

DONATO S. PAULMITAN, JULIANA P. FANESA AND RODOLFO FANESA, PETITIONERS, VS. COURT OF APPEALS, ALICIO PAULMITAN, ELENA PAULMITAN, ABELINO PAULMITAN, ANITA PAULMITAN, BAKING PAULM...

G.R. No. 61584. November 25, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

This is a petition for review on certiorari seeking the reversal of the decision[1] of the Court of Appeals, dated July 14, 1982 in CA-G.R. No. 62255-R entitled "Alicio Paulmitan, et al. v. Donato Sagario Paulmitan, et al." which affirmed the decision[2] of the then Court of First Instance (now RTC) of Negros Occidental, 12th Judicial District, Branch IV, Bacolod City, in Civil Case No. 11770.

The antecedent facts are as follows:

Agatona Sagario Paulmitan, who died sometime in 1953,[3] left the two following parcels of land located in the Province of Negros Occidental: (1) Lot No. 757 with an area of 1,946 square meters covered by Original Certificate of Title (OCT) No. RO-8376; and (2) Lot No. 1091 with an area of 69,080 square meters and covered by OCT No. RO-11653. From her marriage with Ciriaco Paulmitan, who is also now deceased, Agatona begot two legitimate children, namely: Pascual Paulmitan, who also died in 1953,[4] apparently shortly after his mother passed away, and Donato Paulmitan, who is one of the petitioners. Petitioner Juliana P. Fanesa is Donato's daughter while the third petitioner, Rodolfo Fanesa, is Juliana's husband. Pascual Paulmitan, the other son of Agatona & Sagario, is survived by the respondents, who are his children, namely: Alicio, Elena, Abelino, Adelina, Anita, Baking and Anito, all surnamed Paulmitan.

Until 1963, the estate of Agatona Sagario Paulmitan remained unsettled and the titles to the two lots mentioned above remained in the name of Agatona. However, on August 11, 1963, petitioner Donato Paulmitan executed an Affidavit of Declaration of Heirship, extrajudicially adjudicating unto himself Lot No. 757 based on the claim that he is the only surviving heir of Agatona Sagario. The affidavit was filed with the Register of Deeds of Negros Occidental who, on August 20, 1963, cancelled OCT No. RO-8376 in the name of Agatona Sagario and issued Transfer Certificate of Title (TCT) No. 35979 in Donato's name.

As regards Lot No. 1091, Donato executed on May 28, 1974 a Deed of Sale over the same in favor of petitioner Juliana P. Fanesa, his daughter.[5]

In the meantime, sometime in 1952, for non-payment of taxes, Lot No. 1091 was forfeited and sold at a public auction, with the Provincial Government of Negros Occidental being the buyer. A Certificate of Sale over the land was executed by the Provincial Treasurer in favor of the Provincial Board of Negros Occidental.[6]

On May 29, 1974, Juliana P. Fanesa redeemed the property from the Provincial Government of Negros Occidental for the amount of P2,959.09.[7]

On learning of these transactions, respondent's children of the late Pascual Paulmitan filed on January 18, 1975 with the Court of First Instance of Negros Occidental a Complaint against petitioners to partition the properties plus damages.

Petitioners set up the defense of prescription with respect to Lot No. 757 as an affirmative defense, contending that the Complaint was filed more than eleven years after the issuance of a transfer certificate of title to Donato Paulmitan over the land as a consequence of the registration with the Register of Deeds, of Donato's affidavit extrajudicially adjudicating unto himself Lot No. 757. As regards Lot No. 1091, petitioner Juliana P. Fanesa claimed in her Answer to the Complaint that she acquired exclusive ownership thereof not only by means of a deed of sale executed in her favor by her father, petitioner Donato Paulmitan, but also by way of redemption from the Provincial Government of Negros Occidental.

Acting on the petitioners' affirmative defense of prescription with respect to Lot No. 757, the trial court issued an order dated April 22, 1976 dismissing the complaint as to the said property upon finding merit in petitioners' affirmative defense. This order, which is not the object of the present petition, has become final after respondents' failure to appeal therefrom.

Trial proceeded with respect to Lot No. 1091. In a decision dated May 20, 1977, the trial court decided in favor of respondents as to Lot No. 1091. According to the trial court, the respondents, as descendants of Agatona Sagario Paulmitan were entitled to one-half (1/2) of Lot No. 1091, pro indiviso. The sale by petitioner Donato Paulmitan to his daughter, petitioner Juliana P. Fanesa, did not prejudice their rights. And the repurchase by Juliana P. Fanesa of the land from the Provincial Government of Negros Occidental did not vest in Juliana exclusive ownership over the entire land but only gave her the right to be reimbursed for the amount paid to redeem the property. The trial court ordered the partition of the land and directed petitioners Donato Paulmitan and Juliana P. Fanesa to pay private respondents certain amounts representing the latter's share in the fruits of the land. On the other hand, respondents were directed to pay P1,479.55 to Juliana P. Fanesa as their share in the redemption price paid by Fanesa to the Provincial Government of Negros Occidental. The dispositive portion of the trial court's decision reads:

"WHEREFORE, judgment is hereby rendered on the second cause of action pleaded in the complaint as follows:

"1. The deed of sale (Exh. 'F') dated May 28, 1974 is valid insofar as the one-half undivided portion of Lot 1091 is concerned as to vest ownership over said half portion in favor of defendant Juliana Fanesa and her husband Rodolfo Fanesa, while the remaining half shall belong to plaintiffs, pro-indiviso;

"2. Lot 1091, Cadastral Survey of Pontevedra, Province of Negros Occidental, now covered by TCT No. RO-11653 (N.A.), is ordered partitioned. The parties must proceed to an actual partition by property instrument of partition, submitting the corresponding subdivision within sixty (60) days from finality of this decision, and should they fail to agree, commissioners of partition may be appointed by the Court;

"3. Pending the physical partition, the Register of Deeds of Negros Occidental is ordered to cancel Original Certificate of Title No. RO-11653 (N.A.) covering Lot 1091, Pontevedra Cadastre, and to issue in lieu thereof a new certificate of title in the name of plaintiffs and defendants, one-half portion each, pro-indiviso, as indicated in paragraph 1 above;

"4. Plaintiffs are ordered to pay, jointly and severally, defendant Juliana Fanesa the amount of P1,479.55 with interest at the legal rate from May 28, 1974 until paid;

"5. Defendants Donato Sagario Paulmitan and Juliana Paulmitan Fanesa are ordered to account to plaintiffs and to pay them, jointly and severally, the value of the produce from Lot 1091 representing plaintiffs' share in

the amount of P5,000.00 per year from 1966 up to the time of actual partition of the property, and to pay them the sum of P2,000.00 as attorney's fees as well as the costs of the suit."

* * *

On appeal, the Court of Appeals affirmed the trial court's decision. Hence this petition.

To determine the rights and obligations of the parties to the land in question, it is well to review, initially, the relatives who survived the decedent Agatona Sagario Paulmitan. When Agatona died in 1953, she was survived by two (2) sons, Donato and Pascual. A few months later in the same year, Pascual died, leaving seven children, the private respondents. On the other hand, Donato's sole offspring was petitioner Juliana P. Fanesa.

At the time of the relevant transactions over the properties of decedent Agatona Sagario Paulmitan, her son Pascual had died, survived by respondents, his children. It is, thus, tempting to apply the principles pertaining to the right of representation as regards respondents. It must, however, be borne in mind that Pascual did not predecease his mother[8], thus precluding the operation of the provisions in the Civil Code on the right of representation[9] with respect to his children, the respondents. When Agatona Sagario Paulmitan died intestate in 1952, her two (2) sons Donato and Pascual were still alive. Since it is well-settled by virtue of Article 777 of the Civil Code that "(t)he rights to the succession are transmitted from the moment of the death of the decedent,"[10] the right of ownership, not only of Donato but also of Pascual, over their respective shares in the inheritance was automatically and by operation of law vested in them in 1953 when their mother died intestate. At that stage, the children of Donato and Pascual did not yet have any right over the inheritance since "[i]n every inheritance the relative nearest in degree excludes the more distant ones." [11] Donato and Pascual excluded their children as to the right to inherit from Agatona Sagario Paulmitan, their mother.

From the time of the death of Agatona Sagario Paulmitan to the subsequent passing away of her son Pascual in 1953, the estate remained unpartitioned. Article 1078 of the Civil Code provides: "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." [12] Donato and Pascual Paulmitan were, therefore, co-owners of the estate left by their mother as no partition was ever made.

When Pascual Paulmitan died intestate in 1953, his children, the respondents, succeeded him in the co-ownership of the disputed property. Pascual Paulmitan's right of ownership over an undivided portion of the property passed on to his children, who, from the time of Pascual's death, became co-owners with their uncle Donato over the disputed decedent estate.

Petitioner Juliana P. Fanesa claims ownership over Lot No. 1091 by virtue of two transactions, namely: (a) the sale made in her favor by her father Donato Paulmitan; and (b) her redemption of the land from the Provincial Government of Negros Occidental after it was forfeited for non-payment of taxes.

When Donato Paulmitan sold on May 28, 1974 Lot No. 1091 to his daughter Juliana P. Fanesa, he was only a co-owner with respondents and as such, he could only sell that portion which may be allotted to him upon termination of the co-ownership.[13] The sale did not prejudice the rights of respondents to one half (1/2) undivided share of the land which they inherited from their father. It did not vest ownership in the entire land with the buyer but transferred only the seller's pro-indiviso share in the property[14] and consequently made the buyer a co-owner of the land until it is partitioned. In *Bailon-Casilao v. Court of Appeals*, [15] the Court, through Justice Irene R. Cortes, outlined the effects of a sale by one co-owner without the consent of all the co-owners, thus:

"The rights of a co-owner of a certain property are clearly specified in Article 493 of the Civil Code. Thus:

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 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. [*Italics supplied.*]

As early as 1923, this Court has ruled that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale [*Punsalan v. Boon Liat*, 44 Phil. 320 (1923)]. This is because under the aforementioned codal provision, the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common. [*Ramirez v. Bautista*, 14 Phil. 528 (1909)]. Consequently, by virtue of the sales made by Rosalia and Gaudencio Bailon which are valid with respect to their proportionate shares, and the subsequent transfers which culminated in the sale to private respondent Celestino Afable, the said Afable thereby became a co-owner of the disputed parcel of land as correctly held by the lower court since the sales produced the effect of substituting the buyers in the enjoyment thereof [*Mainit v. Bandy*, 14 Phil. 730 (1910)].

From the foregoing, it may be deduced that since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void. However, only the rights of the co-owner-seller are transferred, thereby making the buyer a co-owner of the property."

Applying this principle to the case at bar, the sale by petitioner Donato Paulmitan of the land to his daughter, petitioner Juliana P. Fanesa, did not give to the latter ownership over the entire land but merely transferred to her the one half (1/2) undivided share of her father, thus making her the co-owner of the land in question with the respondents, her first cousins.

Petitioner Juliana P. Fanesa also claims ownership of the entire property by virtue of the fact that when the Provincial Government of Negros Occidental bought the land after it was forfeited for non-payment of taxes, she redeemed it.

The contention is without merit.

The redemption of the land made by Fanesa did not terminate the co-ownership nor give her title to the entire land subject of the co-ownership. Speaking on the same issue raised by petitioners, the Court, in *Adille v. Court Appeals*,^[16] resolved the same with the following pronouncements:

"The petition raises a purely legal issue: May a co-owner acquire exclusive ownership over the property held in common?

Essentially, it is the petitioners' contention that the property subject of dispute devolved upon him upon the failure of his co-heirs to join him in its redemption within the period required by law. He relies on the provisions of Article 1515 of the old Civil Code, Article 1613 of the present Code, giving the vendee a retro the right to demand redemption of the entire property.

There is no merit in this petition.

The rights of repurchase may exercised by a co-owner with respect to his share alone (CIVIL CODE, art. 1612; CIVIL CODE (1889), art. 1514.). While the record show hat petitioner redeemed the property in its entirety, shouldering the expenses therefor, that did not make him the owner of all of it. In other words, it did not put to end the existing state of co-ownership (*Supra*, art 489). There is no doubt that redemption of property entails a necessary expense. Under the Civil Code:

ART. 488. Each co-owner shall have a right to compel the other co-owners to contribute to the expenses of preservation of the thing or right owned in common and to the taxes. Any one of the latter may exempt himself

from this obligation by renouncing so much of his undivided interest as may be equivalent to his share of the expenses and taxes. No such waiver shall be made if it is prejudicial to the co-ownership.

The result is that the property remains to be in a condition of co-ownership. While a vendee a retro, under Article 1613 of the Code, "may not be compelled to consent to a partial redemption," the redemption by one co-heir or co-owner of the property in its totality does not vest in him ownership over it. Failure on the part of all the co-owners to redeem it entitles the vendee a retro to retain the property and consolidate title thereto in his name (Supra, art. 1607). But the provision does not give to the redeeming co-owner the right to the entire property. It does not provide for a mode of terminating a co-ownership."

Although petitioner Fanesa did not acquire ownership over the entire lot by virtue of the redemption she made, nevertheless, she did acquire the right to be reimbursed for half of the redemption price she paid to the Provincial Government of Negros Occidental on behalf of her co-owners. Until reimbursed, Fanesa holds a lien upon the subject property for the amount due her.[17]

Finally, petitioners dispute the order of the trial court, which the Court of Appeals affirmed, for them to pay private respondents P5,000.00 per year from 1966 until the partition of the estate which represents the share of private respondents in the fruits of the land. According to petitioners, the land is being leased for P2,000.00 per year only. This assigned error, however, raises a factual question. The settled rule is that only questions of law may be raised in a petition for review. As a general rule, findings of fact made by the trial court and the Court of Appeals are final and conclusive and cannot be reviewed on appeal.[18]

WHEREFORE, the petition is DENIED and the decision of the Court of Appeals AFFIRMED.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Melo, JJ., concur.

[1] Penned by Associate Justice Crisolito Pascual with the concurrence of Associate Justices Guillermo P. Villasor and Vicente V. Mendoza.

[2] Penned by Judge Oscar R. Victoriano.

[3] Petition, page 3; Rollo, page 15.

[4] Record on Appeal, pages 63, 65.

[5] Record on Appeal, pp. 21-24.

[6] Record on Appeal, page, 72.

[7] Record on Appeal, page 92.

[8] The records of the case do not indicate the exact date when Agatona Sagario Paulmitan and her son Pascual died in 1953 but all parties, including petitioners, do not dispute that Agatona died ahead of her son (See Petition, p.3; Rollo p. 15.)

[9] See Articles 970-977, 981 of the Civil Code.

[10] Jimenez v. Fernandez, G.R. No. 46364, April 6, 1990, 184 SCRA 190; Quion v. Claridad, 74 Phil. 100 (1943).

[11] Article 962, Civil Code.

[12] See also *Mendoza I v. Court of Appeals*, G.R. No. 44664, July 31, 1991, 199 SCRA 778.

[13] Article 493, Civil Code; *Reyes v. Concepcion*, G.R. No. 56550, October 1, 1990, 190 SCRA 171.

[14] *Abad v. Court of Appeals*, G.R. No. 84908, December 4, 1989, 179 SCRA 817.

[15] G.R. No. 78178, April 15, 1988, 160 SCRA 738, 744-745.

[16] G.R. No. L-44546, January 29, 1988, 157 SCRA 455, 459-460.

[17] *Guinto v. Lim Bonfing*, 48 Phil. 884 (1926).

[18] *Bustamante v. Court of Appeals*, G.R. No. 89880, February 6, 1991, 193 SCRA 603; *De Ocsio v. Court of Appeals*, G. R. No. 44237, February 28, 1989, 170 SCRA 729.

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