

## THIRD DIVISION

[ G.R. No. 201011, January 27, 2014 ]

**THERESITA, JUAN, ASUNCION, PATROCINIA, RICARDO, AND GLORIA, ALL SURNAMED DIMAGUILA, PETITIONERS, VS. JOSE AND SONIA A. MONTEIRO, RESPONDENTS.**

### D E C I S I O N

#### **MENDOZA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the August 15, 2011 Decision<sup>[1]</sup> and the March 5, 2012 Resolution<sup>[2]</sup> of the Court of Appeals (CA), in CA-G.R. CV No. 92707, which affirmed the August 23, 2007 Decision<sup>[3]</sup> of the Regional Trial Court, Branch 27, Santa Cruz, Laguna (RTC), in Civil Case No. SC-3108.

#### **The Facts**

On July 5, 1993, the respondent spouses, Jose and Sonia Monteiro (*Spouses Monteiro*), along with Jose, Gerasmo, Elisa, and Clarita Nobleza, filed their Complaint for Partition and Damages before the RTC, against the petitioners, Theresita, Juan, Asuncion, Patrocinia, Ricardo, and Gloria Dimaguila (*The Dimaguilas*), together with Rosalina, Jonathan, Eve, Sol, Venus, Enrique, Nina, Princess Arieta, and Evangelina Borlaza. The complaint alleged that all the parties were co-owners and prayed for the partition of a residential house and lot located at Gat. Tayaw St., Liliw, Laguna, with an area of 489 square meters, and covered by Tax Declaration No. 1453. Spouses Monteiro anchored their claim on a deed of sale executed in their favor by the heirs of Pedro Dimaguila (*Pedro*).

In their Answer, the Dimaguilas and the other defendants countered that there was no co-ownership to speak of in the first place. They alleged that the subject property, then owned by Maria Ignacio Buenaseda, had long been partitioned equally between her two sons, Perfecto and Vitaliano Dimaguila, through a Deed of Extradjudicial Partition, with its southern-half portion assigned to Perfecto and the northern-half portion to Vitaliano. They claimed that they were the heirs of Vitaliano and that Spouses Monteiro had nothing to do with the property as they were not heirs of either Perfecto or Vitaliano.

During the course of the proceedings, several incidents were initiated, namely: (a) Motion to Dismiss for lack of legal capacity to sue of Spouses Monteiro and for lack of cause of action; (b) Motion for Reconsideration of the Order of denial thereof, which was denied; (c) Motion for Production and Inspection of Documents; (d) Motion for Reconsideration of the Order granting the same, which was denied; (e) Motion to Defer Pre-trial; (f) Notice of Consignation by the petitioners in the exercise of their alleged right of redemption of the share being claimed by the Spouses Monteiro in light of the deed of sale they produced and claimed to have

been executed by the heirs of Pedro in their favor; (g) Motion to Remove Sonia Monteiro (*Sonia*) as plaintiff, which was denied; (h) Motion for Reconsideration thereof, which was also denied; (i) Motion for Clarification and/or Extended Resolution; and (j) Motion to Suspend Proceedings due to a pending Petition for Certiorari before the CA assailing several of the RTC orders. The proceedings resumed after the promulgation by the CA of its April 5, 2000 Resolution in CA-G.R. No. SP 52833, which upheld the assailed RTC orders.

On January 2, 2001, upon resumption of the proceedings, Spouses Monteiro filed their Motion for Leave to Amend and/or Admit Amended Complaint.<sup>[4]</sup> The RTC granted their motion. The amended complaint abandoned the original claim for partition and instead sought the recovery of possession of a portion of the subject property occupied by the Dimaguilas and other defendants, specifically, the portion sold to the couple by the heirs of Pedro. Furthermore, only Spouses Monteiro were retained as plaintiffs and the Dimaguilas as defendants.

In amending their complaint, Spouses Monteiro adopted the Dimaguilas' admission in their original answer that the subject property had already been partitioned between Perfecto and Vitaliano, through a Deed of Extrajudicial Partition, dated October 5, 1945, and that during their lifetime, the brothers agreed that Perfecto would become the owner of the southern-half portion and Vitaliano of the northern-half portion, which division was observed and respected by them as well as their heirs and successors-in-interest.

Spouses Monteiro further averred that Perfecto was survived by Esperanza, Leandro and Pedro, who had divided the southern-half portion equally amongst themselves, with their respective 1/3 shares measuring 81.13 square meters each; that Pedro's share pertains to the 1/3 of the southern-half immediately adjacent to the northern-half adjudicated to the Dimaguilas as heirs of Vitaliano; that on September 29, 1992, Pedro's share was sold by his heirs to them through a *Bilihan ng Lahat Naming Karapatan (Bilihan)* with the acquiescence of the heirs of Esperanza and Leandro appearing in an Affidavit of Conformity and Waiver; and that when they attempted to take possession of the share of Pedro, they discovered that the subject portion was being occupied by the Dimaguilas.

In their Answer<sup>[5]</sup> to the amended complaint, the Dimaguilas admitted that the subject property was inherited by, and divided equally between Perfecto and Vitaliano, but denied the admission in their original answer that it had been actually divided into southern and northern portions. Instead, they argued that the Extrajudicial Partition mentioned only the division of the subject property "into two and share and share alike." In effect, they argued the existence of a co-ownership, contrary to their original position. The Dimaguilas further argued that the *Bilihan* did not specify the metes and bounds of the property sold, in violation of Article 1458 of the Civil Code. Even assuming that such had been specified, they averred that the sale of a definite portion of a property owned in common was void since a co-owner could only sell his undivided share in the property.

During the trial, Spouses Monteiro presented Pedrito Adrieta, brother of Sonia Monteiro (*Sonia*), who testified that Perfecto was his grandfather and that at the time of Perfecto's death, he had two properties, one of which was the subject property in Liliw, Laguna, which went to his children, Esperanza, Leonardo and

Pedro. Pedro was survived by his children Pedrito, Theresita, Francisco, and Luis, who, in turn, sold their rights over the subject property to Sonia.

Sonia testified that she was approached by Pedro's son, Francisco, and was asked if she was interested in purchasing Pedro's 1/3 share of the southern portion of the *Bahay na Bato*, and that he showed her a deed of extrajudicial partition executed by and between Perfecto and Vitaliano, as well as the tax declaration of the property to prove that the property had already been partitioned between the two brothers.

Engineer Baltazar F. Mesina testified that he was the geodetic engineer hired by Spouses Monteiro to survey the property in Liliw, and recounted that he checked the boundary of the subject property, subdivided the lot into two and came up with a survey plan.

Crisostomo Arves, an employee from the Office of the Municipal Assessor, presented a certified true copy of the cadastral map of Liliw and a list of claimants/owners.

Dominga Tolentino, a record officer of the Department of Environment and Natural Resources (DENR), testified that as part of her duties, she certifies and safekeeps the records of surveyed land, including cadastral maps from the region.

One of the Dimaguilas, Asuncion, was the sole witness for the defendants. She testified that their first counsel made a mistake when he alleged in their original answer that the property had already been partitioned into northern and southern portions between the two brothers, as the original answer had been rushed and they were never given a copy of it. She claimed that the mistake was only pointed out to her by their new counsel after their former counsel withdrew due to cancer. She further testified that there was no intention to partition the "*bahay na bato*" which stood on the subject property, in order to preserve its historical and sentimental value.

### **Ruling of the RTC**

In its August 23, 2007 Decision, the RTC ruled in favor of Spouses Monteiro and ordered the Dimaguilas to turn over the possession of the subject 1/3 portion of the southern-half of the property, to wit:

WHEREOF, judgment is hereby rendered in favor of the plaintiffs and against the defendants:

- a. Ordering the defendants and all persons claiming rights under them to peacefully vacate and turn-over possession of 1/3 of the southern portion of the property covered by Tax Declaration No. 1453, specifically described as "A" of Lot 877 in the sketch plan marked as Exhibit "I", within 60 days from the finality of this Decision, failing which let a writ of possession issue;
- b. Ordering the defendants to pay the plaintiffs, jointly and solidarily, the amount of P500 per month in the form of rent for the use of the property from July 1993 until the

property is vacated;

- c. Ordering the defendants to pay the plaintiffs, jointly and solidarily, attorney's fees of P30,000 and litigation expense of P20,000.

SO ORDERED.<sup>[6]</sup>

The RTC found that although the extrajudicial partition merely divided the property into two share and share alike, evidence *aliunde* was appreciated to show that there was an actual division of the property into south and north between Perfecto and Vitaliano, and that such partition was observed and honored by their heirs. These pieces of evidence were the cadastral map of Liliw<sup>[7]</sup> and a corresponding list of claimants, which showed that the subject property had long been registered as Lot 876 (northern-half), claimed by Buenaventura Dimaguila (Buenaventura), an heir of Vitaliano, and Lot 877 (southern-half), claimed by Perfecto.

The RTC held that the manner of partition was admitted by the Dimaguilas themselves in their original answer. It gave no credence to the claim of Asuncion that such admission was an error of their former counsel and that she was unaware of the contents of their original answer. It noted that the Dimaguilas had strongly maintained their theory of partition from 1992 when the complaint was first filed, and only changed their defense in 2001 when Spouses Monteiro filed their amended complaint. It keenly observed that it was precisely their admission which propelled Spouses Monteiro to amend their complaint from one of partition to recovery of possession. Thus, the RTC concluded that there was indeed a partition of the subject property into southern-half and northern-half portions between Perfecto and Vitaliano and that the Dimaguilas were estopped from denying the same.

As to the authenticity of the *Bilihan*, where the 1/3 share of Pedro was sold to Spouses Monteiro, the RTC found the document to be regular and authentic absent any piece of evidence to the contrary. It stated that the proper persons to contest the sale were not the Dimaguilas, who were the heirs of Vitaliano, but the heirs of Perfecto. It noted that the records showed that the heirs of Esperanza and Leandro (Pedro's siblings), had signified their conformity to the partition and to the sale of Pedro's 1/3 portion.

### **Ruling of the CA**

In its assailed August 15, 2011 Decision, the CA affirmed the ruling of the RTC.

The CA found that Spouses Monteiro had established their case by a preponderance of evidence thru their presentation of the Deed of Extrajudicial Partition,<sup>[8]</sup> the cadastral map and the municipal assessor's records.<sup>[9]</sup> It noted, more importantly, that the Dimaguilas themselves corroborated the claim of partition in their original answer. It likewise ruled that the petitioners were estopped from denying their admission of partition after the respondent spouses had relied on their judicial admission.

The Dimaguilas also insisted on their argument, which was raised before the RTC, but not addressed, that the *Bilihan* should not have been admitted as evidence for

lack of a documentary stamp tax, in accordance with Section 201 of the National Internal Revenue Code (NIRC). Citing *Gabucan v. Manta*<sup>[10]</sup> and *Del Rosario v. Hamoy*,<sup>[11]</sup> the CA, however, ruled that if a document which did not bear the required documentary stamp was presented in evidence, the court should require the proponent to affix the requisite stamp. The CA noted that the RTC had failed to direct Spouses Monteiro to affix the stamp and merely reminded the presiding judge to be more vigilant on similar situations in the future. Nonetheless, it held that the petitioners did not possess the necessary personality to assail the sale between Spouses Monteiro and the heirs of Pedro because it pertained to the southern-half of the property to which they had no claim.

The CA likewise found sufficient basis for the award of rentals as compensatory damages since Spouses Monteiro were wrongfully deprived of possession of the 1/3 portion of the southern-half of the subject property. It also upheld the award of attorney's fees and litigation expenses by the RTC, considering that Spouses Monteiro were compelled to litigate and incur expenses to protect their rights and interest.

In its assailed March 5, 2012 Resolution, the CA denied the petitioners' motion for reconsideration for lack of merit.

Hence, this petition.

### **ASSIGNMENT OF ERRORS**

#### **I**

**THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THERE WAS AN ACTUAL PARTITION OF THE PROPERTY COVERED BY TAX DECLARATION NO. 1453.**

#### **II**

**THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE 1/3 PORTION OF THE SOUTHERN HALF OF THE PROPERTY WAS SOLD TO THE RESPONDENTS.**

#### **III**

**THE COURT OF APPEALS GRAVELY ERRED IN ADMITTING IN EVIDENCE EXHIBIT C, THE *BILIHAN NG LAHAT NAMING KARAPATAN*.**

#### **IV**

**THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE RESPONDENTS ARE ENTITLED TO RECOVER POSSESSION OF THE 1/3 PORTION OF THE SOUTHERN HALF OF THE PROPERTY.**

#### **V**