

MARIA LOPEZ, PLAINTIFF AND APPELLANT, VS. MAGDALENA GONZAGA VDA. DE CUAYCONG ET AL., DEFENDANTS AND APPELLEES; LOPEZ SUGAR CENTRAL MILL CO., INC., INTERVENOR AND APPELLANT.

G.R. No. 46079. March 24, 1944

Ponente: BOCOBO, J.

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BOCOBO, J.:

The intervenor and appellant, the Lopez Sugar Central Mill Co., Inc., moves for a reconsideration of the resolution of this Court promulgated on July 20, 1940, in so far as said resolution declared the deed of sale, Exhibit D, void in its entirety and denied certain remedies prayed for.

In the decision of this Court under date of January 29, 1940, this Court held the sale in question void and of no effect in so far as the three daughters, Maria Cristina, Josefina and Anita Cuaycong, were concerned because they had not taken part therein, but valid as to the widow and other children of Cuaycong who had consented to the transaction. In said decision, this Court ordered intervenor to remove the buildings constructed on Lot 178-B. Then, in the resolution dated July 20, 1940, this Court held that said contract was void in its entirety. The portion of said resolution whose reconsideration is sought reads: "And with respect to the widow of Cuaycong and his children of age, the sale was also void, because they alienated, without a previous partition of the hacienda, a definite and concrete part thereof, although they had only an abstract and undivided share of said property."

We shall discuss three questions raised in the motion for reconsideration: (1) Was the consent of the three daughters, Maria Cristina, Josefina and Anita Cuaycong necessary to the sale in question? (2) What rights did the intervenor acquire in this sale? (3) Whether the distillery building and other improvements constructed on Lot 178-B should be removed by the intervenor.

I

On the first question, we believe the consent of the three daughters above named was not necessary to the validity of the sale in question. Each co-owner may alienate his undivided or ideal share in the community.

Articles 392 and 399 of the Civil Code provide:

"Article 392. There is co-ownership whenever the ownership of a thing or of a right belongs undivided to different persons.

"Art. 399. Todo condueño tendra la plena propiedad de su parte y la de los frutos y utilidades que le correspondan, pudiendo en su ebnsuencia enajenarla, cederla o hipotecarla, y aim sustituir otro en su aprovechamiento, salvo si se tratare de derechos personales. Pero el efecto de la enajenacion o hipoteca con relacion a los condueños estara limitado a la porcion que se le adjudique en la division al cesar la comunidad.

"Article 399. Each one of the co-owners shall have the absolute ownership of his part and that of the fruits and

profits pertaining thereto, and he may therefore sell, assign or mortgage it, and even substitute another person in its enjoyment, unless personal rights are involved. But the effect of the alienation or mortgage with respect to the co-owners shall be limited to the share which may be allotted to him in the division upon the termination of the co-ownership."

Manresa has the following to say on this subject;

"Cada condomino lo es del todo, y sobre el todo ejerce derechos dominicales, pero al mismo tiempo es propietario de una parte realmente abstracta, porque hasta que la division se efectue no queda aquella determinada concretamente. Los derechos de los comuneros son, por lo expuesto, todo lo absolutos que el dominio requiere, puesto que aquellos pueden gozar y disponer de la cosa comun, sin otras limitaciones que las de no perjudicar en el ejercicio de su derecho los intereses generados de la comunidad, y poseen además la plena propiedad de su parte, que pueden enajenar, ceder o hipotecar: parte que, repetimos, no será cierta hasta el momento de cesar la comunidad. El derecho de propiedad, por consiguiente, tal y como lo define el art. 348 del presente Código civil, con sus notas de absoluto y con su carácter de individualización, aparece ejercido en el condominio, sin otra diferencia entre la propiedad singular y la comun que la que acertadamente establece el código portugués (arts. 2175 y 2176), al decir 'que el propietario singular ejerce de modo exclusivo sus derechos, y el propietario en comun los ejerce conjuntamente con los otros'; pero, añadiremos nosotros, estándole atribuidos al condomino de modo individual sobre su parte indivisa todos los derechos de tal propietario, a más del uso y disfrute de la cosa, que es comun a todos los propietarios." (Italics supplied.)

"Each co-owner owns the whole, and over it he exercises rights of dominion, but at the same time he is the owner of a share which is really abstract, because until the division is effected, such share is not concretely determined. The rights of the co-owners are, therefore, as absolute as dominion requires, because they may enjoy and dispose of the common property, without any limitation other than that they should not, in the exercise of their right, prejudice the general interest of the community, and possess, in addition, the full ownership of their share, which they may alienate, convey or mortgage: in which share, we repeat, will not be certain until the community ceases. The right of ownership, therefore, as defined in Art. 348 of the present Civil Code, with its absolute features and its individualized character, is exercised in co-ownership, with no other differences between sole and common ownership than that which is rightly established by the Portuguese Code (Arts. 2175 and 2176), when it says 'that the sole owner exercises his rights exclusively, and the co-owner exercises them jointly with the other co-owners'; but we shall add, to each co-owner pertains individually, over his undivided share, all the rights of the owner, aside from the use and enjoyment of the thing, which is common to all the co-owners." (Italics supplied.)

Manresa further says that in the alienation of his undivided or ideal share, a co-owner does not need the consent of the others. (Vol. 3, pp. 486-487, 3rd Ed.).

Sanchez Roman also says ("Estudios de Derecho Civil", vol. 3, pp. 174-175):

"Muestra el 399 la integridad esencial del derecho de cada condueño en la porción mental que en el condominio o comunidad le corresponde."

* * * *

"* * * el ser condueño o copartícipe de una propiedad no significa quedar privado de todo reconocimiento de disposición de la cosa, del libre uso de su derecho dentro de las condiciones circunstanciales de tal estado jurídico, ni que para ejercer el uso y disfrute, o el de libre disposición, sea preciso el previo consentimiento de todos los interesados."

"Article 399 shows the essential integrity of the right of each co-owner in the mental portion which belongs to him in the co-ownership or community."

* * * *

"To be a co-owner of a property does not mean that one is deprived of every recognition of the disposal of the thing, of the free use of his right within the circumstantial conditions of such juridical status, nor is it necessary, for the use and enjoyment, or the right of free disposal, that the previous consent of all the interested parties be obtained.

According to Scaevola (Codigo Civil, vol. 7, pp. 154- 155) :

"2.a. Derecho absoluto de cada comunero respecto de su parte o cuota.—Respecto de esta se equipara al propietario individual. Es, en efecto, un propietario singular, con todos los derechos inherentes a tal condition. La cuota del comunero, o sea la parte que idealmente le corresponde en la cosa o derecho comun y que se halla representada por una cantidad determinada, es suya y puede disponer de ella como le plazca, porque no afecta al derecho de los demas. Dicha cantidad equivale a un credito contra la cosa o derecho eomtin, propiedad particular de cada acreedor (comunero). Las diversas cuotas suponen idealmente otras tantas unidades de cosa o derecho, pertenecientes de modo singular a los various propietarios. o sea una unidad a cada dueño."

"2nd. Absolute right of each co-owner with respect to his part or share.—With respect to the latter, each co-owner is the same as an individual owner. He is a singular owner, with all the rights inherent in such condition. The share of the co-owner, that is, the part which ideally belongs to him in the common thing or right and is represented by a certain quantity, is his and he may dispose of the same as he pleases, because it does not affect the right of the others. Such quantity is equivalent to a credit against the common thing or right, and is the private property of each creditor (co-owner). The various shares ideally signify as many units of thing or right, pertaining individually to the different owners; in other words, a unit for each owner."

It follows that the consent of the three daughters Maria Cristina, Josefina and Anita Cuaycong to the sale in question was not necessary.

II

The second question is: What rights did the intervenor acquire in this sale? The answer is: the same rights as the grantors had as co-owners in an ideal share equivalent iii value to 10,832 square meters of the hacienda. No specific portion, physically identified, of the hacienda has been sold, but only an abstract and undivided share equivalent in value to 10,832 square meters of the common property. What portion of the hacienda has been sold will not be physically and concretely ascertained until after the division. This sale is therefore subject to the result of such partition, but this condition does not render the contract void, for an alienation by the co-owner of his ideal share is permitted by law, as already indicated. If in the partition this lot 178-B should be adjudicated to the intervenor, the problem would be simplified; otherwise, the sellers would have to deliver to the intervenor another lot equivalent in value to Lot No. 178-B. Incidentally, it should be stated that according to Rule 71, sec. 4, of the new Rules of Court, regarding partition of real estate, the commissioners on partition shall set apart the real property "to the several parties in such lots or parcels as will be most advantageous and equitable, having due regard to the improvements, situation and quality of the different parts thereof." (Italics supplied.) Consequently, without deciding that the commissioners on partition must assign Lot 178-B to intervenor, we deem it proper to state that if in the partition proceedings, the commissioners should set apart said lot to intervenor, they would be acting within the letter and spirit of the provision, just quoted, of Rule 71, sec. 4; and that they will probably make such adjudication.

In the Sentence of December 29, 1905, the Supreme Tribunal of Spain declared that the alienation, by a co-owner, of either an abstract or a concrete part of the property owned in common does not mean the cessation of the ownership. Said sentence held:

"No es de estimar el primer motivo, porque tal estado de derecho no desaparece, ni siquiera se desvirtua, con respecto a los copropietarios entre si, por haber ambos, o alguno de ellos, ejecutado actos que pudieran

reputarse no comprendidos en las facultades inherentes a la administracion, unicas que de mutuo acuerdo se habian conferido en determinados bienes, porque si bien todo condueño puede enajenar, ceder o hipotecar la propiedad de su parte, el efecto de tal enajenacion esta limitado, con referenda a los condueños, a la porcion que se le adjudique ulteriormente, conforme al articulo 399 delCodigo civil, y no implica la cesacion de la comunidad, ya se refiera la venta a parte abstracta de los bienes, ya a parte concreta y determinada de los mismos, porque esto ultimo, que podra afectar a la forma y condiciones con que en su dia haya de practicarse la particion, no altera en manera alguna la situacion juridica de los que poseen colectivamente, mientras no se realice la division de la cosa comun, que se declara no haber tenido efecto." (Italics supplied.)

"The first assignment of error cannot be sustained, because such legal status does not disappear, nor is it impaired, with respect to the co-owners between themselves simply because both or either of them executed acts which may be considered as beyond the powers inherent in administration, the only powers which by mutual agreement had been conferred as to certain properties, inasmuch as although every co-owner may alienate, grant, or mortgage the ownership of his share, the effect of such alienation is limited, with reference to the co-owners, to the portion which may be adjudicated to him later, according to Art 399 of the Civil Code, and does not imply the cessation of the community, whether the sale refers to an abstract part of the property, or to a concrete and definite part thereof, because though in the latter case the form and conditions of the subsequent partition may be effected, nevertheless, the juridical situation of the collective owners is not in any way altered so long as the partition of the common property is not carried out, which is declared not to have taken place." (Italics supplied.)

Applying the above doctrine to the instant case, it cannot be said that the sale of Lot 178-B to the intervenor had the effect of partitioning the hacienda and adjudicating that lot to the intervenor. It merely transferred to the intervenor an abstract share equivalent in value to 10,832 square meters of said hacienda, subject to the result of a subsequent partition. The fact that the agreement in question purported to sell a concrete portion of the hacienda does not render the sale void, for it is a 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." (When a thing is of no force as I do it, it shall have as much force as it can have.") It is plain that Margarita G. Vda. de Cuaycong and her children of age intended to sell to intervenor no more than what they could legally and rightfully dispose of, and as they could convey only their ideal share, equivalent in value to 10,832 square meters of the hacienda, that ideal share alone must be deemed to have been the subject-matter of the sale in question. They are presumed to know the law that before partition, conventional or judicial, no coowner may dispose of any physically identified portion of the common property; and that any conveyance by a coowner is subject to the result of a subsequent partition. This interpretation of the contract does no harm to the minor daughters, as the sale in question is subject to the result of the partition which intervenor may demand.

As a successor in interest to an abstract or undivided share of the sellers, equivalent in value to 10,832 square meters of the property owned in common, the intervenor has the same right as its predecessors in interest to demand partition at any time, according to article 400 of the Civil Code which reads:

"Art. 400. Ningun copropietario estara obligado a permanecer en la comunidad. Cada uno de ellos podra pedir en cualquier tiempo que se divida la cosa comun.

"Esto no obstante, sera valido el pacto de conservar la cosa indivisa por tiempo determinado, que no exceda de diez anos. Este plazo podra prorrogarse por nueva convencion."

III

The third and remaining question is whether the distillery building and other improvements constructed on Lot 178-B should be removed by the intervenor. It is clear that the sale in question being valid, subject to the result of

the partition which the intervenor has a right to demand as a coowner, the intervenor is a builder in good faith. Hence, if in the partition already discussed, Lot 178-B should not be adjudicated to the intervenor as a coowner, then article 361 of the Civil Code would have to be applied. Said article provides:

"Art. 361. El dueño del terreno en que se edificare, sembrare o plantare de buena fe, tendrá: derecho a hacer suya la obra, siembra o plantación, previa la indemnización establecida en los artículos 453 y 454, o a obligar al que fabricó o plantó a pagarle el precio del terreno, y al que sembró la renta correspondiente."

Therefore, upon reconsideration we hereby declare the deed of sale, Exh. D. valid, binding as it is, not only upon the widow and her children who consented thereto but also upon her three minor daughters Maria Cristina, Josefina and Anita Cuaycong. It is hereby further adjudicated that the intervenor as a coowner has a right to demand partition; that if in the partition, Lot No. 178-B should not be adjudicated to the intervenor, then the rights of the parties concerned should be governed by article 361 of the Civil Code, the intervenor being a builder in good faith; and that consequently, our order in the decision of January 29, 1940, requiring intervenor to remove the buildings constructed on said lot should be and is hereby cancelled and withdrawn.

So ordered.

Yulo, C. J., Horrilleno, Ozaeta, and Paras, JJ., concur.

MORAN J.;

I concur in the result by analogy with the doctrine laid down in *Teves de Jacosalem vs. Nicolas Rafols*, 2 Off. Gaz., No. 1, p. 31.

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