

SECOND DIVISION

[G.R. No. 224144, June 28, 2017]

LOLITA BAS CAPABLANCA, PETITIONER, VS. HEIRS OF PEDRO BAS, REPRESENTED BY JOSEFINA BAS ESPINOSA AND REGISTER OF DEEDS OF THE PROVINCE OF CEBU, RESPONDENTS.

DECISION

LEONEN, J.:

This resolves a Petition for Review^[1] assailing the Decision^[2] dated March 12, 2014 and Resolution^[3] dated March 15, 2016 of the Court of Appeals, Nineteenth Division, Cebu City. The Court of Appeals reversed the Decision^[4] dated December 26, 2007 of Branch 8, Regional Trial Court, Cebu City and dismissed the petitioner's complaint.

The subject matter of this case is Lot 2535 of the Talisay-Minglanilla Friar Land's Estate located in "Biasong, Dumlog, Talisay, Cebu"^[5] with an area of 6,120 square meters.^[6]

Andres Bas (Andres) and Pedro Bas (Pedro) acquired Lot 2535, "and Patent No. 1724 was issued in their names on May 12, 1937."^[7]

On November 28, 1939, Pedro sold to Faustina Manreal (Faustina), married to Juan Balorio, his portion of Lot 2535 "with a seeding capacity of four (4) chupas of com."^[8] The sale was evidenced by a notarized Deed of Sale dated November 28, 1939.^[9]

After the death of Faustina and her husband, their heirs executed a notarized Extra-Judicial Declaration of Heirs and Deed of Absolute Sale dated March 13, 1963. Lot 2535 consisting of "1,000 square meters, more or less," was conveyed to one (1) of their heirs, Alejandra Balorio (Alejandra).^[10] Alejandra sold the land through a Deed of Absolute Sale dated June 13, 1967 to Edith N. Deen, who in turn sold it to Atty. Eddy A. Deen (Atty. Deen) on March 21, 1968.^[11]

Upon Atty. Deen's death on December 18, 1978, an extra-judicial settlement of estate, which did not include Lot 2535, was executed by his heirs. Later, or on March 30, 1988, they executed an Additional ExtraJudicial Settlement with Absolute Deed of Sale, which sold the land for P10,000.00 to Norberto B. Bas (Norberto), who took possession of and built a house on it.^[12]

On December 15, 1995, Norberto died without a will and was succeeded by his niece and only heir, Lolita Bas Capablanca (Lolita).^[13]

Subsequently, Lolita learned that a Transfer Certificate of Title (TCT) No. T-96676 dated June 6, 1996 was issued in the names of Andres and Pedro on the basis of a reconstituted Deed of Conveyance No. 96-00004.^[14]

In October 1996, Josefina Bas Espinosa (Josefina) represented the Heirs of Pedro Bas to file a complaint for Clarification of Ownership of Lot 2535 against Lolita before the Lupong Tagapamayapa of Barangay Biasong, Talisay, Cebu.^[15] The conflict between the parties was not resolved and resulted to the issuance of a Certification to file Action.^[16]

On December 16, 1996, a notarized Partition Agreement of Real Property, Quitclaim and Waiver of Rights was executed between the heirs of Andres and Lolita, representing Norberto, whereby they partitioned Lot 2535 among themselves.^[17]

Lolita sought to register her portion in Lot 2535 but was denied by the Register of Deeds of Cebu, citing the need for a court order.^[18] Lolita then learned that TCT No. T-96676 had been partially cancelled and TCT Nos. T-100181, T-100182, T-100183, and T-100185 had been issued in the name of the Heirs of Pedro Bas, represented by Josefina, on May 29, 1997.^[19]

On December 16, 1997, Lolita filed a complaint before the Regional Trial Court of Cebu City for the cancellation of the titles with prayer for moral and exemplary damages, attorney's fees, and litigation expenses.^[20]

In their Answer, the Heirs of Pedro Bas claimed that "the sale between Pedro Bas and Faustina Manreal [was] fake, spurious and invalid because [Pedro] who [was] an illiterate never learned how to write his name so that the signature appearing thereon could not have been made by Pedro Bas."^[21] They further claimed that the cancellation of TCT No. T-96676 was made pursuant to a final judgment in Civil Case No. 840^[22] for Partition, Damages, and Attorney's Fees.^[23]

After trial, Branch 8, Regional Trial Court, Cebu City rendered a Decision^[24] on December 26, 2007, in favor of Lolita. The trial court held that there was substantial evidence to prove that Lolita had been in long possession of the lot under a claim of ownership as the heir of Norberto and that it was not necessary for her to be first declared as his heir before filing the complaint.^[25] It further ruled that to dismiss the case on the ground that Lolita should first be declared an heir would be too late as the Heirs of Pedro Bas did not raise the issue in a motion to dismiss or as an affirmative defense in their complaint.^[26]

On the substantive issues, the trial court upheld the validity of the 1939 Deed of Sale executed by Pedro in favor of Faustina. It found Josefina's uncorroborated testimony of Pedro's illiteracy as self-serving and unconvincing to contradict the regularity of the notarized deed. Moreover, her testimony was controverted by the notarized Assignment of Sale Certificate 195, which bore the same signature of Pedro, and by the Heirs of Pedro Bas' answers in Civil Case No. R-10602, another case which contained allegations that Pedro sold his share in the lot to Faustina.^[27]

The trial court further held that the object of the sale was determinate, i.e., Pedro's

share in Lot 2535 was specified by the boundaries indicated in the Deed of Sale.^[28] It concluded that Norberto acquired the entire share of Pedro in Lot 2535, which was found only after survey in 1996,^[29] to actually consist of 3,060 square meters and not 1,000 square meters as insisted by the Heirs of Pedro Bas. The trial court gave credence to Lolita's testimony that before the survey, Pedro's portion was estimated to be 1,000 square meters; hence, the area indicated in the successive transfers of the lot from the heirs of Faustina down to Norberto was "1,000 square meters, more or less."^[30]

Consequently, with Pedro's sale of his share in Lot 2535, his heirs acquired no portion by inheritance and their titles were null and void and should be cancelled.^[31]

Finally, the trial court affirmed that the Judgement of the Municipal Trial Court of Talisay in Civil Case No. 840 for Partition, Damages and Attorney's fees was not binding on Lolita, who was not a party to the case.^[32]

The *fallo* of the Decision read:

WHEREFORE, premises considered, a judgment is hereby rendered in favor of the plaintiff and against the defendants, declaring as null and void and ordering the Register of Deeds of the Province of Cebu to cancel the following transfer certificates of title:

- 1) Transfer Certificate of Title No. T-100181, of the Register of Deeds of the Province of Cebu, in the name of Heirs of Pedro Bas, represented by Josefina Bas, covering Lot 2535-J, Psd-07-037377, being a portion of Lot 2535, Flr-133, situated in the Barrio of Dumlog, Mun. of Talisay, Prov. of Cebu, Island of Cebu, containing an area of 304 square meters;
- 2) Transfer Certificate of Title No. T-100182, of the Register of Deeds of the Province of Cebu, in the name of Heirs of Pedro Bas, represented by Josefina Bas, covering Lot 2535-B, Psd-07-037377, being a portion of Lot 2535, Flr-133, situated in the Barrio of Dumlog, Mun. of Talisay, Prov. of Cebu, Island of Cebu, containing an area of 1,554 square meters;
- 3) Transfer Certificate of Title No. T-100183, of the Register of Deeds of the Province of Cebu, in the name of Heirs of Pedro Bas, represented by Josefina Bas, covering Lot 2535-A, Psd-07-037377, being a portion of Lot 2535, Flr-133, situated in the Barrio of Dumlog, Mun. of Talisay, Prov. of Cebu, Island of Cebu, containing an area of 965 square meters; and
- 4) Transfer Certificate of Title No. T-100185, of the Register of Deeds of the Province of Cebu, in the name of Heirs of Pedro Bas, represented by Josefina Bas, covering Lot 2535-A Psd-07-037377, being a portion of Lot 2535, Flr-133, situated in the Barrio of Dumlog, Mun. of Talisay, Prov. of Cebu, Island of Cebu, containing an area of 187 square meters.

Costs against the defendants.^[33]

The Regional Trial Court subsequently denied the Heirs of Pedro Bas' motion for reconsideration.^[34]

Hence, the Heirs of Pedro Bas appealed to the Court of Appeals, making the following lone assignment of error:

The trial court seriously erred in not dismissing the case for plaintiffs lack of cause of action pursuant to (the) doctrinal jurisprudential case of Guido and Isabel Yaptinchay vs. Del Rosario (304 SCRA 18) considering that plaintiff in her complaint alleged, she is the sole heir of Norberto Bas.^[35]

The Court of Appeals reversed the Regional Trial Court Decision and dismissed the complaint.^[36] According to the Court of Appeals, Lolita must first be declared as the sole heir to the estate of Norberto in a proper special proceeding. Thus:

WHEREFORE, premises considered, the Decision dated December 26, 2007, of the Regional Trial Court, 7th Judicial Region, Branch 8, Cebu City in Civil Case No. CEB-21348 for Ownership, Nullity of Deeds, Cancellation of TCT Nos. T-100181, T-100182, TM100183[,] and T-100185, covering portions of Lot No. 2535, damages, etc., ordering the cancellation of Transfer Certificates of Title Nos. T-100181, T-100182, T-100183[,] and T-100185 is hereby REVERSED and SET ASIDE.

The complaint of plaintiff-appellee is hereby DISMISSED, without prejudice to any subsequent proceeding to determine the lawful heirs of the late Norberto Bas and the rights concomitant therewith.^[37]

Lolita sought reconsideration but was denied in the Court of Appeals Resolution dated March 15, 2016.

Hence, Lolita filed this Petition principally contending that the Court of Appeals committed a reversible error in reversing the Regional Trial Court Decision and dismissing the complaint.

Petitioner argues that the 1999 case of the *Heirs of Yaptinchay v. Del Rosario*^[38] cited in the Court of Appeals Decision does not apply to this case because the factual circumstances are different.^[39] In that case, the claims of the opposing parties were anchored on their alleged status as heirs of the original owner.^[40] "Hence there may have been the need for a previous judicial declaration of heirship in a special proceeding."^[41] Here, petitioner does not claim to be an heir of Pedro, the original owner. Rather, her interest over the property is derived from a series of transactions starting from the sale executed by Pedro.^[42]

Petitioner further contends that respondents neither raised the ground "lack of cause of action" as an affirmative defense nor filed a motion to dismiss before the court *a quo*. Instead, they allowed the trial to proceed with their full participation all throughout. Petitioner asserts that respondents' action or inaction should be

constituted a waiver.^[43] Otherwise, respondents' "failure to properly act on its perceived defect" in the complaint hampers the speedy disposition of the action "and would only promote multiplicity of suits."^[44]

In their two (2)-page Comment,^[45] respondents contend that the findings of the Court of Appeals were duly supported by evidence and jurisprudence.

This Court grants the petition.

Contrary to the erroneous conclusion of the Court of Appeals, this Court finds no need for a separate proceeding for a declaration of heirship in order to resolve petitioner's action for cancellation of titles of the property.

The dispute in this case is not about the heirship of petitioner to Norberto but the validity of the sale of the property in 1939 from Pedro to Faustina, from which followed a series of transfer transactions that culminated in the sale of the property to Norberto. For with Pedro's sale of the property in 1939, it follows that there would be no more ownership or right to property that would have been transmitted to his heirs.

Petitioner's claim is anchored on a sale of the property to her predecessor-in-interest and not on any filiation with the original owner. What petitioner is pursuing is Norberta's right of ownership over the property which was passed to her upon the latter's death.^[46]

This Court has stated that no judicial declaration of heirship is necessary in order that an heir may assert his or her right to the property of the deceased.^[47] In *Marabilles v. Quito*:^[48]

The right to assert a cause of action as an heir, although he has not been judicially declared to be so, if duly proven, is well settled in this jurisdiction. This is upon the theory that the property of a deceased person, both real and personal, becomes the property of the heir by the mere fact of death of his predecessor in interest, and as such he can deal with it in precisely the same way in which the deceased could have dealt, subject only to the limitations which by law or by contract may be imposed upon the deceased himself. Thus, it has been held that "[t]here is no legal precept or established rule which imposes the necessity of a previous legal declaration regarding their status as heirs to an intestate on those who, being of age and with legal capacity, consider themselves the legal heirs of a person, in order that they may maintain an action arising out of a right which belonged to their ancestor" ... A recent case wherein this principle was maintained is Cabuyao vs. [C]aagbay.^[49] (Emphasis supplied)

The Court of Appeals' reliance on the ruling in *Heirs of Yaptinchay v. Del Rosario*^[50] was misplaced. In that case, the motion to dismiss was filed immediately after the second Amended Complaint was filed.^[51] The trial court granted the motion to dismiss, holding that the Heirs of Yaptinchay "have not shown any proof or even a semblance of it-except the allegations that they are the legal heirs of the above-named Yaptinchays-that they have been declared the legal heirs of the deceased