

5 Phil. 567

[ G.R. No. 2426. January 24, 1906 ]

**FERNANDO MONTAÑO LOPEZ, PLAINTIFF AND APPELLEE, VS. PEDRO MARTINEZ ILUSTRE, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**WILLARD, J.:**

On the 26th day of December, 1902, Francisco Martinez and the defendant, Pedro Martinez, his son, were the owners as tenants in common of two separate parcels of land in Calle Dulumbayan, in the city of Manila, each being the owner of an undivided one-half of each of said tracts of land. On the 26th day of December, 1902, Francisco Martinez conveyed to the plaintiff his undivided half interest in both said tracts of land. This deed contained a clause giving Martinez the right to repurchase the property within one year from December 26, 1902. He did not repurchase it, and on the 28th of December, 1903, the plaintiff caused the proper marginal entry to be made upon the books in the registry of property in which registry the conveyance had been recorded, and afterwards brought this action in March, 1904, asking for a partition of the two lots of land, between himself and the defendant, and that defendant account for and pay to the plaintiff his part of the rents of the said properties from the 26th day of December, 1903.

It appeared that Francisco Martinez and the defendant, his son, were the owners as tenants in common of twenty-six other parcels of land; that in June, 1903, before the expiration of the year in which Francisco Martinez had the right to repurchase the property so conveyed to the plaintiff, he and the defendant, his son, made a voluntary partition of these twenty-eight tracts of land, which partition was approved by the Court of First Instance of Manila on the 15th day of June, 1903. These twenty-eight tracts of land had been acquired by Francisco Martinez during his marriage with his wife, Dona Germana Ilustre. The wife having died, her estate was in process of administration in the Court of First Instance of Manila, and the partition above mentioned was made on the theory that these lands were

the property of the conjugal partnership existing between Francisco Martinez and his wife. In this partition the two parcels of land in question in this case fell to the defendant, and his claim is that by this partition plaintiff lost all his interest in the property. Judgment was entered in the court below in favor of plaintiff as prayed for in his complaint, and the defendant has brought the case here by bill of exceptions.

Article 399 of the Civil Code is as follows:

“Every coowner shall have full ownership of his part and in 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.”

This article gives the owner of an undivided interest in the property the right to freely sell and dispose of it—that is, of his undivided interest. He has, no right to sell a divided part of the real estate. If he is the owner of an undivided half of a tract of land, he has a right to sell and convey an undivided half, but he has no right to divide the lot into two parts, and convey the whole of one part by metes and bounds. All that Francisco Martinez undertook to do in this case was to convey his undivided interest in these two properties. This he had a perfect right to do, in accordance with the terms of said article. There is nothing in the last clause of the article inconsistent with this position. That declares simply that when the property is divided the purchaser gets an interest only in that part which may be assigned to him. For the purposes of this case we see no difference between it and a case in which the tenant in common makes an absolute conveyance of his *undivided* interest in the property, without reserving the right to repurchase. In the case of an absolute conveyance of that character, the relation between the grantor in the deed and his cotenant is terminated. They are no longer cotenants. The grantee in the deed takes the place of the grantor, and he and the other owner of the property become cotenants. In such a case the grantor loses all interest in the property, and of course has no right to take any part in the partition of it. It would be absurd to say that after such conveyance the grantor, who had lost all his interest in the property, could by agreement with the other owner make a partition of property in which he had no interest that would be binding upon his grantee.

We do not see how the fact that Francisco Martinez and his son were the owners of other

pieces of property as tenants in common can affect the question presented in this case. Each tract was separate and distinct from all the others. The parties had a right to deal with one lot without any reference to the other twenty-seven. The fact that the defendant acquired title to all of them by inheritance from his mother did not make them physically one tract of land, so that a conveyance by the son of his undivided half interest in one of these lots would amount to a conveyance of a divided part of a tract of land held by him in common with his father.

The judgment of the court below is affirmed, with the costs of this instance against the appellant, and after the expiration of twenty days judgment should be entered in accordance herewith and the case remanded to the court below for execution. So ordered.

*Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.*

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