

CONCEPCION ROQUE, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT, ERNESTO ROQUE, FILOMENA OSMUNDO, CECILIA ROQUE, MARCELA ROQUE, JOSE ROQUE AND RUBEN ROQUE, RESPONDENTS.

G.R. No. 75886. August 30, 1988

Ponente: FELICIANO, J.

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FELICIANO, J.:

The subject of the present Petition for Review is the 31 July 1986 Decision of the former Intermediate Appellate Court in AC-G.R. CV No. 02248 (entitled, "Conception Roque, plaintiff-appellee, vs. Ernesto Roque, Filomena Osmundo, Cecilia Roque, Marcela Roque, Jose Roque and Ruben Roque, defendants-appellants") which reversed and set aside on appeal the decision of the Regional Trial Court of Malolos, Branch 9.

The controversy here involves a 3 12 square meter parcel of land situated in San Juan, Malolos, Bulacan and designated as Lot No. 1549 of the Cadastral Survey of Malolos. The property was registered originally in the name of Januario Avendano, a bachelor who died intestate and without issue on 22 October 1945.

On 21 September 1959, the intestate heirs of Januario Avendano executed a document entitled "Paghahati at Pagtagahuyan ng Mana sa Labas ng Hukuman." [1] Through this instrument, extrajudicial partition of Lot No. 1549 was effected among the intestate heirs as follows:

- One-fourth (¼) undivided portion to Illuminada Avendano.
- One-fourth (¼) undivided portion to Gregorio Avendano and Miguel Avendano.
- One-fourth (¼) undivided portion to Bernardino, Bienvenido, Numeriano and Rufina, all surnamed Avendano.
- One-fourth (¼) undivided portion to respondent Ernesto Roque and Victor Roque. [2]

On 28 September 1959, co-owners Illuminada, Gregorio, Miguel, Bernardino, Bienvenido, Numeriano and Rufina, all surnamed Avendano, in consideration of the aggregate amount of P500.00, transferred their collective and undivided three-fourths (¾) share in Lot No. 1549 to respondent Ernesto Roque and Victor Roque, thereby vesting in the latter full and complete ownership of the property. The transactions were embodied in two (2) separate deeds of sale both entitled "Kasulatan ng Bilihang Patuluyan" [3] and both duly notarized. Subsequently, in an unnotarized "Bilihan Lubos at Patuluyan" [4] dated 27 November 1961, Ernesto and Victor Roque purportedly sold a three-fourths (¾) undivided portion of Lot No. 1549 to their half-sister, petitioner Concepcion Roque, for the same amount. The property, however, remained registered in the name of the decedent, Januario

Avendano.

Upon the instance of petitioner Concepcion Roque and allegedly of respondent Ernesto Roque, Lot No. 1 549 was surveyed on 20 September 1975. Consequent thereto, a Subdivision Plan[5] was drawn up by the Geodetic Engineer identifying and delineating a one-fourth ($\frac{1}{4}$) portion (78 square meters) of the property as belonging to respondent Ernesto Roque and Victor Roque (who had died on 14 April 1962), upon the one hand, and a three-fourths ($\frac{3}{4}$) portion (234 square meters) of the same property as belonging to petitioner Concepcion Roque, upon the other hand. Petitioner claimed that preparation of the Subdivision Plan, which was approved on 3 November 1975 by the Land Registration Commission was a preliminary step leading eventually to partition of Lot No. 1549, partition allegedly having been previously agreed upon inter se by the co-owners. Respondents Ernesto Roque and the legal heirs of Victor Roque, however, refused to acknowledge petitioner's claim of ownership of any portion of Lot No. 1549 and rejected the plan to divide the land.

Attempts at amicable settlement having fallen through, petitioner Concepcion Roque, on 6 December 1977, filed a Complaint for "Partition with Specific Performance"[6] (docketed as Civil Case No. 5236-M) with Branch 2 of then Court of First Instance of Malolos against respondents Ernesto Roque and the heirs of Victor Roque" In her complaint, petitioner (plaintiff below) claimed legal ownership of an undivided three-fourths ($\frac{3}{4}$) portion of Lot No. 1549(by virtue of the 27 November 1961 "Bilihan Lubos at Patuluyan" executed in her favor by Ernesto Roque and the heirs of Victor Roque. In support of this claim, petitioner also presented an undated and unauthorized "Kasulatang Pagkilala sa Bilihan Patuluyan ng Bahagui at Pagmamana sa Labas ng Hukuman at Paghahati-hati at Abuyan ng Bahagui"[7] said to have been signed by the respondents in acknowledgment of the existence and validity of the Bilihan in favor of petitioner. Finally, petitioner alleged that, as a co-owner of Lot No. 1549, she had a right to seek partition of the property, that she could be compelled to remain in the co-ownership of the same.

In an Answer with Compulsory Counterclaim[8] filed on 28 December 1977(defendants below) impugned the genuineness and due execution of the "Bilihan Lubos at Patuluyan" dated 27 November 1961 on the ground "that the signatures appearing thereon are not the authentic signatures of the supposed signatories x x X.f It was also alleged that petitioner Concepcion Roque, far from being a co-owner of Lot No. 1549, "occupied a portion of the lot in question by mere tolerance of the [defendants]." Respondents also refused to honor the unnotarized Kasulatan and, additionally, denied having had any participation in the preparation of the Subdivision Plan.

On 27 June 1983, the trial court (now Branch 9, Regional Trial Court of Malolos) rendered a Decision,[9] the dispositive portion of which read:

"WHEREFORE, judgment is hereby rendered, in favor of the plaintiff and against the defendants;

- Ordering the heirs of the late Victor Roque namely Filomena Osmundo, his spouse, his children, Cecilia Roque, Marcela Roque, Jose Roque and Ruben Roque and their uncle and co-defendant Ernesto Roque, to execute a deed of confirmation of the sale made by Ernesto and Victor Roque in favor of plaintiff Concepcion Roque, entitled "Bilihan Lubos at Patuluyan" executed' on November 27, 1961, Exh. E, over the $\frac{3}{4}$ portion of the subject property;

- Ordering the partition of the parcel of land described in par. 3 of the complaint covered by the Original Certificate of Title No. 1442-Bulacan issued in the name of Janurio Avendano, in the proportion of $\frac{3}{4}$ to pertain to Concepcion Roque, and $\frac{1}{4}$ to pertain to Ernesto Roque and his co-defendants, his sister-in-law, nephews and nieces, in accordance with the approved subdivision plan (LRC Psd-230726).

- Ordering defendants, jointly and severally, to pay to plaintiff the sum of P2,000.00 as and for attorney's fees and the costs of suit.

SO ORDERED.

The respondents appealed from this decision alleging the following errors;

"I

The lower court erred when it decided and ordered defendants-appellants to execute a confirmation of the "Bilihan Lubos at Patuluyan" Exh. "E".

II

The lower court erred when it decided and ordered the defendants-appellants to deliver unto the plaintiff [a] $\frac{3}{4}$ share of the land in question.

III

The lower court erred in deciding this case in favor of the plaintiff-appellee, based on an unnotarized and forged signature of defendant-appellant Ernesto Roque.

IV

The lower court erred in giving credence to the testimony of the plaintiff-appellee Concepcion Roque despite [its] gross inconsistencies."[10]

Acting on the appeal (docketed as A.C.-G.R. CV No. 02248), the Intermediate Appellate Court, in a Decision[11] dated 31 July 1986, reversed the judgment of the trial court and dismissed both the petitioner's complaint and the respondents' appeal. A Motion for Reconsideration of petitioner Concepcion Roque was denied.

The present Petition for Review was filed with this Court on 18 September 1986. In a resolution dated 27 July 1987, we gave due course to the Petition and required the parties to submit their respective Memoranda.

- On the matter of dismissal of petitioner's complaint, the Intermediate Appellate Court stated in its decision:

"While the action filed by the plaintiff is for partition, the defendants, after denying plaintiff's assertion of co-ownership, asserted that they are the exclusive and sole owners of the $\frac{3}{4}$ portion of the parcel of land claimed by the plaintiff.

Upon the issue thus joined by the pleadings, it is obvious that the case has become one of ownership of the disputed portion of the subject lot.

It is well settled that an action for partition will not prosper as such from the moment an alleged co-owner asserts an adverse title. The action that may be brought by an aggrieved co-owner is action reivindicatoria or action for recovery of title and possession (*Jardin vs. Hallasgo*, 117 SCRA 532, 536, 537; *Paner vs. Caspar*, 3 CA Rep. 155, 158)." (Italics supplied).

Viewed in the light of the facts of the present case, the Intermediate Appellate Court's decision appears to imply that from the moment respondents (defendants below) alleged absolute and exclusive ownership of the whole of Lot No. 1549 in their Answer, the trial court should have immediately ordered the dismissal of the action for partition and petitioner (plaintiff below), if she so desired, should have refiled the case but this time as an accion

reivindicatoria. Taking this analysis a step further, should the reivindicatory action prosper — i.e., a co-ownership relation is found to have existed between the parties — a second action for partition would still have to be instituted in order to effect division of the property among the co-owners.

We do not agree with the above view. An action for partition — which is typically brought by a person claiming to be co-owner of a specified property against a defendant or defendants whom the plaintiff recognizes to be co-owners — may be seen to present simultaneously two principal issues. First, there is the issue of whether the plaintiff is indeed a co-owner of the property sought to be partitioned. Second, assuming that the plaintiff successfully hurdles the first issue, there is the secondary issue of how the property is to be divided between plaintiff and defendant(s) — i.e., what portion should go to which co-owner.

Should the trial court find that the defendants do not dispute the status of the plaintiff as co-owner, the court can forthwith proceed to the actual partitioning of the property involved. In case the defendants assert in their Answer exclusive title in themselves adversely to the plaintiff, the court should not dismiss the plaintiff's action for partition but, on the contrary and in the exercise of its general jurisdiction, resolve the question of whether the plaintiff is co-owner or not. Should the trial court find that the plaintiff was unable to sustain his claimed status as co-owner, or that the defendants are or have become the sole and exclusive owners of the property involved, the court will necessarily have to dismiss the action for partition. This result would be reached, not because the wrong action was commenced by the plaintiff, but rather because the plaintiff having been unable to show co-ownership rights in himself, no basis exists for requiring the defendants to submit to partition the property at stake. If, upon the other hand, the court after trial should find the existence of co-ownership among the parties litigant, the court may and should order the partition of the property in the same action. Judgment for one or the other party being on the merits, the losing party (respondents in this case) may then appeal the same. In either case, however, it is quite unnecessary to require the plaintiff to file another action, separate and independent from that for partition originally instituted. Functionally, an action for partition may be seen to be at once an action for declaration of co-ownership and for segregation and conveyance of a determinate portion of the property involved. This is the import of our jurisprudence on the matter,[12] and is sustained by the public policy which abhors multiplicity of actions.

The question of prescription also needs to be addressed in this connection. It is sometimes said that "the action for partition of the thing owned in common (*actio communi dividendo* or *actio familiae erciscundae*) does not prescribe." [13] This statement bears some refinement. In the words of Article 494 of the Civil Code, "each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned." No matter how long the co-ownership has lasted, a co-owner can always opt out of the co-ownership, and provided the defendant co-owners or co-heirs have theretofore expressly or impliedly recognized the co-ownership, they cannot set up as a defense the prescription of the action for partition. But if the defendants show that they had previously asserted title in themselves adversely to the plaintiff and for the requisite period of time, the plaintiff's right to require recognition of his status as a co-owner will have been lost by prescription and the court cannot issue an order requiring partition. This is precisely what happened in *Jardin v. Hallasgo*, 117 SCRA 532 (1982), which the respondent appellate court cited to support its position quoted above.

The case of *Jardin* involved, among others, two (2) parcels of land which were inherited in 1920 by the brothers Catalino Jardin and Galo Jardin together with their half-brother, Sixto Hallasgo. The three (3) held these lands in co-ownership until Sixto later (the date was not specified) repudiated the co-ownership and occupied and possessed both parcels of land, claiming the same exclusively as his own. Sometime in 1973, the heirs of Catalino and Galo instituted an action for partition of the two (2) properties against Sixto's heirs, who had refused to surrender any portion of the same to the former. The trial court, assuming that prescription had started to run in

that case even before the Civil Code took effect, held that the action for partition filed by the heirs of Catalino and Gaio had already prescribed. On appeal, this Court affirmed the trial court on this point in the following terms:

"Article 494 of the Civil Code provides that 'no co-owner shall be obliged to remain in the co-ownership¹ and that 'each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.' It also provides that 'no prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.'

While the action for the partition of the thing owned in common (*actio communi dividendo* or *actio familiae erciscundae*) does not prescribe, the co-ownership does not last forever since it may be repudiated by a co-owner [i.e., Sixto]. In such a case, the action for partition does not lie. What may be brought by the aggrieved co-owner [i.e., the heirs of Catalino and Galo] is 'an *accion reivindicatoria* or action for recovery of title and possession. That action may be barred by prescription.

'If the co-heir or co-owner having possession of the hereditary or community property, holds the same in his own name, that is, under claim of exclusive ownership, he may acquire the property by prescription if his possession meets all the other requirements of the law, and after the expiration of the prescriptive period, his coheir or co-owner may lose their right to demand partition, and their action may then be held to have prescribed (*De los Santos vs. Santa Teresa*, 44 Phil. 811).'

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x x x

x x x

(Italics supplied).

In the light of the foregoing discussion, it will be seen that the underscored portion of the Court's opinion in *Jardin* is actually obiter. For there, the Court simply held the action for partition by the heirs of Catalino and Galo had prescribed and did not require such heirs to start a new action (which would have been quite pointless); on the other hand, the Court remanded the case to the lower court for further proceedings in respect of the recovery of a 350 square meter lot which the evidence showed was owned by the plaintiffs but wrongfully included by Sixto in the cadastral survey of his share of the adjoining lot.

In *Jardin*, the claim of co-ownership asserted by the heirs of Catalino and Galo was effectively refuted by the heirs of Sixto, who not only claimed for themselves absolute and exclusive ownership of the disputed properties but were also in actual and adverse possession thereof for a substantial length of time. The Court found, further, that the action for partition initially available to the heirs of Catalino and Galo had, as a result of the preceding circumstance, already prescribed.

An entirely different situation, however, obtains in the case at bar. First of all, petitioner Concepcion Roque — the co-owner seeking partition — has been and is presently in open and continuous possession of a three-fourths ($\frac{3}{4}$) portion of the property owned in common. The Court notes in this respect the finding of the trial court that petitioner, following execution of the "*Bilihan Lubos at Patuluyan*" on 27 November 1961, had been in "continuous occupancy of the $\frac{3}{4}$ portion of the lot x x x up to the present, and whereon plaintiff's house and that of her son are erected." [14] Respondents do not dispute this finding of fact, although they would claim that petitioner's possession is merely tolerated by them. Second, prior to filing in 1977 of the Complaint in Civil Case No. 5236-M, neither of the parties involved had asserted or manifested a claim of absolute and exclusive ownership over the whole of Lot No. 1549 adverse to that of any of the other co-owners: in other words,

co-ownership of the property had continued to be recognized by all the owners. Consequently, the action for partition could not have and, as a matter of fact, had not yet prescribed at the time of institution by Concepcion of the action below.

- Coming now to the matter regarding dismissal of the respondents' appeal, the Intermediate Appellate Court held that inasmuch as the attack on the validity of the "Bilihan Lubos at Patuluyari" was predicated on fraud and no action for annulment of the document had been brought by respondents within the four (4) year prescriptive period provided under Article 1391 of the Civil Code, such action had already prescribed.

We find it unnecessary to deal here with the issue of prescription discussed by the respondent court in its assailed decision. The facts on record clearly show that petitioner Concepcion Roque had been in actual, open and continuous possession of a three-fourths ($\frac{3}{4}$) portion of Lot No. 1549 ever since execution of the "Bilihan Lubos at Patuluyan" in November of 1961. The Court notes that it was only in their Answer with Compulsory Counterclaim filed with the trial court in December of 1977 — more than sixteen (16) years later — that respondents first questioned the genuineness and authenticity of the "Bilihan Lubos at Patuluyan." Not once during those sixteen (16) years did respondents contest petitioner's occupation of a three-fourths ($\frac{3}{4}$) portion of Lot No. 1549. Furthermore, if indeed it is true that respondents, as they claim, are the absolute owners of the whole of Lot No. 1549, it is most unusual that respondents would have allowed or tolerated such prolonged occupation by petitioner of a major portion ($\frac{3}{4}$) of the land while they, upon the other hand, contented themselves with occupation of only a fourth thereof. This latter circumstance, coupled with the passage of a very substantial length of time during which petitioner all the while remained undisturbed and uninterrupted in her occupation and possession, places respondents here in laches: respondents may no longer dispute the existence of the co-ownership between petitioner and themselves nor the validity of petitioner's claim of a three-fourths ($\frac{3}{4}$) interest in Lot No. 1549, as they are deemed, by their unreasonably long inaction, to have acquiesced in the co-ownership.¹⁵ In this respect, we affirm the decision of the respondent appellate court presently under review.

WHEREFORE, the Decision of the Intermediate Appellate Court dated 31 July 1986 in A.C.-G.R. CV No. 02248 is SET ASIDE with respect to that portion which orders the dismissal of the Complaint in Civil Case No. 5236-M, but is AFFIRMED with respect to that portion which orders the dismissal of the respondents' appeal in A.C. — G.R. CVNo. 02248. The Decision of Branch 9 of the Regional Trial Court of Malolos dated 27 June 1983 in Civil Case No. 5236-M is hereby REINSTATED. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J. (Chairman), Gutierrez, Jr., and Cortes, JJ., concur.

Bidin, J., no part. Participated in some incident of the case before the Court of Appeals.

[1] CFI Records, pp. 6-7.

[2] Ernesto Roque and Victor Roque are the children of Fidelina Avendano, a sister of Januario Avendarlo.

[3] CFI Records, p. 8.

[4] Id., P. 99.

[5] Id., P. 100.

[6] Id., PP. 1-5.

[7] Id., pp. 137-138.

[8] Id., pp. 15-19.

[9] Id., pp. 213-226.

[10] IAC Records, p. 92; Appeal Brief, p. 9.

[11] Rollo, pp. 12-17.

[12] See *Fabrica vs. Court of Appeals*, 146 SCRA 250 (1986); *Garbo vs. Court of Appeals*, 129 SCRA 616 (1984); *Cease vs. Court of Appeals*, 93 SCRA 483 (1979); *Valdez vs. Bagaso*, 82 SCRA 22 (1978); and *Miranda vs. Court of Appeals*, 71 SCRA 295 (1976). See also *Larena de Villanueva vs. Capistrano*, 49 Phil. 460 (1926); and *Africa vs. Africa*, 42 Phil. 934 (1921).

[13] *Jardin v. Hallasgo*, 117 SCRA 532 at 536 (1982).

[14] CF1, Records, p. 223; CF1, Decision, p.11.

[15] See *Lola vs. Court of Appeals*, 145 SCRA 439 (1986); *Guerrero vs. Court of Appeals*, 126 SCRA 109 (1983); and *Alarcon vs. Bidin*, 120 SCRA 390 (1983).

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