

SECOND DIVISION

[G.R. No. 189420, March 26, 2014]

**RAUL V. ARAMBULO AND TERESITA A. DELA CRUZ,
PETITIONERS, VS. GENARO NOLASCO AND JEREMY SPENCER
NOLASCO, RESPONDENTS.**

D E C I S I O N

PEREZ, J.:

This is a Petition for Review of the 7 October 2008 Decision^[1] and 30 July 2009 Resolution^[2] of the Court of Appeals in CA-G.R. CV No. 76449, which reversed and set aside the Decision^[3] of the Regional Trial Court (RTC) of Manila, Branch 51, dated 19 September 2002.

Petitioners Raul V. Arambulo and Teresita A. Dela Cruz, along with their mother Rosita *Vda.* De Arambulo, and siblings Primo V. Arambulo, Ma. Lorenza A. Lopez, Ana Maria V. Arambulo, Maximiano V. Arambulo, Julio V. Arambulo and Iraida Arambulo Nolasco (Iraida) are co-owners of two (2) parcels of land located in Tondo, Manila, with an aggregate size of 233 square meters. When Iraida passed away, she was succeeded by her husband, respondent Genaro Nolasco and their children, Iris Abegail Nolasco, Ingrid Aileen Arambulo and respondent Jeremy Spencer Nolasco.

On 8 January 1999, petitioners filed a petition for relief under Article 491 of the Civil Code with the RTC of Manila, alleging that all of the co-owners, except for respondents, have authorized petitioners to sell their respective shares to the subject properties; that only respondents are withholding their consent to the sale of their shares; that in case the sale pushes through, their mother and siblings will get their respective 1/9 share of the proceeds of the sale, while respondents will get ¼ share each of the 1/9 share of Iraida; that the sale of subject properties constitutes alteration; and that under Article 491 of the Civil Code, if one or more co-owners shall withhold their consent to the alterations in the thing owned in common, the courts may afford adequate relief.^[4]

In their Answer, respondents sought the dismissal of the petition for being premature. Respondents averred that they were not aware of the intention of petitioners to sell the properties they co-owned because they were not called to participate in any negotiations regarding the disposition of the property.^[5]

After the pre-trial, two (2) issues were submitted for consideration:

1. Whether or not respondents are withholding their consent in the sale of the subject properties; and

2. In the affirmative, whether or not withholding of consent of sale by the respondents is prejudicial to the petitioners.^[6]

On 19 September 2002, the trial court ruled in favor of petitioners and ordered respondents to give their consent to the sale. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the petitioners and against the respondents:

1. Directing respondents Genaro Nolasco and Jeremy Spencer A. Nolasco to give their consent to the sale of their shares on the subject properties;
2. Allowing the sale of the aforementioned properties;
3. Directing the petitioners and the co-owners, including the respondents herein to agree with the price in which the subject properties are to be sold and to whom to be sold; and
4. Directing the distribution of the proceeds of the sale of the aforementioned properties in the following proportion:
 - a.) Rosita V. Vda. De Arambulo -1/9
 - b.) Primo V. Arambulo -1/9
 - c.) Maximiano V. Arambulo -1/9
 - d.) Ana Maria V. Arambulo -1/9
 - e.) Ma. Lorenza A. Lopez -1/9
 - f.) Julio V. Arambulo -1/9
 - g.) Raul V. Arambulo -1/9
 - h.) Teresita A. dela Cruz -1/9
 - i.) Genaro Nolasco, Jr. -1/4 of 1/9
 - j.) Jeremy Spencer A. Nolasco -1/4 of 1/9
 - k.) Iris Abegail A. Nolasco -1/4 of 1/9
 - l.) Ingrid Aileen Arambulo -1/4 of 1/9^[7]

Going along with petitioners' reliance on Article 491 of the Civil Code, the trial court found that respondents' withholding of their consent to the sale of their shares is prejudicial to the common interest of the co-owners.

Respondents filed a Notice of Appeal and the trial court gave due course to the appeal and the entire records of the case were elevated to the Court of Appeals.

In a Decision dated 7 October 2008, the Court of Appeals granted the appeal and reversed the trial court's decision. The Court of Appeals held that the respondents had the full ownership of their undivided interest in the subject properties, thus, they cannot be compelled to sell their undivided shares in the properties. It referred to the provisions of Article 493 of the Civil Code. However, the Court of Appeals, implying applicability of Article 491 also observed that petitioners failed to show how respondents' withholding of their consent would prejudice the common interest over the subject properties.

Hence, the instant petition seeking the reversal of the appellate court's decision and

praying for the affirmance of the trial court's decision that ordered respondents to give their consent to the sale of the subject properties. Petitioners emphasize that under Article 491 of the Civil Code, they may ask the court to afford them adequate relief should respondents refuse to sell their respective shares to the co-owned properties. They refute the appellate court's finding that they failed to show how the withholding of consent by respondents becomes prejudicial to their common interest. Citing the testimony of petitioner Teresita A. Dela Cruz, they assert that one of the two subject properties has an area of 122 square meters and if they decide to partition, instead of selling the same, their share would be reduced to a measly 30-square meter lot each. The other property was testified to as measuring only 111 square meters. Petitioners reiterate that all the other co-owners are willing to sell the property and give respondents their share of the proceeds of the sale.

At the core of this petition is whether respondents, as co-owners, can be compelled by the court to give their consent to the sale of their shares in the co-owned properties. Until it reached this Court, the discussion of the issue moved around Article 491 of the Civil Code. We have to remove the issue out of the coverage of Article 491. It does not apply to the problem arising out of the proposed sale of the property co-owned by the parties in this case.

The Court of Appeals correctly applied the provision of Article 493 of the Civil Code, which states:

Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and 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.

Upon the other hand, Article 491 states:

Art. 491. None of the co-owners shall, without the consent of the others, make alterations in the thing owned in common, even though benefits for all would result therefrom. However, if the withholding of the consent by one or more of the co-owners is clearly prejudicial to the common interest, the courts may afford adequate relief.

As intimated above, the erroneous application of Article 491 is, in this case, an innate infirmity. The very initiatory pleading below was captioned Petition For Relief Under Article 491 of the New Civil Code. Petitioners, likewise petitioners before the RTC, filed the case on the submission that Article 491 covers the petition and grants the relief prayed for, which is to compel the respondent co-owners to agree to the sale of the co-owned property. The trial court took up all that petitioners tendered, and it favored the pleading with the finding that:

x x x To this court, the act of respondents of withholding consent to the sale of the properties is not only prejudicial to the common interest of the co-owners but is also considered as an alteration within the purview of Article 491 of the New Civil Code. x x x. Hence, it is deemed just and proper to afford adequate relief to herein petitioners under Article 491 of the New Civil Code.^[8]

That a sale constitutes an alteration as mentioned in Article 491 is an established jurisprudence. It is settled that alterations include any act of strict dominion or ownership and any encumbrance or disposition has been held implicitly to be an act of alteration.^[9] Alienation of the thing by sale of the property is an act of strict dominion.^[10] However, the ruling that alienation is alteration does not mean that a sale of commonly owned real property is covered by the second paragraph of Article 491, such that if a co-owner withholds consent to the sale, the courts, upon a showing of a clear prejudice to the common interest, may, as adequate relief, order the grant of the withheld consent. Such is the conclusion drawn by the trial court, and hinted at, if not relied upon, by the appellate court.

Ruling that the trial court erred in its conclusion, the Court of Appeals correctly relied on Article 493 in support of the finding that respondents cannot be compelled to agree with the sale. We affirm the reversal by the Court of Appeals of the judgment of the trial court.

1. There is co-ownership whenever, as in this case, the ownership of an undivided thing, belongs to different persons.^[11] Article 493 of the Code defines the ownership of the co-owner, clearly establishing that each co-owner shall have full ownership of his part and of its fruits and benefits.

Pertinent to this case, Article 493 dictates that each one of the parties herein as co-owners with full ownership of their parts can sell their fully owned part. The sale by the petitioners of their parts shall not affect the full ownership by the respondents of the part that belongs to them. Their part which petitioners will sell shall be that which may be apportioned to them in the division upon the termination of the co-ownership. With the full ownership of the respondents remaining unaffected by petitioners' sale of their parts, the nature of the property, as co-owned, likewise stays. In lieu of the petitioners, their vendees shall be co-owners with the respondents. The text of Article 493 says so.

2. Our reading of Article 493 as applied to the facts of this case is a reiteration of what was pronounced in *Bailon-Casilao v. Court of Appeals*.^[12] The rights of a co-owner of a certain property are clearly specified in Article 493 of the Civil Code. Thus:

Art. 493. Each co-owner shall have the *full ownership of his part* and of the fruits and benefits pertaining thereto, and he may therefore *alienate, assign or mortgage* it[,] and 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*