Supreme Court E-Library

THIRD DIVISION

[G.R. No. 65416. October 26, 1999]

CARLOMAGNO A. CRUCILLO, ADELAIDA C. PERENA, LUCIA ROZUL, PRIMITIVA MENDOZA SUMAGUI, YOLANDA ROZUL, PABLITA ROZUL, PETRITA ROZUL, ROSALINA ROZUL, MAXIMINO CRUCILLO, NICASIO SARMIENTO, MARCIAL SARMIENTO, CIPRIANO SARMIENTO, CONRADO CRUCILLO, LOURDES CRUCILLO, MIGUEL CRUCILLO, FELICIDAD CRUCILLO, and MIGUELA CRUCILLO, *petitioners, vs.* **THE INTERMEDIATE APPELLATE COURT, LUCIO PERENA, RAFAEL A. CRUCILLO, MIGUEL R. PERLADO, FELIX NOCEDA, BENITA GATPANDAN NOCEDA, and THE PROVINCIAL ASSESSOR OF CAVITE,** *respondents.*

SYNOPSIS

Petitioners, heirs of the late Balbino Crucillo, occupied and possessed portions of parcels of lands left by the deceased, constructed improvements thereon and declared in their names for taxation purposes their respective shares. Rafael, one of the surviving heirs, in a *"Patuluyang Bilihan ng Isang Lagay na Lupa"* sold his share, a portion of the lot and the ancestral house, to co-respondents Spouses Noceda. Meanwhile a *"Kasulatang Sa Partihan Labas sa Hukuman"* (Exh. "A" or Deed of Partition) was executed by Adelaida Crucillo, Rafael Crucillo, Carlomagno Crucillo, the heirs of Elena Crucillo and the heirs of Maximino Crucillo dividing among themselves a parcel of land declared under Tax Declaration No. 376. Rafael executed another instrument entitled *"Kasulatan Sa Ganap Na Bilihan"* (Exh. "B" or Deed of Sale) in favor of respondents Spouses Noceda. Tax Declaration No. 376 was then cancelled and 5 new ones were issued. Tax Declaration 5417 was issued in the name of Spouses Noceda.

A complaint was filed for the annulment of the deed of extrajudicial partition, Deed of Sale and the five (5) new tax declarations issued in lieu of Tax Declaration No. 376. The

Supreme Court E-Library

case was dismissed for failure of plaintiffs to exert earnest efforts towards a compromise. When efforts to settle the case amicably failed, the case was refiled. Judgment was rendered declaring the Deed of Partition (Exh "A") as well as the subsequent tax declarations issued null and void. The trial court, however, declared the Nocedas spouses the true and lawful owners of the disputed property. Motions for reconsiderations were denied. On appeal, the Court of Appeals originally declared the Deed of Sale (Exh. "B") null and void but on reconsideration, sustained its validity declaring the Spouses Noceda the true and lawful owners of the subject property. Hence, this petition assailing the findings of fact of the Court of Appeals.

Generally, questions of facts are not proper in an appeal on *certiorari* except when the appealed decision is clearly contradicted by the evidence or when the appellate court miscomprehended the facts. However, this is inapplicable in this case as the Court of Appeals correctly appreciated the facts in arriving at its questioned resolution.

An oral agreement for the partition of the property owned in common is valid, binding and enforceable on the parties and that a co-owner can validly dispose of his share therein without right of redemption from the other co-owners.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT OF COURT OF APPEALS GENERALLY UPHELD ON APPEAL; CASE AT BAR, NOT AN EXCEPTION.** — The petition raises questions of fact which are not proper in an appeal on *certiorari*. Petitioners cited exceptions to the rule — as when the factual findings of the trial court and the appellate court conflict, when the appealed decision is clearly contradicted by the evidence on record, or when the appellate court miscomprehended the facts — justifying a review, but the exceptions aforecited are inapplicable to the case under consideration, it appearing that the appellate court correctly appreciated the facts in arriving at its questioned resolution. Even granting *arguendo* that the petition falls under any of the above exceptions justifying a factual review of the findings of the respondent court, the petition cannot prosper. The Court

Supreme Court E-Library

is of the opinion, and so holds, that the assailed Resolution of the respondent court has sufficient evidentiary support, on the basis of which the respondent court abandoned its earlier Decision.

2. **ID.; ACTIONS; ESTOPPEL; PARTIES, AFTER EXERCISING ACTS OF OWNERSHIP OVER RESPECTIVE PORTIONS OF CONTESTED ESTATE, ESTOPPED FROM DENYING EXISTENCE OF ORAL PARTITION.** — From the foregoing facts, it can be gleaned unerringly that the heirs of Balbino A. Crucillo agreed to orally partition subject estate among themselves, as evinced by their possession of the inherited premises, their construction of improvements thereon, and their having declared in their names for taxation purposes their respective shares. These are indications that the heirs of Balbino A. Crucillo agreed to divide subject estate among themselves, for why should they construct improvements thereon, pay the taxes therefor, and exercise other acts of ownership, if they did not firmly believe that the property was theirs. It is certainly foolhardy for petitioners to claim that no oral partition was made when their acts showed otherwise. Moreover, it is unbelievable that the possession of the heirs was by mere tolerance, judging from the introduction of improvements thereon and the length of time that such improvements have been in existence. Then too, after exercising acts of ownership over their respective portions of the contested estate, petitioners are estopped from denying or contesting the existence of an oral partition.

3. **CIVIL LAW; CO-OWNERSHIP; DISSOLUTION; PARTY COULD VALIDLY CONVEY HIS OWN SHARE; CASE AT BAR.** — Anent the second and third issues — whether there was a valid conveyance by Rafael Crucillo of the lot subject matter of the "Kasulatan Sa Ganap Na Bilihan" to the spouses Felix Noceda and Benita Gatpandan-Noceda, and whether the latter spouses acquired true and lawful ownership thereof, including the ancestral house standing thereon, the Court also rules in the affirmative. As the existence of the oral partition of the estate of Balbino A. Crucillo by his heirs has been well established, it stands to reason and conclude that Rafael Crucillo could validly convey his share therein to the spouses Felix

Supreme Court E-Library

Noceda and Benita Gatpandan-Noceda who then became the true and lawful owners thereof, including the ancestral house existing thereon. Petitioners have, therefore, no right to redeem the same property from the spouses Noceda because when the sale was made, they were no longer co-owners thereof, the same having become the sole property of respondent Rafael Crucillo.

4. **ID.; DAMAGES; ACTUAL AND MORAL DAMAGES AND ATTORNEY'S FEES; AWARD MUST BE SUPPORTED WITH PROPER BASIS.** — As regards petitioners' prayer for an award to them of actual and moral damages and attorney's fees, the same is denied for want of proper basis in law and jurisprudence.

APPEARANCES OF COUNSEL

Carlos Dans for petitioners.
Franco L. Loyola for private respondents.

D E C I S I O N

PURISIMA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court seeking a reversal of the Resolution,[1] dated October 7, 1983, of the former Intermediate Appellate Court (now Court of Appeals) in AC-G.R. No. CV-61084.

The facts that matter are as follows:

Balbino A. Crucillo was married to Juana Aure. They were blessed with eight (8) children, namely, Elena, Maximino, Perpetua, Santiago, Adelaida, Miguel, Rafael, and Vicente, all surnamed Crucillo.

Balbino A. Crucillo died intestate in 1909. Juana Aure died on November 19, 1949. Balbino A. Crucillo left, among other

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[1] Penned by Associate Justice Marcelino R. Veloso and concurred by Associate Justices Porfirio V. Sison, Abdulwahid A. Bidin, and Desiderio P. Jurado.

Supreme Court E-Library

things, two (2) parcels of unregistered land situated at General Luna Street, Mendez-Nunez, Cavite, with a total area of 1,998 square meters under Tax Declaration No. 376[2] of the Office of the Provincial Assessor of Cavite. He was survived by his heirs, who became co-owners of the aforesaid lots and thereafter, entered into the possession thereof.

It is worthy to note that when the present case was commenced below, the only surviving children of Balbino A. Crucillo were Adelaida Crucillo, Miguel Crucillo, and Rafael Crucillo. The other children above-named died, and were survived by their respective heirs, to wit:

1. Elena Crucillo-Mendoza
    - 1.1 Primitiva Mendoza (daughter)
    - 1.2 Lolita Mendoza-Rozul (daughter),

    deceased, with the following heirs:
        - 1.2.1 Yolanda Rozul
        - 1.2.2 Pablita Rozul
        - 1.2.3 Petrita Rozul
        - 1.2.4 Lucia Rozul
        - 1.2.5 Rosalina Rozul
2. Maximino Crucillo
    - 2.1 Carlomagno Crucillo
    - 2.2 Maximino Crucillo, Jr.
    - 2.3 Vicente Crucillo
3. Perpetua Crucillo-Sarmiento
    - 3.1 Nicasio Sarmiento
    - 3.2 Cipriano Sarmiento

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[2] See Exhibit "C-5", *Rollo* of Exhibits, pp. 18-19.

Supreme Court E-Library

3.3 Marcial Sarmiento

3.4 Buenaventurada Sarmiento

4. Santiago Crucillo

4.1 Conrado Crucillo

4.2 Lourdes Crucillo

5. Vicente Crucillo

5.1 Felicidad M. Crucillo (widow)

5.2 Nicolas Crucillo (son-now deceased)

5.3 Miguela C. Crucillo (widow of Nicolas)

Soon after the death of Balbino A. Crucillo, the following persons occupied and possessed portions of subject parcels of land:

1. Rafael Crucillo occupied and resided in the ancestral house erected on a portion of subject lots;

2. Nicasio Sarmiento, son of Perpetua Crucillo Sarmiento, caused a residential lot situated at Gen. Trias St., Mendez, Cavite, to be registered in his name;

3. Miguel Crucillo possessed exclusively a residential lot situated at Gen. Trias St., Mendez, Cavite;

4. Vicente Crucillo, Buenaventurada Sarmiento (daughter of the deceased Perpetua Crucillo-Sarmiento), and Atty. Conrado Crucillo (son of the deceased Santiago Crucillo) owned in common an agricultural land situated in Sitio Niko, Mendez, Cavite, covered by Tax Declaration No. 1179;[3]

5. The heirs of Elena Crucillo-Mendoza, Adelaida Crucillo, and Nicasio Sarmiento owned in common an agricultural land in Pulong Munti, covered by Tax Declaration No. 375;[4]

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[3] See Exhibit "6", *Rollo* of Exhibits, p. 63.

[4] See Exhibit "7", *Rollo* of Exhibits, p. 64.

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6. Buenaventurada Sarmiento and Vicente Crucillo owned in common another property covered by Tax Declaration No. 663;[5]

7. Primitiva Mendoza possessed an agricultural land in Pulong Munti and in Niko, Mendez, Cavite;

8. Carlomagno Crucillo possessed an agricultural land situated in Sitio Maykiling, Mendez, Cavite; and

9. Miguel Crucillo occupied exclusively an agricultural land in Pulong Munti and Ulo ng Bukal.

On March 28, 1969, respondent Rafael A. Crucillo executed and entered into a "*Patuluyang Bilihan Ng Isang Lagay Na Lupa*"[6] with the co-respondents, spouses Felix Noceda and Benita Gatpandan-Noceda, whereby Rafael A. Crucillo, for the price of Twenty Thousand (₱20,000.00) Pesos, sold and conveyed to the spouses Noceda a parcel of land more particularly described:

"Isang lagay na lupang (solar) na may luang na APAT AT WALOMPONG (480) metro cuadrados, humiguit kumulang (labing dalawang [12] metro and [sic] *haba simula sa linderong Ibaba hanggang Ilaya at apat na pung [40] metro and haba simula sa kalye sa Kanluran hangang sa linderong Silangan) bahagui ng isang lagay na lupang nasasaad sa Hoja Declaratoria Bilang 376 at kung tuluyang mapahiwalay sa kalihon ay libot ng mga sumusunod na karatig: Sa Ibaba, lupang pagaari ni* Adelaida Crucillo; *sa Ilaya,* Santiago Crucillo *(ngayon,* Carlomagno Crucillo*); sa Silangan,* Crispin Llamado *(ngayon,* Simeon Manalo*); at sa Kanluran, Kalye* General Luna, *sa libot ng bakod na bato at iba pang matitibay na pananda sa panabi."*

which parcel of land formed part of the estate of Balbino A. Crucillo.

The spouses Noceda delivered the amount of ₱4,000.00 to Rafael A. Crucillo as partial payment of the price agreed upon.

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[5] See Exhibit "10", *Rollo* of Exhibits, p. 70.

[6] See Exhibit "D", *Rollo* of Exhibits, p. 20.

Supreme Court E-Library

On April 15, 1969, the petitioner, Conrado Crucillo, wrote the Register of Deeds of Cavite requesting the latter to hold in abeyance the registration of the said land transaction for the reason that the same was done without the knowledge, consent and authority of the co-owners of subject property and consequently, null and void.[7] In connection therewith, petitioner Carlomagno Crucillo and Anita Perena (daughter of petitioner Adelaida Crucillo) returned to respondents Noceda the amount of ₱4,000.00 which the latter had partially paid to their co-respondent, Rafael Crucillo.

Sometime in February 1971, respondent Rafael Crucillo presented to the office of the Provincial Assessor of Cavite, Trece Martires City, Cavite, a "*Kasulatan Sa Partihang Labas sa Hukuman*"[8] dated February 17, 1971, executed by and between petitioners Primitiva Mendoza, Carlomagno Crucillo, Adelaida A. Crucillo, and respondent Rafael Crucillo; dividing the estate into five (5) equal parts with the following beneficiaries:

1. Heirs of Elena A. Crucillo
2. Heirs of Maximino Crucillo
3. Adelaida A. Crucillo
4. Rafael A. Crucillo
5. Carlomagno A. Crucillo

On February 19, 1971, respondent Rafael A. Crucillo and the co-respondents spouses, Felix Noceda and Benita Gatpandan-Noceda, executed a "*Kasulatan Sa Ganap Na Bilihan*"[9] whereby Rafael A. Crucillo conveyed and sold to his said co-respondents, for and in consideration of the sum of ₱25,000.00, a parcel of land more particularly described as:

"Isang lagay na lupa na nasa poblacion, munisipyo ng Mendez-Nunez, Kabite, *may luang na DALAWANG DAAN AT APAT NA PU*

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[7] See Exhibit "H", *Rollo* of Exhibits, p. 25.

[8] See Exhibit "A", *Rollo* of Exhibits, pp. 1-3.

[9] See Exhibit "B", *Rollo* of Exhibits, pp. 8-9.

Supreme Court E-Library

AT LIMANG (245) metros cuadrados, humiguit kumulang nasasaad sa Hoja Declaratoria Bilang ____ at libot ng mga sumusunod na karatig: Sa Ibaba, lupang pag-aari ni Adelaida A. Crucillo; *Sa Ilaya,* Santiago A. Crucillo, *ngayon ay* Carlomagno A. Crucillo; *sa Silangan,* Carlomagno A. Crucillo *at sa Kanluran, Kalye* General Trias, *at libot ng bakod na bato at iba pang buhay na bakod at mga panabi o hanganan."*

On February 23, 1971, the respondent Provincial Assessor of Cavite, by virtue of the *"Kasulatan sa Ganap na Bilihan"* and *"Kasulatan sa Partihang Labas sa Hukuman,"* cancelled Tax Declaration No. 376[10] in the name of Balbino A. Crucillo and issued in lieu thereof the following new tax declarations:

a. Tax Declaration No. 5413[11] in the name of the heirs of Elena A. Crucillo;

b. Tax Declaration No. 5414[12] in the name of the heirs of Maximino Crucillo;

c. Tax Declaration No. 5415[13] in the name of Adelaida A. Crucillo;

d. Tax Declaration No. 5416[14] in the name of Carlomagno A. Crucillo, married to Felicitas de Keyser; and

e. Tax Declaration No. 5417[15] in the name of the Spouses Felix Noceda and Benita Gatpandan Noceda.

Subsequently, the respondent spouses, Felix Noceda and Benita Gatpandan Noceda, started possessing the property sold to them by Rafael Crucillo, occupied the ancestral house standing on the property, and introduced improvements thereon.

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[10] *Supra*, footnote 2.

[11] See Exhibit "C", *Rollo* of Exhibits, pp. 10-11.

[12] See Exhibit "C-1", *Rollo* of Exhibits, pp. 12-13.

[13] See Exhibit "C-2", *Rollo* of Exhibits, p. 14.

[14] See Exhibit "C-3", *Rollo* of Exhibits, p. 15.

[15] See Exhibit "C-4", *Rollo* of Exhibits, pp. 16-17.

Supreme Court E-Library

On March 12, 1971, petitioner Carlomagno Crucillo's lawyer, Abraham Sarmiento (later to become Associate Justice of this Supreme Court) wrote the Provincial Assessor of Cavite, Trece Martires City, to request the latter to withhold any future transactions on or transfers of the parcel of land covered by Tax Declaration No. 5417 until the question of ownership of the land involved shall have been settled by judicial adjudication.[16]

On August 14, 1971, the petitioners' counsel wrote respondent Felix Noceda, asking the latter to "stop or refrain immediately from continuing any work or construction which [you] may have started upon receipt of this letter" and to "vacate the portion of land that you have occupied without the consent of all the heirs of Balbino Crucillo x x x."[17]

On August 13, 1971, petitioners brought a complaint[18] against the respondents for "Annulment of Extrajudicial Partition, Deed of Sale, and Tax Declaration Nos. 5413, 5414, 5415, 5416 and 5417 of the Office of the Provincial Assessor of Cavite, with Damages," docketed as Civil Case No. TG-190, before Branch IV of the defunct Court of First Instance of Cavite but the same was dismissed for plaintiff's failure to exert earnest efforts towards a compromise, as required by Article 222 of the New Civil Code.

On May 4, 1972, when efforts to settle amicably failed, petitioners filed a substantially similar Complaint, docketed as Civil Case No. TG-204, which Complaint was amended on August 29, 1972 to implead as co-plaintiffs, the petitioners, Felicidad Crucillo and Miguela Crucillo.[19]

The petitioners, Primitiva Mendoza-Sumagui, Yolanda Rozul, Pablita Rozul, Petrita Rozul, Lucia Rozul, Rosalina Rozul, Vicente Crucillo, Conrado Crucillo, Lourdes Crucillo, Felicidad Crucillo,

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[16] See Exhibit "I", *Rollo* of Exhibits, pp. 26-27.

[17] See Exhibit "E", *Rollo* of Exhibits, p. 22.

[18] Amended Record on Appeal, *Rollo*, pp. 155-180.

[19] Amended Record on Appeal, *Rollo*, pp. 192-203.

Supreme Court E-Library

and Miguela Crucillo, were declared non-suited for failure to attend the pre-trial conference on October 2, 1972.

On October 31, 1975, after trial on the merits, the trial court came out with a Decision,[20] disposing thus:

"WHEREFORE, judgment is hereby rendered:

a) Declaring the Deed of Partition, Exh. "A", null and void;

b) Declaring the defendants-spouses Felix Noceda and Benita Gatpandan to be the true and lawful owners of the 'ancestral house' and the lot upon which it is erected, consisting of 249.75 square meters, more or less. Pursuant to Art. 1623 of the New Civil Code however, the plaintiffs are hereby given thirty (30) days from notice to their counsel within which to exercise their right of legal redemption;

c) Declaring Tax Declaration Nos. 5413, 5414, 5415, 5416, and 5417 of the Office of the Provincial Assessor of Cavite (Exhs. 'C', 'C-1' to 'C-4') null and void, and directing the Provincial Assessor of Cavite to cancel the same;

d) Directing the Provincial Assessor of Cavite to issue new Tax Declaration in lieu of Tax Declaration No. 376 (Exh. 'C-5'), as follows:

1) To the 'Heirs of Elena Crucillo,' for a parcel of land containing an area of 249.75 sq. m., in lieu of Tax Declaration No. 6413;

2) To the 'Heirs of Maximino Crucillo' for a parcel of land containing an area of 249.75 square meters in lieu of Tax Declaration No. 5414;

3) To 'Adelaida Crucillo' for a parcel of land containing an area of 249.75 square meters, in lieu of Tax Declaration No. 5415;

4) To 'Carlomagno Crucillo' for a parcel of land containing an area of 249.75 square meters, in lieu of Tax Declaration No. 5416;

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[20] Amended Record on Appeal, IAC Record, pp. 158-179.

Supreme Court E-Library

5) To the 'Spouses Felix Noceda and Benita Gatpandan' for a parcel of land containing an area of 249.75 square meters and the house erected thereon, in lieu of Tax Declaration No. 5417;

6) To the 'Heirs of Vicente Crucillo' for a parcel of land containing an area of 249.75 square meters;

7) To the 'Heirs of Perpetua Crucillo' for a parcel of land containing an area of 249.75 square meters;

8) To 'Miguel Crucillo' for a parcel of land containing an area of 249.75 square meters; all in accordance with the Sketch Plan (Exhs. 'X' and 'Y');

e) Dismissing plaintiff's second and third causes of action;

f) Dismissing defendant's counterclaim for insufficiency of evidence.

No pronouncement as to costs.

SO ORDERED."

The petitioners and respondents interposed Motions for Reconsideration on January 7, 1976 and January 10, 1976, respectively, but the same were both denied for lack of merit in the Order of September 30,1976.

On October 19, 1976, petitioners appealed the trial court's Decision to the then Intermediate Appellate Court which, in a Decision [21] dated May 25, 1983, modified the judgment of the trial court as follows:

"WHEREFORE, in view of the foregoing premises, the judgment of the lower court is hereby modified, in conformity with the above findings. Judgment is hereby rendered:

1) Declaring the Deed of Sale (Exh. 'B') null and void. Appellees, spouses Felix and Benita Noceda and/all persons claiming under them are hereby directed to vacate the premises of the land subject of the Deed of Sale aforementioned, and to surrender peacefully

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[21] *Rollo*, pp. 99-110.

Supreme Court E-Library

the possession thereof to appellants, so that the same shall be returned or collated into the intestate estate of Balbino Crucillo;

2) All alterations made by appellees spouses Felix and Benita Noceda in the 'ancestral house' and the lot upon which it is erected are hereby forfeited in favor of appellants. Appellants are hereby ordered to pay jointly and severally appellants the amount of ₱10,000.00 for actual damages, and ₱10,000.00 for and in the concept of moral damages;

3) Appellees are hereby also directed to pay jointly and severally appellants the sum of ₱10,000.00 by way of attorney's fees and cost of the suit.

SO ORDERED."

Private respondents presented a Motion for Reconsideration, dated June 21, 1983, of the said Decision of the appellate court, and acting thereupon, the appellate court resolved:

"WHEREFORE, in view of the foregoing premises, the decision of this Court on May 24, 1983 is hereby set aside. Judgment is hereby rendered sustaining the decision *a quo* declaring the Deed of Sale (Exhibit 'B') valid and binding and declaring the defendants-appellees Spouses Felix Noceda and Benita Gatpandan to be the true and lawful owners of the ancestral house and lot upon which it is erected consisting of 249.75 square meters more or less. Moreover, plaintiffs-appellants have no right of legal redemption since it is not sanctioned by law and evidence. Except for this modification, the judgment under appeal is hereby affirmed *in toto*.

SO ORDERED."[22]

Undaunted, petitioners found their way to this Court *via* the present Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, theorizing that:

I

IN SETTING ASIDE ITS OWN DECISION PROMULGATED ON MAY 25, 1983, ANNEX "B" HEREOF, AND RECONSIDERING IT BY SUSTAINING THE DECISION DATED OCTOBER 31, 1975,

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[22] Resolution, *Rollo*, pp. 87-97.

Supreme Court E-Library

AMENDED RECORD ON APPEAL, 158-179, ANNEX "E" HEREOF, OF THE COURT *A QUO,* TO THE EFFECT THAT THE RESPONDENTS HAVE SUFFICIENTLY ESTABLISHED THE EXISTENCE OF A PRIOR ORAL PARTITION OF THE ESTATE INHERITED FROM BALBINO A. CRUCILLO, BY THE HEIRS OF BALBINO A CRUCILLO, THE RESPONDENT INTERMEDIATE APPELLATE COURT HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR JURISPRUDENCE.

II

IN SETTING ASIDE ITS OWN DECISION PROMULGATED ON MAY 25, 1983, ANNEX "B" HEREOF, AND RECONSIDERING IT BY SUSTAINING THE DECISION OF THE COURT *A QUO* DATED OCTOBER 31, 1975, AMENDED RECORD ON APPEAL, 158-179, ANNEX "E" HEREOF, TO THE EFFECT THAT THE RESPONDENT RAFAEL A. CRUCILLO VALIDLY SOLD THE LOT SUBJECT MATTER OF THE *KASULATAN SA GANAP NA BILIHAN,* EXHIBIT "B", ALSO EXHIBIT "2" (ALSO ANNEX "2" COMPLAINT, AMENDED RECORD ON APPEAL, 43-46, ANNEX "E" HEREOF), THE RESPONDENT INTERMEDIATE APPELLATE COURT HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR JURISPRUDENCE.

III

IN SETTING ASIDE ITS OWN DECISION PROMULGATED ON MAY 25, 1983, ANNEX "B" HEREOF, AND RECONSIDERING IT BY SUSTAINING THE DECISION DATED OCTOBER 31, 1975, AMENDED RECORD ON APPEAL, 158-179, ANNEX "E" HEREOF, OF THE COURT *A QUO*, TO THE EFFECT THAT THE *KASULATAN SA GANAP NA BILIHAN*, EXHIBIT "B", ALSO EXHIBIT "2" (ALSO ANNEX "C", COMPLAINT, AMENDED RECORD ON APPEAL, 43-46, ANNEX "E" HEREOF) WAS VALID, THAT THE RESPONDENTS-SPOUSES FELIX NOCEDA AND BENITA GATPANDAN-NOCEDA ARE THE TRUE AND LAWFUL OWNERS OF THE LOT SUBJECT MATTER OF EXHIBIT "B", ALSO EXHIBIT "2", AS WELL AS OF THE ANCESTRAL HOUSE LOCATED THEREON, AND THAT THE PETITIONERS HAVE NO RIGHT OF LEGAL REDEMPTION THEREOF, THE RESPONDENT INTERMEDIATE APPELLATE COURT HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR JURISPRUDENCE.

Supreme Court E-Library

IV

IN SETTING ASIDE ITS OWN DECISION PROMULGATED ON MAY 25, 1983, AND AFFIRMING WITH MODIFICATION THE DECISION OF THE COURT *A QUO* DATED OCTOBER 31, 1975, AMENDED RECORD ON APPEAL, 158-179, ANNEX "E" HEREOF, AND SUSTAINING, CONSEQUENTLY, THE FOLLOWING JUDGMENT OF THE COURT *A QUO*:

x x x x x x x x x

c) Declaring Tax Declaration Nos. 5413, 5414, 5415, 5416, and 5417 of the Office of the Provincial Assessor of Cavite (Exhs. 'C', 'C-1' to 'C-4') null and void, and directing the Provincial Assessor of Cavite to cancel the same;

d) Directing the Provincial Assessor of Cavite to issue new Tax Declaration in lieu of Tax Declaration No. 376 (Exh. 'C-5'), as follows:

1) To the 'Heirs of Elena Crucillo,' for a parcel of land containing an area of 249.75 sq. m., in lieu of Tax Declaration No. 5413;

2) To the 'Heirs of Maximino Crucillo,' for a parcel of land containing an area of 249.75 square meters in lieu of Tax Declaration No. 5414.

3) To 'Adelaida Crucillo,' for a parcel of land containing an area of 249.75 square meters, in lieu of Tax Declaration No. 5415;

4) To 'Carlomagno Crucillo,' for a parcel of land containing an area of 249.75 square meters, in lieu of Tax Declaration No. 5416;

5) To the 'Spouses Felix Noceda and Benita Gatpandan,' for a parcel of land containing an area of 249.75 square meters and the house erected thereon, in lieu of Tax Declaration No. 5417;

6) To the 'Heirs of Vicente Crucillo,' for a parcel of land containing an area of 249.75 square meters;

7) To the 'Heirs of Perpetua Crucillo,' for a parcel of land containing an area of 249.75 square meters;

Supreme Court E-Library

8) To 'Miguel Crucillo,' for a parcel of land containing an area of 249.75 square meters; all in accordance with the Sketch Plan (Exhs. 'X' and 'Y');

e) Dismissing plaintiff's second and third causes of action;

x x x x x x x x x

THE RESPONDENT INTERMEDIATE APPELLATE COURT HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR JURISPRUDENCE.

It is petitioners' submission that the fact that Balbino A. Crucillo's heirs have *actually occupied, sold, taken possession of their respective shares from Balbino A. Crucillo's estate does not suffice to establish a prior oral agreement by and among the heirs of Balbino Crucillo.*

The petition raises questions of fact which are not proper in an appeal on *certiorari*.[23] Petitioners cited exceptions to the rule — as when the factual findings of the trial court and the appellate court conflict, when the appealed decision is clearly contradicted by the evidence on record, or when the appellate court miscomprehended the facts[24] — justifying a review, but the exceptions aforecited are inapplicable to the case under consideration, it appearing that the appellate court correctly appreciated the facts in arriving at its questioned resolution.

Even granting *arguendo* that the petition falls under any of the above exceptions justifying a factual review of the findings of the respondent court, the petition cannot prosper. The Court is of the opinion, and so holds, that the assailed Resolution of the respondent court has sufficient evidentiary support, on the basis of which the respondent court abandoned its earlier Decision.

To begin with, the oral agreement for the partition of the property owned in common is valid, binding and enforceable on the parties.[25]

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[23] *Alicbusan v. Court of Appeals*, 269 SCRA 336.

[24] *Batiquin v. Court of Appeals,* 258 SCRA 334.

[25] *Vda. de Espina v. Abaya*, 196 SCRA 312.

Supreme Court E-Library

On the issue as to whether an oral partition, effected by the heirs of Balbino A. Crucillo of his estate, has been sufficiently established, the Court rules in the affirmative. It has been shown that upon the death of Juana Aure, the petitioners and the respondent Rafael Crucillo partitioned the estate among themselves, with each one of them possessing their respective shares and exercising acts of ownership. Thus, the trial court found:

"x x x Thus, aside from the disputed lot, Rafael had sold two other lots belonging to the estate. Nicasio Sarmiento (son of Perpetua Crucillo) has caused a residential lot situated at Gen. Trias St., Mendez, Cavite to be registered in his name alone, Miguel Crucillo is in exclusive possession of a residential lot located at General Trias St., Mendez, Cavite. An agricultural land located at Sitio Niko, Mendez, Cavite, covered by Tax Declaration No. 1179 (Exh. '6'), is owned in common by Vicente Crucillo (now occupied by his surviving spouse Felicidad M. Crucillo). Buenaventurada Sarmiento (daughter of the deceased Perpetua Crucillo), Adelaida Crucillo, and Atty. Conrado Crucillo (son of the deceased Santiago Crucillo). Another agricultural land situated at Pulong Munti, covered by Tax Declaration No. 375 (Exh. '7'), is owned in common by the Heirs of Elena Crucillo, Adelaida Crucillo, and Nicasio Sarmiento. Still another property covered by Tax Declaration No. 653 (Exh. '10') is owned in common by Buenaventurada Sarmiento and Vicente Crucillo, whose share was acquired by Miguel Crucillo.

Additionally, Primitiva Mendoza is in possession of an agricultural land in Pulong Munti and also in Niko, Mendez, Cavite, while Carlomagno Crucillo possesses an agricultural land at Sitio Maykiling, Mendez, Cavite, Miguel Crucillo is exclusively occupying an agricultural land at Pulong Munti and Ulo ng Bukal, and the remaining portion another agricultural land after the other portion thereof had been sold by Rafael Crucillo.

x x x x x x x x x

When the Court conducted an ocular inspection of the property in dispute, it observed that Dr. Carlomagno Crucillo had erected a building of strong materials, which he utilizes as his clinic, on the southern portion of said land fronting Gen. Luna St., that Adelaida Crucillo had constructed her residence, which is also of strong materials, on the northern portion of said land fronting Gen. Luna

Supreme Court E-Library

St.; that between the clinic of Dr. Carlomagno Crucillo and the residential house of Adelaida Crucillo is the 'ancestral house,' which is erected on that portion of the said land which Rafael Crucillo sold to the defendants-spouses; and that the Heirs of Elena Crucillo had constructed a house of strong materials on the northern portion of said land fronting Aure St. (of Exhs. 'X' and 'Y') The Court further observed that a hollow block party wall separates the respective portion occupied by the residential house of Adelaida, the 'ancestral house,' and the clinic of Dr. Carlomagno Crucillo, Judging from their appearance and condition, the improvements erected by Adelaida Crucillo, Dr. Carlomagno Crucillo, and the Heirs of Elena Crucillo are not less than ten (10) years old." *(Decision, Court of First Instance; see Amended Record on Appeal)*

From the foregoing facts, it can be gleaned unerringly that the heirs of Balbino A. Crucillo agreed to orally partition subject estate among themselves, as evinced by their possession of the inherited premises, their construction of improvements thereon, and their having declared in their names for taxation purposes their respective shares. These are indications that the heirs of Balbino A. Crucillo agreed to divide subject estate among themselves, for why should they construct improvements thereon, pay the taxes therefor, and exercise other acts of ownership, if they did not firmly believe that the property was theirs. It is certainly foolhardy for petitioners to claim that no oral partition was made when their acts showed otherwise. Moreover, it is unbelievable that the possession of the heirs was by mere tolerance, judging from the introduction of improvements thereon and the length of time that such improvements have been in existence. Then too, after exercising acts of ownership over their respective portions of the contested estate, petitioners are estopped from denying or contesting the existence of an oral partition.[26]

Anent the second and third issues — whether there was a valid conveyance by Rafael Crucillo of the lot subject matter of the *"Kasulatan Sa Ganap Na Bilihan"* to the spouses Felix

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[26] *Barcelona vs. Barcelona*, 100 Phil. 251; *Hernandez vs. Andal,* 78 Phil. 196; see also Art. 1091.

Supreme Court E-Library

Noceda and Benita Gatpandan-Noceda, and whether the latter spouses acquired true and lawful ownership thereof, including the ancestral house standing thereon, the Court also rules in the affirmative. As the existence of the oral partition of the estate of Balbino A. Crucillo by his heirs has been well established, it stands to reason and conclude that Rafael Crucillo could validly convey his share therein to the spouses Felix Noceda and Benita Gatpandan-Noceda who then became the true and lawful owners thereof, including the ancestral house existing thereon. Petitioners have, therefore, no right to redeem the same property from the spouses Noceda because when the sale was made, they were no longer co-owners thereof, the same having become the sole property of respondent Rafael Crucillo.

As regards petitioners' prayer for an award to them of actual and moral damages and attorney's fees, the same is denied for want of proper basis in law and jurisprudence.

WHEREFORE, the Resolution dated October 7, 1983 of the former Intermediate Appellate Court (now Court of Appeals) is *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and *Gonzaga-Reyes, JJ.*,. concur.