Supreme Court E-Library

WHEREFORE, the decision of the trial court is hereby *REVERSED*. Accused-appellant is hereby ACQUITTED of the charge against him.

SO ORDERED.

Melencio-Herrera (Chairperson), Padilla, Sarmiento, and *Regalado, JJ.*, concur.

THIRD DIVISION

[G.R. No. 92436. July 26, 1991]

MARIA *VDA. DE* REYES, EFREN REYES, ELVIRA REYES-TIMBOL, ERLINDA REYES-VALERIO, ERNESTO REYES, ELIZABETH REYES, ALEX, RAFAEL II, EMELINA and EVELYN, all surnamed REYES, represented by their mother, MARIA *VDA. DE* REYES, *petitioners*, *vs.* **THE COURT OF APPEALS and SPOUSES DALMACIO GARDIOLA and ROSARIO MARTILLANO,** *respondents*.

SYLLABUS

1. CIVIL LAW; SUCCESSION; ORAL PARTITION AMONG HEIRS, VALID AND BINDING; NO LAW REQUIRING WRITTEN PARTITION AMONG HEIRS. — The Court of Appeals correctly held that the partition made by the children of Gavino Reyes in 1936, although oral, was valid and binding. There is no law that requires partition among heirs to be in writing to be valid.

2. ID.; ID.; PARTITION; OBJECT OF REQUIREMENT THAT A PARTITION BE PUT IN A PUBLIC DOCUMENT AND REGISTERED. — In *Hernandez vs. Andal*, this Court,

Supreme Court E-Library

interpreting Section 1 of Rule 74 of the Rules of Court, held that the requirement that a partition be put in a public document and registered has for its purpose the protection of creditors and at the same time the protection of the heirs themselves against tardy claims. The object of registration is to serve as constructive notice to others.

3. **ID.; ID.; ID.; HEIRS OF AN ESTATE MAY ENTER INTO AN AGREEMENT IN ANY MANNER AND UPON A PLAN DIFFERENT FROM THOSE PROVIDED BY LAW WHERE NO RIGHTS OF CREDITORS ARE AFFECTED.** — The intrinsic validity of partition not executed with the prescribed formalities does not come into play when there are no creditors or the rights of creditors are not affected. Where no such rights are involved, it is competent for the heirs of an estate to enter into an agreement for distribution in a manner and upon a plan different from those provided by law. There is nothing in Section I, Rule 74 of the Rules of Court from which it can be inferred that a writing or other formality is an essential requisite to the validity of the partition.

4. **ID.; ID.; REASON FOR THE VALIDITY OF ORAL PARTITION.** — *Barcelona, et al. vs. Barcelona, et al.*, 100 Phil. 251 provides the reason why oral partition is valid and why it is not covered by the Statute of Frauds: partition among heirs or renunciation of an inheritance by some of them is not exactly a conveyance of real property for the reason that it does not involve transfer of property from one to the other, but rather a confirmation or ratification of title or right of property by the heir renouncing in favor of another heir accepting and receiving the inheritance.

5. **ID.; ID.; RIGHTS TO SUCCESSION TRANSMITTED FROM THE MOMENT OF DEATH OF DECEDENT.** — The rights to the succession are transmitted from the moment of death of the decedent. The estate of the decedent would then be held in co-ownership by the heirs. In *Ramirez vs. Bautista*, this Court held that every co-heir has the absolute ownership of his share in the community property and may alienate, assign, or mortgage the same, except as to purely personal rights, but the effect of any such transfer is limited to the portion which may be awarded to him upon the partition of the property.

6. **ID.; ID.; ID.; ONLY SUCCESSIONAL RIGHTS RECEIVED MAY BE TRANSMITTED; SUCCESSIONAL RIGHTS NOT**

Supreme Court E-Library

RECEIVED CANNOT BE TRANSFERRED BY EXTRA-JUDICIAL SETTLEMENT NOR BY ERRONEOUS ISSUANCE OF TRANSFER CERTIFICATE OF TITLE. — Petitioners, as mere successors-in-interest of Rafael Reyes, Jr., son of Rafael Reyes, Sr., can only acquire that which Rafael, Jr. could transmit to them upon his death. The latter never became the owner of Lot No. 1-A-14 because it was sold by his father in 1943. The issuance of TCT No. T-27257 in the name of Rafael Reyes, Jr., in so far as Lot No. 1-14-A is concerned, was clearly erroneous because he never became its owner. An extrajudicial settlement does not create a right in favor of an heir. As this Court stated in the *Barcelona* case, it is but a confirmation or ratification of title or right to property. Thus, since he never had any title or right to Lot No. 1-14-A, the mere execution of the settlement did not improve his condition, and the subsequent registration of the deed did not create any right or vest any title over the property in favor of the petitioners as heirs of Rafael Reyes, Jr. The latter cannot give them what he never had before. *Nemo dare potest quod non habet.*

7. **ID.; PROPERTY; RECOVERY OF POSSESSION; ACTION BARRED BY LACHES.** — Petitioners' immediate predecessor-in-interest, Rafael Reyes, Jr., never took any action against private respondents from the time his father sold the lot to the latter. Neither did petitioners bring any action to recover from private respondents the ownership and possession of the lot from the time Rafael Reyes, Jr. died. As categorically admitted by petitioners in their complaint and amended complaint, it was only in or about September 1969 when, after the delivery of TCT No. 27257 by Candido Hebron to them, that they definitely discovered that they were the owners of the property in question. And yet, despite full knowledge that private respondents were in actual physical possession of the property, it was only about thirteen and one-half (131/2) years later that they decided to file an action for recovery of possession. The original complaint was filed in the trial court on 14 March 1983. There was then absolutely no basis for the trial court to place the burden on private respondents to bring an action for reconveyance within four (4) years from their discovery of the issuance of the transfer certificate of title in the name of Rafael Reyes, Jr.

Supreme Court E-Library

APPEARANCES OF COUNSEL

De Lara, De Lunas & Rosales for petitioners.
Santos, Pilapil & Associates for private respondents.

D E C I S I O N

DAVIDE, JR., *J.*:

Assailed before Us in this appeal by *certiorari* under Rule 45 of the Rules of Court is the decision of the respondent Court of Appeals in C.A.-G.R. CV No. 11934, promulgated on 20 October 1989,[1] reversing the decision of 1 October 1986 of Branch 21 (Imus, Cavite) of the Regional Trial Court of the Fourth Judicial Region in Civil Case No. RTC-BCV-83-17 entitled *Maria vda. de Reyes, et al. vs. Spouses Dalmacio Gardiola and Rosario Martillano and Spouses Ricardo M. Gardiola and Emelita Gardiola*,[2] and the resolution of 1 March 1990 denying the petitioner's motion for reconsideration.

As culled from both decisions and the pleadings of the parties, the following facts have been preponderantly established:

During his lifetime, one Gavino Reyes owned a parcel of land of approximately 70 hectares, more or less, located at Sangayad, Ulong-Tubig, Carmona, Cavite. He sought to bring said land under the operation of the Torrens System of registration of property. Unfortunately, he died in 1921 without the title having been issued to him. The application was prosecuted by his son, Marcelo Reyes, who was the administrator of his property.

In 1936 the above property was surveyed and subdivided by Gavino's heirs (Exh. "6"). In the subdivision plan, each resultant lot was earmarked, indicated for and assigned to a specific

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[1] Annex "A" of Petition; *Rollo*, 15-23; Per Associate Justice Bonifacio A. Cacdac, Jr., concurred in by Associate Justices Cecilio L. Pe and Fernando A. Santiago.

[2] Annex "G" of Petition; *Id.*, 38-43.

Supreme Court E-Library

heir. It appears therein that two lots, one of which is Lot No. 1-A-14 (Exh. "6-A"), were allotted to Rafael Reyes, Sr., one of Gavino's children. Per testimony of Juan Poblete, the children thereafter secured tax declarations for their respective shares.

In 1941, or about twenty (20) years after the death of Gavino, the original certificate of title for the whole property — OCT No. 255 — was issued. It was, however, kept by Juan Poblete, son-in-law of Marcelo Reyes, who was by then already deceased. The heirs of Gavino were not aware of this fact.

On 3 December 1943, Rafael Reyes, Sr. sold a parcel of land with an area of 23,431 square meters, more or less, to private respondent Dalmacio Gardiola (Exh. "5"). According to the vendee, this parcel corresponds to Lot No. 1-A-14 of the subdivision plan aforestated. The deed of sale, however, did not specifically mention Lot No. 1-A-14. The vendee immediately took possession of the property and started paying the land taxes therein.

In 1945 or thereabouts, Juan Poblete "revalidated" the original Certificate of Title. As reconstituted, the new title is *OCT (O-4358) RO-255* (Exhs. "4" to "4-A").

On 21 October 1967, when the heirs of Gavino Reyes executed a Deed of Extrajudicial Settlement of Estate (Exh. "D") based on the aforestated subdivision plan (Exh. "6"), the lot that was intended for Rafael Reyes, Sr., who was already deceased, was instead adjudicated to his only son and heir, Rafael Reyes, Jr. (the predecessor-in-interest of the petitioners herein). Private respondent Rosario Martillano signed the deed in representation of her mother, Marta Reyes, one of the children of Gavino Reyes.

As a result of the Extrajudicial Settlement, OCT RO-255 was cancelled and in lieu thereof, several transfer certificates of title covering the subdivided lots were issued in the names of the respective adjudicatees. One of them is TCT No. 27257 in the name of Rafael Reyes, Jr. covering Lot No. 1-A-14. The Transfer Certificates of Title were, however, kept by one Candido Hebron. On 10 January 1969, some of the heirs of Gavino Reyes filed a case of Annulment of Partition and

Supreme Court E-Library

Recovery of Possession before the Court of First Instance of Cavite City, which was docketed therein as Civil Case No. 1267. One of the defendants in said case is herein private respondent Rosario Martillano. The case was dismissed on 18 September 1969, but Candido Hebron was ordered by the trial court to deliver to the heirs concerned all the transfer certificates of title in his possession.[3]

After obtaining the Transfer Certificate of Title for Lot No. 1-A-14 from Hebron, pursuant to the aforesaid order in Civil Case No. 1267, petitioners herein, as successors-in-interest of Rafael Reyes, Jr., filed on 14 March 1983 with the Regional Trial Court the above-mentioned Civil Case No. RTC-BCV-83-17 against private respondents (defendants therein) for recovery of possession or, in the alternative, for indemnification, accounting and damages. They allege therein that after "having definitely discovered that they are the lawful owners of the property," (Lot No. 1-A-14), they, "including Rafael Reyes, Jr., during his lifetime, made repeated demands to (sic) defendants to surrender the possession of and vacate the parcel of land belonging to the former, but defendants refused to vacate and surrender the possession of the said land to herein plaintiffs"; the last of the demands was allegedly made on 8 October 1982. They further allege that they have been deprived by said defendants of the rightful possession and enjoyment of the property since September 1969 — which coincides with the date of the order in Civil Case No. 1267.[4] In their answer, private respondents deny the material averments in the complaint and assert that they are the owners of the lot in question, having bought the same from Rafael Reyes, Sr.; that the issuance of TCT No. 27257 is null and void, for such sale was known to Rafael Reyes, Jr.; that they have been in possession of the property and have been paying the land taxes thereon; and that petitioners are barred by prescription and/or laches.[5]

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[3] Annex "A" of Petition, 1-2; *Rollo*, 15-16; and Annex "G" of Petition, 3-4; *Id.*, 40-41.

[4] Par. 6 of Amended Complaint (Annex "F" of Petition); *Rollo*, 34-35.

[5] Annex "G" of Petition; *Id.*, 39.

Supreme Court E-Library

Petitioners amended their complaint on 21 March 1985 to implead as additional defendants the spouses Ricardo M. Gardiola and Emelita Gardiola, on the basis of the following claims:

x x x x x x x x x

"9. Meanwhile, during the presentation of the defendants spouses Dalmacio Gardiola and Rosario Martillano's evidence the former testified that they mortgaged the subject land to the Rural Bank of Carmona Inc. For their failure to redeem the mortgage the same was foreclosed by the bank.

10. However, within the period of one (1) year from such foreclosure the questioned land was redeemed by the original defendants' son in the person of Ricardo M. Gardiola, who was knowledgeable/aware of the pendency of the above captioned case. The corresponding redemption was effected through a deed of conveyance, x x x."[6]

The prayer of the amended complaint now contains the alternative relief for indemnification for the reasonable value of the property "in the event restitution of the property is no longer possible."[7]

In its decision of 1 October 1986,[8] the trial court concluded that petitioners' "title over the subject property is valid and regular and thus they are entitled to its possession and enjoyment," and accordingly decided thus:

"WHEREFORE, the defendants or anyone acting for and in their behalf are hereby ordered to relinquish possession or vacate the property in question which is covered by Transfer Certificate of Title No. T-27257 in favor of the plaintiffs.

All other claims and/or counterclaims of the parties relative to this case are dismissed for lack of proper substantiation."

The conclusion of the trial court is based on its finding that (a) there is no evidence that the heirs of Gavino Reyes entered

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[6] Amended Complaint; *Rollo*, 35-36.

[7] *Ibid.*, *Id.*, 36.

[8] Annex "G" of Petition; *Id.*, 43.

Supreme Court E-Library

into any written agreement of partition in 1936 based on the subdivision plan; (b) there is no identity between Lot No. 1-14-A and the land sold to private respondents by Rafael Reyes, Sr., or otherwise stated, the description of the latter as indicated in the deed of sale (Exh. "5") does not tally with the description of the former; and (c) moreover:

"Granting, *arguendo*, that the sale made by Rafael Reyes, Sr. to the defendants covered the land in question — Lot No. 1-A-14 — and that Transfer Certificate of Title No. T-27257 was obtained by means of fraud, the claim of the defendants over the said property is already barred. Action for reconveyance prescribes in four (4) years from the discovery thereof. If there was fraud, the defendant could have discovered the same in *1967* when the partition was made in as much as defendant Rosario Martillano was a party to that partition. Let us grant further that the issuance of Transfer Certificate of Title No. T-27257 to Rafael Reyes, Jr. created a constructive or implied trust in favor of the defendants, again, the claim of the defendants is also barred. From 1967 to the filing of their answer (let us consider this as an action for reconveyance) to this case sometime in July, 1983, a period of about sixteen (16) years had already elapsed. Prescriptibility of an action for reconveyance based on implied or constructive trust is ten (10) years.

The trial court further held that the continued possession by private respondents, which it found to have started in 1943, did not ripen into ownership because at that time, the property was already registered, hence it cannot be acquired by prescription or adverse possession.[9]

Private respondents appealed the said decision to the Court of Appeals which docketed the appeal as C.A.-G.R. CV No. 11934. In its decision of 20 October 1989, the respondent Court of Appeals formulated the issues before it as follows:

"I

Whether or not the lower court erred in declaring that the property of the late Gavino Reyes consisting of 70 hectares was partitioned only in 1967 by his grandchildren after discovery of the existence

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[9] *Rollo*, 41-42.

Supreme Court E-Library

of OCT No. 255 and that no actual partition was made in 1936 by the decedent's children.

II

Whether or not the lower court erred in concluding that the parcel of land sold by the appellees' predecessor-in-interest, the late Rafael Reyes, Sr. to appellant Dalmacio Gardiola was not the same parcel of land under litigation."[10]

and resolved such issues, thus:

"On the first issue, We believe that the lower court committed a reversible error when it declared that the landed estate of the late Gavino Reyes was partitioned only in 1967 by the latter's grandchildren; and that no actual partition was made in 1936 by the decedents' (sic) children. The evidence on record bears out the existence of a subdivision plan (Exh. 6) which was not controverted nor denied by the appellees. In like manner, the lower court itself recognized the fact that the property of the late Gavino Reyes consisting of 70 hectares was surveyed and subdivided in 1936 as evidenced by the said subdivision plan (Exh. 6). With the existence of a subdivision plan, and from the uncontroverted testimony of appellants' witness, We can only infer that at least an oral partition, which under the law is valid and binding, was entered into by the heirs of Gavino Reyes regarding his properties in 1936. As held in a long line of decisions, extrajudicial partition can be done orally, and the same would be valid if freely entered into (*Belen v. Belen*, 49 O.G. 997, March 1953). The reason for this is because a partition is not exactly a conveyance for the reason that it does not involve transfer of property from one to the other but rather a confirmation by them of their ownership of the property. It must also be remembered that when Gavino Reyes died on March 7, 1921, his property was admittedly not yet covered by a torrens title, as it was only in 1941 when said properties were brought into the application of the torrens system. With this factual milieu, it can also be concluded that his heirs have indeed settled, subdivided and partitioned Gavino Reyes' landed estate without formal requirements of Rule 74 of the Rules of Court when a parcel of land is covered by a torrens title. As told earlier, the Subdivision Plan (Exh. 6) undisputedly showed on its face that the 70 hectares of land belonging to the late Gavino Reyes was

[10] *Rollo*, 20.

Supreme Court E-Library

subdivided and partitioned by his children in 1936. On this score, the partition of the said property even without the formal requirements under the rule is valid as held in the case of *Hernandez vs. Andal*, 78 Phil. 176, which states:

x x x x x x x x x

Moreover, in the Deed of Sale dated December 3, 1943 (Exh. 5) executed by Rafael Reyes, Sr. in favor of appellant Dalmacio Gardiola, the land sold therein was described as '*na aking minana sa aking ama.*' This alone would confirm the contention of the appellants that there was already an actual partition (at least an oral partition) of the property of Gavino Reyes in 1936. As aforestated, the presence of the Subdivision Plan (Exh. 6) is an (sic) evidence of such partition which appellees failed to controvert not to mention the fact that the lower court itself recognized the existence of said plan, in the same manner that it concluded that the property was already surveyed and actually subdivided in 1936 (page 3, pars. 3 and 4, Decision).

From the foregoing considerations it is evident that the Deed of Extrajudicial Settlement of Estate (Exh. D) executed by the grandchildren of the late Gavino Reyes in 1967 is of no moment considering that the property subject of the partition in the deed was already partitioned in 1936 by the children of Gavino Reyes. It is for this reason that the lots supposedly inherited by the grandchildren named in the deed of 1967 were the same lots inherited and given to their respective fathers or mothers in 1936 while the land was not yet covered by the torrens system. Hence, in the case of Rafael Reyes, Sr., the land inherited by him was two (2) parcels of land known as Lots Nos. 1-A-3 and 1-A-14 described in the Subdivision plan of 1936 (Exh. 6), which were the same parcels of land allegedly inherited by Rafael Reyes, Jr. from Gavino Reyes in representation of his father, pursuant to the Deed of Extrajudicial Settlement of Estate for which TCT No. 27257 was issued.

Coming to the second issue, the lower court likewise erred when it concluded that the parcel of land sold by appellee's predecessor-in-interest to appellant Dalmacio Gardiola was not the same parcel of land under litigation. It must be pointed out that the identity of the parcel of land which the appellees sought to recover from the appellants was never an issue in the lower court, because the litigants had already conceded that the parcel identified as Lot No. 1-A-14 in TCT No. 27257 was the same parcel of land identified as Cadastral Lot No. 1228 and 1235 described in Tax Declaration No. 4766. Despite

Supreme Court E-Library

this admission, however, the lower court declared that 'as described in the deed of sale (Exh. 5), the land's description does not tally with the description of Lot No. 1-A-14, the land in litigation.' As correctly pointed out by the appellants however, the discrepancy in the description was due to the fact that the description of the land sold in the Deed of Sale was expressed in layman's language whereas the description of Lot No. 1-A-14 in TCT No. 27257 was done in technical terms. This was so because, when Rafael Reyes, Sr. sold the property in dispute to appellant Dalmacio Gardiola on December 3, 1943, the only evidence of title to the land then available in so far as Rafael Reyes, Sr. was concerned was Tax Declaration No. 4766, because at that time, neither he nor appellant Dalmacio Gardiola was aware of the existence of OCT No. 255 as in fact TCT No. 27257 was issued only in 1967. Consequently, the land subject of the Deed of Sale was described by the vendor in the manner as described in Tax Declaration No. 4766. However, the description of the land appearing in the Deed of Sale (Exh. 5) was exactly the same land identified as Lot No. 1-A-14 in the Subdivision Plan (Exh. 6) of 1936. Accordingly, the assumption of the lower court that 'if the land sold by Rafael Reyes, Sr. was the one now in litigation, he could have easily indicated Lot No. 1-A-14' is bereft of merit under the foregoing circumstances. Interestingly enough, the appellees never denied the identity of the subject lot during the hearing at the lower court. What they were denying only was the sale made by Rafael Reyes, Sr. to appellant Dalmacio Gardiola which does not hold true because of the document denominated as Deed of Sale (Exh. 5)."[11]

It concluded that the trial court erred when it ordered the private respondents or anyone acting in their behalf to relinquish the possession or vacate the property in question. It thus decreed:

"WHEREFORE, the appealed Judgment is ordered REVERSED and SET ASIDE and a new one is rendered declaring appellants to be the lawful owners of the lot identified as Lot No. 1-A-14 in TCT No. 27257. No costs."[12]

Their motion to reconsider the above decision having been denied by the Court of Appeals in its resolution of 1 March

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[11] *Rollo*, 20-23.

[12] *Id.*, 23.

Supreme Court E-Library

1990,[13] petitioners filed the instant petition on 6 April 1990 after having obtained an extension of time within which to file it.

The petition does not implead original new defendants Ricardo Gardiola and Emelita Gardiola.

As ground for their plea for the review of the decision of the Court of Appeals, petitioners allege that said court has decided questions of substance in a way not in accord with law or applicable jurisprudence when it held that "the deed of extrajudicial settlement of estate (Exh. "D") executed by the grandchildren of the late Gavino Reyes in 1967 is of no moment considering that the property subject of the partition was already partitioned in 1938 by the children of Gavino Reyes." In support thereof, they claim that (a) TCT No. 27257 covers two parcels of land; the lot described in paragraph 1 thereof is owned by petitioners and that ownership was confirmed by this Court in G.R. No. 79882, hence, the Court of Appeals should have affirmed the decision of the trial court; (b) private respondent Rosario Martillano was a party to the extrajudicial settlement of estate which was duly registered in the Registry of Deeds in 1967; said registration is the operative act that gives validity to the transfer or creates a lien upon the land and also constituted constructive notice to the whole world. The court cannot disregard the binding effect thereof. Finally, the pronouncement of the Court of Appeals that private respondents are the lawful owners of the lot in question "militates against the indefeasible and incontrovertible character of the torrens title,"[14] and allows reconveyance which is not tenable since the action therefor had already prescribed, as stated in the decision of the trial court.

In the resolution of 7 May 1990, We required respondents to comment on the petition. But even before it could do so, petitioner, without obtaining prior leave of the Court, filed on 29 May 1990 a so-called Supplemental Arguments in Support

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[13] Annex "B" of Petition; *Id.*, 24.

[14] Citing *PNB vs. Court of Appeals*, 153 SCRA 435.

Supreme Court E-Library

of The Petition For Review On *Certiorari*[15] wherein they assert, among others, that: (a) the findings of facts of respondent Court are contrary to those of the trial court and appear to be contradicted by the evidence on record thus calling for the review by this Court;[16] (b) it also committed misapprehension of the facts in this case and its findings are based on speculation, conjecture and surmises; (c) private respondents' attack on petitioners' title is a collateral attack which is not allowed; even if it is allowed, the same had already prescribed and is now barred.

It was only on 15 June 1990 that private respondents filed their Comment.[17] We required petitioners to reply thereto, which they complied with on 8 August 1990.[18] A rejoinder was filed by private respondents on 29 August 1990.

We gave due course to the petition on 19 September 1990 and required the parties to submit simultaneously their respective memoranda which they complied with.

Attached as Annex "A" to private respondent's Memorandum, which was filed on 10 December 1990, is the Resolution of this Court (Third Division) of 20 August 1990 in G.R. No. 92811 entitled *Spouses Artemio Durumpili and Angustia Reyes vs. The Court of Appeals and Spouses Dalmacio Gardiola and Rosario Martillano*, which also involves the property of Gavino Reyes, the partition thereof among his children in 1936, and the extrajudicial settlement in 1967.

In said resolution, this Court held:

"x x x The partition made in 1936, although oral, was valid. The requirement in Article 1358 of the Civil Code that acts which have

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[15] *Rollo*, 48-62.

[16] Citing *Fireman's Fund Insurance Co. vs. Metro Port Services*, G.R. No. 83613, February 21, 1990, citing *Metro Port Services, Inc. vs. Court of Appeals*, 131 SCRA 365.

[17] *Rollo*, 68-72.

[18] *Id.*

Supreme Court E-Library

for their object the creation, transmission, modification or extinguishment of real rights over immovable property must appear in a public instrument is only for convenience and not for validity or enforceability as between the parties themselves. [*Thunga Hui vs. Que Bentec*, 2 Phil. 561 (1903)] The subsequent execution by the heirs of the Extrajudicial Partition in 1967 did not alter the oral partition as in fact the share pertaining to Augustia Reyes corresponded to that previously assigned to her father. Considering that Angel Reyes sold this property to Basilio de Ocampo who, in turn, sold the same to respondents, we agree with the Court of Appeals that the latter lawfully acquired the property and are entitled to ownership and possession thereof."

In answer to the charge of private respondents that petitioners deliberately failed to cite this resolution, the latter, in their reply-memorandum dated 15 March 1991 and filed three days thereafter, allege:

"Our failure to mention the aforementioned resolution before this Honorable Court is not deliberate nor with malice aforethought. The reason is that to date, we have not yet received any resolution to our Motion For Leave of Court To Refer Case To The Honorable Supreme Court *En Banc*. Moreover, we honestly feel that the resolution that will be issued therein will not be applicable to the case before this Honorable Court's Second Division. It should be mentioned that in the Durumpili case before the Third Division, the Court of Appeals relied on the alleged confirmation of the sale executed by Angustia Reyes, while in the Reyes case before this Second Division, there was no sale that was executed by the petitioners Reyes' predecessor-in-interest, Rafael Reyes, Jr."

The foregoing claim is not supported by the *rollo* of G.R. No. 92811, which reveals the following: (a) On 18 September 1990, petitioners therein, represented by *De Lara*, De Lunas and Rosales, who are the lawyers of petitioners in the instant case, filed a motion for the reconsideration of the resolution of 20 August 1990.[19] b) This motion was denied in the resolution of 1 October 1990.[20] c) On 17 November 1990, petitioners

[19] *Rollo* of G.R. No. 92811, 67-86.

[20] *Id.*, 97.

Supreme Court E-Library

therein, through the same lawyers, filed a Motion For Leave Of Court To Refer Case To The Honorable Supreme Court *En Banc* and/or Motion For Reconsideration[21] wherein they specifically admit that said case and the instant petition have "identity and/or similarity of the parties, the facts, the issues raised," even going to the extent of "graphically" illustrating where such similarities lie.[22] d) This motion was denied in the resolution of 28 November 1990. Copy thereof was furnished the attorneys for petitioners.[23] e) Entry of judgment had already been made therein and a copy thereof was sent to petitioner's counsel per Letter of Transmittal of the Deputy Clerk of Court and Chief of the Judicial Records Office dated 20 December 1990.

What comes out prominently from the disquisitions of the parties is this simple issue: whether or not respondent Court of Appeals committed any reversible error in setting aside the decision of the trial court.

We find none. The reversal of the trial court's decision is inevitable and unavoidable because the legal and factual conclusions made by the trial court are unfounded and clearly erroneous. The Court of Appeals was not bound to agree to such conclusions. The trial court erred in holding that: (a) there was no partition among the children of Gavino Reyes in 1936 since there is no written evidence in support thereof; yet, it admits that there was a survey and subdivision of the property and the adjudication of specific subdivision lots to each of the children of Gavino; (b) the land sold by Rafael Reyes, Sr. to private respondents is not identical to Lot No. 1-A-14, the lot specified for and adjudicated to Rafael Reyes, Jr. in the partition agreement; and (c) if the land sold by Rafael Reyes, Sr. to private respondent Dalmacio Gardiola is indeed Lot No. 1-A-14 and that TCT No. T-27257 was obtained through fraud, the

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[21] *Id.*, 99-106.

[22] Par. 4 of Motion: *Id.*, 101.

[23] *Rollo* of G.R. No. 92811.

Supreme Court E-Library

remedy open to the vendee was an action for reconveyance, which should have been brought within four (4) years from the discovery thereof in 1967 when the Extrajudicial Settlement was executed since private respondent Rosario Martillano, wife of Dalmacio, was a party thereto.

The Court of Appeals correctly held that the partition made by the children of Gavino Reyes in 1936, although oral, was valid and binding. There is no law that requires partition among heirs to be in writing to be valid.[24] In *Hernandez vs. Andal*, *supra*, this Court, interpreting Section 1 of Rule 74 of the Rules of Court, held that the requirement that a partition be put in a public document and registered has for its purpose the protection of creditors and at the same time the protection of the heirs themselves against tardy claims. The object of registration is to serve as constructive notice to others. It follows then that the intrinsic validity of partition not executed with the prescribed formalities does not come into play when there are no creditors or the rights of creditors are not affected. Where no such rights are involved, it is competent for the heirs of an estate to enter into an agreement for distribution in a manner and upon a plan different from those provided by law. There is nothing in said section from which it can be inferred that a writing or other formality is an essential requisite to the validity of the partition. Accordingly, an oral partition is valid.

Barcelona, et al. vs. Barcelona, et al., supra, provides the reason why oral partition is valid and why it is not covered by the Statute of Frauds: partition among heirs or renunciation of an inheritance by some of them is not exactly a conveyance of real property for the reason that it does not involve transfer of property from one to the other, but rather a confirmation or ratification of title or right of property by the heir renouncing in favor of another heir accepting and receiving the inheritance.

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[24] *Madamba vs. Magno, et al.*, 10 Phil. 86; *De Guzman, et al. vs. Pangilinan, et al.*, 28 Phil. 322; *Hernandez vs. Andal*, 78 Phil. 196; *Barcelona, et al. vs. Barcelona, et al.*, 100 Phil. 251; and *De Garces vs. Broce*, 23 SCRA 612.

Supreme Court E-Library

Additionally, the validity of such oral partition in 1936 has been expressly sustained by this Court in the Resolution of 20 August 1990 in G.R. No. 92811.[25]

But even if We are to assume *arguendo* that the oral partition executed in 1936 was not valid for some reason or another, We would still arrive at the same conclusion for upon the death of Gavino Reyes in 1921, his heirs automatically became co-owners of his 70-hectare parcel of land. The rights to the succession are transmitted from the moment of death of the decedent.[26] The estate of the decedent would then be held in co-ownership by the heirs. The co-heir or co-owner may validly dispose of his share or interest in the property subject to the condition that the portion disposed of is eventually allotted to him in the division upon termination of the co-ownership. Article 493 of the Civil Code provides:

"Each co-owner shall have the full ownership of his part and the fruits and benefits pertaining thereto, and he may even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership."

In *Ramirez vs. Bautista*,[27] this Court held that every co-heir has the absolute ownership of his share in the community property and may alienate, assign, or mortgage the same, except as to purely personal rights, but the effect of any such transfer is limited to the portion which may be awarded to him upon the partition of the property.

In the case at bar, the lot sold by Rafael Reyes, Sr. to private respondent Dalmacio Gardiola is his share in the estate of his deceased father, Gavino Reyes. It is the same property which was eventually adjudicated to his son and heir, Rafael Reyes, Jr.,

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[25] *Supra.*

[26] Article 777, Civil Code.

[27] 14 Phil. 528; see also *Segura, et al. vs. Segura, et al.*, 165 SCRA 368; *Pamplona, et al. vs. Moreto, et al.*, 96 SCRA 775.

Supreme Court E-Library

represented in turn by his heirs — petitioners herein — in the extrajudicial settlement of 1967.

In respect to the issue as to whether the property sold by Rafael Reyes, Sr. is identical to Lot No. 1-14-A, the trial court based its conclusion that it is not, on his observation that the description of the former does not tally with that of the latter; moreover, if Rafael did intend to sell Lot No. 1-14-A, he should have specifically stated it in the deed since at that time, the property had already been partitioned and said lot was adjudicated to him. In addition to the contrary findings and conclusion of the respondent Court on this issue to which We fully agree, it is to be stressed that Rafael had this property declared for taxation purposes and the tax declaration issued was made the basis for the description of the property in the deed of sale. Upon the execution of the deed of sale, vendee — herein private respondent Dalmacio Gardiola — immediately took possession of the property. This is the very same property which is the subject matter of this case and which petitioners seek to recover from the private respondents. The main evidence adduced for their claim of ownership and possession over it is TCT No. T-27257, the certificate of title covering Lot No. 1-14-A. They therefore admit and concede that the property claimed by private respondent, which was acquired by sale from Rafael Reyes, Sr., is none other than Lot No. 1-14-A.

The participation of private respondent Rosario Gardiola in the Extrajudicial Settlement did not place private respondents in estoppel to question the issuance of TCT No. T-27257. As correctly maintained by private respondents, she signed it in representation of her deceased mother, Marta Reyes, a daughter and an heir of Gavino Reyes. She did not sign for and in behalf of her husband, Dalmacio Gardiola, vendee of the share of Rafael Reyes, Sr.

The same did not operate to divest the vendee of the share of Rafael Reyes, Sr. in the estate of Gavino. Petitioners, as mere successors-in-interest of Rafael Reyes, Jr., son of Rafael Reyes, Sr., can only acquire that which *Rafael, Jr.* could transmit to them upon his death. The latter never became the owner of

Supreme Court E-Library

Lot No. 1-A-14 because it was sold by his father in 1943. The issuance of TCT No. T-27257 in the name of Rafael Reyes, Jr., in so far as Lot No. 1-14-A is concerned, was clearly erroneous because he never became its owner. An extrajudicial settlement does not create a right in favor of an heir. As this Court stated in the *Barcelona* case,[28] it is but a confirmation or ratification of title or right to property. Thus, since he never had any title or right to Lot No. 1-14-A, the mere execution of the settlement did not improve his condition, and the subsequent registration of the deed did not create any right or vest any title over the property in favor of the petitioners as heirs of Rafael Reyes, Jr. The latter cannot give them what he never had before. *Nemo dare potest quod non habet.*

There is one more point that should be stressed here. Petitioners' immediate predecessor-in-interest, Rafael Reyes, Jr., never took any action against private respondents from the time his father sold the lot to the latter. Neither did petitioners bring any action to recover from private respondents the ownership and possession of the lot from the time Rafael Reyes, Jr. died. As categorically admitted by petitioners in their complaint and amended complaint, it was only in or about September 1969 when, after the delivery of TCT No. 27257 by Candido Hebron to them, that they definitely discovered that they were the owners of the property in question. And yet, despite full knowledge that private respondents were in actual physical possession of the property, it was only about thirteen and one-half (13 ½) years later that they decided to file an action for recovery of possession. As stated earlier, the original complaint was filed in the trial court on 14 March 1983. There was then absolutely no basis for the trial court to place the burden on private respondents to bring an action for reconveyance within four (4) years from their discovery of the issuance of the transfer certificate of title in the name of Rafael Reyes, Jr.

The instant petition then is without merit.

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[28] *Supra.*

Supreme Court E-Library

WHEREFORE, *judgment* is hereby rendered *DENYING* the petition with costs against petitioners.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and *Bidin, JJ.*, concur.

EN BANC

[G.R. No. 92606. July 26, 1991]

MAJOR ZOSIMO R. MAGNO, and CAPTAIN ROSARIO J. TAMAYO, *petitioners, vs.* **GENERAL RENATO DE VILLA, in his capacity as Chief of Staff, Armed Forces of the Philippines, COMMODORE PROCESO FERNANDEZ, Chairman of Court Martial No. 6, COL. TEODORO CARANGAN, COL. ASHLEY SALVADOR, CAPT. VICENTE GARRIZA, COL. HUMBERTO REBONG, COL. FRANCISCO PAREDES, LT. COL. DANILO VENTORINA, MEMBERS OF THE GENERAL COURT MARTIAL NO. 6,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SUPREME COURT; NOT A TRIER OF FACTS. — This Court is neither a reviewer of evidence before its submission in court, nor, generally, a trier of facts.

2. ID.; ID.; DECISIONS OF COURTS-MARTIAL, GENERALLY NOT APPEALABLE THERETO; EXCEPTION. — This is specially true in cases before Courts-Martial because its decisions are not appealable to this Court. Pursuant to Sections 87 and 88 of the *Manual*, such decisions would pass the reviewing and the confirming authorities. This conforms to the principle, as hereinafter discussed, that courts-martial are not courts within the Philippine judicial system. This is not to