

FIRST DIVISION

[G.R. NO. 170829, November 20, 2006]

**PERLA G. PATRICIO, PETITIONER, VS. MARCELINO G. DARIO III
AND THE HONORABLE COURT OF APPEALS, SECOND DIVISION,
RESPONDENTS.**

DECISION

YNARES-SANTIAGO, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks to annul and set aside the Resolution of the Court of Appeals dated December 9, 2005^[1] in CA-G.R. CV No. 80680, which dismissed the complaint for partition filed by petitioner for being contrary to law and evidence.

On July 5, 1987, Marcelino V. Dario died intestate. He was survived by his wife, petitioner Perla G. Patricio and their two sons, Marcelino Marc Dario and private respondent Marcelino G. Dario III. Among the properties he left was a parcel of land with a residential house and a pre-school building built thereon situated at 91 Oxford corner Ermin Garcia Streets in Cubao, Quezon City, as evidenced by Transfer Certificate of Title (TCT) No. RT-30731 (175992) of the Quezon City Registry of Deeds, covering an area of seven hundred fifty five (755) square meters, more or less.^[2]

On August 10, 1987, petitioner, Marcelino Marc and private respondent, extrajudicially settled the estate of Marcelino V. Dario. Accordingly, TCT No. RT-30731 (175992) was cancelled and TCT No. R-213963 was issued in the names of petitioner, private respondent and Marcelino Marc.

Thereafter, petitioner and Marcelino Marc formally advised private respondent of their intention to partition the subject property and terminate the co-ownership. Private respondent refused to partition the property hence petitioner and Marcelino Marc instituted an action for partition before the Regional Trial Court of Quezon City which was docketed as Civil Case No. Q-01-44038 and raffled to Branch 78.

On October 3, 2002,^[3] the trial court ordered the partition of the subject property in the following manner: Perla G. Patricio, 4/6; Marcelino Marc G. Dario, 1/6; and Marcelino G. Dario III, 1/6. The trial court also ordered the sale of the property by public auction wherein all parties concerned may put up their bids. In case of failure, the subject property should be distributed accordingly in the aforestated manner.^[4]

Private respondent filed a motion for reconsideration which was denied by the trial court on August 11, 2003,^[5] hence he appealed before the Court of Appeals, which denied the same on October 19, 2005. However, upon a motion for reconsideration filed by private respondent on December 9, 2005, the appellate court partially

reconsidered the October 19, 2005 Decision. In the now assailed Resolution, the Court of Appeals dismissed the complaint for partition filed by petitioner and Marcelino Marc for lack of merit. It held that the family home should continue despite the death of one or both spouses as long as there is a minor beneficiary thereof. The heirs could not partition the property unless the court found compelling reasons to rule otherwise. The appellate court also held that the minor son of private respondent, who is a grandson of spouses Marcelino V. Dario and Perla G. Patricio, was a minor beneficiary of the family home.^[6]

Hence, the instant petition on the following issues:

I.

THE HONORABLE COURT OF APPEALS PATENTLY ERRED IN REVERSING ITS EARLIER DECISION OF OCTOBER 19, 2005 WHICH AFFIRMED IN TOTO THE DECISION OF THE TRIAL COURT DATED 03 OCTOBER 2002 GRANTING THE PARTITION AND SALE BY PUBLIC AUCTION OF THE SUBJECT PROPERTY.

II.

COROLLARILY, THE HONORABLE COURT OF APPEALS PATENTLY ERRED IN APPLYING ARTICLE 159 IN RELATION TO ARTICLE 154 OF THE FAMILY CODE ON FAMILY HOME INSTEAD OF ARTICLE 494 IN RELATION TO ARTICLES 495 AND 498 OF THE NEW CIVIL CODE ON CO-OWNERSHIP.^[7]

The sole issue is whether partition of the family home is proper where one of the co-owners refuse to accede to such partition on the ground that a minor beneficiary still resides in the said home.

Private respondent claims that the subject property which is the family home duly constituted by spouses Marcelino and Perla Dario cannot be partitioned while a minor beneficiary is still living therein namely, his 12-year-old son, who is the grandson of the decedent. He argues that as long as the minor is living in the family home, the same continues as such until the beneficiary becomes of age. Private respondent insists that even after the expiration of ten years from the date of death of Marcelino on July 5, 1987, i.e., even after July 1997, the subject property continues to be considered as the family home considering that his minor son, Marcelino Lorenzo R. Dario IV, who is a beneficiary of the said family home, still resides in the premises.

On the other hand, petitioner alleges that the subject property remained as a family home of the surviving heirs of the late Marcelino V. Dario only up to July 5, 1997, which was the 10th year from the date of death of the decedent. Petitioner argues that the brothers Marcelino Marc and private respondent Marcelino III were already of age at the time of the death of their father,^[8] hence there is no more minor beneficiary to speak of.

The family home is a sacred symbol of family love and is the repository of cherished memories that last during one's lifetime.^[9] It is the dwelling house where husband and wife, or by an unmarried head of a family, reside, including the land on which it

is situated.^[10] It is constituted jointly by the husband and the wife or by an unmarried head of a family.^[11] The family home is deemed constituted from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.^[12]

The law explicitly provides that occupancy of the family home either by the owner thereof or by "any of its beneficiaries" must be actual. That which is "actual" is something real, or actually existing, as opposed to something merely possible, or to something which is presumptive or constructive. Actual occupancy, however, need not be by the owner of the house specifically. Rather, the property may be occupied by the "beneficiaries" enumerated in Article 154 of the Family Code, which may include the in-laws where the family home is constituted jointly by the husband and wife. But the law definitely excludes maids and overseers. They are not the beneficiaries contemplated by the Code.^[13]

Article 154 of the Family Code enumerates who are the beneficiaries of a family home: (1) The husband and wife, or an unmarried person who is the head of a family; and (2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support.

To be a beneficiary of the family home, three requisites must concur: (1) they must be among the relationships enumerated in Art. 154 of the Family Code; (2) they live in the family home; and (3) they are dependent for legal support upon the head of the family.

Moreover, Article 159 of the Family Code provides that the family home shall continue despite the death of one or both spouses or of the unmarried head of the family for a period of 10 years or for as long as there is a minor beneficiary, and the heirs cannot partition the same unless the court finds compelling reasons therefor. This rule shall apply regardless of whoever owns the property or constituted the family home.

Article 159 of the Family Code applies in situations where death occurs to persons who constituted the family home. Dr. Arturo M. Tolentino comments on the effect of death of one or both spouses or the unmarried head of a family on the continuing existence of the family home:

Upon the death of the spouses or the unmarried family head who constituted the family home, or of the spouse who consented to the constitution of his or her separate property as family home, the property will remain as family home for ten years or for as long as there is a minor beneficiary living in it. ***If there is no more beneficiary left at the time of death, we believe the family home will be dissolved or cease, because there is no more reason for its existence. If there are beneficiaries who survive living in the family home, it will continue for ten years, unless at the expiration of the ten years, there is still a minor beneficiary, in which case the family home continues until that beneficiary becomes of age.***