

## SECOND DIVISION

[ G.R. No. 184454, August 03, 2011 ]

**CO GIOK LUN, AS SUBSTITUTED BY HIS LEGAL HEIRS NAMELY: MAGDALENA D. CO, MILAGROS D. CO, BENJAMIN D. CO, ALBERT D. CO, ANGELITA C. TENG, VIRGINIA C. RAMOS, CHARLIE D. CO, AND ELIZABETH C. PAGUIO, PETITIONERS, VS. JOSE CO, AS SUBSTITUTED BY HIS LEGAL HEIRS NAMELY: ROSALINA CO, MARLON CO, JOSEPH CO, FRANK CO, ANTONIO CO, NELSON CO, ROLAND CO, JOHNSON CO, CORAZON CO, ADELA CO, SERGIO CO, PAQUITO CO, JOHN CO, NANCY CO, AND TERESITA CO, RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

Before the Court is a petition<sup>[1]</sup> for review on certiorari assailing the Decision<sup>[2]</sup> dated 23 April 2008 and Resolution<sup>[3]</sup> dated 10 September 2008 of the Court of Appeals (CA) in CA-G.R. CV. No. 85920.

#### The Facts

This case involves two lots allegedly co-owned by two brothers, petitioner Co Giok Lun (Lun) and Co Bon Fieng (Fieng), the father of respondent Jose Co (Co). The lots, which are situated in Sorsogon province, one in the town of Gubat and the other in the town of Barcelona, are described as:

#### Gubat Property

A parcel of commercial/residential land, located at Poblacion, Gubat, Sorsogon, containing an area of 720.68 square meters, more or less, bounded on the North by Angel Camara, on the East by Rodolfo Rocha, on the South by Guariña Street and on the West by Zulueta Street declared under Tax Declaration No. 11379 in the name of Co Bon Fieng and assessed at P12,370.00.<sup>[4]</sup>

#### Barcelona Property

*Terreno cocal radicada en el sitio de Telegrafo barrio de Luneta, Barcelona, Sorsogon, I. F. cabida de sesenta y cinco (65 a.) lindates por Norte Hertrudes Casulla, por sur Antonio Evasco, por Este con los manglares y por Oeste Atanacio Espera y Eugenio Esteves.*

*Terreno cocalero ubicado en el barrio de Luneta, Barcelona, Sorsogon, I.F. cabida de una hectaria dies y ocho areas y sesenta y siete centiarias (1 hecets. 18 hareas 67 centiareas) lindantes al Norte Cementerio Municipal antes Eugenio Esteves, al Este Gabriel Gredoña y Laudia Asis, al Sur Amando Torilla y Florentino Mercader, y al Oeste Carretera Provincial.*

*Terreno solar con doce ponos de coco situada en el barrio de Luneta, Barcelona, Sorsogon, I.F. cabida de dos riales y quevalente a trienta y cuatro areas y un camarin de materiales fuertes y deficada dentro de la misma lindante al Norte Camino para S. Antonio, al Sur Eugenio Esteves, al Este Carretera Provincial y al Oeste a los herederos del defunto Feliciano Fontelar.*<sup>[5]</sup>

Petitioners, the legal heirs of Lun who died on 12 January 1997, filed a complaint<sup>[6]</sup> for partition and damages against Co with the Regional Trial Court (RTC) of Gubat, Sorsogon, Branch 54.

### ***Claim of Petitioners***

Petitioners claimed that Lun and Fieng came to the Philippines from China in 1929. Lun allegedly acquired the Gubat property from the P8,000.00 capital the brothers inherited from their father, Co Chaco (Chaco), before Chaco returned to China in 1926 due to old age. The Gubat property was named under Fieng only since it has been a common practice and custom in China that properties intended for the children are placed in the name of the eldest child. The Barcelona property, on the other hand, was acquired by Chaco in 1923 while he was still doing his business in Gubat.

Lun and Fieng set up a business, selling and trading of dry goods, called the Philippine Honest and Company. Using the company's funds, they rented the property of Crispina Rocha (Rocha), which was mortgaged and finally sold to them in 1935. Later, from the income of the business, they acquired the two adjoining residential and commercial lots which increased the size of the Gubat property to its present area of 720.68 square meters.

In 1946, Lun and Fieng dissolved and liquidated the business. After receiving his share of P26,000 from the liquidation, Lun established his own dry goods business called Shanghai Trading. Fieng, on the other hand, entered into other businesses with different partners.

Petitioners claimed that Lun stayed at the Gubat property from the time he arrived in China in 1929. Lun was the one who religiously paid for the realty taxes and made several repairs on the building to make the Gubat property habitable. It was only sometime in 1946 when Lun and Fieng decided to divide the two lots. However, the partition did not push through on the insistence of their mother, Po Kiat, who wanted to preserve and maintain close family ties.

Petitioners also alleged that Lun prevented the Gubat property from being appropriated when the lot was used by Fieng as a loan guarantee. Fieng incurred the P4,500 obligation from Erquiaga Corporation which Lun assumed and paid

without any contribution from respondents, specifically Co. After Fieng suffered financial bankruptcy in Manila, he went back to Gubat. Upon the request of their mother, Lun lent his brother P30,000 which Fieng used to start up a business. However, until Fieng's death on 8 July 1958, the amount which Lun lent was never returned to him.

Lun even extended financial assistance to Co amounting to no less than P30,000 which remained unpaid. Later, when Lun already refused to lend money to Co, the latter made himself the administrator of the Gubat property without Lun's knowledge. Thereafter, Co filed a case for unlawful detainer against Lun with the Municipal Trial Court (MTC) of Gubat, docketed as Civil Case No. 210. This case was decided by the MTC in favor of Co but was reversed by the RTC in its Decision dated 28 April 1994. The RTC's decision was later affirmed by the CA and this Court.

### ***Claim of Respondents***

On the other hand, respondents, in their Amended Answer, maintained that the Gubat property is the exclusive property of their father. They asserted that Fieng acquired the lot by purchase from Rocha in 1935 or nine years after Chaco left for China in 1926. While Lun was still in China, Fieng and Rocha entered into an agreement for the use of the lot where Fieng built a "camalig" and started his *sari-sari* store business. On 13 March 1929, Fieng and Rocha entered into another contract extending Fieng's right to occupy the lot until 17 August 1938. On 16 March 1930, another extension was given until 19 August 1940. On 13 October 1935, Fieng and Rocha executed a Deed of Absolute Sale where Rocha sold the lot to Fieng for P3,000. On 6 August 1936, Ireneo Rocha also sold a parcel of the adjoining land to Fieng which increased the size of the Gubat property to its present area. Both documents had been properly notarized.

Fieng used the property not only as the family's residence but also for business and trade purposes until his death in 1958. It was even Fieng who had constructed the commercial building on the property in 1928. From 1937 to 1983, the land and tax declarations of the property was in the sole name of their father. In 1983, Co became the administrator of the Gubat property and had the property declared in his own name in substitution of his father without any objection from Lun.

Respondents denied that Lun and Fieng entered into any business together. Respondents claim that it was only in 1956 or 1957 when Lun was taken in by Fieng, who was then ill and could not manage his general merchandising business. Fieng allowed Lun to use the lower portion of the Gubat property and let him manage his business and properties as administrator. Lun was in possession of the property even after Fieng's death in 1958 because of the consent and tolerance of the respondents who were still young at that time.

Respondents further insisted that Chaco gave the Barcelona property to Fieng exclusively as advance inheritance and denied that Co ever borrowed money from Lun. As a counterclaim, respondents asked for the payment of rent for the use by Lun of the Gubat property, as well as moral damages, attorney's fees and litigation expenses.

### **The RTC's Ruling**

In a Decision<sup>[7]</sup> dated 21 July 2004, the RTC decided the case in favor of petitioners. The RTC stated that the documentary evidence presented in court showed that the Gubat property is indeed under Fieng's name. However, the chain of events prior to the purchase of the property and the evidence submitted by the petitioners prove the presence of co-ownership. The dispositive portion of the decision states:

WHEREFORE, in view of all the foregoing and by preponderance of evidence, judgment is hereby rendered that the Heirs of Co Chaco are *pro indiviso* owners of the Gubat and Barcelona properties which are to be partitioned among these heirs. They are hereby directed to cause the survey of the property and to submit to this Court the plan of partition for approval.

No costs.

SO ORDERED.<sup>[8]</sup>

### **The Court of Appeals' Ruling**

Respondents appealed to the CA. In a Decision dated 23 April 2008, the CA reversed the decision of the RTC and ruled in favor of the respondents. The dispositive portion states:

WHEREFORE, in view of the foregoing, the instant appeal is GRANTED. The assailed decision of the Regional Trial Court of Gubat, Sorsogon (Branch 54) in Civil Case No. 1601, is REVERSED. The order of the trial court to cause the survey of the subject properties for the partition thereof is SET ASIDE. The subject properties are declared exclusively owned by Co Bon Fieng, and now by his legal heirs, herein appellants.

SO ORDERED.<sup>[9]</sup>

Petitioners filed a motion for reconsideration which the CA denied in a Resolution dated 10 September 2008.

Hence, this petition.

### **The Issue**

The main issue is whether the CA erred in holding that no co-ownership existed between Lun and Fieng over the Gubat and Barcelona properties and in declaring Fieng as the exclusive owner of both properties.

### **The Court's Ruling**

The petition lacks merit.