

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PETITIONER, VS. FRANCISCO ABADINAS ET AL., RESPONDENTS. JORGE GABUTAN, APPELLANT; BALBINO GABUTAN, APPELLEE.

G.R. No. 45324. May 27, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The question to be considered and decided in this appeal is whether, after the issuance of an original certificate of title to a land in a cadastral case in favor of two co-owners, one of them may ask for the subdivision of the lot in the same cadastral case, or whether he should bring a separate action for partition as was decided by the appealed order sustaining the contention of the other co-owner.

The facts of the case are as follows: Jorge Gabutan and Balbino Gabutan obtained an original certificate of title to lot No. 6381 of the Cebu cadastre (No. 12, G. L. R. O. Record No. 9468, lot 6381), which lot was adjudicated to them in undivided equal parts. Jorge Gabutan filed a motion in said cadastral case asking, by reason of certain charges alleged by him, that the court order in any manner the subdivision of the said lot into halves, directing the surveyor, Espiritu Bunugan to prepare the subdivision plan by drawing a dividing line across the length or the width of the said lot. Balbino Gabutan opposed the motion, impugning the jurisdiction of the court to take cognizance thereof, contending that an action for partition should be brought for the purpose under section 84 of Act No. 496, and alleging, moreover, that the court, in a cadastral case, cannot decide questions bearing upon improvements and other rights acquired by the coowners.

The grounds of the opposition are indefensible. The jurisdiction of the court even after the issuance of the final decree of registration in a cadastral case, is not exhausted but, on the contrary, subsists as to all incidental questions affecting the registered title to the end that the court's jurisdiction over the same subject matter be not split. This is borne out by the provisions of section 6 of Act No. 2259, known as the Cadastral Act, and by those of section 112 of the Land Registration Act, according to which, after the entry of final decree for the registration of a lot, subdivisions thereof may be made with the court's approval (sec. 6, Act No. 2259), and after the entry of a certificate of title, the registered owner or any interested party may ask the corresponding court to declare the termination of registered real rights or the creation of new real rights etc. (sec. 112, Act No. 496).

The oppositor-appellee contends that the present case is governed by section 84 of Act No. 496 reading:

"Sec. 84. In all proceedings for partition of registered land, after the entry of the final judgment or decree of partition * * *." (Italics ours.)

Note that the quoted portion of section 84 speaks only of proceedings for partition; not actions for partition, and the last paragraph of section 6 of the Cadastral Act precisely refers to proceedings for partition. As above stated, after the entry of the final decree for the registration of a lot, subdivisions thereof may be made, and the last paragraph of the said section 6 reads:

"All subdivisions under this section shall be made in accordance with the provisions of section forty-four of Act Numbered Four hundred and ninety-six * * *."

And under section 44 of Act No. 496, the owner of a registered land may subdivide the same into various lots by petitioning the court to issue one or more new certificates for the lots into which the property is divided. From this it follows that to subdivide a lot, as in the present case, does not call for an action for partition, but only for an application in the same cadastral or registration proceedings, as the case may be, and the court may grant it in these proceedings.

The circumstance that the lot sought to be subdivided is the common property in equal parts of two coowners, does not, in our opinion, bring the present case outside the purview of" the said section 44 of the Land Registration Act; because if the said section were not applicable to the case at bar, we would come to the conclusion that a co-owner is not entitled to ask for the partition of a land owned in common by several, or that coowner is forever bound to remain as such. The contrary is precisely provided by article 400 of the Civil Code reading:

"Art. 400. No coowner shall be obliged to remain a party to the community, but each may, at any time, demand the partition of the thing held in common."

Where to ask for the division of the lot in question, has been answered by us: in the cadastral case under the provisions of section 6 of the Cadastral Act.

We do not believe that the action for partition lies in the present case because, according to section 184 of the Code of Civil Procedure, the said action should be brought when the right of ownership of the parties should be judicially passed upon before the partition of the property is decreed. In the instant case, the right of ownership of the coowners has already been decided by the final decree of registration.

Another objection of the oppositor is to the effect that the court, in a cadastral case, cannot decide, prior to the partition, questions bearing upon improvements and other rights acquired by the coowners. Section 112 of the Land Registration Act precisely provides that, after the entry of a certificate of title, the registered owner may at any time petition the court in writing stating that new real rights have been created which do not appear in the certificate. From which it follows that, if a new right, like, for instance, the right over improvements, is acquired by the owner, the court may, under the provisions of section 112, upon due notice to the interested parties, take cognizance of and decide said questions and others to the end that it may order an amendment of the corresponding certificate of title.

In view of the foregoing, the appealed order is reversed, and the Court of First Instance of Cebu is ordered, in the cadastral case above-mentioned, upon notice to and hearing of the parties, to decree the partition of lot No. 6381 of the Cebu cadastre, in accordance with law, with the costs to the appellee. So ordered.

Avanceña, C. J., Imperial, Diaz, and Laurel, JJ., concur.

Moran, J., see dissenting opinion.

Villa-Real, J., concurs in the dissenting opinion of Justice Moran.

DISSENTING OPINION

MORAN, J.:

I dissent.

After the issuance of the original certificate of title No. 15193 in favor of Jorge Gabutan and Albino Gabutan over lot No. 6381 of the Cebu cadastre, the former demanded of the latter the partition of the land, Albino Gabutan refused, whereupon, Jorge Gabutan filed a motion in the cadastral case asking the court to order the partition of the land because Albino Gabutan deprived him of his share in the products' thereof. Albino Gabutan again opposed the partition thus sought. The court denied the petition on the ground that it lacked jurisdiction to hear an action for partition in the cadastral case. Jorge Gabutan appealed, and the majority now takes the view that the partition lies in said cadastral case. I find no legal provision or valid reason in support of such view. The majority relies on two legal provisions, namely, section 6 of Act No. 2259 and section 112 of Act No. 496. However, these provisions have absolutely no application to the case at bar.

Section 6 of Act No. 2259 reads as follows:

"After final decree has been entered for the registration of a lot its cadastral number shall not be changed except by order of the Court of Land Registration. Future subdivisions of any lot shall, with the approval of said court, be designated by a letter or letters of the alphabet added to the cadastral number of the lot to which the respective subdivisions pertain. The letter with which a subdivision is designated shall be known as its 'cadastral letter:' Provided, however, That subdivisions of additions to cities or townsites may, with the approval of the court, be designated by block and lot numbers instead of cadastral numbers and letters.

"All subdivisions under this section shall be made in accordance with the provisions of section forty-four of Act Numbered Four hundred and ninety-six, and the provisions of section fifty-eight of the said Act shall be applicable to conveyances of lands so subdivided."

And section 44 of Act No. 496, to which the quoted legal provision refers, is as follows:

"A registered owner holding one duplicate certificate for several distinct parcels of land may surrender it, with the approval of the court, and take out several certificates for portions thereof. So a registered owner holding separate certificates for several distinct parcels may surrender them, and with like approval, take out a single duplicate certificate for the whole land, or several certificates for the different portions thereof. Any owner subdividing a tract of registered land into lots shall file with the clerk a plan of such land, when applying for a new certificate or certificates, and the court, before issuing the same, shall cause the plan to be verified and require that all boundaries, streets, and passageways shall be distinctly and accurately delineated thereon."

It seems unnecessary to state that these legal provisions have reference to the case of an owner of a certificate of title over various parcels of land who wishes to subdivide it into various certificates, or of an owner of various certificates who desires to consolidate them into one or more. But there is nothing therein which, directly or indirectly, authorizes an action for partition between the coowners of a real property who have not come to an amicable settlement.

Section 112 of Act No. 496 reads:

"No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the clerk or any register of deeds, except by order of the court. Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error, omission, or mistake was made in entering a certificate or any

memorandum thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married; or, if registered as married, that the marriage has been terminated; or that a corporation which owned registered land and has been dissolved has not conveyed, same within three years after its dissolution, or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: Provided, however, That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent.

"Any petition filed under this section and all petitions and motions filed under the provisions of this Act after original registration shall be filed and entitled in the original case in which the decree of registration was entered.

There is nothing in these legal provisions which authorizes an action for partition. This has nothing to do with "the termination of registered real rights or the creation of new real rights", as the majority states.' But even granting that the creation of new rights were involved, while this "creation" is not a fact but a disputed one, the land registration or cadastral court does not acquire jurisdiction under section 112. For instance: supposing that the purchaser of a registered land applies for the issuance in his favor of a transfer certificate, but the vendor objects on the ground that the contract is not one of sale, but one of mortgage, and that the deed does not reflect the real intention of the parties; in this case the land registration or cadastral court is without jurisdiction, under section 112, to hear and decide the controversy. The contentious case should go to the ordinary courts, and after they have defined the newly created right, the court of land registration may then act.

As we have already once said, "After the land has been registered the Court of Land Registration ceases to have jurisdiction over it for any purpose and it returns to the jurisdiction of the ordinary courts of law of the Islands for all subsequent purposes. The only authority remaining in the Court of Land Registration after its decree becomes final is that given to it by section 112 of Act No. 496." (Cayugan and Lim Tuico vs. Sy Quia, 24 Phil, 567, 572.) And as I have before said, section 112 does not authorize an action for partition.

In an action for partition, the plaintiff may claim his share in the rents or products previously received by his coowners under section 191 of Act No. 190. Has a land registration or cadastral court jurisdiction to hear and decide such claim? It is elementary that it cannot do so. It may perhaps be argued that the Land Registration Court can limit its decree to the partition of the land, reserving the partition of the fruits for ordinary courts. But in such case, to use the same phrase of the majority, we would be splitting the jurisdiction of the court over the same subject matter.

Says the majority: "We do not believe that the action for partition lies in the present case because, according to section 184 of the Code of Civil Procedure, the said action should be brought when the right of ownership of the parties should be judicially passed upon before the partition of the property is decreed. In the instant case, the right of ownership of the coowners has already been decided by the final decree of registration." It seems to me that this theory has no legal or logical foundation. Supposing that a registered land is involved, and the community of property is admitted by all the parties so that a judicial declaration of their right of ownership is unnecessary, but they cannot agree as to the manner of dividing the land owned in common, may they resort to an action for partition under the Code of Civil Procedure? It seems that the affirmative answer is imperative for this is precisely the case where a real action for partition lies, because when the defendants deny coownership and allege exclusive ownership, the action is converted into one for the recovery of property, as we have said in former cases. (Africa vs. Africa, 42 Phil., 934; Larena de Villanueva vs. Capistrano, 49 Phil, 460.)

The only case where an action for partition is authorized by law in registration cases is that of partitions which may be made during the cadastral proceedings before the issuance of the final decree. Sections 19 to 24 of the Cadastral Act read as follows:

"SEC. 19. Whenever in proceedings under this Act the court is of the opinion that the interests of justice require or the parties themselves petition that a partition be made of lands included in the petition and held by various persons in common or jointly, the court may order that such partition be made and for that purpose may appoint two or more disinterested and judicious persons to be commissioners to make the partition, and shall order a writ of partition to issue to the commissioners, commanding them to make partition of the lands and to set off to each of the parties in interest such part and proportion of the lands as the court shall order. By agreement between the co-owners or cotenants of lands included in the petition, lands not so included but held by said coowners or cotenants in the same manner and by the same tenure may, with the approval of the court, be included in the same partition proceedings, and in such cases the court may order a survey to be made of such lands.

"SEC. 20. Before making the partition the commissioners shall take and subscribe an oath, before any officer authorized to administer oaths, that they will faithfully perform their duties as such commissioners, which oath shall be filed in court with the proceedings in the case.

"SEC. 21. Except as herein otherwise provided the commissioners and the court in making the partition shall be governed by the provisions of sections one hundred and eighty-live, one hundred and eighty-six, one hundred and eighty-seven, one hundred and eighty-eight, one hundred and eighty-nine, one hundred and ninety, and one hundred and ninety-one of the Code of Civil Procedure, and the commissioners shall receive such compensation as the court may determine, but not to exceed three pesos per day for the time actually and necessarily employed in the performance of their duties.

"SEC. 22. The order of the court effecting the partition shall state definitely, by adequate description, the particular portion of the estate which is apportioned to each party in interest and shall have the same force and effect as the final judgment in partition proceedings under the Code of Civil Procedure.

"SEC. 23. The guardian of minors and persons of unsound mind shall represent them in the partition proceedings authorized by this Act. Where no guardian is appointed, or where he fails to appear, the court may appoint a guardian ad litem to represent the minors or persons of unsound mind, in the proceedings. Such guardian or guardian ad litem may, on behalf of his ward, and with the approval of the court, do and perform any act, matter, or thing respecting the partition of the estate, including amicable partition thereof, which such minor or person of unsound mind could do in the partition proceedings if he were of age or of sound mind.

"SEC. 24. The proceedings in partition authorized by this Act shall be regarded as a part of the land registration case in connection with which the partition is ordered, and no special fees shall be charged by the clerk of the court. for any service performed by him in such partition proceedings, but the compensation of the commissioners appointed and additional expenses incurred in connection with the partition, including the costs of additional surveys, may be taxed as costs in the case and apportioned among the parties interested in the partition to such an extent and in such a manner as the court may deem just and equitable. Upon the order taxing and apportioning such costs becoming final, an execution may issue therefor as in partition proceedings under the Code of Civil Procedure unless the court direct that payment be made in installments as provided in section eighteen of this Act."

Note that the aforequoted section 19 states that the partition may be made "in proceedings under this Act," which means during the proceedings in the cadastral case and not after the issuance of the final decree. And this becomes the more evident in section 24 providing that the costs of partition may be taxed as costs of the cadastral proceedings, payable on installment, which means that it has to do with a partition to be made before final judgment is rendered or, at least, before the decree of registration is issued.

In view of the foregoing considerations, I am of the opinion that the appealed order should be affirmed.

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