

NINETEENTH DIVISION

[CA-G.R. C.V. No. 03613, July 31, 2014]

**VICENTE V. TORRES, JR., MARIANO VELEZ* AND CARLOS VELEZ,
PLAINTIFFS-APPELLEES, VS. AMPARO ALFORQUE, DEFENDANT-
APPELLANT,**

JESUS VELEZ, DEFENDANT-APPELLEE.

D E C I S I O N

LAGURA-YAP, J.:

Can a co-owner sell a definite portion of a lot owned in common before its partition?

That is the principal question raised in this case. The present appeal seeks the reversal of the September 23, 2009 Judgment^[1] and the April 30, 2010 Order^[2] of the Regional Trial Court (RTC), Branch 5, Cebu City. The dispositive portion of the September 23, 2009 Judgment reads:

"WHEREFORE, premises considered, judgment is hereby rendered declaring the sale to defendant Alforque by defendant Velez of a definite portion of Lot No. 4389 as null and void; ordering defendant Alforque to vacate the portion of Lot 4389 she is occupying; ordering defendants, jointly and severally, to pay plaintiffs the sum of PhP 1,000.00 as damages from January 2004 until the portion of Lot No. 4389 occupied is vacated by defendant Alforque, PhP 30,000.00 as attorney's fees and PhP 20,000.00 as litigation expenses.

Notify the parties and their counsel of this judgment.

IT IS SO ORDERED."

The facts, as culled from the records, are as follows:

This case stemmed from a Complaint^[3] dated February 4, 2006 filed by Vicente V. Torres, Jr., Mariano Velez, and Carlos Velez (plaintiffs) before the Regional Trial Court, Branch 5, Cebu City, for Declaration of Nullity of Deed of Sale and Recovery of Possession and Ownership and Damages, against Amparo Alforque and Jesus Velez (defendants).

The complaint alleged that plaintiffs and defendant Jesus Velez are co-owners of Lot No. 4389 situated in Carcar City, Cebu, covered by Transfer Certificate of Title No. T-134124, with an assessed value of PhP 21,770.^[4] Sometime in 1993, Jesus Velez filed an Action for Partition against plaintiffs. The case was docketed as Civil Case No. CEB-14785 filed before the RTC, Branch 21, Cebu City.^[5]

On August 13, 2001, Judgment by Compromise^[6] was rendered authorizing Jesus Velez, Mariano Velez, and Vicente Torres, Jr., to sell the properties under litigation and to divide the proceeds among themselves. However, due to defendant Velez's non-cooperation, the RTC issued another Order,^[7] upon motion of the plaintiffs, revoking the authority of defendant Velez to sell the subject properties.

Pursuant to such authority, plaintiffs inspected the said lot and discovered that a certain Amparo Alforque was occupying a portion thereof. Plaintiffs subsequently filed a case for Forcible Entry against Alforque before the Municipal Trial Court in Cities of Carcar, Cebu. In the said Forcible Entry case, Alforque claimed that while the case for Partition was pending, defendant Jesus Velez sold to him a definite portion of Lot No. 4839, evidenced by a Deed of Conveyance dated May 4, 1999^[8]

Plaintiffs-appellees argued that the sale by Jesus Velez of a definite portion of Lot No. 4839, to his co-defendant Amparo Alforque is void. In addition, Jesus Velez's authority to sell was already revoked by the Court and thus he had no right to sell a portion of the lot.

In her Answer,^[9] Alforque denied most of the material allegations in the Complaint. Alforque maintained that she had always believed that her co- defendant (Jesus Velez) is the absolute owner of the disputed property, the latter claiming to have inherited the property from his deceased parents.^[10] Alforque also stressed the fact that the disputed property consists only of one hundred (100) square meters, and as such, the assessed value thereof is much lesser than twenty-one thousand seven hundred and seventy pesos (PhP 21,770.00). Since the assessed value does not exceed twenty thousand pesos (PhP 20,000), the case should have been filed with the municipal trial court.^[11] The fact that the case was denominated as Declaration of Nullity of Deed of Sale is of no moment as the ultimate purpose of plaintiffs is to recover possession of the subject property.

Alforque also categorically denied that she stated in his Answer to the Complaint for Forcible Entry that the sale was made while the partition case was pending, the truth being that she had no knowledge of the said partition case.^[12]

Alforque argued that the sale by Jesus Velez to her is valid as the latter is the absolute owner of the one hundred (100) square meter portion of the lot. Moreover, plaintiffs never questioned the sale even after the alleged partition was concluded sometime in 2001.^[13]

Further, Alforque pointed out that the Forcible Entry case was decided in her favor^[14], a fact which, for obvious reasons, was never mentioned in the Complaint. Consequently, plaintiffs-appellants are guilty of forum-shopping as they have already filed a case involving the same issue as to who has a better right of possession over the subject property.^[15]

Meanwhile, Mariano Velez died during the pendency of the case and was substituted by his heirs, Anita Chiong Velez, Robert Oscar Velez, Sarah Jean Velez, and Ted Velez.^[16]

On May 8, 2006, defendant Jesus Velez submitted a Letter-Affidavit before the RTC,

Branch 5, Cebu City, stating that he owns seventy-three percent (73%) of Lot No. 4389, having bought some of the portions from the other co-owners.^[17]

On May 9, 2006, plaintiffs filed a Motion to Declare Defendant Jesus Velez in Default,^[18] because the latter failed to file an Answer despite service of summons. The Motion was denied since the trial court considered the Letter-Affidavit as defendant Velez's Answer.^[19]

For failure of plaintiffs and their counsel to appear during pre-trial, they were declared non-suited and the case was dismissed.^[20] Plaintiffs filed a Motion for Reconsideration^[21] of the Order dismissing the case, which the trial court granted on September 18, 2006.^[22]

After numerous postponements, pre-trial was finally scheduled on July 7, 2009. However, defendants and their counsel failed to appear on that date, and upon Motion of plaintiff's counsel, the trial court allowed the plaintiffs to present evidence ex-parte.^[23]

After presentation of plaintiffs' evidence, the trial court rendered Judgment^[24] declaring null and void the sale by Jesus Velez to Amparo Alforque of a definite portion of Lot No. 4389 on the ground that Jesus Velez had no authority to sell the subject property to Amparo Alforque. Defendants filed a Motion for Reconsideration but it was denied.

Only Amparo Alforque filed a Notice of Appeal,^[25] raising the following assignment of errors:

ISSUES

- I. THE REGIONAL TRIAL COURT ERRED IN DECLARING THAT THE SALE TO DEFENDANT-APPELLANT BY DEFENDANT VELEZ OF A DEFINITE PORTION OF LOT NO. 4389 IS NULL AND VOID.
- II. THE REGIONAL TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT TO VACATE THE PORTION OF LOT NO. 4389 SHE IS OCCUPYING.
- III. THE REGIONAL TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT AND CO-DEFENDANT VELEZ TO PAY, JOINTLY AND SEVERALLY, PLAINTIFFS-APPELLEES DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES.

THE RULING OF THE COURT

The appeal is impressed with merit.

At the outset, it must be stressed that the Deed of Conveyance executed by defendant Jesus Velez in favor of defendant-appellant Alofroque was executed on May 4, 1999 and notarized by Atty. Ma. Consuelo Filisopo on the same date,^[26] while the Judgment by Compromise^[27] in the partition case (Civil Case No. CEB-