

## FIRST DIVISION

[ G.R. No. 130115, July 16, 2008 ]

**FELIX TING HO, JR., MERLA TING HO BRADEN, JUANA TING HO  
LYDIA TING HO BELENZO, PETITIONERS, VS. VICENTE TENG  
GUI, RESPONDENT.**

### D E C I S I O N

**PUNO, CJ.:**

This is a Petition for Review on *Certiorari*<sup>[1]</sup> assailing the Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 42993 which reversed and set aside the Decision of the Regional Trial Court (RTC) of Olongapo City, Branch 74, in Civil Case No. 558-0-88.

The instant case traces its origin to an action for partition filed by petitioners Felix Ting Ho, Jr., Merla Ting Ho Braden, Juana Ting Ho and Lydia Ting Ho Belenzo against their brother, respondent Vicente Teng Gui, before the RTC, Branch 74 of Olongapo City. The controversy revolves around a parcel of land, and the improvements established thereon, which, according to petitioners, should form part of the estate of their deceased father, Felix Ting Ho, and should be partitioned equally among each of the siblings.

In their complaint before the RTC, petitioners alleged that their father Felix Ting Ho died intestate on June 26, 1970, and left upon his death an estate consisting of the following:

- a) A commercial land consisting of 774 square meters, more or less, located at Nos. 16 and 18 Afable St., East Bajac-Bajac, Olongapo City, covered by Original Certificate of Title No. P-1064 and Tax Declaration No. 002-2451;
- b) A two-storey residential house on the aforesaid lot;
- c) A two-storey commercial building, the first floor rented to different persons and the second floor, Bonanza Hotel, operated by the defendant also located on the above described lot; and
- d) A sari-sari store (formerly a bakery) also located on the above described lot.<sup>[3]</sup>

According to petitioners, the said lot and properties were titled and tax declared under trust in the name of respondent Vicente Teng Gui for the benefit of the deceased Felix Ting Ho who, being a Chinese citizen, was then disqualified to own public lands in the Philippines; and that upon the death of Felix Ting Ho, the respondent took possession of the same for his own exclusive use and benefit to their exclusion and prejudice.<sup>[4]</sup>

In his answer, the respondent countered that on October 11, 1958, Felix Ting Ho sold the commercial and residential buildings to his sister-in-law, Victoria Cabasal, and the bakery to his brother-in-law, Gregorio Fontela.<sup>[5]</sup> He alleged that he acquired said properties from the respective buyers on October 28, 1961 and has since then been in possession of subject properties in the concept of an owner; and that on January 24, 1978, Original Certificate of Title No. P-1064 covering the subject lot was issued to him pursuant to a miscellaneous sales patent granted to him on January 3, 1978.<sup>[6]</sup>

The undisputed facts as found by the trial court (RTC), and affirmed by the appellate court (CA), are as follows:

[T]he plaintiffs and the defendant are all brothers and sisters, the defendant being the oldest. They are the only legitimate children of the deceased Spouses Felix Ting Ho and Leonila Cabasal. Felix Ting Ho died on June 26, 1970 while the wife Leonila Cabasal died on December 7, 1978. The defendant Vicente Teng Gui is the oldest among the children as he was born on April 5, 1943. The father of the plaintiffs and the defendant was a Chinese citizen although their mother was Filipino. That sometime in 1947, the father of the plaintiffs and defendant, Felix Ting Ho, who was already then married to their mother Leonila Cabasal, occupied a parcel of land identified to (sic) as Lot No. 18 Brill which was thereafter identified as Lot No. 16 situated at Afable Street, East Bajac-Bajac, Olongapo City, by virtue of the permission granted him by the then U.S. Naval Reservation Office, Olongapo, Zambales. The couple thereafter introduced improvements on the land. They built a house of strong material at 16 Afable Street which is a commercial and residential house and another building of strong material at 18 Afable Street which was a residential house and a bakery. The couple, as well as their children, lived and resided in the said properties until their death. The father, Felix Ting Ho had managed the bakery while the mother managed the sari-sari store. **Long before the death of Felix Ting Ho, who died on June 26, 1970, he executed on October 11, 1958 a Deed of Absolute Sale of a house of strong material located at 16 Afable Street, Olongapo, Zambales, specifically described in Tax Dec. No. 5432, in favor of Victoria Cabasal his sister-in-law (Exh. C).** This Deed of Sale cancelled the Tax Dec. of Felix Ting Ho over the said building (Exh. C-1) and the building was registered in the name of the buyer Victoria Cabasal, as per Tax Dec. No. 7579 (Exh. C-2). **On the same date, October 11, 1958 the said Felix Ting Ho also sold a building of strong material located at 18 Afable Street, described in Tax Dec. No. 5982, in favor of Gregorio Fontela, of legal age, an American citizen, married (Exh. D).** This Deed of Sale, in effect, cancelled Tax Dec. No. 5982 and the same was registered in the name of the buyer Gregorio Fontela, as per Tax Dec. No. 7580 (Exh. D-2). **In turn Victoria Cabasal and her husband Gregorio Fontela sold to Vicente Teng Gui on October 28, 1961 the buildings which were bought by them from Felix Ting Ho and their tax declarations for the building they bought (Exhs. C-2 and D-2) were accordingly cancelled and the said buildings were registered in the name of the defendant Vicente Teng Gui (Exhs. C-3 and D-3).** On October 25, 1966 the father of the parties Felix Ting Ho executed an Affidavit of

Transfer, Relinquishment and Renouncement of Rights and Interest including Improvements on Land in favor of his eldest son the defendant Vicente Teng Gui. On the basis of the said document the defendant who then chose Filipino citizenship filed a miscellaneous sales application with the Bureau of Lands. **Miscellaneous Sales Patent No. 7457 of the land which was then identified to be Lot No. 418, Ts-308 consisting of 774 square meters was issued to the applicant Vicente Teng Gui and accordingly on the 24<sup>th</sup> of January, 1978 Original Certificate of Title No. P-1064 covering the lot in question was issued to the defendant Vicente Teng Gui.** Although the buildings and improvements on the land in question were sold by Felix Ting Ho to Victoria Cabasal and Gregorio Fontela in 1958 and who in turn sold the buildings to the defendant in 1961 the said Felix Ting Ho and his wife remained in possession of the properties as Felix Ting Ho continued to manage the bakery while the wife Leonila Cabasal continued to manage the sari-sari store. During all the time that the alleged buildings were sold to the spouses Victoria Cabasal and Gregorio Fontela in 1958 and the subsequent sale of the same to the defendant Vicente Teng Gui in October of 1961 the plaintiffs and the defendant continued to live and were under the custody of their parents until their father Felix Ting Ho died in 1970 and their mother Leonila Cabasal died in 1978.<sup>[7]</sup> (Emphasis supplied)

In light of these factual findings, the RTC found that Felix Ting Ho, being a Chinese citizen and the father of the petitioners and respondent, resorted to a series of simulated transactions in order to preserve the right to the lot and the properties thereon in the hands of the family. As stated by the trial court:

After a serious consideration of the testimonies given by both one of the plaintiffs and the defendant as well as the documentary exhibits presented in the case, the Court is inclined to believe that Felix Ting Ho, the father of the plaintiffs and the defendant, and the husband of Leonila Cabasal thought of preserving the properties in question by transferring the said properties to his eldest son as he thought that he cannot acquire the properties as he was a Chinese citizen. To transfer the improvements on the land to his eldest son the defendant Vicente Teng Gui, he first executed simulated Deeds of Sales in favor of the sister and brother-in-law of his wife in 1958 and after three (3) years it was made to appear that these vendees had sold the improvements to the defendant Vicente Teng Gui who was then 18 years old. The Court finds that these transaction (sic) were simulated and that no consideration was ever paid by the vendees.

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With regards (sic) to the transfer and relinquishment of Felix Ting Ho's right to the land in question in favor of the defendant, the Court believes, that although from the face of the document it is stated in absolute terms that without any consideration Felix Ting Ho was transferring and renouncing his right in favor of his son, the defendant Vicente Teng Gui, still the Court believes that the transaction was one of implied trust executed by Felix Ting Ho for the benefit of his family...<sup>[8]</sup>

Notwithstanding such findings, the RTC considered the Affidavit of Transfer, Relinquishment and Renouncement of Rights and Interests over the land as a donation which was accepted by the donee, the herein respondent. With respect to the properties in the lot, the trial court held that although the sales were simulated, pursuant to Article 1471 of the New Civil Code<sup>[9]</sup> it can be assumed that the intention of Felix Ting Ho in such transaction was to give and donate such properties to the respondent. As a result, it awarded the entire conjugal share of Felix Ting Ho in the subject lot and properties to the respondent and divided only the conjugal share of his wife among the siblings. The dispositive portion of the RTC decision decreed:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant as the Court orders the partition and the adjudication of the subject properties, Lot 418, Ts-308, specifically described in original Certificate of Title No. P-1064 and the residential and commercial houses standing on the lot specifically described in Tax Decs. Nos. 9179 and 9180 in the name of Vicente Teng Gui in the following manner, to wit: To the defendant Vicente Teng Gui is adjudicated an undivided six-tenth (6/10) of the aforementioned properties and to each of the plaintiffs Felix Ting Ho, Jr., Merla Ting-Ho Braden, Juana Ting and Lydia Ting Ho-Belenzo each an undivided one-tenth (1/10) of the properties...<sup>[10]</sup>

From this decision, both parties interposed their respective appeals. The petitioners claimed that the RTC erred in awarding respondent the entire conjugal share of their deceased father in the lot and properties in question contrary to its own finding that an implied trust existed between the parties. The respondent, on the other hand, asserted that the RTC erred in not ruling that the lot and properties do not form part of the estate of Felix Ting Ho and are owned entirely by him.

On appeal, the CA reversed and set aside the decision of the RTC. The appellate court held that the deceased Felix Ting Ho was never the owner and never claimed ownership of the subject lot since he is disqualified under Philippine laws from owning public lands, and that respondent Vicente Teng Gui was the rightful owner over said lot by virtue of Miscellaneous Sales Patent No. 7457 issued in his favor, viz:

**The deceased Felix Ting Ho, plaintiffs' and defendant's late father, was never the owner of the subject lot, now identified as Lot No. 418, Ts-308 covered by OCT No. P-1064 (Exh. A; Record, p. 104). As stated by Felix Ting Ho no less in the "Affidavit of Transfer, Relinquishment and Renouncement of Rights and Interest" etc. (Exh. B: Record, p. 107), executed on October 25, 1966 he, the late Felix Ting Ho, was merely a possessor or occupant of the subject lot "by virtue of a permission granted... by the then U.S. Naval Reservation Office, Olongapo, Zambales".** The late Felix Ting Ho was never the owner and never claimed ownership of the land. (Emphasis supplied)

The affidavit, Exhibit B, was subscribed and sworn to before a Land Investigator of the Bureau of Lands and in the said affidavit, the late Felix Ting Ho expressly acknowledged that because he is a Chinese citizen he

is not qualified to purchase public lands under Philippine laws for which reason he thereby transfers, relinquishes and renounces all his rights and interests in the subject land, including all the improvements thereon to his son, the defendant Vicente Teng Gui, who is of legal age, single, Filipino citizen and qualified under the public land law to acquire lands.

X X X      X X X      X X X

**Defendant Vicente Teng Gui acquired the subject land by sales patent or purchase from the government and not from his father, the late Felix Ting Ho.** It cannot be said that he acquired or bought the land in trust for his father because on December 5, 1977 when the subject land was sold to him by the government and on January 3, 1978 when Miscellaneous Sales Patent No. 7457 was issued, the late Felix Ting Ho was already dead, having died on June 6, 1970 (TSN, January 10, 1990, p. 4).<sup>[11]</sup>

Regarding the properties erected over the said lot, the CA held that the finding that the sales of the two-storey commercial and residential buildings and sari-sari store to Victoria Cabasal and Gregorio Fontela and subsequently to respondent were without consideration and simulated is supported by evidence, which clearly establishes that these properties should form part of the estate of the late spouses Felix Ting Ho and Leonila Cabasal.

Thus, while the appellate court dismissed the complaint for partition with respect to the lot in question, it awarded the petitioners a four-fifths (4/5) share of the subject properties erected on the said lot. The dispositive portion of the CA ruling reads as follows:

WHEREFORE, premises considered, the decision appealed from is REVERSED and SET ASIDE and NEW JUDGMENT rendered:

1. DISMISSING plaintiff-appellants' complaint with respect to the subject parcel of land, identified as Lot No. 418, Ts-308, covered by OCT No. P-1064, in the name of plaintiff-appellants [should be defendant-appellant];
2. DECLARING that the two-storey commercial building, the two-storey residential building and sari-sari store (formerly a bakery), all erected on the subject lot No. 418, Ts-308, form part of the estate of the deceased spouses Felix Ting Ho and Leonila Cabasal, and that plaintiff-appellants are entitled to four-fifths (4/5) thereof, the remaining one-fifth (1/5) being the share of the defendant-appellant;
3. DIRECTING the court *a quo* to partition the said two-storey commercial building, two-storey residential building and sari-sari store (formerly a bakery) in accordance with Rule 69 of the Revised Rules of Court and pertinent provisions of the Civil Code;
4. Let the records of this case be remanded to the court of origin for further proceedings;