

ANGEL V. CAGUIOA, PETITIONER, VS. COURT OF APPEALS AND LUZONICA D. DORIA-DEL ROSARIO AND RIZALINO D. DORIA, AS HEIRS OF VALLENTIN C. DORIA, RESPONDENTS.

G.R. No. 58849, October 27, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

This is a controversy over the partition of Lot 11, a 500-square meter lot of the Philippine Homesite and Housing Corporation located at the former War Damage Compound in Quezon City valued at P7,994.60 (p. 16, Rollo; p. 19, CA Rollo).

Lot 11 was applied for by Jose Pantí who in 1960 transferred his rights to Vicente Manzon. There was an agreement between Manzon and one Valentin C. Doria to divide the lot equally, each paying one-half of the price to the PHHC. Doria paid P2,314 in Pantí's name.

Pantí was issued on April 1, 1964 a title for the lot. On May 7, 1964 he formally sold the lot to Manzon for P9,000. A new title was issued to Manzon who sold it to Angel V. Caguioa who obtained a new title and thereafter mortgaged the lot to the Quezon City Development Bank (p. 19, CA Rollo).

Doria sued Pantí, Manzon and Caguioa to recover his one-half share of the lot. Judge Pacifico de Castro in a decision dated October 23, 1971 ordered Caguioa "to convey to the plaintiff (Doria) 1/2 of Lot 11" upon payment within five months of the balance still due on his share with 12% interest a year from May 10, 1964. This decision was affirmed by the Court of Appeals on February 2, 1977 (pp. 21-29, CA Rollo).

Doria paid the balance. Pursuant to a writ of execution, Caguioa on September 30, 1977, executed a formal conveyance of one-half of the lot to Doria (p. 33, Rollo). To put an end to the co-ownership and in the course of the contempt proceeding against Caguioa, the lower court issued an order on October 5, 1977 directing Doria to have the lot surveyed and divided into two equal parts. Copies of the order were sent to Caguioa and his counsel (p. 48, CA Rollo).

The lot was divided by the surveyor into a front lot, Lot 11-A, and an interior lot, Lot 11-B, but giving the interior lot a three-meter wide access from the street.

The case was set for hearing on July 20, 1978, with notice to Caguioa, for approval of the subdivision plan. But Caguioa did not appear at the hearing. Nevertheless, the lower court proceeded to adjudicate the two subdivision lots by means of tossing of a coin: if the head came out, Doria would get the front lot and if the tail came out, Caguioa would get that front lot.

A coin was tossed. The head came out. The court in its order of July 20, 1978 adjudged Doria the owner of the front lot and ordered that Caguioa and Doria share the survey expenses amounting to P1,530 (pp. 66-68, CA Rollo).

On November 10, 1978, the branch clerk of court executed the corresponding deed of conveyance to Doria for the front lot (pp. 69-71, CA Rollo). TCT No. 271595 was issued to Doria while TCT No. 271596 was issued to Caguioa on August 26, 1980.

On March 1, 1979, Caguioa sold for P30,000 his supposed one-half proindiviso share in Lot 11 to Aurea Cabatbat, the wife of Vicente Manzon, a resident of 4 General Segundo Street, Quezon City, the same place where Caguioa resided. (The sale was later suspended.)

As Doria had not yet taken possession of the front lot, he filed a motion dated December 29, 1980 for a writ of possession. It was set for hearing on January 15, 1981. A copy of the motion was furnished Caguioa. The motion was granted. A writ of possession was issued on January 20, 1981. The sheriff sent a notice to vacate to Caguioa dated January 29, 1981.

On February 10, 1981, Caguioa filed a petition for certiorari and prohibition in the Court of Appeals, assailing the proceedings in the lower court. He contended that no writ of possession could be issued in the case and that it would have been more just to partition that lot by allowing the parties to divide it frontally.

The Court of Appeals dismissed the petition. It found Caguioa guilty of laches in assailing the 1978 order which partitioned the lot by means of the tossing of a coin. (CA-G. R. No. SP-12023, July 15, 1981.) He appealed to this Court.

After deliberating on the petition and private respondent's comment, the Court Resolved to dismiss the same because (1) as found by the Court of Appeals, its decision had already become final and (2) if it had not become final and the instant petition was filed on time, the said petition lacks merit.

The Appellate Court correctly concluded that Caguioa is not really assailing the writ of possession dated January 20, 1981 but the order of July 20, 1978, partitioning the lot in question which had long become final. At this late hour, he cannot impugn anymore that 1978 order.

It is noteworthy that Doria's transaction with Panti regarding the lot in question commenced in 1951. He died in 1982 or thirty-one years later. It is deplorable that at the time of his death possession of his share of the lot had not yet been delivered to him.

WHEREFORE, the petition is dismissed for lack of merit.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.
De Castro, J., on sick leave and he did not take part.

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