since a co-ownership subsists between ABEJO and DE GUIA, judicial or extra-judicial partition is the proper recourse. An action to demand partition is imprescriptible and not subject to laches. Each co-owner may demand at any time the partition of the common property unless a co-owner has repudiated the co-ownership under certain conditions. Neither ABEJO nor DE GUIA has repudiated the co-ownership under the conditions set by law.

To recapitulate, we rule that a co-owner may file an action for recovery of possession against a co-owner who takes exclusive possession of the entire co-owned property. However, the only effect of such action is a

recognition of the co-ownership. The courts cannot proceed with the actual partitioning of the co-owned property. Thus, judicial or extra-judicial partition is necessary to effect physical division of the FISHPOND between ABEJO and DE GUIA. An action for partition is also the proper forum for accounting the profits received by DE GUIA from the FISHPOND. However, as a necessary consequence of such recognition, ABEJO shall exercise an equal right to possess, use and enjoy the entire FISHPOND.[47] (Citations omitted)

From the Court's ruling in De Guia, two things are clear:

First, a co-owner may file an action to recover possession against a co-owner who takes exclusive possession and asserts exclusive ownership of the property. In such case, however, the purpose of the action is only to obtain recognition of the co-ownership.

It was established during trial that respondents forcibly entered the property and deprived petitioners of possession.[48] Following De Guia, even assuming co-ownership exists between respondents and petitioners, the latter were not precluded from filing an action to recover possession against respondents. More glaring, however, is the Court's declaration that the purpose of the action to recover possession is to obtain recognition of the co-ownership. Corollarily, this means that the court in which the action was filed can in fact rule on the existence or non-existence of co-ownership between the parties. Thus, a separate action for partition to determine the existence of co-ownership is not necessary.

Second, while the Court in De Guia ultimately ruled that judicial or extrajudicial partition is necessary to effect the physical division of the property, this declaration was made only after the co-ownership between Abejo and De Guia was recognized by virtue of the action for recovery of possession. The Court declared that as a consequence of the recognition of the co-ownership, Abejo has an equal right to possess, use, and enjoy the entire property. The court, however, in which the action for recovery of possession was filed has no power to proceed with the actual partitioning of the property. If the parties desire to physically divide the property, an extrajudicial or judicial partition would be necessary.

Respondents rely on the case of *Domingo v. Sps. Molina*[49] in arguing that the CA did not err in dismissing the complaint because the proper action of petitioners should have been one for partition. In that case, spouses Anastacio and Flora Domingo were the owners of a one-half undivided portion of a 18,164 square meter parcel of land. After Flora's death, Anastacio sold his interest over the land to spouses Molina. The sale transferred the entire one-half undivided portion of the land to spouses Molina. Subsequently, Melecio Domingo, one of the children of Anastacio and Flora, filed a complaint for annulment of title and recovery of ownership against spouses Genaro and Elena Molina. Melecio averred that Anastacio gave the property to spouses Molina only as collateral for money that Anastacio previously borrowed; that Anastacio could not have validly sold the interest over the property without the consent of Flora who was already dead at that time; and that the document which purportedly sold the interest to spouses Molina must have been falsified by Genaro. The Court adopted the factual findings of the RTC and CA that the property was a conjugal property of Anastacio and Flora and ruled that:

The OCT annotation of the sale to the spouses Molina reads that "[o]nly the rights, interests and participation of Anastacio Domingo, married to Flora Dela Cruz, is hereby sold, transferred, and conveyed unto the said vendees for the sum of ONE THOUSAND PESOS (P1,000.00) which pertains to an undivided one-half (1/2) portion and subject to all other conditions specified in the document x x x" (emphases supplied). At the time of the sale, Anastacio's undivided interest in the conjugal properties consisted of: (1) one-half of the entire conjugal properties; and (2) his share as Flora's heir on the conjugal properties.

Anastacio, as a co-owner, had the right to freely sell and dispose of his undivided interest, but not the interest of his co-owners. Consequently, Anastacio's sale to the spouses Molina without the consent of the other co-owners was not totally void, for Anastacio's rights or a portion thereof were thereby effectively transferred,

making the spouses Molina a co-owner of the subject property to the extent of Anastacio's interest. This result conforms with the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so (*quando res non valet ut ago, valeat quantum valere potest*).

The spouses Molina would be a trustee for the benefit of the co-heirs of Anastacio in respect of any portion that might belong to the co-heirs after liquidation and partition. The observations of Justice Paras cited in the case of *Heirs of Protacio Go, Sr. V. Servacio* are instructive:

x x x [I]f it turns out that the property alienated or mortgaged really would pertain to the share of the surviving spouse, then said transaction is valid. If it turns out that there really would be, after liquidation, no more conjugal assets then the whole transaction is null and void. But if it turns out that half of the property thus alienated or mortgaged belongs to the husband as his share in the conjugal partnership, and half should go to the estate of the wife, then that corresponding to the husband is valid, and that corresponding to the other is not. Since all these can be determined only at the time the liquidation is over, it follows logically that a disposal made by the surviving spouse is not void ab initio. Thus, it has been held that the sale of conjugal properties cannot be made by the surviving spouse without the legal requirements. The sale is void as to the share of the deceased spouse (except of course as to that portion of the husband's share inherited by her as the surviving spouse). The buyers of the property that could not be validly sold become trustees of said portion for the benefit of the husband's other heirs, the *cestui que trust ent*. Said heirs shall not be barred by prescription or by laches.

Melecio's recourse as a co-owner of the conjugal properties, including the subject property, is an action for partition under Rule 69 of the Revised Rules of Court. As held in the case of *Heirs of Protacio Go, Sr.*, "it is now settled that the appropriate recourse of co-owners in cases where their consent were not secured in a sale of the entire property as well as in a sale merely of the undivided shares of some of the co-owners is an action for PARTITION under Rule 69 of the Revised Rules of Court." [50] (Citations omitted; emphasis in the original)

What is clear in *Domingo*, however, is that the issue of whether the co-owner validly sold his share to a third person was not disputed. The Court in fact held that the sale was valid, albeit only to the extent of the selling co-owner's share in the common property. Insofar as the selling co-owner's interest is concerned, the transferees became co-owners with the other co-owners whose consent were not secured in the sale of the common property.

Thus, similar in *De Guia*, there was first a "recognition" of co-ownership between the disputing parties before the Court declared that an action for partition was the proper recourse for the complaining co-owner.

In the present case, the CA did not make a categorical ruling on the validity of the Affidavit of Waiver, and whether it transferred Emelie's rights over the property to respondents. Rather, the CA immediately dismissed the complaint on the ground that it was a wrong remedy. In its decision, the CA stated:

Contrary to plaintiffs-appellants' assertion, the trial court did not rule that the purported Deed of Sale and Affidavit of Waiver transferred Emelie's title over the subject property to the defendants-appellees. In fact, the trial court dismissed plaintiffs-appellants' Complaint for availing of the wrong remedy.

Whether or not defendants-appellees validly acquired Emelie's pro indiviso share in the subject property, thereby making them co-owners with the plaintiffs-appellants, is an issue which can be properly threshed out in an action for partition. The first stage of an action for judicial partition x x x is concerned with the determination of whether or not a co-ownership in fact exists x x x. This phase may end in a declaration that xxx co-ownership does not exist or a partition is legally prohibited. It may also end, on the other hand, with an adjudgment that a co-ownership does in truth exist, that partition is proper in the premises, xx x. [51]

Absent a finding that Emelie validly transferred her share in the property, which would have resulted to a

co-ownership between petitioners and respondents, the CA's dismissal of the complaint was premature. As discussed above, the CA could have, in the action for recovery of possession, ruled on the existence or non-existence of co-ownership, and decide thereafter whether an action for partition is the proper recourse for petitioners. Verily, if the CA found that no co-ownership exists, an action for partition would be unnecessary. This is because petitioners were not seeking the division of the property so they can individually enjoy a proportionate share of it. What they simply prayed for was for the possession of the property to be returned to them.

In ruling the way it did, the CA overlooked that under Article 487 of the Civil Code, any of the co-owners may file an action in ejectment. This article covers all kinds of action for the recovery of possession, i.e. forcible entry and unlawful detainer (*accion interdictal*), recovery of possession (*accion publiciana*), and recovery of ownership (*accion de reivindicacion*).[52] This right of the co-owners is not subject to the requirement that a partition be effected first. In fact, as discussed above, a "co-heir or a co-owner may bring suit without impleading all the other co-owners if the suit is for the benefit of all." [53] The complaint filed by petitioners was clearly for the benefit of all the co-owners. They "did not claim exclusive ownership over the [property], but [they] filed the [complaint] for the purpose of recovering its possession which would redound to the benefit of the co-owners." [54]

The law, to be sure, does not require the co-owners to partition the common property before they can use and enjoy it. Article 486 of the Civil Code is clear:

Article 486. Each co-owner may use the thing owned in common, provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interests of the co-ownership or prevent the other co-owners from using it according to their rights. The purpose of the co-ownership may be changed by agreement, express or implied.

If the co-owners choose to maintain the co-ownership, they may validly do so. Under Article 494 of the Civil Code, "x x x, an agreement to keep the thing undivided for a period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement."

In ruling that the petitioners should instead file an action for partition, the CA effectively denied petitioners a remedy that is available to them under the law. Moreover, in requiring petitioners to file an action for partition, the CA pre-empted petitioners' choice on whether to divide the common property or not. This cannot be allowed.

At this juncture, the Court rules that when the issue of co-ownership is involved, an action to recover possession of a property and an action for partition serve different purposes. One is not a pre-requisite for the other, nor does one preclude the other. Both remedies are available to the parties, depending on the circumstances of each case.

III.

Having ruled that the CA's dismissal of the complaint was premature, this Court finds it proper to rule on the merits of petitioners' action to recover possession. The Court notes that petitioners are suing as indigents, and are being assisted by the Public Attorney's Office in the present case. Moreover, the complaint was filed on June 19, 2014, or almost seven (7) years ago.

Remanding the case to the RTC would only delay the disposition of the case, to the detriment and prejudice of the party entitled to relief. Indeed, the interests of justice will be better served if the Court decides this case with finality now.

As mentioned above, the right of a co-owner to bring an action in ejectment covers all kinds of action for the recovery of possession, i.e. forcible entry and unlawful detainer (*accion interdictal*), recovery of possession (*accion publiciana*), and recovery of ownership (*accion de reivindicacion*).[55]

These three types of action for recovery of possession have been discussed by the Court in this wise:

Accion interdical comprises two distinct causes of action, namely, forcible entry (detentacion) and unlawful detainer (desahuico) [sic]. In forcible entry, one is deprived of physical possession of real property by means of force, intimidation, strategy, threats, or stealth whereas in unlawful detainer, one illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The two are distinguished from each other in that in forcible entry, the possession of the defendant is illegal from the beginning, and that the issue is which party has prior de facto possession while in unlawful detainer, possession of the defendant is originally legal but became illegal due to the expiration or termination of the right to possess.

The jurisdiction of these two actions, which are summary in nature, lies in the proper municipal trial court or metropolitan trial court. Both actions must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand, in case of unlawful detainer. The issue in said cases is the right to physical possession.

Accion publiciana is the plenary action to recover the right of possession which should be brought in the proper regional trial court when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title. In other words, if at the time of the filing of the complaint more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be, not one of the forcible entry or illegal detainer, but an accion publiciana. On the other hand, accion reivindicatoria is an action to recover ownership also brought in the proper regional trial court in an ordinary civil proceeding.[56]

The complaint filed by petitioners was actually an accion reivindicatoria. An accion reivindicatoria is an action instituted to recover a parcel of land as an element of ownership. It is an action whereby plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession.[57] To reiterate, petitioners filed the complaint to recover possession of the property from respondents, alleging that they are the owners of it.

Article 434 of the Civil Code provides that "[i]n an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of defendant's claim." In order that an action for the recovery of title may prosper, it is indispensable, in accordance with the precedents established by the courts, that the party who prosecutes it must fully prove, not only his ownership of the thing claimed, but also the identity of the same.[58]

The Court rules that petitioners were able to establish their ownership over the property. The CA found the following facts: (1) the property was acquired by Bernardo from the NHA by virtue of a Contract to Sell/Deed of Sale with Mortgage; (2) Bernardo died on August 27 1993, and was survived by his children, petitioners herein, and his wife, Emelie; (3) the outstanding balance for the purchase of the property from NHA was paid by petitioner Rosalinda; and (4) the NHA issued a certification stating that Bernardo is an awardee of Block 01-C Lot 13, CAA, Phase II, Las Piñas City and that his account has been paid in full.[59]

It is thus clear that petitioners are the owners of the property. Their title to the property was by virtue of inheritance from Bernardo, which immediately passed onto them upon Bernardo's death.[60] The property was also clearly identified, as evidenced by the NHA certification. In any case, it has been held that "although the identity of the thing that a party desires to recover must be established, if the plaintiff has already proved his right of ownership over a tract of land, and the defendant is occupying without right any part of such tract, it is not necessary for plaintiff to establish the precise location and extent of the portions occupied by the defendant within the plaintiffs property.[61]

In the present case, no evidence was presented by respondents to support any supposed title they have over the

property. In fact, they technically could not have done so during trial. After petitioners filed their formal offer of evidence,[62] respondents filed a Motion for Leave of Court to File Supplemental Motion to Dismiss with attached Supplemental Motion to Dismiss. The Supplemental Motion to Dismiss was subsequently denied by the RTC, which then ruled that the presentation of evidence by respondents was considered not availed of.[63] The Affidavit of Waiver was only attached to the respondents' answer,[64] and was not formally offered in evidence. Under Section 34, Rule 132 of the Revised Rules on Evidence, "[t]he court shall consider no evidence which has not been formally offered."

WHEREFORE, premises considered, the petition is GRANTED. The Decision dated March 16, 2017 and the Resolution dated June 16, 2017 of the Court of Appeals in CA-G.R. CV No. 106781 are hereby REVERSED and SET ASIDE. Respondents are hereby ORDERED to IMMEDIATELY VACATE the property and RETURN ITS POSSESSION to petitioners. No pronouncement as to costs.

SO ORDERED

Leonen, (Chairperson), Hernando, Inting, and Rosario,[*] JJ., concur.

[*] Designated additional Member per Special Order No. 2833, dated June 29, 2021.

[1]Rollo, pp. 21-31.

[2]Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Amy C. Lazaro-Javier (now a Member of the Supreme Court) and Pedro B. Corrales concurring; id. at 38-50.

[3]Id. at 54-55.

[4]Id. at 249-253.

[5]Id. at 46.

[6]Id. at 249.

[7]Id. at 249-250.

[8]Id. at 250.

[9]Id.

[10]Id. at 56-58.

[11]Id. at 57.

[12]Id. at 58.

[13]Id. at 88-93.

[14]Id. at 100.

[15]Id. at 112-122.

[16]Id. at 41.

[17]Id. at 136-142.

[18]Id. at 43.

- [19]Id. at 252.
- [20]Id. at 251-252.
- [21]As cited in CA decision; id. at 43.
- [22]Id. at 43-47.
- [23]Id. at 54-55.
- [24]Id. at 26.
- [25]Id. at 27-28.
- [26]Otherwise known as the "Urban Development and Housing Act of 1992."
- [27]Rollo, pp. 265-270.
- [28]785 Phil. 506, 518 (2016).
- [29]RULES OF COURT, Rule 45, sec. 1.
- [30]Pascual v. Burgos, et al., 776 Phil. 167, 183 (2016).
- [31]Malabanan v. Malabanan, Jr., G.R. No. 187225, March 6, 2019.
- [32]G.R. No. 215988, April 10, 2019, citing Medina v. Mayor Asistio, Jr., 269 Phil. 225 (1990).
- [33]Medina v. Asistio, Jr., supra at 232.
- [34]Rollo, p. 26.
- [35]Id. at 8.
- [36]Supra note 32.
- [37]Rollo, p. 46.
- [38]See Heirs of Gregorio Lopez v. Development Bank of the Phils., 747 Phil. 427, 437 (2014), citing Article 777 of the Civil Code which states: "The rights to the succession are transmitted from the moment of death of the decedent."
- [39]Id., citing Article 1078 of the Civil Code which states: "Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased."
- [40]Rollo, p. 46.
- [41]Id.
- [42]Id. at 46-47.
- [43]807 Phil. 85 (2017).
- [44]Id. at 96.
- [45]Ignacio v. Reyes, et al., 813 Phil. 717, 733 (2017), citing Lim De Mesa v. Court of Appeals, 301 Phil. 783, 792 (1994).

[46]459 Phil. 447 (2003).

[47]Id. at 462-465.

[48]Rollo, p. 250.

[49]785 Phil. 506 (2016).

[50]Id. at 517-518.

[51]Rollo, p. 47.

[52]Catedrilla v. Sps. Lauron, 709 Phil. 335, 344 (2013).

[53]Clemente v. Republic, G.R. No. 220008, February 20, 2019, 894 SCRA 66, 80.

[54]Supra note 52.

[55]Supra note 53.

[56]Heirs of Alfonso Yusingco v. Busilak, et al., 824 Phil.454, 460-461 (2018), citing Spouses Valdez, Jr. v. Court of Appeals, 523 Phil. 39, 45-46 (2006); Encarnacion v. Amigo, 533 Phil. 466, 472 (2006); Suarez v. Spouses Em boy, Jr., 729 Phil. 315, 329-330 (2014).

[57]Pillos v. Domingo, G.R. No. 251090, June 10, 2020, citing S.J. Vda. De Villanueva v. Court of Appeals, 403 Phil. 721, 730 (2001).

[58]Spouses Cañez v. Spouses Bautista, 644 Phil. 43, 48-49 (2010), citing Salacup v. Rambac, 17 Phil. 22 (1910).

[59]Rollo, p. 46.

[60]Heirs of Gregorio Lopez v. Development Bank of the Phils., supra note 38.

[61]Supra note 57, at 49, citing Arturo M. Tolentino, 2 Commentaries and Jurisprudence on the Civil Code of the Philippines 72 (1998). Citations omitted.

[62]Rollo, pp. 136-142.

[63]Id. at 43.

[64]Id. at 88-93.

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