Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

VICENTE TORRES, JR., CARLOS VELEZ, AND THE HEIRS OF MARIANO VELEZ, NAMELY: ANITA CHIONG VELEZ, ROBERT OSCAR CHIONG VELEZ, SARAH JEAN CHIONG VELEZ AND TED CHIONG VELEZ, Petitioners,	**G.R. No. 187987** Present: SERENO, *C.J.*, Chairperson, LEONARDO-DE CASTRO, BERSAMIN, VILLARAMA, JR.,* and PEREZ, *JJ.*
- *versus* -	
LORENZO LAPINID AND JESUS VELEZ, Respondents.	Promulgated: **NOV 2 6 2014**

x -- x

DECISION

PEREZ, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by the petitioners assailing the 30 January 2009 Decision[2] and 14 May 2009 Resolution[3] of the Twentieth Division of the Court of Appeals in CA-G.R. CV No. 02390, affirming the 15 October 2007 Decision[4] of the Regional Trial Court of Cebu City (RTC Cebu City) which dismissed the complaint for the declaration of nullity of deed of sale against respondent Lorenzo Lapinid (Lapinid).

---

* Per Special Order No. 1885 dated 24 November 2014.

1 *Rollo*, pp. 3-20.

2 Penned by Associate Justice Francisco P. Acosta with Associate Justices Amy C. Lazaro-Javier and Rodil V. Zalameda, concurring. Id. at 22-31.

3 Id. at 39-40.

4 Penned by Judge Simeon P. Dumdum, Jr. Records, pp. 149-154.

The facts as reviewed are the following:

On 4 February 2006, Vicente V. Torres, Jr. (Vicente), Mariano Velez (Mariano)[5] and Carlos Velez (petitioners) filed a Complaint[6] before RTC Cebu City praying for the nullification of the sale of real property by respondent Jesus Velez (Jesus) in favor of Lapinid; the recovery of possession and ownership of the property; and the payment of damages.

Petitioners alleged in their complaint that they, including Jesus, are co-owners of several parcels of land including the disputed Lot. No. 4389[7] located at Cogon, Carcar, Cebu. Sometime in 1993, Jesus filed an action for partition of the parcels of land against the petitioners and other co-owners before Branch 21 of RTC Cebu City. On 13 August 2001, a judgment was rendered based on a compromise agreement signed by the parties wherein they agreed that Jesus, Mariano and Vicente were jointly authorized to sell the said properties and receive the proceeds thereof and distribute them to all the co-owners. However, the agreement was later amended to exclude Jesus as an authorized seller. Pursuant to their mandate, the petitioners inspected the property and discovered that Lapinid was occupying a specific portion of the 3000 square meters of Lot No. 4389 by virtue of a deed of sale executed by Jesus in favor of Lapinid. It was pointed out by petitioner that as a consequence of what they discovered, a forcible entry case was filed against Lapinid.

The petitioners prayed that the deed of sale be declared null and void arguing that the sale of a definite portion of a co-owned property without notice to the other co-owners is without force and effect. Further, the complainants prayed for payment of rental fees amounting to ₱1,000.00 per month from January 2004 or from the time of deprivation of property in addition to attorney's fees and litigation expenses.

Answering the allegations, Jesus admitted that there was a partition case between him and the petitioners filed in 1993 involving several parcels of land including the contested Lot No. 4389. However, he insisted that as early as 6 November 1997, a motion[8] was signed by the co-owners (including the petitioners) wherein Lot No. 4389 was agreed to be adjudicated to the co-owners belonging to the group of Jesus and the other lots be divided to the other co-owners belonging to the group of Torres.

---

5 Now deceased and substituted by his legal heirs named as petitioners in this case.
6 Records, pp. 1-4.
7 With an area of 19,018 square meters.
8 Records, p. 178.

Jesus further alleged that even prior to the partition and motion, several co-owners in his group had already sold their shares to him in various dates of 1985, 1990 and 2004.[9] Thus, when the motion was filed and signed by the parties on 6 November 1997, his rights as a majority co-owner (73%) of Lot No. 4389 became consolidated. Jesus averred that it was unnecessary to give notice of the sale as the lot was already adjudicated in his favor. He clarified that he only agreed with the 2001 Compromise Agreement believing that it only pertained to the remaining parcels of land excluding Lot No. 4389.[10]

On his part, Lapinid admitted that a deed of sale was entered into between him and Jesus pertaining to a parcel of land with an area of 3000 square meters. However, he insisted on the validity of sale since Jesus showed him several deeds of sale making him a majority owner of Lot No. 4389. He further denied that he acquired a specific and definite portion of the questioned property, citing as evidence the deed of sale which does not mention any boundaries or specific portion. He explained that Jesus permitted him to occupy a portion not exceeding 3000 square meters conditioned on the result of the partition of the co-owners.[11]

Regarding the forcible entry case, Jesus and Lapinid admitted that such case was filed but the same was already dismissed by the Municipal Trial Court of Carcar, Cebu. In that decision, it was ruled that the buyers, including Lapinid, were buyers in good faith since a proof of ownership was shown to them by Jesus before buying the property.[12]

On 15 October 2007, the trial court dismissed the complaint of petitioners in this wise:

> Therefore, the Court DISMISSES the Complaint. At the same time, the Court NULLIFIES the site assignment made by Jesus Velez in the Deed of Sale, dated November 9, 1997, of Lorenzo Lapinid's portion, the exact location of which still has to be determined either by agreement of the co-owners or by the Court in proper proceedings.[13]

---

9 Annexes "A" "A-I," id. at 14-25.
10 Joint Answer of Jesus and Lapinid, id. at 10-13; Affidavit of Jesus, id. at 113-116.
11 Id.; Affidavit of Lapinid, id. at 120-121.
12 Id.; Municipal Trial Court Decision, id. at 43-50.
13 Id. at 154.

Aggrieved, petitioners filed their partial motion for reconsideration which was denied through a 26 November 2007 Order of the court.[14] Thereafter, they filed a notice of appeal on 10 December 2007.[15]

On 30 January 2009, the Court of Appeals affirmed[16] the decision of the trial court. It validated the sale and ruled that the compromise agreement did not affect the validity of the sale previously executed by Jesus and Lapinid. It likewise dismissed the claim for rental payments, attorney's fees and litigation expenses of the petitioners.

Upon appeal before this Court, the petitioners echo the same arguments posited before the lower courts. They argue that Lapinid, as the successor-in-interest of Jesus, is also bound by the 2001 judgment based on compromise stating that the parcels of land must be sold jointly by Jesus, Mariano and Vicente and the proceeds of the sale be divided among the co-owners. To further strengthen their contention, they advance the argument that since the portion sold was a definite and specific portion of a co-owned property, the entire deed of sale must be declared null and void.

We deny the petition.

Admittedly, Jesus sold an area of land to Lapinid on 9 November 1997. To simplify, the question now is whether Jesus, as a co-owner, can validly sell a portion of the property he co-owns in favor of another person. We answer in the affirmative.

A co-owner has an absolute ownership of his undivided and *pro-indiviso* share in the co-owned property.[17] He has the right to alienate, assign and mortgage it, even to the extent of substituting a third person in its enjoyment provided that no personal rights will be affected. This is evident from the provision of the Civil Code:

> 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 the mortgage, with respect to the co-owners, shall be limited

---

14 Id. at 165.
15 Id. at 167.
16 *Rollo*, pp. 22-31.
17 Rabuya, Elmer, *Property,* 2008 ed., p. 306 citing *City of Mandaluyong v. Aguilar,* 403 Phil. 404, 424 (2001).

> to the portion which may be allotted to him in the division upon the termination of the co-ownership.

A co-owner is an owner of the whole and over the whole he exercises the right of dominion, but he is at the same time the owner of a portion which is truly abstract.[18] Hence, his co-owners have no right to enjoin a co-owner who intends to alienate or substitute his abstract portion or substitute a third person in its enjoyment.[19]

In this case, Jesus can validly alienate his co-owned property in favor of Lapinid, free from any opposition from the co-owners. Lapinid, as a transferee, validly obtained the same rights of Jesus from the date of the execution of a valid sale. Absent any proof that the sale was not perfected, the validity of sale subsists. In essence, Lapinid steps into the shoes of Jesus as co-owner of an ideal and proportionate share in the property held in common.[20] Thus, from the perfection of contract on 9 November 1997, Lapinid eventually became a co-owner of the property.

Even assuming that the petitioners are correct in their allegation that the disposition in favor of Lapinid before partition was a concrete or definite portion, the validity of sale still prevails.

In a *catena* of decisions,[21] 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 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.[22]

As explained in *Spouses Del Campo v. Court of Appeals*:[23]

> 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

---

18 *De Guia v. Court of Appeals*, 459 Phil. 447, 462 (2003).

19 *Heirs of Dela Rosa v. Batongbakal*, G.R. No. 179205, 30 July 2014.

20 Rabuya, Elmer, *Property*, 2008 ed., p. 307.

21 *Vagilidad v. Vagilidad, Jr.*, 537 Phil. 310, 326-327 (2006); *Sanchez v. Court of Appeals*, 452 Phil. 665, 676 (2003) citing *Oliveras v. Lopez*, 250 Phil. 430, 435-436 (1988).

22 Rabuya, Elmer, *Property,* 2008 ed., p. 308 citing *Oliveras v. Lopez*, id. at 436; *City of Mandaluyong v. Aguilar,* supra note 17 at 424; *Spouses Del Campo v. Court of Appeals*, 403 Phil. 706, 717 (2001).

23 Id.

> 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.[24]

Also worth noting is the pronouncement in *Lopez v. Vda. De Cuaycong*:[25]

> x x x 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).[26] (Italics theirs).

Consequently, whether the disposition involves an abstract or concrete portion of the co-owned property, the sale remains validly executed.

The validity of sale being settled, it follows that the subsequent compromise agreement between the other co-owners did not affect the rights of Lapinid as a co-owner.

Records show that on 13 August 2001, a judgment based on compromise agreement was rendered with regard to the previous partition case involving the same parties pertaining to several parcels of land, including the disputed lot. The words of the compromise state that:

> COME NOW[,] the parties and to this Honorable Court, most respectfully state that instead of partitioning the properties, subject matter of litigation, that they will just sell the properties covered by TCT Nos. 25796, 25797 and 25798 of the Register of Deeds of the Province of Cebu and divide the proceeds among themselves.
>
> That Jesus Velez, Mariano Velez and Vicente Torres, Jr. are currently authorized to sell said properties, receive the proceeds thereof and distribute them to the parties.[27]

---

24 Id.
25 74 Phil. 601 (1944).
26 Id. at 609.
27 Records, p. 65.

Be that as it may, the compromise agreement failed to defeat the already accrued right of ownership of Lapinid over the share sold by Jesus. As early as 9 November 1997, Lapinid already became a co-owner of the property and thus, vested with all the rights enjoyed by the other co-owners. The judgment based on the compromise agreement, which is to have the covered properties sold, is valid and effectual provided as it does not affect the proportionate share of the non-consenting party. Accordingly, when the compromise agreement was executed without Lapinid's consent, said agreement could not have affected his ideal and undivided share. Petitioners cannot sell Lapinid's share absent his consent. *Nemo dat quod non habet* – "no one can give what he does not have."[28]

This Court has ruled in many cases 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. This is because the sale or other disposition of a co-owner 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.[29]

We find unacceptable the argument that Lapinid must pay rental payments to the other co-owners.

As previously discussed, Lapinid, from the execution of sale, became a co-owner vested with rights to enjoy the property held in common.

Clearly specified in the Civil Code are the following rights:

> Art. 486. Each co-owner may use the thing owned in common, provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. The purpose of the co-ownership may be changed by agreement, express or implied.
>
> 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

---

[28] Rabuya, Elmer, *Property,* 2008 ed., p. 318 citing *Spouses Del Campo v. Court of Appeals,* supra note 22 at 717.

[29] *Acabal* v. *Acabal,* 494 Phil. 528, 553 (2005); *Spouses Del Campo v. Court of Appeals,* id.

> the portion which may be allotted to him in the division upon the termination of the co-ownership.

Affirming these rights, the Court held in *Aguilar v. Court of Appeals* that:[30]

> x x x Each co-owner of property held *pro indiviso* exercises his rights over the whole property and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co-owners, the reason being that until a division is made, the respective share of each cannot be determined and every co-owner exercises, together with his co-participants joint ownership over the *pro indiviso* property, in addition to his use and enjoyment of the same.[31]

From the foregoing, it is absurd to rule that Lapinid, who is already a co-owner, be ordered to pay rental payments to his other co-owners. Lapinid's right of enjoyment over the property owned in common must be respected despite opposition and may not be limited as long he uses the property to the purpose for which it is intended and he does not injure the interest of the co-ownership.

Finally, we find no error on denial of attorney's fees and litigation expenses.

Pursuant to Article 2208 of the New Civil Code, attorney's fees and expenses of litigation, in the absence of stipulation, are awarded only in the following instances:

> x x x x
>
> 1. When exemplary damages are awarded;
> 2. **When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interests;**
> 3. In criminal cases of malicious prosecution against the plaintiff;
> 4. In case of a clearly unfounded civil action or proceeding against the plaintiff;
> 5. Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid and demandable claim;
> 6. In actions for legal support;

---

30 G.R. No. 76351, 29 October 1993, 227 SCRA 472.

31 Id. at 480.

7. In actions for the recovery of wages of household helpers, laborers and skilled workers;
8. In actions for indemnity under workmen's compensation and employer's liability laws;
9. In a separate civil action to recover civil liability arising from a crime;
10. When at least double judicial costs are awarded;
11. In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

Petitioners cite Jesus' act of selling a definite portion to Lapinid as the reason which forced them to litigate and file their complaint. However, though the Court may not fault the complainants when they filed a complaint based on their perceived cause of action, they should have also considered thoroughly that it is well within the rights of a co-owner to validly sell his ideal share pursuant to law and jurisprudence.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision and Resolution of the Court of Appeals dated 30 January 2009 and 14 May 2009 are hereby **AFFIRMED**.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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