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FIRST DIVISION

[G.R. No. 187987, November 26, 2014]

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, VS. LORENZO LAPINID AND JESUS VELEZ, RESPONDENTS.

D E C I S I O N

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).

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 P1,000.00 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. 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]

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 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 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.
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> 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]