Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

REYNALDO REYES, AS HEIR OF VITALIANO REYES,
Petitioner,

- *versus* -

SPS. WILFREDO AND MELITA GARCIA,
Respondents.

G.R. No. 225159

Present:

PERLAS-BERNABE, *S.A.J.,* *
HERNANDO,
Acting Chairperson, **
ZALAMEDA,
ROSARIO, and
MARQUEZ, *JJ.*

Promulgated:

MAR 2 1 2022

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DECISION

HERNANDO, *J.*:

Challenged in this petition[1] is the February 16, 2016 Decision[2] and June 9, 2016 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 101161, which affirmed the April 12, 2013 Decision[4] of the Regional Trial Court (RTC), Branch 266 of Pasig City in Civil Case No. 71077-TG.

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* On official leave.
** Per Special Order No. 2882 dated March 17, 2022.
1 *Rollo*, 9-19.
2 CA *rollo*, pp. 81-89. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a Member of this Court).
3 Id. at 111-112.
4 Records, pp. 408-413. Penned by Presiding Judge Toribio E. Ilao, Jr.

The Antecedents:

Petitioner Reynaldo Reyes (petitioner) claimed that Julian Reyes (Julian) is the owner of an unregistered parcel of land located in Quezon St., Bagumbayan, Taguig with a total area of 463 square meters (sqm) as per Tax Declaration No. 9700 (5277).[7] Julian and his spouse, Marcela Reyes (Marcela) had nine children, namely, Vitaliano, Maria, Felicidad, Ireneo, Isidoro, Anastacio, Julia, Vicente and Isadora. [8] On September 21, 1944 and October 31, 1964, Julian and Marcela died, respectively.[9]

On August 30, 1975, the heirs of Julian and Marcela executed a "*Partihan At Bilihan Nang Kalahating Bahagi ng Lupang Tirahan Sa Labas ng Hukuman*,"[10] and sold half of the subject property, *i.e.*, 231.5 sqm, to one of the heirs, Anastacio. The remaining quarter of the subject property, *i.e.*, 116 sqm, was occupied by Vitaliano's children, namely, petitioner and Fermin Reyes (Fermin), while the other quarter was sold by Isidoro to respondents Wilfredo and Melita Garcia (spouses Garcia), as per Deed of Sale dated August 16, 1989.[11]

Sometime in 1997, petitioner and Fermin came to know of Isidoro's sale of ¼ of the subject property to respondents spouses Garcia when the latter filed an ejectment case against Fermin. Thus, herein petitioner filed a complaint for recovery of ownership, quieting of title and annulment of deed of sale against the spouses Garcia alleging that the Deed of Sale dated August 16, 1989 is void since Isidoro is not the true and real owner of the subject property which originally belongs to Julian's estate.[12]

On their part, respondents spouses Garcia countered that the complaint should be dismissed on the ground of *res judicata*, failure to state a cause of action, and to implead indispensable parties, non-compliance with a condition precedent, and extinguishment of claim by reason of waiver and abandonment. The spouses Garcia pointed out that the assessed value of the subject property was only ₱19,040.00 as per the tax declaration presented by them, which is below the jurisdictional limit of ₱50,000.00. Also, the spouses Garcia alleged that petitioner is not the real party in interest and thus cannot bring the present suit against them to recover the subject property which is co-owned with other non-impleaded parties.[13]

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7 Id. at 4.
8 *Rollo*, p. 22.
9 Records, p. 14.
10 Id. at 14-15.
11 Id. at 218-221.
12 Id. at 3-8.
13 Id. at 42-45.

In addition, the spouses Garcia averred that although no partition agreement was executed by the heirs of Julian and Marcela, the heirs already agreed to divide it among themselves when they allowed a portion of the subject property to be occupied by heirs of Vitaliano. Also, they claimed that the portion of the subject property sold to them was Isidoro's share in the subject property.[14]

Ruling of the Regional Trial Court:

On April 12, 2013, the RTC rendered its Decision dismissing petitioner's complaint and respondents' counterclaim for lack of merit. The dispositive portion of which reads:

> WHEREFORE, the Complaint of plaintiff Reynaldo Reyes for Recovery of Ownership of Real Property/Quieting of Title/Annulment of Deed of Sale and Tax Declaration No. D-001-03341 and Reconveyance with Damages is hereby DISMISSED for lack of merit. The counterclaim interposed by defendants spouses Melita and Wilfredo Garcia is likewise DISMISSED for lack of merit.
>
> SO ORDERED.[15]

The RTC ruled that the jurisdiction of the court over the subject matter is determined by the plaintiff's allegation in the complaint and the principal relief sought. Thus, the spouses Garcia's allegation and evidence showing that the subject property's assessed value is less than ₱50,000.00 is not material in determining jurisdiction over the subject matter. All co-owners are real parties in interest. Thus, any one of them may bring an action for recovery of co-owned properties. One of the co-owners is considered an indispensable party to recover a co-owned property for the benefit of all co-owners.[16]

Moreover, no document was presented to show that the heirs of Julian and Marcela agreed to divide the remaining half of the subject property, *i.e.*, 231.5 sqm, among themselves; or that one or some of them waived their rights over the remaining 231.5 sqm. There is a preponderance of evidence showing that the subject property is still co-owned by the heirs of Julian and Marcela.[17]

However, the RTC held that Isidoro may validly sell his *pro indiviso* share in the subject property as an heir of Julian and Marcela, and co-owner of the subject property. Thus, by virtue of the deed of sale dated August 16, 1989, the spouses Garcia are now co-owners of the subject property in lieu of Isidoro. Nonetheless, the RTC ruled that the proper action should be partition and not

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[14] Id.
[15] Id. at 413.
[16] Id. at 406-408.
[17] Id. at 408-409.

nullification or recovery of possession. Hence, the RTC dismissed petitioner's complaint as well as the counterclaim of the spouses Garcia.[18]

Ruling of the Court of Appeals:

On February 16, 2016, the CA affirmed RTC's ruling, to wit:

> WHEREFORE, premises considered and subject to the above disquisitions, the appeal is hereby DENIED. The Decision dated April 12, 2013 of the Regional Trial Court, Branch 266, Pasig City, in Civil Case No. 71077-TG, is accordingly AFFIRMED.
>
> SO ORDERED.[19]

The CA found petitioner to be a real party in interest, and hence can file any kind of action for recovery of possession or ownership of the co-owned property even without joining all the co-owners as co-plaintiffs. Petitioner's filing of a complaint shall be deemed for the benefit of all co-owners. Also, the CA ruled that the trial court has jurisdiction over the case. An action to quiet title of real property falls under the jurisdiction of the RTC.[20]

The RTC is correct in ruling that the subject property, *i.e.* 231.5 sqm, remains to be co-owned by the heirs of Julian and Marcela. Thus, when Isidoro sold the entire co-owned property to third persons, only the sale corresponding to his or her share is valid. However, the CA opined that the ruling in the present case can only be limited to a recognition that a co-ownership exists. The parties' proper remedy is to file an action for partition under Rule 69 of the Rules of Court. The spouses Garcia are considered trustees of the portion not owned by Isidoro.[21]

Petitioner moved for a reconsideration of the CA's Decision which was denied by the CA in its June 9, 2016 Resolution.

Hence, this petition for review on *certiorari* under Rule 45.

Issues

Petitioner presented the following issues for the resolution of this Court:

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[18] Id. at 413.
[19] CA *rollo*, p. 102.
[20] Id. at 98-99.
[21] Id. at 99-102.

1. Whether or not the appellate court erred when it ruled that the proper remedy of the parties is to partition the subject property; and

2. Whether or not the appellate court erred when it did not declare the Deed of Sale dated August 16, 1989 as null and void insofar as the interests of the other heirs are concerned.[22]

Petitioner's Arguments:

Petitioner argues that if the the subject property, *i.e.,* 231.5 sqm, would be partitioned, it would become unserviceable. Each of the nine heirs of Julian and Marcela are entitled to 1/9 of the subject property or 25.66 sqm., which is too small for a family of at least five or six members. To partition the subject property would render it useless and unserviceable to live in.[23]

Moreover, Isidoro is only entitled to 25.66 sqm of the subject property. Thus, he had no right to sell the interests of the other co-heirs or the remaining 205.84 which belongs to the estate of Julian and Marcela. Hence, petitioner contends that the deed of sale dated August 16, 1989, insofar as the share of the co-heirs are concerned, should be declared as null and void.[24]

Arguments of the Spouses Garcia:

The spouses Garcia contend that petitioner's arguments are a mere rehash of those raised before the CA. Also, the petition failed to raise any question of law which is the crux of a Rule 45 petition. They claim that the issues raised by petitioner are questions of fact which cannot be raised before the Court as it is not a trier of facts. Petitioner imputes grave abuse of discretion to the CA which is not allowed under Rule 45.[25]

Our Ruling

After careful consideration, We find the petition to be without merit.

It is undisputed that the subject property belongs to Julian, and that upon the demise of Julian and his wife Marcela, the heirs executed *Partihan At Bilihan Nang Kalahating Bahagi ng Lupang Tirahan Sa Labas ng Hukuman* dated August 30, 1975[26] which sold half of the subject property, *i.e.* 231.5 sqm, to

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[22] *Rollo*, pp. 13-17.
[23] Id. at 14-15.
[24] Id. at 16-17.
[25] Id. at 72-73.
[26] Records, pp. 14-15.

their co-heirs Anastacio. As to the remaining half of the subject property, the same remains in the estate of Julian and Marcela.

Nonetheless, a co-owner may alienate an inchoate portion of the subject property which belongs to him or her. Article 493 of the Civil Code provides for the rights of the co-owners over a co-owned property, thus:

> Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, **and he may therefore alienate, assign or mortgage it and even substitute another person in its enjoyment**, except when personal rights are involved. **But the effect of the alienation or mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.** (Emphasis ours.)

Thus, Isidoro, as one of the heirs of Julian and Marcela, has the right to alienate his *pro indiviso* share in the co-owned property even without the consent of the other co-heirs. However, as mere part owner, he cannot alienate the shares of the other co-owners. *Nemo dat quod non habet*. No one can give what he does not have. Hence, as correctly ruled by the courts *a quo*, Isidoro's sale of the remaining half of the subject property will only affect his own share but not those of the other co-owners who did not consent to the sale. The spouses Garcia will only get Isidoro's undivided share in the subject property.

Despite the foregoing, petitioner's recourse of filing a complaint for nullification of sale and recovery of ownership is not the proper action. This Court explained in *Bailon-Casilao v. Court of Appeals*[27] that the appropriate remedy is not a nullification of the sale or for the recovery of the thing owned in common but a division of the common property, thus:

> As early as 1923, this Court has ruled that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale [*Punsalan v. Boon Liat*, 44 Phil. 320 (1923)]. This is because under the aforementioned codal provision, the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common. [*Ramirez v. Bautista*, 14 Phil. 528 (1909)]. Consequently, by virtue of the sales made by Rosalia and Gaudencio Bailon which are valid with respect to their proportionate shares, and the subsequent transfers which culminated in the sale to private respondent Celestino Afable, the said Afable thereby became a co-owner of the disputed parcel of land as correctly held by the lower court since the sales produced the effect of *substituting* the buyers in the enjoyment thereof [*Mainit v. Bandoy*, 14 Phil. 730 (1910)].

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[27] 243 Phil. 888 (1988).

> **From the foregoing, it may be deduced that since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void. However, only the rights of the co-owner-seller are transferred, thereby making the buyer a co-owner of the property**.
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> **The proper action in cases like this is not for the nullification of the sale or for the recovery of the thing owned in common from the third person who substituted the co-owner or co-owners who alienated their shares, but the DIVISION of the common property as if it continued to remain in the possession of the co-owners who possessed and administered it** [*Mainit v. Bandoy, supra.*]
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> Thus, it is now settled that the appropriate recourse of co-owners in cases where their consent were not secured in a sale of the entire property as well as in a sale merely of undivided shares of some of the co-owners is an action for PARTITION under Rule 69 of the Revised Rules of Court. Neither recovery of possession nor restitution can be granted since the defendant buyers are legitimate proprietors and possessors in joint ownership of the common property claimed [*Ramirez v. Bautista, supra*].[28] (Emphasis ours.)

To demand a partition or division of the common property is in accord with Article 494 of the Civil Code, that is, no co-owner shall be obliged to remain in the co-ownership and that each co-owner may demand at any time partition of the thing owned in common insofar as his or her share is concerned. Petitioner's contention that the subject property, *i.e.*, 231.5 sqm, would be rendered unserviceable if it would be divided among the co-owners, is without legal merit. It bears stressing that petitioner's issue is addressed by the provisions of Article 498[29] in relation with Article 495.[30] Thus, petitioner cannot argue that a declaration of nullity of the sale between Isidoro and the spouses Garcia is warranted or else, a partition of the subject property would render it unserviceable.

Nevertheless, the spouses Garcia, as co-owner of the 231.5 sqm subject property by virtue of the deed of sale dated August 16, 1989[31] executed by Isidoro in their favor, cannot claim a specific portion of the subject property prior to its partition. With the subsistence of co-ownership, the spouses Garcia only owns Isidoro's undivided *aliquot* share of the subject property. The spouses

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[28] Id. at 892-893.

[29] Article 498 of the Civil Code

Art. 498. Whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds distributed.

[30] Article 495 of the Civil Code

Art. 495. Notwithstanding the provisions of the preceding article, the co-owners cannot demand a physical division of the thing owned in common, when to do so would render it unserviceable for the use for which it is intended. But the co-ownership may be terminated in accordance with Article 498.

[31] Records, pp. 96-97.

Garcia and all the co-owners cannot adjudicate to himself or herself title to any definite portion of the subject property until its actual partition by agreement or judicial decree. In *Carvajal v. Court of Appeals*,[32] which We reiterated in *Heirs of Jarque v. Jarque*,[33] We ruled that:

> The action for ejectment and recovery of possession instituted by herein respondents in the lower court is premature, for what must be settled first is the action for partition. Unless a project of partition is effected, each heir cannot claim ownership over a definite portion of the inheritance. **Without partition, either by agreement between the parties or by judicial proceeding, a co-heir cannot dispose of a specific portion of the estate**. For where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs. Upon the death of a person, each of his heirs becomes the undivided owner of the whole estate left with respect to the part or portion which might be adjudicated to him, a community of ownership being thus formed among the co-owners of the estate or co-heirs while it remains undivided.
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> While under Article 493 of the New Civil Code, each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto and he may alienate, assign or mortgage it, and even substitute another person in its enjoyment, the effect of the alienation or the mortgage with respect to the co-owners, shall be limited, by mandate of the same article, to the portion which may be allotted to him in the division upon the termination of the co-ownership. He has no right to sell or alienate a concrete, specific, or determinate part of the thing in common to the exclusion of the other co-owners because his right over the thing is represented by an abstract or ideal portion without any physical ad-judication. **An individual co-owner cannot adjudicate to himself or claim title to any definite portion of the land or thing owned in common until its actual partition by agreement or judicial decree. Prior to that time all that the co-owner has is an ideal or abstract quota or proportionate share in the entire thing owned in common by all the co-owners. What a co-owner may dispose of is only his *undivided aliquot share*, which shall be limited to the portion that may be allotted to him upon partition.** Before partition, a co-heir can only sell his successional rights.[34] (Emphasis ours.)

In *Torres, Jr. v. Lapinid*,[35] We upheld the validity of the sale of a co-owned property even when the sale pertains to an abstract or definite portion of the property, to wit:

> In a *catena* of decisions, the Supreme Court had repeatedly held that no individual can claim title to a definite or concrete portion before partition of co-owned property. Each co-owner only possesses a right to sell or alienate his ideal share after partition. However, in case he disposes his share before partition, such disposition does not make the sale or alienation null and void. What will be

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[32] *Carvajal v. Court of Appeals*, 197 Phil. 913 (1982).
[33] *Heirs of Jarque v. Jarque*, 843 Phil. 604 (2018).
[34] *Carvajal v. Court of Appeals*, supra note 32 at 917-918.
[35] *Torres, Jr. v. Lapinid*, 748 Phil. 587 (2014).

affected on the sale is only his proportionate share, subject to the results of the partition. The co-owners who did not give their consent to the sale stand to be unaffected by the alienation.

As explained in *Spouses Del Campo v. Court of Appeals*:

> We are not unaware of the principle that a co-owner cannot rightfully dispose of a particular portion of a co-owned property prior to partition among all the co-owners. However, this should not signify that the vendee does not acquire anything at all in case a physically segregated area of the co-owned lot is in fact sold to him. Since the co-owner/vendor's undivided interest could properly be the object of the contract of sale between the parties, what the vendee obtains by virtue of such a sale are the same rights as the vendor had as co-owner, in an ideal share equivalent to the consideration given under their transaction. In other words, the vendee steps into the shoes of the vendor as co-owner and acquires a proportionate abstract share in the property held in common.

Also worth noting is the pronouncement in *Lopez v. Vda. De Cuaycong*:

> ...The fact that the agreement in question purported to sell a *concrete portion* of the hacienda *does not render the sale void,* for it is a well-established principle that *the binding force of a contract must be recognized as far as it is legally possible to do so. "Quando res non valet ut ago, valeat quantum valere potest."* (When a thing is of no force as I do it, it shall have as much force as it can have). (Italics theirs).
>
> Consequently, whether the disposition involves an abstract or concrete portion of the co-owned property, the sale remains validly executed.[36] (Citation omitted)

Apropos, the fact that the sale executed by Isidoro in favor of the spouses Garcia was made prior to the partition of the subject property will not render the deed of sale dated August 16, 1989 null and void. Nonetheless, despite the validity of the sale, the spouses Garcia only acquired Isidoro's inchoate interest in the subject property and not a definite portion thereof.

WHEREFORE, the petition is **DENIED.** The February 16, 2016 Decision and June 9, 2016 Resolution of the Court of Appeals in CA-G.R. CV No. 101161 are hereby **AFFIRMED.**

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[36] Id. at 595-596.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

On official leave.
ESTELA M. PERLAS-BERNABE
Senior Associate Justice

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice