

SECOND DIVISION

[G.R. NO. 122904, April 15, 2005]

**ADORACION E. CRUZ, THELMA DEBBIE E. CRUZ, GERRY E. CRUZ
AND NERISSA CRUZ-TAMAYO, PETITIONERS, VS. THE
HONORABLE COURT OF APPEALS, SUMMIT FINANCING CORP.,
VICTOR S. STA. ANA, MAXIMO C. CONTRERAS, RAMON G.
MANALASTAS, AND VICENTE TORRES, RESPONDENTS.**

D E C I S I O N

TINGA, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure. Petitioners are assailing the *Decision*^[1] of the Court of Appeals in CA-G.R.CV No. 41298 which reversed and set aside the *Decision*^[2] of the Regional Trial Court (RTC), Branch CLXIII, Pasig in Civil Case No. 49466 and dismissed petitioners' complaint therein for annulment of certain deeds, and the November 21, 1995 *Resolution*,^[3] which denied petitioners' motion for reconsideration.

Herein petitioner Adoracion Cruz is the mother of her co-petitioners Thelma Cruz, Gerry Cruz and Nerissa Cruz Tamayo, as well as Arnel Cruz, who was one of the defendants in Civil Case No. 49466. Petitioners filed said case on February 11, 1983 against Arnel Cruz and herein private respondents Summit Financing Corporation ("Summit"), Victor S. Sta. Ana and Maximo C. Contreras, the last two in their capacities as deputy sheriff and ex-officio sheriff of Rizal, respectively, and Ramon G. Manalastas in his capacity as Acting Register of Deeds of Rizal.

The *Complaint*^[4] alleged that petitioners and Arnel Cruz were co-owners of a parcel of land situated in Taytay, Rizal. Yet the property, which was then covered by Transfer Certificate of Title (TCT) No. 495225, was registered only in the name of Arnel Cruz. According to petitioners, the property was among the properties they and Arnel Cruz inherited upon the death of Delfin Cruz, husband of Adoracion Cruz.

On August 22, 1977, petitioners and Arnel Cruz executed a *Deed of Partial Partition*,^[5] distributing to each of them their shares consisting of several lots previously held by them in common. Among the properties adjudicated to defendant Cruz was the parcel of land covered at the time by TCT No. 495225. It is the subject of this case.

Subsequently, the same parties to the *Deed of Partial Partition* agreed in writing to share equally in the proceeds of the sale of the properties although they had been subdivided and individually titled in the names of the former co-owners pursuant to the *Deed of Partial Partition*. This arrangement was embodied in a *Memorandum of Agreement*^[6] executed on August 23, 1977 or a day after the partition. The tenor of the *Memorandum of Agreement* was annotated at the back of TCT No. 495225 on September 1, 1977.

Sometime in January 1983, petitioner Thelma Cruz discovered that TCT No. 495225 had already been cancelled by TCT No. 514477 which was issued on October 18, 1982 in the name of Summit. Upon further investigation, petitioners learned that Arnel Cruz had executed a *Special Power of Attorney*^[7] on May 16, 1980 in favor of one Nelson Tamayo, husband of petitioner Nerissa Cruz Tamayo, authorizing him to obtain a loan in the amount of One Hundred Four Thousand Pesos (P104,000.00) from respondent Summit, to be secured by a real estate mortgage on the subject parcel of land.

On June 4, 1980, a *Real Estate Mortgage*^[8] was constituted on the disputed property then covered by TCT No. 495225 to secure the loan obtained by Arnel Cruz thru Nelson Tamayo from respondent Summit. Since the loan had remained outstanding on maturity, Summit instituted extrajudicial foreclosure proceedings, and at the foreclosure sale it was declared the highest bidder. Consequently, Sheriff Sta. Ana issued a *Certificate of Sale*^[9] to respondent Summit, which more than a year later consolidated its ownership of the foreclosed property. Upon presentation of the affidavit of consolidation of ownership, the Acting Register of Deeds of Rizal cancelled TCT No. 495225 and issued, in lieu thereof, TCT No. 514477 in the name of respondent Summit.

In their complaint before the RTC, petitioners asserted that they co-owned the properties with Arnel Cruz, as evidenced by the *Memorandum of Agreement*. Hence, they argued that the mortgage was void since they did not consent to it.

In ruling in favor of petitioners, the trial court declared that with the execution of the *Memorandum of Agreement*, petitioners and Arnel Cruz had intended to keep the inherited properties in a state of co-ownership. The trial court stated that respondent Summit should suffer the consequences of incorrectly assuming that Arnel Cruz was the exclusive owner of the mortgaged property. It found respondent Summit negligent in its failure to inquire further into the limitations of defendant Cruz's title. Thus, the trial court declared that only the undivided share of Cruz in the mortgaged property was validly transferred to respondent Summit although it granted petitioners' prayer for nullification, per the dispositive portion of its *Decision*, thus:

WHEREFORE, judgment is hereby rendered, in favor of plaintiff and against defendants, as follows:

1. Declaring the "Special Power of Attorney," the Real Estate Mortgage, the "Public Auction Sale," the "Certificate of Sale," the "Affidavit of Consolidation," executed by defendant Summit Financing Corporation, and the Consolidation of Ownership null and void ab initio;
2. Ordering the Register of Deeds of Rizal, to cancel TCT No. 514477, and to issue, in lieu thereof another TCT, in the name of Arnel E. Cruz, with the same annotations on the Real Estate Mortgage inscribed on September 16, 1980 and thereafter.
3. Ordering defendants, jointly and severally, to pay to plaintiffs, the amount of P10,000.00, as reasonable attorney's fees, plus costs.

4. Dismissing defendants (sic) counterclaims, for lack of merit.

SO ORDERED.^[10]

With the exception of Arnel Cruz, the other defendants, who are herein private respondents, elevated the case to the Court of Appeals. Private respondents as appellants therein argued, among others, that the trial court erred in not holding Arnel Cruz as the sole and exclusive owner of the mortgaged property, in not holding petitioners in estoppel, and in not finding that under the *Memorandum of Agreement* the parties thereto merely agreed to share in the proceeds of the sale of the properties. Private respondents also questioned the trial court's nullification of the special power of attorney and its declaration that respondent Summit was grossly negligent in not verifying the capacity of Arnel Cruz.^[11]

In the assailed *Decision*, the Court of Appeals reversed the trial court's decision. The appellate court stressed that the *Memorandum of Agreement* does not contain any proscription against the mortgage of the subject property although it provides that the parties thereto are entitled to share in the proceeds of the sale of the properties covered by it. In that regard, the appellate court noted that petitioner Adoracion Cruz had executed two other real estate mortgages on the other parcels of land, which were not objected to by her supposed co-owners. Thus, it upheld the validity of the real estate mortgage executed by Nelson Tamayo on behalf of Arnel Cruz, without prejudice to petitioners' right of action against Arnel Cruz for the collection of the proceeds of the loan.^[12]

Petitioners moved for the reconsideration of the decision, but the Court of Appeals denied it in the assailed *Resolution* dated November 21, 1995.

Hence, the present petition which at the bottom presents the issue whether or not the real estate mortgage on the property then covered by TCT No. 495225 is valid. Resolution of the issue in turn depends on the determination of whether the mortgaged property was the exclusive property of Arnel Cruz when it was mortgaged. If answered in the affirmative, then there was nothing to prevent him from exercising ownership over the said property.

Petitioners insist that the *Memorandum of Agreement* "expressly created a *pro-indiviso* co-ownership over the property."^[13] Thus, petitioners argue that the Court of Appeals erred in upholding the validity of the mortgage considering that it was executed without their knowledge and consent.

On the other hand, private respondents rely on the provisions of the *Deed of Partial Partition* in claiming that defendant Cruz was already the exclusive owner of the disputed property at the time it was mortgaged. To further bolster their claim, private respondents assert that each of petitioners also executed real estate mortgages on the properties allocated to them in the partition deed as absolute owners in fee simple.

This Court finds no merit in the petition.

Co-ownership is terminated upon judicial or extra-judicial partition of the properties owned in common. Partition, in general, is the separation, division and assignment