

## THIRD DIVISION

[ G.R. No. 206534, October 05, 2016 ]

**JULIA LIM ROSARIO, MERCEDES LIM CUSTODIO AS  
REPRESENTED BY DONNO CUSTODIO, NORMA LICARDO, AND  
LEILA ESPIRITU, PETITIONERS, VS. ALFONSO LIM,  
RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

This a Petition for Review on *Certiorari* under Rule 45 seeking to annul and set aside the Court of Appeals (CA) Resolution<sup>[1]</sup> dated March 11, 2013 and its Decision<sup>[2]</sup> dated September 11, 2012 in CA-G.R. CV No. 95703 which reversed the Decision<sup>[3]</sup> of the Regional Trial Court (RTC) of Baguio City, Branch 61, dated May 17, 2010 in Civil Case No. 6599-R.

The pertinent facts of the case are as follows:

Sometime in 1973, Brigida Aquino Lim acquired a leasehold right over a government-owned lot in Hilltop-Kayang, Baguio City, pursuant to City Council Resolution No. 102-74. Later, Brigida and his son, respondent Alfonso Lim, allegedly entered into an agreement on March 10, 1973 for the construction of a building on said property, which would be fully financed by the latter. Alfonso thus administered the construction of a commercial building. Sometime in the late 1980s, Brigida and Alfonso once again agreed on the construction of three (3) more floors on the already existing two (2)-storey commercial building. On March 23, 1992, Brigida executed an Affidavit of Waiver of Rights, categorically waiving, renouncing, and transferring all her rights and interests over the leased lot in Alfonso's favor. On November 29, 1995, Brigida executed a Deed of Waiver of Rights reiterating her waiver of rights over the leased lot and the erected building in favor of her son.

However, on March 23, 1996, Brigida executed another affidavit assailing the validity of the previously executed documents and stating that she and her husband, Luis, were the real owners of the property and that Alfonso never caused and paid for the construction of the subject building.

On February 8, 2001, Brigida died intestate. Subsequently, Alfonso and his sisters, petitioners Julia Lim Rosario, Mercedes Lim Custodio, Norma Licardo, and Leila Espiritu executed a Deed of Extrajudicial Settlement for the estates of their parents without including the disputed property. However, after six (6) years, or on November 20, 2007, petitioners filed a Complaint for Judicial Partition of Real Estate, Accounting with Damages and Writ of Preliminary Injunction.

On May 17, 2010, the RTC ruled that the parties are co-owners of the disputed

property and ordered its partition among them in equal shares, thus:

WHEREFORE, this Court renders judgment for the plaintiffs and against the defendants, as follows:

1. The properties subject of this case are hereby ordered to be partitioned in five (5) equal shares and in case of disagreement in the partition, this Court shall appoint three (3) competent and disinterested individuals as commissioners to make the partition;
2. The defendant is hereby ordered to make an accounting of all the rentals of the subject properties from the date of judicial demand or filing of this complaint and to deliver to the plaintiffs their corresponding shares as well as their share in the subsequent rentals until the partition of the properties is effected; and
3. The defendant is hereby ordered to pay the plaintiffs the amount of P50,000 as attorney's fees.

SO ORDERED.<sup>[4]</sup>

Aggrieved, Alfonso elevated the case to the CA. On September 11, 2012, the CA rendered a Decision granting the petition, the dispositive portion of which reads:

**WHEREFORE**, premises considered, the appeal is GRANTED. The assailed Decision dated May 17, 2010 of the Regional Trial Court of Baguio City, Branch 61, in Civil Case No. 6599-R, is **REVERSED and SET ASIDE**. Accordingly, the case is **REMANDED** to the court of origin for further proceedings to determine the facts and introduction of evidence essential to the proper application of Articles 448 and 546 of the Civil Code, specifically in accordance with the following matters and parameters:

- a. Co-owners' (plaintiffs-appellees including defendant-appellant) option to appropriate - as their own - the improvements on the lots, after paying the indemnity, as provided under Article 546 in relation to Article 448 of the Civil Code; or in requiring defendant-appellant Alfonso Lim to pay for the value of the lot unless it is considerably more than that of the improvements in which case defendant-appellant shall pay reasonable rent based upon the terms provided under the Civil Code;
- b. The value of the necessary and/or useful expenses incurred by defendant-appellant in the construction of the improvements on the lot;

- c. The increase in value acquired by the lot by reason of the construction of the building/useful improvements;
- d. Type of indemnity to be paid (whether b or c above);  
[and]
- e. Whether the value of the lot is considerably more than that of the improvements built thereon.

No costs.

**SO ORDERED.**<sup>[5]</sup>

Hence, petitioners come before the Court for relief. The petition is meritorious.

The appellate court found that the main issue of the instant case is whether the property in question should be included in Brigida's estate and be divided in equal shares among her children.

Upon a close examination of the available records of the case at bar, the Court affirms the findings of the courts below that, indeed, Brigida acquired the disputed property during the subsistence of her marriage to Luis. It likewise appears that the title to said property remains in Brigida's name. The CA gave credence to Brigida's Affidavit dated March 23, 1996 which provides:

x x x x

3. That sometime in the year 1973, when my husband Luis Lim was still alive, we caused the construction of a two (2)-storey commercial building on the aforesaid lot using from our joint income and also the proceeds of a mortgage loan we obtained from the bank using as collateral for the purpose, my real property located at Rizal Street, Poblacion, Mangaldan, Pangasinan;

4. That after about four (4) years of profitable operation of said building, I caused the construction of additional 3<sup>rd</sup> and 4<sup>th</sup> storey building, plus a penthouse, using funds derived from the earnings of the said building and also my bank deposits and other savings;

5. That sometime in 1988, my eldest child and only son, Alfonso Lim revealed his greedy intention to own for himself alone the said entire building at the exclusion of all his aforementioned sisters. And towards this end, with use of threats and intimidation, my said son Alfonso Lim, forced me to sign an affidavit dated May 27, 1988 stating therein, among others, that it was my said son Alfonso Lim who financed the construction of the first two (2) storeys and who entered into a building contract with a certain Romeo F. Laigo. It is also stated therein that it was my said son who financed the construction of the 3<sup>rd</sup> and fourth floors, plus the penthouse of the same building sometime in 1977. All these matters are absolutely false because all the expenses therefor are my own money as