

TWENTIETH DIVISION

[CA-G.R. CEB CV NO. 02092, November 26, 2014]

**NEMESIO DOINOG AND THE HEIRS OF DONATA DOINOG,
REPRESENTED BY MERLA D. JAROPOJOP, PLAINTIFFS-
APPELLEES, VS. VICTORIA MACABIDANG, DEFENDANT-
APPELLANT.**

D E C I S I O N

QUIJANO-PADILLA, J.:

This is an appeal from the Decision^[1] dated May 28, 2007, of the Regional Trial Court, 8th Judicial Region, Branch 31, Calbayog City, in Civil Case No. 348 for Ownership and Recovery of Property.

The Facts

The instant action stems from the Complaint filed by plaintiffs-appellees on July 27, 1989 before the RTC, which reads:

“ Plaintiffs through counsel, allege:

1. [T]hat they are all of legal age, each with capacity to sue and to be sued, and with their respective residences, as follows:

Name of Heir	Residence
MERLA D. JAROPOJOP	Brgy. Cabanatuan, Oquendo District
ANICETA CATAMORA	Brgy. Tomaliges, Calbayog City
FE JOSE	Brgy. Payahan, Calbayog City
MERCEDES OPANES	Brgy. Pilar, Oquendo District
EDITHA ALEJANDRINO	Brgy. Trinidad, Calbayog City
EDUARDO DOINOG	Manila
EDITO DOINOG	Poblacion, Calbayog City
EDILBERTO DOINOG	Brgy. Trinidad, Calbayog City
BENITO DOINOG	Brgy. Trinidad, Calbayog City
MARIA MEDY DOINOG	Brgy. Trinidad, Calbayog City
MARIA NELY DOINOG	Brgy. Trinidad,

Calbayog City

Defendant is likewise of legal age, with capacity to sue and to be sued, and a resident of Brgy. Cabatuan, Oquendo District, Calbayog City, where she may be served with summons;

2. That plaintiffs are the heirs of Donata Doinog, who in her lifetime together with Nemesio Doinog, acquired the three-fourths ($\frac{3}{4}$) portion/share of real property situated at [Brgy.] Cabatuan, Orquendo District, Calbayog City, more particularly described as follows:

"A parcel of agricultural land with an area of more or less 46,894 square meters, covered by a tax declaration no. 08993 in the name of Victoriano Alandino, bounded as follows: North-Bonifacio Lentejas; South- Jorge Bonguet; East-Cagbanacaroo Brook; and West- Solop Brook assessed at P720.00"

3. That in 1973 Donata Doinog mortgaged all her interest in the above described property via a public document of sale but with a collateral understanding that defendant-mortgagee will take over possession and management of the land the produce thereof;

4. That in the year 1976, Donata Doinog redeemed said mortgage and demanded for the return of possession of her $\frac{3}{4}$ portion/share but the latter then refused. When Donata Doinog died, her heirs (plaintiffs) demanded again from the same defendant the return of the possession of the land but again refused until the present;

5. That the land yields a quarterly produce of 3,000 nuts equivalent to P1,500.00 and 80 cavans of palay per harvest season, equivalent to P8,000.00 more or less;

6. That to protect their rights and interest over that land, they were forced to litigate and incurred expenses in the process.

WHEREFORE, it is prayed that after hearing, defendants be ordered to:

1. Recognize the ownership of $\frac{3}{4}$ of the land described in par.2 hereof, and to turn over the same to plaintiffs;
2. To pay plaintiffs actual damages in the form of unrealized share of the plaintiffs from the harvest of that land, as abovestated;
3. And to pay plaintiff(s) the reimbursement of their litigation expenses as may be proved during the trial.

Plaintiffs pray for such other relief which they may be entitled under the law."^[2]

Donata Doinog [Donata] married Nemesio Doinog [Nemesio] and out of that marriage they have eleven [11] children, herein plaintiffs-appellees. The land

subject of this controversy is owned by Victoriano Alandino [Victoriano] and Demetria Alandino [Demetria], which land is particularly described as follows:

"A parcel of coconut and riceland (unirrigated), bounded on the North by Bonifacio Lentejas and Pedro Moncano; South by Jorge Bonguit; East by the Cagbancaro Brook; and West by Solop Brook; having an area of 4 hectares more or less and assessed at P662.05." [3]

It was declared for taxation purposes under Tax Declaration No. 08993 in the name of Victoriano.

Victoriano and Demetria had three [3] children namely: Donata Alandino, Gloria Alandino and Patricio Alandino. Donata married Nemesio Doinog while Patricio married herein defendant-appellant Victoria Macabidang [Victoria]. On April 17, 1973, Victoriano died and two [2] days later his son, Patricio also passed away.

On December 4, 1973, Demetria, executed a Deed of Absolute sale in favor of Donata involving "one-half determinate portion towards the south of the rice land only" for a consideration of Five Hundred Pesos [P500.00]. [4]

On the same day, Donata's sister Gloria, likewise executed a Deed of Absolute Sale of her share in favor of the former, which share was described as "one-third of the one-half portion only of the riceland above-described." [5]

Apart from that, on April 6, 1979, Demetria and Gloria executed a Deed of Quitclaim and Renunciation of Rights in Realty in favor of Donata consisting of 5,000 square meters. [6]

In sum, the total area claimed by Donata sums up to 18,337 square meters encompassing the rice land and the coco land portion of TD. No. 08993. [7] On August 30, 1973, Donata mortgaged all of her share to Victoria for a consideration of P1,000.00 [8] and the latter was placed in possession of the property mortgaged. Sometime in 1976, Donata tried to redeem from Victoria the property she mortgaged but the latter did not surrender possession thereof. Moreover, Victoria transferred in her name the tax declaration of the entire lot, canceling Tax Declaration No. 08993 and is now under Victoria's name under Tax Declaration No. 018574. Later on, when Donata died, her heirs, plaintiffs-appellees herein demanded for the possession of the land but the same proved futile.

Defendant-appellant Victoria contends that sometime in June 1968, during the lifetime of Victoriano and Demetria, the said spouses sold to her and her former husband, Patricio, the whole coconut land portion of the land covered under TD 08993 in their favor. Although the Deed of Absolute Sale was then unnotarized, [9] the said sale was later on confirmed by Demetria when she executed a notarized Deed of Confirmation of Previous Sale on August 5, 1973 in favor of Victoria. [10] Therefore, what remains in the estate of Victoriano is the riceland portion only.

So after the death of Victoriano, the riceland portion was partitioned by his children and his wife Demetria. After the partition, each heir took possession of their respective shares. Donata mortgaged her share to Victoria and the same was later on redeemed. On the other hand, Gloria sold her share to Victoria.

As it turns out later on, what really transpired was not a mortgage because after Donata repurchased the said property from Victoria, the latter remained and continue to remain to be in possession of the said property which only means that the transaction is really one of conditional sale.^[11]

The RTC, in its Decision^[12] dated May 28, 2007, ruled:

“WHEREFORE, the court makes the following rulings:

1. The coconut land portion of the land covered by Tax Declaration No. 08993 belongs to defendant Victoria Macabidang and the other heirs of Patricio Alandino;
2. The 7,541 square meters of the ricefield portion of the land covered in the sketch plan is owned in common by the plaintiffs. Since, this ricefield was already partitioned, the partition should be followed in determining the portion of the plaintiffs. On the other hand, the remaining 1,508 square meters portion is owned in common by the heirs of Patricio Alandino.
3. The 5,000 square meter portion of the land covered by T.D. No. 08993 denominated in the sketch plan as “Dowry of Donata A. Doinog” and covered by T.D. No. 05060 in the name of Donata A. Doinog is owned by the plaintiffs in common.
4. The defendant should pay the plaintiffs one million two hundred twenty seven thousand and six hundred pesos (P1,227,600.00) by way of actual damages and P500.00 as litigation expenses.
5. The defendant is ordered to pay plaintiffs P20,000.00 by way of exemplary damages;
6. The defendant is ordered to pay the costs of the suit; and
7. Defendant's counterclaims are dismissed for lack of legal basis.

SO ORDERED.”^[13]

Thus, from the adverse decision, defendant-appellant comes to Us on appeal with the following assignment of errors, to wit:

“I. THE COURT A QUO ERRED IN FAILING TO DISMISS THE COMPLAINT ALTHOUGH THE APPELLEES FAILED TO PROPERLY (IDENTIFY) THE PROPERTY THEY SEEK TO RECOVER AND ESTABLISH THEIR TITLE TO IT BASED ON THEIR OWN EVIDENCE PURSUANT TO ARTICLE 434 OF THE NEW CIVIL CODE;

II. THE COURT A QUO ERRED IN FAILING TO DISMISS THE COMPLAINT NOTWITHSTANDING THE FACT THAT THE HEREIN ACTION BASED ON A WRITTEN CONTRACT OF REAL ESTATE MORTGAGE WAS FILED MORE THAN TEN (10) YEARS FROM THE ACCRUAL OF THE CAUSE OF ACTION

PURSUANT TO ARTICLE 1144(1) OF THE NEW CIVIL CODE AND, ALSO, BARRED BY ARTICLE 1142 OF THE SAME CODE;

III. THE COURT A QUO ERRED IN FAILING TO DECLARE THAT APPELLEES ARE BEREFT OF ANY LEGAL CAUSE OF ACTION CONSIDERING THAT THE COMPLAINT IS DEVOID OF ANY ADEQUATE ALLEGATIONS OF MATERIAL FACTS SHOWING THAT THE APPELLEES HAVE EXERTED EARNEST EFFORTS TOWARDS A COMPROMISE AS THEY AND APPELLANT ARE MEMBERS OF THE SAME FAMILY, PURSUANT TO ARTICLE 151 OF THE FAMILY CODE;

IV. THE COURT A QUO ERRED IN CONDEMNING THE APPELLANT TO PAY DAMAGES ALTHOUGH THE SAME IS NOT SUPPORTED BY EVIDENCE, BUT, SOLELY BASED ON THE TESTIMONIES OF APPELLEE MERLA D. JAROPOJOP WHICH ARE NOT MERELY UNCORROBORATED, BUT HEARSAY ALSO; AND

V. THE COURT A QUO HAS ERRED IN DISMISSING THE COUNTERCLAIMS OF THE APPELLANT ALTHOUGH MERITORIOUS AND TENABLE, UNREFUTED BY THE APPELLEES.”^[14]

Our Ruling

Before going into the issues raised on appeal by defendant-appellant Victoria, We shall first sort out the claims of the contending parties. Admittedly, the specific portion of the claim of plaintiffs-appellees were not alleged in the complaint, so that the RTC in recognition thereof issued an Order dated October 17, 1989^[15] appointing a commissioner to measure the area of the whole land and to plot the area possessed by Demetria, Patricio, Gloria and Donata. However, the Commissioner's Report^[16] dated November 16, 1989, submitted to the RTC, did not fully achieve the purpose for which it was constituted for the following reasons:

“That in pursuance to the order of the court, the parties were asked by the undersigned whether they can pinpoint the portions allocated in oral partition to Demetria Julaton, Patricio Alandino, Gloria Alandino and Donata Alandino. They manifested that they have no knowledge of such oral partition, hence, this commissioner could not define the said portions of the land.

That what we did was to effect the measurement by metes and bounds of that property described in Paragraph 2 of the complaint covered by Tax Dec. No. 08993, in the name of Victoriano Alandino.

Upon request of the plaintiffs, the portion said to be the Dowry (bantag) of Doinog, Donata as well as, the ricefield and the coconut portion were determined x x x .”

So to start off, sometime in June 1968, an unnotarized Deed of Absolute Sale^[17] was executed by the spouses Victoriano and Demetria Alandino, in favor of then spouses Patricio and Victoria Alandino, the pertinent portion of the agreement, reads: