

TWENTIETH DIVISION

[CA-G.R. CEB-CV NO. 04534, September 04, 2014]

**ALBERTO NAPALAN, SR. AND LUCRESIA ALBERCA, PLAINTIFFS-
APPELLEES, VS. DIEGO MALUPA AND LUCRESIA SIEGA,
DEFENDANTS-APPELLANTS.**

DECISION

HERNANDO, J.:

Before this Court is an appeal filed by Diego Malupa and Lucrecia Siega, seeking the review and reversal of the April 18, 2012 Decision^[1] of the Regional Trial Court (RTC), Branch 25, of Maasin City in Civil Case No. R-3146, an action for Recovery of Real Property with Preliminary Injunction and Damages.

The Antecedents:

Bonifacio Sacro, the original owner of the subject land, had five children, namely: Juan Ensayo, Juan Dato, Tomas, Francisca and Filomena Sacro. Appellant Lucrecia Siega, wife of Diego Malupa, is a descendant of Filomena Sacro. On the other hand, appellee Lucrecia Alberca, wife of Alberto Napalan, Sr., is a descendant of Francisca Sacro.

Appellees aver that sometime in 1975, shortly after Bonifacio's death, his heirs verbally partitioned his properties. The subject land was among the properties assigned to Cornelia, mother of appellee Lucrecia Alberca. When Cornelia died, Lucrecia took possession of her mother's share in the estate of Bonifacio Sacro. In 1996, appellees claim that appellant Lucrecia Siega's mother, Victoria Siega, asked their permission to build a small shanty on the subject land. Appellees acceded to her request but on the condition that she vacate the property should the need for it arise.

On January 5, 1999, the heirs of Bonifacio Sacro's children, in representation of their deceased parents, executed a Partition Agreement^[2] formalizing the earlier verbal partition made by their parents. Lucrecia Alberca, representing her mother Cornelia, was assigned, among others, the subject land. However, in February 2000, appellants entered the subject land and started to construct a residential house thereon. Appellees demanded that the appellants cease construction and vacate the premises. Nevertheless, it fell to deaf ears. Earnest efforts towards a compromise were made but proved futile. Hence, appellees filed the instant Complaint for Recovery of Real Property with Preliminary Injunction and Damages against the appellants before the RTC.

Conversely, appellants assert that no oral partition was ever made by the heirs of

Bonifacio Sacro. Concomitantly, they contend that no valid partition could be made because Bonifacio's estate was then subject of litigation in Civil Case No. R-1912 before the court *a quo*. Appellants maintain that their father, Rafael Siega, inherited the subject land from his mother Juliana Siega, daughter of Filomena Sacro. They also stress that even before the death of their father, they have been in peaceful possession and actual occupation of the subject land in the concept of an owner. Thus, appellants deny that their mother, Victoria Siega, asked permission from appellees to occupy the subject land since it was unnecessary as it was their father's inherited property to begin with. Furthermore, appellants contest the Partition Agreement executed on January 5, 1999 because it failed to include the property inherited by appellant Lucresia Siega from her father, which is declared in a separate and distinct tax declaration under her name. Lastly, appellants contend that the action filed by the appellees is barred by laches and prescription.

On April 18, 2012, the trial court rendered its Decision against appellants, the dispositive portion of which reads:^[3]

WHEREFORE, all the foregoing considered, the court hereby renders judgment for the plaintiffs -

1. declaring the plaintiffs the lawful owners and possessors of that parcel of land denominated as Lot 3, Block 2 in the Sketch Plan, marked as Annex "A" of the Commissioners Report, having an area of 39 square meters; and
2. ordering the defendants to vacate the said premises and to peacefully deliver possession thereof to plaintiffs.

No costs.

SO ORDERED.

It ruled that the Complaint was not barred by prescription and laches as the same shall not run against a co-owner or co-heir. It found that the heirs of Bonifacio Sacro had definitely agreed to partition his estate since the heirs are claiming particular portions of his properties. The trial court ratiocinated that without partitioning Bonifacio's properties, the heirs could not claim specific portions of the estate because it was originally owned by them in common. Consequently, it ruled that Bonifacio's estate was indeed partitioned on January 5, 1999 when his heirs executed the assailed Partition Agreement. It brushed aside appellees' claim that an oral partition took place sometime in 1974 or 1975 since it was not satisfactorily proven.

Corollarily, the trial court observed that appellants' predecessors-in-interest were allotted their rightful share in Bonifacio's estate and subsequently executed their own Partition Agreement^[4] on November 23, 2000. It pointed out that all of Bonifacio's heirs, including appellants, knew what properties were assigned to them. Appellants were aware of appellees' claim over the subject land since a relocation and subdivision survey was conducted on the property. Therefore, the trial court ruled that there was sufficient showing that appellants had knowledge of the partition. It also noted that among the heirs of Bonifacio Sacro, only appellants had

contested the January 5, 1999 Partition Agreement. However, since appellants failed to present any evidence to justify the annulment of the agreement, the trial court found appellees as the lawful owners of the subject land

Thus, the appeal before Us.

The Issues:

The Assignment of Errors^[5] raised by the appellants may be summarized as follows:

- a) Whether or not the partition of Bonifacio Sacro's estate was valid and binding upon appellants who allegedly had no knowledge of the partition and was left out in the agreement.
- b) Whether or not the trial court had jurisdiction over the case since the assessed value of the subject land was not alleged.

The Court's Ruling

The appeal is bereft of merit.

To begin with, contrary to the contention of the appellants, appellees satisfactorily alleged the assessed value of the subject land in their Complaint:^[6]

" a portion of Parcel III with an area of 742 sq. meters, and bounded on the North, Wenefreda Caliente; East, by Hrs. of Gaudioso Bacong; South, by P. Gonzales St., and West, by Bonifacio Salar, with an assessed value of P110.00."

Moreover, the trial court also mentioned the assessed value of the subject land in its Decision, to wit:^[7]

x x x Lucrecia Alberca, representing her mother Cornelia and represented by her husband, co-plaintiff Alfredo Napalan, was allotted, among others,
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A portion of Parcel III with an area of 742 sq. meters and an assessed value of P110.00, and bounded on the North by Wenefreda Caliente; East by Heirs. of Gaudioso Bacong; South by P. Gonzales St.; and West by Bonifacio Salar.

Evidently, the assessed value of the subject land was properly alleged by the appellees. Thus, appellants' contention has simply no leg to stand on. Accordingly, the trial court was not deprived of jurisdiction to try and hear the instant case.

Anent the main issue, it is a general rule that findings of the trial court which are factual in nature deserve to be respected and affirmed if they are supported by substantial evidence on record.^[8] A painstaking examination of the records in this case would show that indeed the findings of the trial court with respect to the validity of the January 5, 1999 Partition Agreement should be upheld. Having been duly notarized, said agreement is a public document which carry the evidentiary weight conferred upon it with respect to its due execution.^[9] Public documents enjoy a presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity.^[10] Hence, the trial court aptly ruled that there was no satisfactory proof to render the agreement illegal or void^[11]

x x x By filing a counterclaim wherein defendants assailed the Partition Agreement as void, defendants could be considered to have timely instituted an action for the annulment of the said partition. However, defendants' ground for claiming that the partition is illegal and void was that the estate of Bonifacio Sacro was then the subject of litigation in Civil Case No. R1912, entitled Casiana Montederamos, et. al. versus Brigido Narit, et. al. for Quieting of Title. The Court sees no reason why the pendency of the afore-cited case that pitted the heirs of Bonifacio Sacro against a third person who was not an heir could validly prevent a partition among the heirs. The allegation of fraud may be inferred from defendants' claim that they have no knowledge of the partition. *Ei incumbit probatio qui dicit, non qui negat*. He who asserts, not he who denies, must prove. Having asserted that fraud attended the execution of the partition, it is the burden of the defendants in this case to prove the existence of fraud and it is not for the plaintiffs to establish that there was no fraud in the making of the partition. However, defendants have shown no satisfactory proof of such fraud.

Concededly, aside from appellants' bare allegations of fraud, because they were not informed of the partition, there is no other compelling evidence proving the same. Indeed, appellants failed to discharge the duty imposed upon them that he who alleges a fact has the burden of proving it and a mere allegation is not evidence.^[12]

From the foregoing, there is substantial evidence to support the trial court's factual holding confirming the validity of the Partition Agreement. Along the same vien, while it is true that appellants were not signatories to the agreement, they were, nonetheless, not prejudiced by said partition. Appellants were not excluded in receiving their share in the partitioned property. The trial court correctly ruled that all of Juliana Siega's heirs, including appellant Lucrecia Siega, were given their rightful share in Bonifacio Sacro's estate, viz:^[13]