



Republic of the Philippines
Supreme Court

Manila

THIRD DIVISION

ISABELO C. DELA CRUZ,
Petitioner,

G.R. No. 192383

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
PERALTA,
ABAD,
MENDOZA, and
LEONEN, JJ.

LUCILA C. DELA CRUZ,
Respondent.

Promulgated:

December 4, 2013

X ----- *Macapuno* X

DECISION

ABAD, J.:

This case deals with the right of a person to whom an immovable property has been unconditionally given to demand its partition.

The Facts and the Case

Petitioner Isabelo C. Dela Cruz (Isabelo) claimed that in 1975 he and his sisters, respondent Lucila C. Dela Cruz (Lucila) and Cornelia C. Dela Cruz (Cornelia), bought on installment a 240-square meter land in Las Piñas from Gatchalian Realty, Inc. Isabelo and Cornelia paid the down payment and religiously paid the monthly amortizations.¹ On the following year, Isabelo constructed a residential house on the subject lot.²

Because of Lucila's plea for the siblings to help their cousin, Corazon L. Victoriano (Corazon), who was in financial distress, Isabelo agreed to have the lot they bought used as collateral for the loan that Corazon planned to secure from the Philippine Veterans Bank. To make this possible, Lucila

¹ Records, pp. 2-3; 120.

² Rollo, p. 4.

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paid the ₱8,000.00 that they still owed Gatchalian Realty, Inc. On January 18, 1979 the Register of Deeds issued Transfer Certificate of Title (TCT) S-80735 in Lucila's name³ and this was mortgaged for Corazon's benefit.

But, since Corazon failed to pay her loan, the bank foreclosed on the property on March 1, 1989 for ₱286,000.00. Lucila redeemed it on March 27, 1992.⁴

On October 7, 2002 Lucila executed an affidavit of waiver⁵ relinquishing all her share, interest, and participation to half of the lot to Isabelo and the other half to her niece, Emelinda C. Dela Cruz (Emelinda). On even date, Isabelo and Emelinda executed a *Kasunduan*⁶ acknowledging their respective rights in the property.

Claiming ownership of half of the subject property by virtue of Lucila's affidavit of waiver, on August 22, 2005 Isabelo filed an action for partition before the Regional Trial Court (RTC) of Las Piñas City in SCA 05-0008, seeking the segregation of his portion of the land and the issuance of the corresponding title in his name.

But Lucila countered that the property, including the house built on it, belonged to her since she paid for the same out of her income as pawnshop general manager and from selling jewelry.⁷ She claimed that her affidavit of waiver did not cede ownership of half of the property to Isabelo since the affidavit made clear that her waiver would take effect only if the problems that beset their family were resolved. Since this condition had not been met, she had every right to revoke that waiver as in fact she did so on September 24, 2004 in the *Kasulatan ng Pagpawalang Bisa ng "Affidavit Waiver."*⁸

On February 7, 2008 the RTC rendered a Decision⁹ denying Isabelo's complaint for lack of merit. It also ordered him to pay Lucila ₱50,000.00 as attorney's fees and to bear the costs of suit.¹⁰ The RTC ruled that Lucila's ownership was evidenced by the tax declaration, the real property tax payment order, and the title to the land in her name. Isabelo's testimony on cross-examination conclusively also showed that Lucila owned the property.¹¹ Isabelo's contention that it was he and Cornelia who paid for the

³ Records, pp. 206-207.

⁴ Id. at 206 (dorsal portion).

⁵ *Rollo*, p. 50.

⁶ Records, pp. 11-12.

⁷ Id. at 234.

⁸ *Rollo*, pp. 51-52.

⁹ Records, pp. 240-249.

¹⁰ Id. at 249.

¹¹ Id. at 247.

monthly amortization of the property cannot be believed since Cornelia herself testified that Lucila paid for all the amortizations on the land.¹²

Further, the RTC held that Lucila's affidavit of waiver did not confer title over the property on Isabelo considering that, absent an annotation on TCT S-80735, the waiver cannot ripen into an adverse claim. More importantly, Lucila already cancelled the waiver through the *Kasulatan* that she subsequently executed.¹³ The RTC was also unconvinced that the house belonged to Isabelo. It noted that the receipts for the construction materials and survey plan that he presented did not prove ownership. Recovery of property, not partition was the proper remedy.

Isabelo appealed to the Court of Appeals (CA) in CA-G.R. CV 90797. On December 18, 2009 the latter court rendered a Decision¹⁴ affirming the RTC ruling that Isabelo failed to established his right to half of the subject property as would entitle him to have the same partitioned. But the CA deleted the award of attorney's fees and costs for failure of Lucila to justify her claims and for the RTC's failure to state in its decision the rationale for the awards. Isabelo moved for reconsideration but the CA denied it.¹⁵

Issue Presented

The sole issue presented in this case is whether or not the CA erred in failing to rule that Lucila's cession of half of the property to Isabelo through waiver did not have the effect of making him part owner of the property with a right to demand partition.

Ruling of the Court

In partition, the court must first determine the existence of co-ownership. The action will not lie if the plaintiff has no proprietary interest in the subject property. Indeed, the rules¹⁶ require him to set forth in his complaint the nature and extent of his title to the property. It would be premature to order partition until the question of ownership is first definitely resolved.¹⁷

¹² Id. at 248.

¹³ Id.

¹⁴ Penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Remedios A. Salazar-Fernando and Romeo F. Barza; *rollo*, pp. 24-34.

¹⁵ Id. at 36-37.

¹⁶ Section 1, Rule 69 of the Rules of Civil Procedure provides:

Sec. 1. Complaint in an action for partition of real estate. — A person having the right to compel the partition of real estate may do so as provided in this Rule, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property.

¹⁷ *Catapusan v. Court of Appeals*, 332 Phil. 586, 590 (1996); *Ocampo v. Ocampo*, 471 Phil. 519, 533-534 (2004).

At bottom, the question is: did Lucila's affidavit of waiver ceding to Isabelo half of the subject property conveys to him a right of ownership over that half? The CA agreed with the RTC that Lucila's affidavit of waiver did not vest any property right to Isabelo since the condition she set in that affidavit had not been fulfilled. This then gave Lucila the right in the meantime to rescind the waiver, something that she eventually did.

But, contrary to the position that the CA and the RTC had taken, Lucila's waiver was absolute and contained no precondition. The pertinent portion of the affidavit of waiver reads:

That to put everything in proper order, I hereby waive all my share, interest and participation in so far as it refer to the one half portion (120 SQ. M.) of the above-parcel of land, with and in favor of my brother ISABELO C. DELA CRUZ, of legal age, married, Filipino and residing at Las Pinas City, and the other half portion (120 SQ. M.) in favor of my niece, EMELINDA C. DELA CRUZ, also of legal age, single, Filipino and residing at Sto. Rosario Hagonoy, Bulacan;

x x x x¹⁸

Evidently, Lucila would not have used the terms "to put everything in proper order, I hereby waive..." if her intent was to set a precondition to her waiver covering the property, half to Isabelo and half to Emelinda. If that were her intention, she could have stated, "subject to the condition that everything is put in proper order, I hereby waive..." or something to that effect.

When she instead said, "That to put everything in proper order, I hereby waive my share, interest and participation" in the two halves of the subject property in favor of Isabelo and Emelinda, Lucila merely disclosed what motivated her in ceding the property to them. She wanted to put everything in proper order, thus she was driven to make the waiver in their favor.

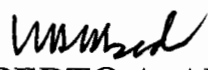
Lucila did not say, "to put everything in proper order, I promise to waive my right" to the property, which is a future undertaking, one that is demandable only when everything is put in proper order. But she instead said, "to put everything in proper order, I hereby waive" etc. The phrase "hereby waive" means that Lucila was, by executing the affidavit, already waiving her right to the property, irreversibly divesting herself of her existing right to the same. After he and his co-owner Emelinda accepted the donation, Isabelo became the owner of half of the subject property having the right to demand its partition.

¹⁸ Supra note 5.


WHEREFORE, the Court:


1. **GRANTS** the petition;
2. **SETS ASIDE** the Decision dated December 18, 2009 and Resolution dated May 25, 2010 of the Court of Appeals in CA-G.R. CV 90797 as well as the Decision dated February 7, 2008 of the Regional Trial Court of Las Piñas in SCA 05-0008;
3. **ORDERS** the partition of the subject property between petitioner Isabelo C. Dela Cruz and Emelinda C. Dela Cruz;
4. **ORDERS** the remand of the records of SCA 05-0008 to the Regional Trial Court of Las Piñas; and
5. **DIRECTS** the latter court to proceed with the partition proceedings in the case in accordance with Section 2, Rule 69 of the Rules of Civil Procedure.

SO ORDERED.

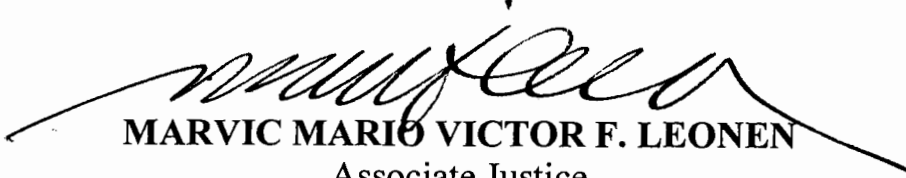

ROBERTO A. ABAD
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

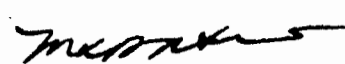
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.



MARIA LOURDES P. A. SERENO
Chief Justice