

## FIRST DIVISION

[ G.R. No. 161030, September 14, 2011 ]

**JOSE FERNANDO, JR., ZOILO FERNANDO, NORMA FERNANDO BANARES, ROSARIO FERNANDO TANGKENC GO, HEIRS OF TOMAS FERNANDO, REPRESENTED BY ALFREDO V. FERNANDO, HEIRS OF GUILLERMO FERNANDO, REPRESENTED BY RONNIE H. FERNANDO, HEIRS OF ILUMINADA FERNANDO, REPRESENTED BY BENJAMIN ESTRELLA AND HEIRS OF GERMOGENA FERNANDO, PETITIONERS, VS. LEON ACUNA, HERMOGENES FERNANDO, HEIRS OF SPOUSES ANTONIO FERNANDO AND FELISA CAMACHO, REPRESENTED BY HERMOGENES FERNANDO, RESPONDENTS.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure seeking to reverse and set aside the Decision<sup>[1]</sup> dated November 24, 2003 of the Court of Appeals in CA-G.R. CV No. 75773, entitled "*Jose Fernando, Jr., et al. v. Heirs of Germogena Fernando, et al.*," which reversed and set aside the Decision<sup>[2]</sup> dated May 16, 2002 of Branch 84, Regional Trial Court (RTC) of Malolos, Bulacan in Civil Case No. 256-M-97.

At the heart of this controversy is a parcel of land covered by Original Certificate of Title (OCT) No. RO-487 (997)<sup>[3]</sup> registered in the names of Jose A. Fernando, married to Lucila Tinio, and Antonia A. Fernando, married to Felipe Galvez, and located in San Jose, Baliuag, Bulacan. When they died intestate, the property remained undivided. Petitioners herein - namely, Jose Fernando, Jr., Zoil o Fernando, Norma Fernando Banares, Rosario Fernando Tangkencgo, the heirs of Tomas Fernando, the heirs of Guillermo Fernando, the heirs of Iluminada Fernando and the heirs of Germogena Fernando - are the heirs and successors-in-interest of the deceased registered owners. However, petitioners failed to agree on the division of the subject property amongst themselves, even after compulsory conciliation before the Barangay Lupon.

Thus, petitioners, except for the heirs of Germogena Fernando, filed a Complaint<sup>[4]</sup> for partition on April 17, 1997 against the heirs of Germogena Fernando. In the Complaint, plaintiffs alleged, among others, that they and defendants are common descendants and compulsory heirs of the late spouses Jose A. Fernando and Lucila Tinio, and the late spouses Antonia A. Fernando and Felipe Galvez. They further claimed that their predecessors-in-interest died intestate and without instructions as to the disposition of the property left by them covered by OCT No. RO-487 (997). There being no settlement, the heirs are asking for their rightful and lawful share because they wish to build up their homes or set up their business in the respective portions that will be allotted to them. In sum, they prayed that the subject property

be partitioned into eight equal parts, corresponding to the hereditary interest of each group of heirs.

In their Answer<sup>[5]</sup> filed on May 20, 1997, defendants essentially admitted all of the allegations in the complaint. They alleged further that they are not opposing the partition and even offered to share in the expenses that will be incurred in the course of the proceedings.

In his Complaint in Intervention<sup>[6]</sup> filed on January 12, 1998, respondent Leon Acuna (Acuna) averred that in the Decision<sup>[7]</sup> dated November 29, 1929 of the Cadastral Court of Baliuag, Bulacan, the portion of the property identified as Lot 1303 was already adjudicated to: (a) Antonio Fernando, married to Felisa Camacho; (b) spouses Jose Martinez and Gregoria Sison; (c) spouses Ignacio de la Cruz and Salud Wisco; and (d) Jose Fernando, married to Lucila Tinio, the petitioners' predecessor-in-interest. He likewise claimed that in a 1930 Decision of the Cadastral Court, the portion identified as Lot 1302 was also already adjudicated to other people as well.

Respondent Acuna further alleged that Salud Wisco, through her authorized attorney-in-fact, Amador W. Cruz, sold her lawful share denominated as Lot 1303-D with an area of 3,818 square meters to Simeon P. Cunanan,<sup>[8]</sup> who in turn sold the same piece of land to him as evidenced by a Deed of Sale.<sup>[9]</sup> He also belied petitioners' assertion that the subject property has not been settled by the parties after the death of the original owners in view of the Decision<sup>[10]</sup> dated July 30, 1980 of the Court of First Instance (CFI) of Baliuag, Bulacan, in LRC Case No. 80-389 which ordered the Register of Deeds of Bulacan to issue the corresponding certificates of title to the claimants of the portion of the subject property designated as Lot 1302.<sup>[11]</sup> Norma Fernando, one of the petitioners in the instant case, even testified in LRC Case No. 80-389. According to respondent Acuna, this circumstance betrayed bad faith on the part of petitioners in filing the present case for partition.

Respondent Acuna likewise averred that the action for partition cannot prosper since the heirs of the original owners of the subject property, namely Rosario, Jose Jr., Norma, Tomas, Guillermo, Leopoldo, Hermogena, Illuminada and Zoilo, all surnamed Fernando, and Lucila Tinio, purportedly had already sold their respective one-tenth (1/10) share each in the subject property to Ruperta Sto. Domingo Villasenor for the amount of P35,000.00 on January 25, 1978 as evidenced by a "*Kasulatan sa Bilihang Patuluyan*."<sup>[12]</sup> He added that he was in possession of the original copy of OCT No. RO-487 (997) and that he had not commenced the issuance of new titles to the subdivided lots because he was waiting for the owners of the other portions of the subject property to bear their respective shares in the cost of titling.

Subsequently, a Motion for Intervention<sup>[13]</sup> was filed on June 23, 1998 by respondent Hermogenes Fernando (Hermogenes), for himself and on behalf of the heirs of the late spouses, Antonio A. Fernando and Felisa Camacho. According to him, in the July 30, 1980 Decision of the CFI of Bulacan, their predecessors-in-interest had already been adjudged owners of Lots 1302-A, 1302-F, 1302-G,<sup>[14]</sup> 1302-H and 1302-J of OCT No. RO-487 (997) and any adverse distribution of the properties would cause respondents damage and prejudice. He would also later claim, in his Answer-in-Intervention,<sup>[15]</sup> that the instant case is already barred by

*res judicata* and, should be dismissed.

In the interest of substantial justice, the trial court allowed the respondents to intervene in the case.

The plaintiffs and defendants jointly moved to have the case submitted for judgment on the pleadings on May 7, 1999.<sup>[16]</sup> However, the trial court denied said motion in a Resolution<sup>[17]</sup> dated August 23, 1999 primarily due to the question regarding the ownership of the property to be partitioned, in light of the intervention of respondents Acuna and Hermogenes who were claiming legal right thereto.

In their Manifestation<sup>[18]</sup> filed on April 12, 2000, petitioners affirmed their execution of a Deed of Sale in favor of Ruperta Sto. Domingo Villaseñor in 1978, wherein they sold to her 1,000 square meters from Lot 1303 for the sum of ₱35,000.00.

After the pre-trial conference, trial ensued. On September 19, 2000, petitioner Elizabeth Alarcon testified that they (plaintiffs) are not claiming the entire property covered by OCT No. RO-487 (997) but only the area referred to as Lot 1303 and *Sapang Bayan*. She also admitted that Lot 1302 had already been divided into ten (10) sublots and allocated to various owners pursuant to the July 30, 1980 Decision of the CFI of Baliuag, Bulacan and these owners already have their own titles. She likewise claimed that the entire area consisting of Lot 1303 and *Sapang Bayan* is based on the subdivision plan of Lot 1303. She admitted that plaintiffs' predecessor-in-interest was only allocated a portion of Lot 1303 based on the said plan. However, she claimed that the November 29, 1929 Decision subdividing Lot 1303 was never implemented nor executed by the parties.<sup>[19]</sup>

Petitioner Norma Fernando testified on October 3, 2000 that she is one of the children of Jose A. Fernando and Lucila Tinio. She affirmed that plaintiffs were only claiming Lot 1303 and *Sapang Bayan*. She also testified that *Sapang Bayan* was supposedly included in Lot 1302 and was previously a river until it dried up. Unlike Lot 1302, the rest of the property was purportedly not distributed. She likewise averred that she is aware of a November 29, 1929 Decision concerning the distribution of Lot 1303 issued by the cadastral court but insisted that the basis of the claims of the petitioners over Lot 1303 is the title in the name of her ascendants and not said Decision.<sup>[20]</sup>

On November 16, 2000, as previously directed by the trial court and agreed to by the parties, counsel for respondent Hermogenes prepared and submitted an English translation of the November 29, 1929 Decision. The same was admitted and marked in evidence as Exhibit "X"<sup>[21]</sup> as a common exhibit of the parties. The petitioners also presented Alfredo Borja, the Geodetic Engineer who conducted a relocation survey of the subject property.

After plaintiffs rested their case, respondent Hermogenes testified on December 7, 2000. In his testimony, he claimed to know the plaintiffs and defendants as they were allegedly his relatives and neighbors. He confirmed that according to the November 29, 1929 Decision, portions of Lot 1303 was designated as Lots 1303-A, 1303-B, 1303-C and 1303-D which were adjudicated to certain persons, including Jose Fernando, while the rest of Lot 1303 was adjudicated to his parents, Antonio A. Fernando married to Felisa Camacho. According to respondent Hermogenes, his

family's tenant and the latter's children occupied the portion of Lot 1303 allotted to his (Hermogenes) parents while the rest of Lot 1303 was occupied by the persons named in the said November 29, 1929 Decision. He admitted, however, that nobody among the purported possessors of Lot 1303 registered the lots assigned to them in the Decision.<sup>[22]</sup>

On January 18, 2001, respondent Hermogenes presented a witness, Engineer Camilo Vergara who testified that the subject land is divided into Lots 1302 and 1303 with a creek dividing the two lots known as *Sapang Bayan*. He also identified a Sketch Plan numbered as PSD-45657 and approved on November 11, 1955.<sup>[23]</sup> During the hearing on January 30, 2001, respondent Hermogenes made an oral offer of his evidence and rested his case. On the same date, respondent Acuna, in lieu of his testimony, offered for the parties to simply stipulate on the due execution and authenticity of the Deeds of Sale dated April 6, 1979 and December 28, 1980, showing the transfer of Lot 1303-D from Salud Wisco to Simeon Cunanan and subsequently to respondent Acuna. When counsel for plaintiffs and defendants agreed to the stipulation, albeit objecting to the purpose for which the deeds of sale were offered, the trial court admitted Acuna's exhibits and Acuna rested his case.<sup>[24]</sup>

On February 15, 2001, plaintiffs recalled Norma Fernando as a rebuttal witness. In her rebuttal testimony, she identified the tax declaration<sup>[25]</sup> over the said property in the name of Jose A. Fernando; an official receipt<sup>[26]</sup> dated October 3, 1997 issued by the Office of the Treasurer of the Municipality of Baliuag, Bulacan for payment of real property taxes from 1991 to 1997; and a real property tax clearance<sup>[27]</sup> dated October 6, 1997, to show that plaintiffs have allegedly been paying the real property taxes on the entire property covered by OCT No. RO-487 (997). However, she further testified that they were now willing to pay taxes only over the portion with an area of 44,234 square meters, which is included in their claim.<sup>[28]</sup>

In a Decision dated May 16, 2002, the trial court ruled that plaintiffs and defendants (petitioners herein) were indeed the descendants and successors-in-interest of the registered owners, Jose A. Fernando (married to Lucila Tinio) and Antonia Fernando (married to Felipe Galvez), of the property covered by OCT No. RO-487 (997). After finding that the parties admitted that Lot 1302 was already distributed and titled in the names of third persons per the July 30, 1980 Decision of the CFI of Baliuag, Bulacan the trial court proceeded to rule on the allocation of Lot 1303 and *Sapang Bayan*.

With respect to Lot 1303, the trial court found that the November 29, 1929 Decision of the Cadastral Court, adjudicating said lot to different persons and limiting Jose Fernando's share to Lot 1303-C, was never implemented nor executed despite the lapse of more than thirty years. Thus, the said decision has already prescribed and can no longer be executed. The trial court ordered the reversion of Lot 1303 to the ownership of spouses Jose A. Fernando and Lucila Tinio and spouses Antonia A. Fernando and Felipe Galvez under OCT No. RO-487 (997) and allowed the partition of Lot 1303 among petitioners as successors-in-interest of said registered owners. Excluded from the partition, however, were the portions of the property which petitioners admitted had been sold or transferred to Ruperta Sto. Domingo Villasenor and respondent Acuna.

As for the ownership of *Sapang Bayan*, the trial court found that the same had not been alleged in the pleadings nor raised as an issue during the pre-trial conference. Also, according to the trial court, the parties failed to clearly show whether *Sapang Bayan* was previously a dry portion of either Lot 1302 or Lot 1303. Neither was there any proof that *Sapang Bayan* was a river that just dried up or that it was an accretion which the adjoining lots gradually received from the effects of the current of water. It was likewise not established who were the owners of the lots adjoining *Sapang Bayan*. The trial court concluded that none of the parties had clearly and sufficiently established their claims over *Sapang Bayan*.

The dispositive portion of the May 16, 2002 Decision of the trial court reads:

WHEREFORE, all the foregoing considered, judgment is hereby rendered ordering the reversion of Lot 1303, except the portions allotted to Acuna and Ruperta Sto. Domingo Villasenor, to the ownership of Jose Fernando and Lucia Tinio and Antonia Fernando and Felipe Galvez under OCT No. 997 and thereafter allowing the partition of said Lot 1303 among the plaintiffs and the defendants as successors-in-interest of Jose and Lucia as well as Antonia and Felipe after the settlement of any inheritance tax, fees, dues and/or obligation chargeable against their estate.<sup>[29]</sup>

All the parties, with the exception of respondent Acuna, elevated this case to the Court of Appeals which rendered the assailed November 24, 2003 Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the decision dated May 16, 2002, of the Regional Trial Court of Malolos, Bulacan, Third Judicial Region, Branch 84, in Civil Case No. 256-M-97, is hereby REVERSED and SET ASIDE and the complaint dated April 17, 1997 filed by plaintiffs-appellants is dismissed. Costs against plaintiffs-appellants.<sup>[30]</sup>

Hence, plaintiffs and defendants in the court *a quo* elevated the matter for our review through the instant petition.

Petitioner raises the following issues for consideration:

1. Whether or not the ownership of Lot 1303 and the Sapang Bayan portion of the piece of land covered by O.C.T. No. RO-487 (997) or Plan Psu-39080 should revert to the descendants and heirs of the late spouses Jose Fernando and Lucila Tinio and Antonia Fernando, married to Felipe Galvez;
2. Whether or not a title registered under the Torrens system, as the subject original certificate of title is the best evidence of ownership of land and is a notice against the world.<sup>[31]</sup>

The petition is without merit.