

**SPOUSES ANTONIO PAILANO, JR. AND PRESENTACION LABIOS,
PETITIONERS, VS. THE COURT OF APPEALS, SPOUSES MARIANO
PAILANO AND FE SAMSON?PAILANO, RESPONDENTS.**

G.R. No. 99333. June 28, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Petitioners take this recourse under Rule 45 of the Rules of Court to seek the modification of the 24 January 1991 decision of the Court of Appeals in CA-G.R. CV No. 22072[1] and its 23 April 1991 Resolution which denied their motion for reconsideration of the said decision.[2]

The facts of the case, as summarized in the challenged decision of public respondent Court of Appeals, are not disputed by the parties.

Petitioner Antonio Pailano, Jr. is the younger brother of private respondent Mariano Pailano. On 24 May 1969, Antonio purchased from Bonifacio Alvarez the latter's undivided share, consisting of 220 square meters, in Lot No. 569 of the Bago City Cadastre, located at Sampinit, Bago City. This share adjoins the portion with a like area which Mariano purchased from a brother of Bonifacio.

On 20 September 1973, Antonio executed a Deed of Absolute Sale (Exhibit "B") over the lot he acquired from Bonifacio in favor of Mariano for the sum of Six Hundred and Fifty Pesos (P650.00). However, eight (8) days thereafter, Mariano in turn executed a Deed of Acknowledgment of Ownership (Exhibit "D") in which he states:

"WHEREAS, the said ANTONIO PAILANO, JR., executed the Deed of Absolute Sale aforesaid in my favor only for my accommodation and I have not really paid the purchase price stated therein, nor has there been any consideration for the execution of the Deed of Absolute Sale aforesaid;

NOW, THEREFORE, x x x I MARIANO PAILANO, x x x hereby acknowledge, declare and bind myself:

1. That, notwithstanding the execution by ANTONIO PAILANO, JR. of the aforestated Deed of Absolute Sale in my favor, the said ANTONIO PAILANO, Jr. is still the true, lawful and absolute owner of the parcel of land which is the subject matter of the said Deed of Absolute Sale.
2. That, upon demand by the said ANTONIO PAILANO, Jr., I will reconvey to him the parcel of land subject matter of the Deed of Sale aforesaid, and to that effect, I will execute all the necessary papers for the reconveyance."

It appears that Mariano had the two (2) portions originally purchased by him and Antonio segregated from the mother lot and designated singly as Lot No. 569-H. Then, on 12 March 1974, Mariano secured in his name Transfer Certificate of Title (TCT) No. T-7785 over Lot No. 569-H, with a total area of 441 square meters (Exhibit "E"). On 27 June 1974, he executed a mortgage over the lot in favor of the Philippine National Bank (PNB) as security for the payment of a loan (Exhibit "E-1"). On 26 May 1980, he obtained another loan from the

said bank in the amount of P12,500.00, which was also secured by a mortgage over the same lot.

Their demand upon Mariano to reconvey the property covered by the deed of sale having been refused, petitioners filed on 2 March 1981 with the Regional Trial Court (RTC) of Negros Occidental a complaint against the private respondents for the recovery of the property based on the Deed of Acknowledgment of Ownership. It was docketed as Civil Case No. 15802 and was raffled off to Branch 47 of the said court. Petitioners alleged in their complaint that the Deed of Sale which was executed in favor of Mariano was meant only to accommodate the latter and that the sale was void for lack of valuable consideration, a fact admitted by Mariano in the Deed of Acknowledgment of Real Property (Exhibit "D"). They pray therein for a judgment:

1) ordering the private respondents to:

- (a) reconvey to the petitioners the 220-square meter northern portion of Lot No. 569-H;
- (b) pay the petitioners the sums of P10,000.00 as moral damages, P3,000.00 as exemplary damages and P2,000.00 as attorney's fees plus P200.00 per appearance of counsel in court;
- (c) pay the PNB the portion of their loan to the extent that it affects the petitioners' portion of Lot No. 569-H to enable the said bank to release the latter portion; and
- (d) to reimburse the petitioners with whatever amount they may pay for the redemption of their property from the PNB in case the mortgage is foreclosed, with interest at the rate of 12% per annum; and

2) ordering the partition of Lot No. 569-H at the expense of the private respondents.[3]

In their Answer, the private respondents insist that the Deed of Absolute Sale was valid as they paid the consideration stated therein and that the Deed of Acknowledgment of Ownership did not reflect the true intent of the parties because it was signed merely to accommodate the petitioners in obtaining a loan.

After trial on the merits, the trial court rendered a judgment upholding the theory of the private respondents that the petitioners voluntarily executed the deed of absolute sale, that the private respondents paid the consideration of P650.00 and that the latter signed the Deed of Acknowledgment to accommodate the petitioners as Antonio had become an appliance dealer and business practice required some kind of recorded asset for appliance dealers as a matter of company policy.[4] It accordingly dismissed the complaint.[5]

Petitioners appealed the decision to the Court of Appeals where the case was docketed as CA-G.R. CV No. 22072. On 24 January 1991, it rendered its decision[6] upholding the theory of the petitioners and, accordingly, reversing the decision of the trial court. It did not, however, order the private respondents to reconvey to the petitioners the questioned portion of Lot No. 569-H. It merely declared the parties as co-owners thereof. The dispositive portion of the public respondent's decision reads:

"WHEREFORE, the decision appealed from is SET ASIDE and judgment is ENTERED, declaring the plaintiff-appellants and the defendant-appellees to be coowners of Lot No. 569-H, Bago City Cadastre, covered by Transfer Certificate of Title No. T-7785. Without pronouncement as to costs."[7]

The public respondent found more probable the petitioners' theory because (a) a party to whom something is sold is not likely to execute anything that would negate the sale made to him unless "the supposed sale is really not true"; (b) there is no proof that Antonio was ever engaged in the appliance business, which was the reason given by the private respondents for accommodating him with the Deed of Acknowledgment; and (c) Antonio signed the deed of absolute sale to accommodate Mariano who needed a collateral for a loan.[8]

Not fully satisfied with the public respondent's decision, the petitioners filed a motion for reconsideration

pleading therein that the affirmative reliefs they prayed for in the complaint, earlier adverted to, be granted.

In its Resolution of 23 April 1991,[9] the public respondent denied the motion for reconsideration. It held that (a) the petitioners' right to demand a partition and reconveyance must depend on a finding that the land has been discharged from its mortgage with the PNB; since no such finding exists in the records, a separate action for partition should be filed in court; and (b) the petitioners are not entitled to moral and exemplary damages, for as found by it, the relationship between Antonio and Mariano, who are brothers, was warm and cordial until December 1980; hence, it would appear that the private respondent's refusal to reconvey the land "was due more to the strained relationship than to a malicious desire on the part of defendant-appellees to covet the land in question." [10]

Petitioners then came to this Court by way of a petition for review on certiorari to question solely the failure of the public respondent to grant them, in the fallo, the affirmative reliefs prayed for.

This Court gave due course to the petition after the private respondents had filed their Comment to the petition and required both parties to file their respective Memoranda, which they subsequently complied with.

In fine, the petitioners assail the failure and subsequent refusal of the public respondent to (a) order the partition of Lot No. 569-H at the expense of the private respondents and the reconveyance of the 220-square meter lot located at the northern portion thereof to the petitioners; (b) award moral and exemplary damages and attorneys' fees to the petitioners; and (c) order the private respondents to pay the PNB that part of the loan affecting the portion of Lot No. 569-H belonging to the petitioners and effect the release of such portion from the mortgage, or, in the alternative, to reimburse the petitioners with whatever the latter may pay the PNB in case the property is foreclosed.

Petitioners asseverate that since their cause of action has been recognized by the public respondent, the latter's passive declaration that they are co-owners of Lot No. 569-H without ordering the partition and reconveyance of the property co-owned, contravenes all applicable laws and jurisprudence on the matter and is inconsistent with the undertaking of the private respondents in the Deed of Acknowledgment to reconvey that portion belonging to them (petitioners) upon demand. Petitioners further contend that, contrary to the stand of the public respondent, the mortgage in favor of the PNB (whose validity they do not question) is not a legal obstacle to the partition of the property under Article 494 of the Civil Code which provides in part:

"ART. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned."

On these points, We agree with the petitioners. The complaint in Civil Case No. 17802 encompasses two (2) closely intertwined principal causes of action, viz.: (a) for the declaration of nullity of the questioned Deed of Absolute Sale and (b) for specific performance of the obligation of private respondent Mariano Pailano under the Deed of Acknowledgment of Ownership to reconvey to petitioner Antonio Pailano, Jr. the property "sold." The reconveyance is not only limited to the execution of an instrument; it necessarily includes the segregation from Lot No. 569-H of that portion which Antonio "sold" to Mariano. Such segregation could only mean subdividing the lot. Hence, petitioners pray for reconveyance and partition. Since the public respondent declared void the Deed of Absolute Sale and gave at the same time full force and effect to the Deed of Acknowledgment, it should not have stopped at merely declaring a co-ownership between the parties over Lot No. 569-H. It should have ordered the private respondents to reconvey to the petitioners the 220-square meter lot described in the Deed of Absolute Sale, which corresponds to the northern portion of Lot No. 569-H. By first declining and later refusing to do so, the public respondent has countenanced and, therefore, encouraged, multiplicity of actions which the spirit of the Rules of Court and public policy abhor. If splitting a cause of action by litigants is bad enough and is

frowned upon by the courts, then it is with stronger reason that no court should refuse to grant a remedy to which a party is entitled to under a cause of action the court itself has recognized and to suggest, instead, the filing of another unnecessary action. The existing mortgage over the property in favor of the PNB is not a legal obstacle to the subdivision because the latter does not operate to extinguish the mortgage, whose validity the petitioners recognize. A mortgage is inseparable from the property. As explicitly stated in Article 2126 of the Civil Code, a "mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it is constituted." In the instant case then, upon the subdivision of the property, two (2) new transfer certificates of title -- one issued in the name of the petitioners and another in the name of the private respondents, for their respective shares -- would be issued in lieu of TCT No. T-7785 which shall thereby be cancelled. However, the mortgage lien in favor of the PNB shall be annotated on both titles.

We also agree with the petitioners that the public respondent erred in not awarding them moral damages and attorney's fees. Under the law, moral damages, although incapable of pecuniary computation, may be recovered if they are the proximate result of the defendant's wrongful act or omission.[11] In breaches of contract, such damages may be awarded if the defendant acted fraudulently or in bad faith.[12] In the instant case, the Deed of Acknowledgment of Ownership was, in relation to the Deed of Absolute Sale, a contract imposing upon private respondent Mariano Pailano the obligation to reconvey the property in question to petitioner Antonio Pailano, Jr. upon the latter's demand. In refusing to fulfill such obligation upon demand and in insisting, instead, that the Deed of Absolute Sale was valid -- after he had secured a transfer certificate of title over the portion originally belonging to Antonio -- private respondent Mariano Pailano acted in gross and evident bad faith. He should, therefore, be held liable for moral damages, which is hereby fixed at P10,000.00.

Under Article 2208(5) of the Civil Code, attorney's fees may be recovered "where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim." Such was what happened in this case. Private respondents then must be adjudged liable to the petitioners for attorney's fees in the sum of P2,000.00.

There is, however, no merit to the claim for exemplary damages. There is no adequate showing that the private respondents acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[13]

We also cannot grant the petitioners' alternative prayer for (a) the payment by the private respondents of the mortgage debt to the PNB for the purpose of releasing the petitioners' portion of Lot No. 569-H from its mortgage lien before the maturity of the obligation, or (b) the reimbursement to them of whatever amount they may pay for the redemption of their property in case of foreclosure of the mortgage which, according to them, is in consonance with the private respondents' promise to reconvey their property upon demand. It is averred that these alternative reliefs will protect them from the "deleterious effect of the respondents' leaving their mortgage debt hanging unpaid for an indefinite period, or leaving an insignificant amount unpaid so as not to justify foreclosure and yet forestall partition, if the ruling of respondent court is correct that the mortgaged lot cannot be partitioned unless the entire mortgaged debt is paid first."

In the first place, the entire Lot No. 569-H was mortgaged as security for the payment of the loan. If the portion belonging to the petitioners is subsequently reconveyed to them, the private respondents cannot be compelled to pay the PNB the proportionate amount of the loan as may correspond to the petitioners' 220-square meter portion to obtain its release from the mortgage without violating the rule on the indivisibility of mortgage.[14] Besides, any order to that effect would be an order to the PNB to accept the partial payment and to release the petitioners' property, which cannot be done since the PNB is not a party in this case.

Nor can this Court grant the second alternative prayer because the relief prayed for is dependent upon an event which may or may not happen. An order for the private respondents to reimburse the petitioners for whatever amount they would pay for the redemption of their property in case of foreclosure is a conditional order. We have held that:

"orders or judgments x x x subject to the performance of a condition precedent, are not final until the condition is performed. (Jaucian v. Querol, 38 Phil., 707, 715) Before the condition is performed or the contingency has happened, the judgment is not effective and is not capable of execution. In truth, such judgment contains no disposition at all and is a mere anticipated statement of what the court shall do in the future when a particular event should happen. For this reason, as a general rule, judgments of such kind, conditioned upon a contingency, are held to be null and void. (33 C.J., 1196) 'A judgment must be definitive. By this is meant that the decision itself must purport to decide finally the rights of the parties upon the issue submitted, by specifically denying or granting the remedy sought by the action.' (33 C.J., 1102) And when a definitive judgment cannot thus be rendered because it depends upon a contingency, the proper procedure is to render no judgment at all and defer the same until the contingency has passed." [15]

WHEREFORE, to the extent above discussed, the instant petition is GRANTED and the challenged decision of the public respondent in CA-G.R. CV No. 22072 is AFFIRMED, subject to the modifications previously indicated.

As MODIFIED, the private respondents are hereby ordered to (a) execute a deed of reconveyance in favor of the petitioners over the 220-square meter northern portion of Lot No. 569-H of the Bago City Cadastre, after which such lot should be subdivided to physically segregate the portion reconveyed, with the expenses therefor to be borne in equal proportions by the parties; and (b) pay the petitioners the sums of P10,000.00 as moral damages and P2,000.00 as attorney's fees.

Upon the registration of the deed of reconveyance and the subdivision plan and payment of the required fees, the Register of Deeds of Bago City shall then cancel Transfer Certificate of Title No. T-7785 and issue in lieu thereof two (2) new Transfer Certificates of Title one of which shall be in the name of the petitioners and the other in the name of the private respondents, both of which shall bear all the valid and existing encumbrances annotated in Transfer Certificate of Title No. T-7785.

Costs against the private respondents.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Rollo, 28-44. Per Associate Justice Vicente V. Mendoza, concurred in by Associate Justices Segundino G. Chua and Luis L. Victor.

[2] Id., 46-49.

[3] Rollo, 11-12.

[4] Id., 33.

[5] Id., 28.

[6] Rollo, 28-44.

[7] Id., 43.

[8] Id., 39-43.

[9] Rollo, 46-49.

[10] Id., 48.

[11] Article 2217, Civil Code.

[12] Article 2220, Id.

[13] Article 2232, Civil Code.

[14] Article 2089, Civil Code.

[15] Cu Unjieng E. Hijos vs. The Mabalacat Sugar Co., 70 Phil. 380 [1940].

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