

FIFTEENTH DIVISION

[CA-G.R. CV No. 100441, June 16, 2014]

RENATO P. GONZALES, PLAINTIFF-APPELLANT, VS. CARLOS GOTAUCO, DEFENDANT-APPELLEE.

DECISION

CASTILLO, M., J.:

For this Court's consideration is an appeal from the Judgment^[1] and Order^[2], both rendered by the Regional Trial Court (RTC) of Manila, Branch 39, in Civil Case No. 85-32619 which accepted the partition of the subject property in accordance with the report and recommendations of the appointed commissioners, pursuant to the trial court's Decision dated August 12, 1999^[3].

The antecedent facts are as follows:

After the demise of defendant-appellee Carlos Gotauco's father in 1929 and his mother in 1937, he and his three (3) brothers inherited their parents' property in equal shares.^[4] The aforesaid property pertained to a parcel of land known as Lot 5, Block 378 located at M.H. Del Pilar Street, Ermita, Manila, with an area of Three Hundred Sixty Seven and 90/100 Square Meters (367.90 sq.m.). On May 9, 1966, Gotauco's three (3) brothers executed a Deed of Absolute Sale^[5], wherein they sold their rights to three-fourths ($\frac{3}{4}$) of the subject property to herein plaintiff-appellant Renato Gonzales. Consequently, plaintiff-appellant Gonzales and defendant-appellee Gotauco became co-owners of the subject property covered by Transfer Certificate of Title (TCT) No. 84746^[6] which was issued on July 28, 1966. Plaintiff-appellant Gonzales owned three-fourths ($\frac{3}{4}$) of the subject property while defendant-appellee Gotauco owned one-fourth ($\frac{1}{4}$) thereof. Thereafter, plaintiff-appellant Gonzales proposed the partition of the subject property into two (2) lots. On August 10, 1966, plaintiff-appellant Gonzales filed a Petition^[7] for cancellation of TCT No. 53260 and/or issuance of a separate title, alleging that defendant-appellee Gotauco refused to surrender the title covering the subject property, thereby preventing Gonzales from registering the aforementioned Deed of Absolute Sale in his favor. On August 16, 1966, the Court of First Instance of Manila issued an Order^[8], directing defendant-appellee Gotauco to surrender the owner's duplicate of TCT No. 53260 to the Register of Deeds of Manila, in order that the Deed of Absolute Sale which was executed in favor of Gonzales may be registered. On November 7, 1966, the Land Registration Commission approved a subdivision survey plan^[9] of the subject property, together with the technical descriptions of both lots. Lot 5-A^[10] (LRC) Psd-63860, with an area of Ninety One and 98/100 Square (91.98 sq.m.), would be adjudicated to Gotauco. On the other hand, Lot 5-B^[11] (LRC) Psd-63860, with an area of Two Hundred Seventy Five and 92/100 Square Meters (275.92 sq.m.), would be assigned to Gonzales. However, defendant-appellee Gotauco^[12] did not agree^[13]

with the proposed partition as indicated in the subdivision plan and refused to sign the Agreement of Partition^[14].

Defendant-appellee Gotauco, on the other hand, offered to buy one-fourth ($\frac{1}{4}$) share in the subject property, in order that Gotauco would own one-half ($\frac{1}{2}$) of the subject property, rendering the same practicable and viable for his needs. Gotauco asserted that it would be difficult to build a structure on his portion of the subject property since it was only approximately three (3) meters wide and twenty-two (22) meters deep.^[15] He also declared that he was not willing to sell his share in the subject property since he inherited the same from his parents and had a sentimental value.^[16] However, plaintiff-appellant Gonzales refused Gotauco's offer.^[17]

On September 13, 1985, plaintiff-appellant Gonzales filed a Complaint^[18] for partition which was docketed as Civil Case No. 85-32619. He alleged that his acquisition of a separate title for Lot 5-B for his business activities, particularly the establishment of a commercial enterprise such as a tourist inn and a shopping complex,^[19] had been delayed due to Gotauco's unjustified refusal to accept the foregoing partition. After receiving summons and a copy of the complaint, Gotauco inspected the subject property and discovered that the same was being used as a restaurant called "*Manukan sa Ermita*". Its occupants then informed him that plaintiff-appellant Gonzales leased the property to a certain Jesus Miguel Benedicto^[20] whom he presumed was the husband of Maria Lourdes Gonzales Benedicto, the latter being the sister of plaintiff-appellant Gonzales. On September 26, 1985, Gotauco filed his Answer^[21]. Gotauco alleged that Gonzales could not, without the conformity of his co-owner, adjudicate unto himself Lot 5-B containing 275.92 sq.m., being a determinate portion of the subject property owned in common, to the exclusion of Gotauco. On October 3, 1985, Gonzales filed his Reply with Counterclaim^[22]. On February 14, 1986^[23], Geronimo Imperial, whom Gotauco employed, prepared a subdivision survey plan^[24].

During the trial, plaintiff-appellant Gonzales testified on his behalf. On the other hand, defendant-appellee Gotauco likewise testified and presented the following witnesses: Geronimo Imperial, the geodetic engineer whom Gotauco employed to prepare a subdivision survey plan of the subject property, with Gotauco's frontage representing one-half ($\frac{1}{2}$) of the area facing M.H. Del Pilar Street; and Maria Lourdes G. Benedicto, sister of plaintiff-appellant Gonzales and manager of "*Manukan sa Ermita*", who testified that she was not a lessee but a part owner of the premises^[25].

On March 7, 1986, plaintiff-appellant Gonzales filed his Formal Offer of Evidence^[26], to wit:

Exhibit "A" - TCT No. 84746 registered in the name of Renato P. Gonzales ($\frac{3}{4}$) and Carlos Gotauco ($\frac{1}{4}$);^[27]

Exhibit "B" - TCT No. 109778 registered in the name of Gonzales' family corporation, covering a parcel of land where Gonzales also resided^[28] and which is adjacent to the subject property;^[29]

Exhibit "C" - Deed of Absolute Sale executed by Juan Gotauco, Emilio Gotauco and Perfecto Gotauco, the defendant-appellee's three (3)

brothers, in favor of plaintiff-appellant Gonzales, pertaining to three-fourths ($\frac{3}{4}$) of the subject property;^[30]

Exhibit "D" - Petition for cancellation of TCT No. 53260 and/or issuance of a separate title filed by plaintiff-appellant Gonzales on August 10, 1966, due to defendant-appellee Gotauco's refusal to surrender the title, covering the subject property, for the purpose of registration of the Deed of Absolute Sale (Exhibit "C");^[31]

Exhibit "E" - Order dated August 16, 1966, of the Court of First Instance of Manila, directing defendant-appellee Gotauco to surrender the owner's copy of TCT No. 53260 to the Register of Deeds of Manila, in order that the the Deed of Absolute Sale (Exhibit "C") may be registered;^[32]

Exhibit "F" - Subdivision Survey Plan of the subject property, as described in TCT No. 84746;^[33]

Exhibit "G" - Agreement of Partition, which defendant-appellee Gotauco refused to sign;^[34]

Exhibit "H" - Technical Description of Lot 5-A;^[35]

Exhibit "H-1" - Technical Description of Lot 5-B;^[36]

Exhibit "I" - Xerox Copy of Tax Declaration No. A-072-0576 in the name of Renato Gonzales, pertaining to his three-fourths ($\frac{3}{4}$) share in the subject property;^[37]

Exhibit "J" - Real Estate Tax Receipt for 1983, to show Gonzales' payment of the taxes on $\frac{3}{4}$ of the subject property;^[38]

Exhibit "K" - Real Estate Tax Receipt for 1984, to show Gonzales' payment of RPT on $\frac{3}{4}$ of the subject property;^[39]

Exhibit "L" - Real Estate Tax Receipt for 1985, to show Gonzales' payment of RPT on $\frac{3}{4}$ of the subject property;^[40]

On the other hand, defendant-appellee Gotauco presented the following exhibits:

Exhibit "1" - Sketch of the location of the subject property;^[41]

Exhibit "2" - Pictures showing the subject property and the improvements thereon;^[42] and

Exhibit "3" - Subdivision Survey Plan of the subject property, showing the property's front area facing M.H. Del Pilar Street being equally divided between plaintiff-appellant Gonzales and defendant-appellee Gotauco, as well as the technical descriptions for Lot 5-A and Lot 5-B thereof.^[43]

On November 25, 1987, defendant-appellee Gotauco filed his Memorandum.^[44] On December 28, 1990, the trial court rendered a Decision^[45], the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Ordering the parties to partition the property subject of this complaint;
2. Ordering the plaintiff to resell to defendant, $\frac{1}{4}$ of the property he has purchased from defendant's co-heirs;
3. Ordering the parties that after the plaintiff has resold the $\frac{1}{4}$ undivided share of defendant's co-heirs, to partition the property equally between them; and should the defendant failed (sic) to avail of his right to redeem $\frac{1}{4}$ of the property within 30 days from receipt of this decision, the same shall be deemed waived and the proposed plan of partition as initiated by the plaintiff (Exh. F) shall prevail and be the basis for partition; and
4. Dismissing defendant's counterclaim.

No pronouncement as to costs.

SO ORDERED.^[46]

On February 1, 1991, pursuant to the foregoing Decision, defendant-appellee Gotauco sent to plaintiff-appellant Gonzales a letter^[47] of availment of his right to redeem one-fourth ($\frac{1}{4}$) of the subject property.^[48] On February 7, 1991, plaintiff-appellant Gonzales filed a Motion for Reconsideration^[49] but the same was denied in the trial court's Order^[50] dated August 28, 1991. On September 3, 1991, Gonzales filed his Notice of Appeal^[51]. On February 14, 1995, this Court (Eleventh Division) rendered a Decision^[52], the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is rendered REVERSING and SETTING ASIDE the decision of the Court a quo, hereby entering a new one:

1. Ordering the case REMANDED to the Court a quo for further proceedings relative to the partition of the property subject of the suit in an equitable and judicious manner;
2. All other claims and counterclaims are dismissed; and
3. No pronouncement as to costs.

SO ORDERED.^[53]

The foregoing Decision dated February 14, 1995 became final and executory on March 16, 1995^[54]. Thereafter, the defendant-appellee and plaintiff-appellant filed with the trial court their respective pleading^[55] on their proposed partition. On August 12, 1999, the trial court rendered a Decision^[56], the dispositive portion of which reads:

WHEREFORE, above premises considered, judgment is hereby rendered.

1. Ordering the partition of the subject property in this wise – $\frac{3}{4}$ of the whole thereof to the plaintiff and the remaining $\frac{1}{4}$ to the defendant; and

2. Conformably with Sec. 3, Rule 69, Rules of Court, this court hereby appoints The Chief, City Engineers Office, City of Manila (or his duly authorized representative), The Chief, City Assessors Office, City of Manila (or his duly authorized representative) and the Barangay Chairman of the subject area as commissioners to make the partition and who upon oath, shall make an accurate report to the court of all their proceedings as provided for under Secs. 6 and 7, Rule 69, Rules of Court.

[57]

On September 22, 1999, plaintiff-appellant Gonzales filed a Motion for Partial Reconsideration/Modification/Clarification^[58], praying that the partition be effected as decreed by RTC Judge Ildefonso E. Gascon in his Decision dated December 28, 1990^[59] and in accordance with Gonzales' Exhibit "F". However, the trial court denied Gonzales' motion in its Order^[60] dated November 12, 1999. On December 14, 1999, Gonzales filed a Notice of Appeal.^[61] On April 19, 2006, this Court (Fourteenth Division) rendered a Decision^[62] in the case of *Gonzales v. Gotauco* which was docketed as CA-G.R. CV No. 66383, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, the instant appeal is hereby **DISMISSED** for lack of merit.^[63]

On May 10, 2006, Gonzales filed a Motion for Reconsideration^[64] which was denied by this Court (Former Fourteenth Division) in the Resolution^[65] dated June 14, 2006. On August 10, 2006, plaintiff-appellant Gonzales filed a Petition for Review on Certiorari^[66] with the Supreme Court. On September 27, 2006, the Supreme Court issued a Resolution^[67] denying Gonzales' petition. He filed a Motion for Reconsideration and a Motion to Admit Second Motion for Reconsideration but both were denied.^[68] On February 15, 2007, the Supreme Court's Resolution dated September 27, 2006 became final and executory.^[69] On April 22, 2008, the trial court in Civil Case No. 85-32619 issued an Order, the dispositive portion of which states:

WHEREFORE, conformably with the decision of this Court, the Court appointed commissioners, namely, The Chief, City Engineers Office, City of Manila (or his duly authorized representative), The Chief, City Assessors Office, City of Manila (or his duly authorized representative) and the Barangay Chairman of the subject area are directed to appear before this Court and submit their oath of office before they proceed to the partition of subject property known as Lot 5, Block 378 situated at Del Pilar St., Ermita, Manila within fifteen (15) days from receipt of this Order.

By agreement of the parties, the proceedings in this case is set on **May 29, 2008 at 8:30 a.m.**

SO ORDERED.^[70]

Upon motion^[71] of plaintiff-appellant Gonzales, the trial court issued an Order dated July 7, 2008^[72], directing the three (3) appointees to take their oath of office as commissioners and directing the parties to attend a conference regarding the