

IRENE BENEDICTO, CION BENEDICTO, DOMINADOR BENEDICTO, ESTELA BENEDICTO, MATILDE BENEDICTO & ESLANA BENEDICTO, PETITIONERS, VS. COURT OF APPEALS AND GREGORIO RAMOS, RESPONDENTS.

G.R. No. 81344. February 07, 1990

Ponente: PARAS, J.

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PARAS, J.:

The parcel of land in question is known as Lot 308 located at Lolomboy, Bocaue, Bulacan. It was originally owned by the spouses Catalino Ramos and Agatona Avendano. Upon their death, their children namely Maria Ramos, Gregorio Ramos and Marciana Ramos succeeded to the ownership of said property by rights inheritance and thus became co-owners pro-indiviso per TCT No. T-24845 of the Registry of Deeds of Bulacan. Upon the death of Maria Ramos her children namely, Irene (married to Teodoro Roxas), Cion, Dominador, Estela, Matilde and Eslana succeeded her in her one-third (1/3) pro-indiviso share. Marciana Ramos died single and intestate on May 13, 1976.

After the death of Marciana, her brother, herein private respondent Gregorio Ramos filed on March 9, 1977 with the then Court of First Instance of Bulacan, Branch II, a complaint for Partition of Lot 308 claiming one-half (1/2) of the one-third (1/3) pro-indiviso share of Marciana on the ground that since she died single with no heir, her one-third (1/3) share devolved on her remaining brother Gregorio and herein petitioners (children and successors-in-interest of Maria). This was opposed by herein petitioners claiming that on January 16, 1966, Marciana mortgaged her one-third (1/3) share of Lot 308 to the spouses Teodoro Roxas and Irene Benedicto for Three Thousand Pesos (P3,000.00) as evidenced by a document captioned "Kasulatan ng Sanglaan na Mayroong Panagot" and that such mortgage indebtedness has not been paid up to the present time. Additionally, it was Teodoro Roxas who paid for the funeral expenses of Marciana in the amount of P1,500.00.

Gregorio Ramos questioned the validity and genuineness of the alleged document of mortgage. He alleged that the same was fictitious and assuming arguendo that it was genuine, the same had already prescribed and therefore had no more effect and validity. (The document was registered only on August 19, 1976 or more than ten (10) years after its execution and already after the death of Marciana).

After trial, the court a quo rendered judgment in favor of Gregorio Ramos, the dispositive portion of which reads

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"PREMISES CONSIDERED, judgment is hereby rendered:

"1. Ordering the partition of the parcel of land covered by T.C.T. No. T-24845 of the land records of Bulacan between the plaintiff who is to receive one half share or portion and the defendants who are to receive the other half share or portion of the said property and the existing improvements therein.

"2. Ordering defendants to execute and sign all the necessary papers or deed of sale to give validity and effect

to the aforesaid partition;

“3. Ordering the plaintiff to pay the defendants the sum of P750.00 as their contribution to the estimated expenses incurred in the funeral expenses of Marciana Roxas;

“4. Ordering the defendants to pay jointly and solidarily the sum of P3,000.00 to plaintiff as and by way of attorney’s fees; and, to costs of suit.

“SO ORDERED.” (pp. 22-23, Rollo)

From the aforesaid Decision, petitioners appealed to the Court of Appeals[*] docketed as CA-G.R. CV-No. 06598. In a Decision promulgated on September 27, 1987, the Court of Appeals modified the decision as follows:

“Under Article 774 of the Civil Code, one succeeds not only to the property and rights of the deceased but also to his obligations upon his death. When Marciana Ramos, therefore, died on May 13, 1976, her indebtedness which was secured by a mortgage dated April 16, 1966 on her 1/3 interest on Lot No. 308, devolved on her brother, Gregorio and to defendants, by right of representation from their deceased mother, Maria. They shared Marciana’s 1/3 share together with its obligation 50-50.

“The mortgage constituted on Marciana 1/3 share even if not recorded is binding between the parties (Article 2125, Civil Code), although records show that said mortgage was duly registered on August 19, 1976 but registration of the mortgage does not make it imprescriptible (Buhat et al. v. Besana, et al. 95 Phil. 721). Consequently, under Article 1142 of the Civil Code, any action to foreclose the mortgage by defendants prescribes after ten (10) years. In the instant case, since the date of the execution of said mortgage is January 1966 (not April), for a term of one (1) year counted from December 31, 1965 to December 31, 1966, the move of defendants to foreclose the same extrajudicially by the Sheriff’s Office on December 23, 1977 (Exhibit ‘A’ - Motion, p. 65, Records) can no longer be maintained and enforced on the ground of prescription (Soriano v. Enrique, et al., 24 Phil. 584).

“Plaintiff is, therefore, entitled to 1/2 of Marciana’s 1/3 share on Lot 308 together with its improvements and to pay his share of the latter’s funeral expenses.

“But defendants are not liable, for the payment of attorney’s fees for want of a factual and legal basis to impose the same under Article 2208 of the New Civil Code.

“WHEREFORE, the decision appealed from is hereby MODIFIED as follows:

‘(1) Ordering the partition of the parcel of land covered by TCT No. T-24845 of the land records of Bulacan between the plaintiff and the defendants who shall receive 1/2 each of said property together with the existing improvements therein;

‘(2) Ordering defendants to execute and sign all necessary documents to give validity and effect to the aforesaid partition; and

‘(3) Ordering plaintiff to pay defendants the sum of P750.00 as their contribution to the estimated funeral expenses of the deceased Marciana Ramos.

‘No costs.” (pp. 24-24A, Rollo)

Petitioners moved for reconsideration, but the same was denied, hence, the present petition.

From the nature of their petition, petitioners would like to prevent the partition of subject property not because Gregorio Ramos is not a legitimate intestate heir of his deceased sister who died without issue but because there is an alleged mortgage constituted over the property which remains unpaid. Thus, petitioners argue that since the deceased left a mortgage debt, the action for partition is premature, citing Art. 1078 of the Civil Code which

provides that "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", and Section 1, Rule 74 of the Rules of Court which states that the partition, whether extrajudicial or judicial can only be effected" if the deceased left no will and no debts xxx."

Upon the other hand, respondent maintains that at the time Gregorio Ramos filed action for partition, the decedent Marciana Ramos had no debts and/or obligations to speak of that will necessitate the filing of a special proceeding and the appointment of administrator despite the so called mortgage over the said property because this mortgage had been extinguished by prescription. This contention of private respondent was sustained both by the lower court and the Court of Appeals. We find no cogent reason to reverse said finding.

Under Art. 1142 of the Civil Code an action for foreclosure of mortgage prescribes after ten (10) years. The mortgage in question was executed in January 1966. Consequently, at the time of the filing of the complaint for partition on March 9, 1977, the mortgage on its face had obviously prescribed. The argument, therefore, of petitioner that there is still a debt or obligation of the deceased Marciana Ramos to be settled is without basis in fact and in law. There being no debt or obligation, partition of the subject property is perfectly proper. It must be emphasized that not only has the mortgage prescribed; but the indebtedness itself has also prescribed, the period of prescription for a written contract being also ten (10) years.

IN VIEW OF ALL THE FOREGOING, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Justice Rodolfo A. Nocon and concurred in by Justices Ricardo P. Tensuan and Felipe P. Kalalo.

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