

**BUENAVENTURA DANCEL, PLAINTIFF AND APPELLANT, VS.
MAMERTO DANCEL ET AL., DEFENDANTS AND APPELLEES. LUCAS
SALVADOR ET AL., INTERVENERS AND APPELLEES.**

G.R. No. 7847. December 24, 1914

Ponente: ARAULLO, J.

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ARAULLO, J.:

The plaintiff, Buenaventura Dancel, alleges that he is a tenant in common, pro indiviso and in equal shares with his brothers and sister, the three defendants bearing the same surname, by virtue of an inheritance from his deceased father, Manuel Dancel, who died on July 15, 1883, of certain rural properties situated in the municipality of Dingras, Province of Ilocos Norte, all duly described in the complaint; that the said defendants opposed the partition of these lands, in spite of his repeated prayers; and in a written petition addressed to the Court of First Instance of the said province, on August 29, 1910, he prayed that judgment be rendered against the defendants by directing partition of the said property between them and himself, with costs against the defendants.

The three defendants, surnamed Dancel, neither appeared at the trial nor answered the complaint, so they were declared to be in default, but the persons named in the title hereof intervened and alleged that they had acquired by purchase from some of the three defendants, the Dancels, and one of them also from the plaintiff himself, several parcels (the descriptions of which appear in their respective petitions on file in the record), of the property mentioned in the complaint, and prayed that the latter be dismissed in so far as it concerned the said particular parcels, and that the said property be held to belong to them, the interveners. The plaintiff, in turn, moved that this petition be denied; that the sale to which the petitioners referred be declared to be null and void; that the contract be rescinded on the ground that one of the alleged vendors is a minor; and that the partition requested by the plaintiff be proceeded with.

Eugenia Agbayani also appeared at the trial and alleged that she was entitled to a share in the property whose partition was sought by the plaintiff because she was the heir to her son, Andres Vicente Dancel, had by the late Domingo Dancel, a brother of the plaintiff and of the defendants, and also because she had taken no part in the alienation of the aforementioned properties to the interveners. She therefore prayed that the court direct that partition be made in equal shares among all the heirs of the deceased Manuel Dancel and that the said conveyances made to the interveners be declared null and void. These petitions were opposed by the interveners.

Upon the introduction of evidence by the respective parties, the court, after entertaining various considerations relative to the propriety of the partition requested by the plaintiff and to the fact that the interveners could not be deprived of their property upon the ground of the nullity of the sales made to them of some of the lands mentioned in the complaint, unless a decision were first rendered on the matter in an action brought for the purpose, rendered the judgment, the dispositive part of which reads as follows:

"For the foregoing reasons the court decrees: (1) That Buenaventura Dancel may distribute his property among his brothers and sister, including Eugenia Agbayani, if all the facts set forth in his petition are found to be true;

(2) that the lands sold to the interveners, Lucas Salvador, Pedro Soriano, Pedro Salvador, Pedro Medina, Prisca del Prado, Roque Garma, Cosme Suguitan, Hilaria Ruiz, and Macario Baptista, shall be maintained as they are until their status be otherwise determined in the proper suit; and (3) that the plaintiff and the defendants shall pay the costs of this action."

The plaintiff first asked for an explanation, and immediately afterwards a reconsideration of the said decision. Both motions being denied, plaintiff excepted to the decision, as well as to the ruling denying his motion for a new trial. The record, by virtue of the appeal raised, was forwarded to this court by means of a bill of exceptions.

The appellant alleges that the lower court erred:

"(1) In not ordering the partition of the common property held by the defendants and the plaintiff and not claimed by the interveners.

"(2) In failing to decide the claim of the intervener, Eugenia Agbayani, that she was entitled to share in the partition solicited by the plaintiff.

"(3) In ordering that the lands sold to the interveners should remain in their possession until otherwise decreed in a proper action.

"(4) In sentencing the plaintiff to pay the costs." First of all, the averments made by the appellant in the first two assignments of error are not at all well-founded, since, as is seen in the dispositive part of the judgment, it was held that the plaintiff, Buenaventura Dancel, could distribute his property among his brothers and sister and Eugenia Agbayani, if all the facts set forth in his petition were found to be true. By this the court meant to say that, assuming the facts alleged in the complaint to be true, the partition of the pro indiviso property requested by the plaintiff among himself, his brothers and sister and Eugenia Agbayani, could be made. Although it is true that this finding is somewhat confused and ambiguous in its phraseology and does not appear to have been made with proper precision and exactness, the court thereby virtually acceded to the plaintiff's claim.

From the evidence introduced at the trial it appears that, although some of the defendants, sometimes together and at other times separately, and even the plaintiff, himself, transferred by sale, not only to the persons who appear herein as interveners, but also to others, several of the parcels of land or properties from among those described in the complaint, and with respect to which property as a whole there exists a summary possessory information which was recorded in the property registry in favor of the plaintiff and the three defendants Dancel and was attached to the record as Exhibit A, still it is not shown that any partition or division has yet been made among them of that property as a whole, which, as disclosed by the possessory information itself, belonged to them all in common, although, in some of the transfers, the particular parcel sold was deemed to belong in partition to the vendor of the particular piece.

In view of this result and of the consent of the three defendants, cotenants of the said property, as well as of the petition of Eugenia Agbayani, the widow, according to her statement, of a brother of the defendants, and heir of a son had by that brother, the property referred to in the complaint must be considered as being still held pro indiviso by and among all those who claim to have a right therein.

"No coowner shall be obliged to remain a party to the community. Each of them may ask at any time the division of the thing owned in common." (Art. 400, Civil Code.)

"No coheir can be obliged to continue in an undivided inheritance unless the testator should expressly forbid the division." (Art. 1051, *ibid.*)

"Every coowner shall have full ownership of his part and the fruits and benefits derived therefrom, and he therefore may alienate, assign, or mortgage it, and even substitute another person in its enjoyment, unless

personal rights are in question. But the effect of the alienation or mortgage, with regard to the coowners, shall be limited to the share which may be awarded him in the division on the dissolution of the community." (Art. 399, *ibid.*)

"The creditors or assignees of the coowners may concur in the division of the thing owned in common, and object to any division made without their concurrence * * * " (Art. 403, *ibid.*)

Finally, pursuant to section 762 of the Code of Civil Procedure, the partition of property held in common and undivided may be made although some of the original tenants or devisees have conveyed their shares to other persons; and in that case such shares shall be set to the persons holding the same as they would have been to the heirs or devisees.

It is unquestionable that, in accordance with the legal provisions quoted, the plaintiff has a perfect right to have a division made of the property he holds in common and pro indiviso with the defendants and with Eugenia Agbayani, his coadjutor in the action prosecuted by him. No hindrance to the exercise and effectiveness of that right lies in the conveyances made of various portions of the said property by some of its cotenants in favor of those persons who have intervened in this suit, for, aside from the fact that the law grants them the right to concur in the division of the thing owned in common and to object to any division made without their consent, it considers them, in an action for the partition of real estate, as subrogated to the rights of the vendors in the portions of the property in their possession. Therefore the lower court did not err in ordering that those portions should remain in the possession of the interveners until otherwise decreed in a proper action, to wit, one brought by any of the parties to annul the alleged sales, or to attack the ownership of the portions sold.

Meanwhile there is nothing that can or should interfere with proceeding according to the provisions of sections 181 to 196 of the Code of Civil Procedure with the action for partition brought by the plaintiff.

It is therefore held that the plaintiff is entitled to partition of the property, prayed for in his complaint, among himself, his brothers and sister, the defendants and his coadjutor, Eugenia Agbayani, in the capacity in which she appeared; and that the interveners shall not be disturbed in their enjoyment of the ownership and possession of the respective parcels of land conveyed to them by the cotenants thereof unless otherwise ordered. In this sense, we affirm the judgment appealed from, with the costs against the appellant.

Arellano, C. J., Johnson, Carson, Moreland, and Trent, JJ., concur.

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