

SECOND DIVISION

[G.R. No. 246096, January 13, 2021]

SPOUSES BENNY AND NORMITA ROL, PETITIONERS, VS. ISABEL URDAS RACHO, * RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated September 13, 2018 and the Resolution^[3] dated February 13, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 105722, which affirmed with modification the Decision^[4] dated July 8, 2015 and the Resolution^[5] dated September 3, 2015 of the Regional Trial Court of Aparri, Cagayan, Branch 8 (RTC), and accordingly declared, *inter alia*, that the sale of Lot No. 1559 to petitioners Spouses Benny and Normita Rol (petitioners) is valid only insofar as half of the aggregate undivided interest of Fausto Urdas, Sr. (Fausto), Chita Urdas (Chita), and Maria Urdas Baclig (Maria) therein are concerned.

The Facts

Respondent Isabel Urdas Racho (Isabel) alleged that her brother, Loreto Urdas (Loreto), was the registered owner of a 1,249-square meter (sq. m.) parcel of land located in the Municipality of Gonzaga, Cagayan, denominated as Lot No. 1559, as reflected in Original Certificate of Title No. O-1061.^[6] On August 6, 1963, Loreto died without an issue, thus, leaving his siblings, namely, Fausto, Chita, Maria, and Isabel as his intestate heirs to the said lot. Sometime before the filing of the complaint, Isabel discovered that: (a) Lot No. 1559 was subdivided into equal 624.50-sq. m. portions, denominated as Lot Nos. 1559-A and 1559-B; (h) despite Loreto's death in 1963, petitioners made it appear that Loreto sold to them the subdivided lots through a Deed of Absolute Sale of Portion of Registered Land^[7] dated September 1, 2006 and Deed of Sale of a Portion of Land^[8] dated June 19, 2012, respectively; and (c) in light of the execution of said deeds, new titles covering the subdivided lots, namely, Transfer Certificates of Title (TCT) Nos. T-156992^[9] and 032-2012004566^[10] were issued in petitioners' names. As such, Isabel was constrained to file a complaint^[11] for *reivindicacion* and damages before the RTC against, *inter alia*, petitioners.^[12]

In their Answer with Counterclaim,^[13] petitioners asserted that sometime in 1993, they were looking to purchase a parcel of land. Coincidentally, petitioners were able to meet Fausto's wife and son, namely, Leoncia,^[14] and Allan, who offered to sell them one-half of Lot No. 1559 for P25,000.00, to which they agreed. Thus, on September 13, 1993 **Fausto, Chita, Maria, and Allan** executed an Extra-Judicial Settlement with Sale^[15] (EJSS) concerning the subject lot whereby: (a) the subject

lot was subdivided equally into two (2) 624.50-sq. m. portions, denominated as Lot Nos. 1559-A and 1559-B; (b) Lot No. 1559-A was adjudicated to Fausto, Chita, and Maria, who then sold the same to petitioners for the aforementioned amount; and (c) Lot No. 1559-B was adjudicated to Allan. Thereafter, petitioners built a house on Lot No. 1559-A and occupied the same peacefully. In 2010, petitioners purchased from Allan and Leoncia Lot No. 1559-B, for which they executed a Deed of Sale of a Portion of Land^[16] dated September 26, 2011. According to petitioners, they have been in open, continuous, and peaceful possession of Lot No. 1559-A since 1993 and Lot No. 1559-B since 2010, until Isabel disturbed the same by filing the instant complaint in June 2013.^[17]

The RTC Ruling

In a Decision^[18] dated July 8, 2015, the RTC ruled in Isabel's favor, and accordingly, declared null and void the following: (a) the EJSS dated September 13, 1993; (b) the Deed of Sale of a Portion of Land dated September 26, 2011; (c) the Deed of Absolute Sale of Portion of Registered Land dated September 1, 2006; and (d) the Deed of Sale of a Portion of Land dated June 19, 2012. The RTC also ordered petitioners to reconvey to Isabel the total area of 312.25-sq. m. from Lot No. 1559, and to pay her P5,646.00 as actual damages, P30,000.00 as attorney's fees, and the costs of suit.^[19]

The RTC found the Deeds of Sale dated September 1, 2006 and June 19, 2012 void for being forgeries, pointing out that there was no way Loreto could have signed those instruments as he died in 1963. It also declared void the EJSS as it was executed without the knowledge and consent of one of Loreto's intestate heirs, *i.e.*, Isabel, and consequently, the Deed of Sale of a Portion of Land dated September 26, 2011 for being a subsequent transfer that emanated from the EJSS. Nonetheless, the RTC found petitioners to be purchasers in good faith, opining that they acquired Lot No. 1559 for valuable consideration, not knowing beforehand that their title thereto was a product of fraud. As such, they are only required to reconvey to Isabel an area of 312.25-sq. m. out of the total area of 1,249-sq. m. of Lot No. 1559, in order to satisfy the latter's share in Loreto's intestate estate.^[20]

Petitioners filed a motion for reconsideration which was, however, denied in a Resolution^[21] dated September 3, 2015. Aggrieved, petitioners appealed to the CA.

The CA Ruling

In a Decision^[22] dated September 13, 2018, the CA affirmed the RTC ruling with modifications, in that: (a) the sale by Fausto, Chita, and Maria to petitioners are valid and binding but only insofar as their respective undivided interests in the half of Lot No. 1559 is concerned; and (b) the award of actual damages to Isabel was deleted.^[23]

Echoing the RTC, the CA declared void the EJSS, considering that, *inter alia*, Isabel, a legal heir to Loreto's intestate estate, was excluded therefrom. As such, the CA rendered void the adjudication of Lot No. 1559-B to Allan as he is not a legal heir to Loreto's intestate estate; and consequently, Allan's transfer of the same to petitioners through the Deed of Sale of a Portion of Land dated September 26, 2011

is likewise void, pursuant to the maxim *nemo dat quod non habet*. Nonetheless, the CA deemed valid the sale of Lot No. 1559-A to petitioners, but only insofar as Fausto, Chita, and Maria's respective aliquot shares therein, *i.e.*, a total area of 468.375-sq. m., are concerned. Relatedly, the CA ruled that petitioners are buyers in bad faith due to their failure to further inquire as to the capacity of Allan and Leoncia to sell Lot No. 1559 and investigate the whereabouts of Loreto, the registered owner thereof.^[24]

Further, the CA held that Isabel is not guilty of laches because she was deprived of her hereditary share without her knowledge and consent; and as such, she is not barred from invoking her right to her inheritance in Loreto's estate.^[25]

Finally, the CA deleted the award of actual damages in Isabel's favor for her failure to show her entitlement thereto; but upheld the award of attorney's fees and costs of suit in her favor as she was forced to litigate in order to assert her rights over Lot No. 1559.^[26]

Undaunted, petitioners moved for reconsideration but the same was denied in a Resolution^[27] dated February 13, 2019; hence, the instant petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly ruled that the conveyance of Lot No. 1559 to petitioners is null and void, except as to the portion in Lot No. 1559-A pertaining to Fausto, Chita, and Maria which is deemed valid.

The Court's Ruling

The petition is without merit.

Records show that there are a total of four (4) documents which supposedly transferred the two (2) subdivided portions of Lot No. 1559, namely, Lot Nos. 1559-A and 1559-B, to petitioners. On the one hand, Isabel alleged that the documents were the Deed of Absolute Sale of Portion of Registered Land dated September 1, 2006 covering Lot No. 1559-A and the Deed of Sale of a Portion of Land dated June 19, 2012 covering Lot No. 1559-B, both purportedly executed by Loreto in favor of petitioners. On the other hand, petitioners anchor their claim of ownership on: (a) the EJSS dated September 13, 1993 executed by **Fausto, Chita, Maria, and Allan** - which adjudicated a half portion of Lot No. 1559, *i.e.*, Lot No. 1559-A, to Fausto, Chita, and Maria who thereafter sold it to petitioners, and adjudicated the other half, *i.e.*, Lot No. 1559-B to Allan; and (b) the Deed of Sale of a Portion of Land dated September 26, 2011 executed by Allan in favor of petitioners.

As for the documents pointed out by Isabel, suffice it to say that they are null and void for being forgeries, as it is simply impossible that Loreto, who died in 1963, could have executed said documents in 2006 and 2012, respectively. It is settled that forged deeds of sale are null and void and convey no title.^[28]

As for the EJSS dated September 13, 1993, the CA correctly declared the same to be null and void, considering that it was executed without the knowledge and

consent of Isabel, a co-heir of Fausto, Chita, and Maria, to the estate of their deceased brother, Loreto.^[29] In a catena of cases, the Court had consistently ruled that a deed of extrajudicial partition executed to the total exclusion of any of the legal heirs, who had no knowledge of and consent to the execution of the same, is fraudulent, vicious, and a total nullity,^[30] as in this case. As such, it produced no effect whatsoever either against or in favor of anyone.^[31] Therefore, the contents of the EJSS, namely: (a) the subdivision of Lot No. 1559 to two (2) equal halves, namely Lot Nos. 1559-A and 1559-B and (b) alienation of the aforementioned halves, *first*, to petitioners with consideration and *second*, to Allan gratuitously, are **null and void** and cannot be given any legal effect as well.

At this juncture, it is well to reiterate that the subdivision of Lot No. 1559 into two (2) equal halves, *i.e.*, Lot Nos. 1559-A and 1559-B, as well as the attempted conveyance of these definite portions to petitioners and Allan, resulted from the execution of the EJSS - which again, was without the knowledge and consent of Isabel. In *Cabrera v. Ysaac*,^[32] the Court held that a sale of a definite portion of a co-owned property requires the consent of all the co-owners. Without such unanimous consent, a co-owner can only convey his undivided, aliquot interest over a co-owned property; he/she has no right to divide, and thereafter, convey definite portions thereof, *viz.*:

If the alienation precedes the partition, **the co-owner cannot sell a definite portion of the land without consent from his or her co-owners. He or she could only sell the undivided interest of the co-owned property.** As summarized in *Lopez v. Illustre*, "[i]f 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."

The undivided interest of a co-owner is also referred to as the "ideal or abstract quota" or "proportionate share." On the other hand, the definite portion of the land refers to specific metes and bounds of a co-owned property.

To illustrate, if a ten-hectare property is owned equally by ten co-owners, the undivided interest of a co-owner is one hectare. The definite portion of that interest is usually determined during judicial or extrajudicial partition. After partition, a definite portion of the property held in common is allocated to a specific co-owner. The co-ownership is dissolved and, in effect, each of the former co-owners is free to exercise autonomously the rights attached to his or her ownership over the definite portion of the land. It is crucial that the co-owners agree to which portion of the land goes to whom.

Hence, prior to partition, a sale of a definite portion of common property requires the consent of all co-owners because it operates to partition the land with respect to the co-owner selling his or her share. The co-owner or seller is already marking which portion should redound to his or her autonomous ownership upon future partition.

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The rules allow respondent to sell his undivided interest in the co-ownership. However, this was not the object of the sale between him and petitioner. The object of the sale was a definite portion. Even if it was respondent who was benefiting from the fruits of the lease contract to petitioner, respondent has "**no right to sell or alienate a concrete, specific or determinate part of the thing owned in common, because his right over the thing is represented by quota or ideal portion without any physical adjudication.**"^[33] (Emphases and underscoring supplied)

In this case, when Loreto died, his siblings, namely, Fausto, Chitn, Maria, and Isabel all became co-owners of Loreto's intestate estate, *i.e.*, Lot No. 1559, pursuant to Article 1078^[34] of the Civil Code, with all of them having equal interest therein, *i.e.*, 1/4 of the property. Thus, for the alienation of definite portions of Lot No. 1559 to be valid, it must be with the consent of all of them. However, the alienations of definite portions made in the EJSS was without the knowledge and consent of Isabel, and hence, are null and void.

Nonetheless, as co-owners of Lot No. 1559, Fausto, Chita, Maria, and Isabel are free to dispose of their undivided aliquot shares therein, which shall be limited to the portion that may be allotted to them upon partition.^[35] Otherwise stated, before an actual partition of an estate, an heir can only alienate his successional rights or undivided interest thereto, and not specific portions thereof.^[36]

Thus, Fausto, Chita, and Maria could not sell a definite portion of an undivided property, *i.e.*, one half of Lot No. 1559 (which formerly pertained to Lot No. 1559-A), to petitioners. However, the Court nevertheless recognizes their intent to sell one-half (1/2) of their inchoate interest over Lot No. 1559 to the latter - not through the EJSS but via an oral contract of sale as in fact, they were able to do so as they received proper compensation therefor from petitioners.^[37] Thus, petitioners were able to validly acquire one half(1/2) of Fausto, Chita, and Maria's aggregate three-fourths (3/4) interest, or a total of 3/8 interest, over Lot No. 1559.

In the same vein, Fausto, Chita, and Maria could also not gratuitously convey a definite portion of the same undivided property, *i.e.*, one half of Lot No. 1559 (which formerly pertained to Lot No. 1559-8) to Allan. In contrast, however, to petitioner's case, the Court could not give life to the three (3) siblings' intent to convey one-half (1/2) of their inchoate interest over Lot No. 1559 to Allan, absent compliance with the requirements of the law. To reiterate, the foregoing conveyance to Allan was made gratuitously, and hence, essentially partakes of a donation of a real property. As such, it is required, *inter alia*, that the donation must be made in a public instrument, and that the acceptance is made either in the same deed or in a separate instrument.^[38] Since the only document of record showing compliance with the foregoing requirements is the EJSS - which is, as discussed, null and void - Fausto, Chita, and Maria's donation over such portion to Allan is void as well. Consequently, Allan and Leoncia's sale of the same portion of land to petitioners had no legal effect whatsoever, following the maxim *nemo dat quod non habet*.^[39] Hence, Fausto, Chita, and Maria are deemed to have retained their remaining