

## SECOND DIVISION

[ G.R. No. 178609, August 04, 2010 ]

**MANUEL P. NEY AND ROMULO P. NEY, PETITIONERS, VS.  
SPOUSES CELSO P. QUIJANO AND MINA N. QUIJANO,  
RESPONDENTS.**

### D E C I S I O N

**NACHURA, J.:**

On appeal is the June 29, 2007 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. No. CV. 86047, setting aside the August 25, 2005 Decision<sup>[2]</sup> of the Regional Trial Court (RTC) of Manila, Branch 45.

Petitioners Manuel P. Ney and Romulo P. Ney (petitioners) are the registered owners of a residential lot located at 1648 Main Street, Paco Manila, with an area of 120 square meters more or less, covered by Transfer Certificate of Title (TCT) No. 122489.<sup>[3]</sup> A three (3) door apartment was constructed on the subject lot - one for Manuel, the other for Romulo; and the last one for their sister Mina N. Quijano and her husband Celso Quijano (respondents).

On October 8, 1999, respondents filed with the RTC of Manila a suit for reconveyance, partition and damages against petitioners. They averred that they are co-owners of the subject property having paid part of its purchase price; that Celso's name was inadvertently omitted as one of the buyers in the execution of the deed of sale. Consequently, TCT No. 122489 covering the subject property was issued only in the names of Manuel and Romulo. To obtain a separate certificate of title, they requested from petitioners the segregation of the portion allotted to them, but the latter refused. They later discovered that the entire property was mortgaged with Metropolitan Bank & Trust Company, prompting them to execute and register their adverse claim with the Register of Deeds; and to file the instant complaint.<sup>[4]</sup>

Petitioners, in their answer,<sup>[5]</sup> denied respondents' allegation of co-ownership. They averred that Celso Quijano was not a vendee of the subject lot; thus, his name did not appear on the title. They asserted that respondents cannot validly maintain an action against them because the latter possessed the property by mere tolerance; and even assuming that respondents had a valid cause of action, the same had already been barred by prescription and/or laches. Petitioners, therefore, prayed for the dismissal of the complaint.

After trial, the RTC rendered a Decision<sup>[6]</sup> dismissing the complaint. It rejected respondents' claim of co-ownership, and declared their documentary and testimonial evidence unreliable. The RTC sustained petitioners' assertion that respondents possessed part of the property through mere tolerance; and that their

cause of action, if any, already prescribed. The RTC thus ruled that respondents can no longer demand the segregation or reconveyance of the claimed portion of the property. Finally, the RTC granted petitioners' counterclaim and ordered the reimbursement of the expenses they incurred in defending the case.

The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, the [respondents'] Complaint is hereby DISMISSED.

On the other hand, finding merit in the [petitioners'] Counterclaim, the [respondents] are hereby ordered to pay the [petitioners]:

- a) The reduced amount of P50,000.00 for attorney's fees; and
- b) The costs of suit.

**SO ORDERED.**<sup>[7]</sup>

From the aforesaid Decision, respondents went to the CA. They faulted the RTC for dismissing their complaint and insisted that they are co-owners of the subject lot; and that their share was erroneously included in petitioners' title. Respondents also took exception to the trial court's declaration that their action was already barred by prescription and laches. Citing *Heirs of Jose Olviga v. Court of Appeals*, respondents asserted that their right to institute an action for reconveyance is imprescriptible because they are in possession of the claimed portion of the property.<sup>[8]</sup>

On June 29, 2007, the CA rendered the now challenged Decision,<sup>[9]</sup> reversing the RTC. The CA found sufficient evidence to support respondents' claim that they are indeed co-owners of the property; and were excluded by petitioners in the deed of sale and certificate of title. The CA considered respondents' complaint as one for quieting of title which is imprescriptible; and granted to respondents the reliefs that they prayed for.

The CA disposed, thus:

**WHEREFORE**, the appeal is **GRANTED**. The appealed Decision dated August 25, 2005 of the Regional Trial Court Branch 45, Manila is hereby **SET ASIDE**. In its stead, a **NEW ONE IS ENTERED**, declaring [respondents], spouses Celso and Mina Quijano, as co-owners of the subject lot to the extent of one-third (1/3) thereof which corresponds to that portion where their house stands.

Accordingly, [petitioners] are hereby ordered:

- 1) to partition the subject lot into three (3) equal portions of forty square meters (40 sq.m.) each, specifically allotting to [respondents] the portion where their house stands;
- 2) to reconvey to [respondents] the clean title to their portion of the

subject lot;

3) to surrender the owner's copy of TCT No. 122489 to the Register of Deeds of Manila for the annotation of [respondents'] share thereon; and

4) to pay [respondents] attorney's fees and the costs of suit in the reasonable amount of P50,000.00.

**SO ORDERED.**<sup>[10]</sup>

Undaunted, petitioners took the present recourse. They ascribe reversible error to the CA for treating respondents' action as one for quieting of title. They claim that nowhere in the complaint does it state that respondents seek to quiet their title to the property. All that respondents averred and prayed for in their complaint was for petitioners to surrender their certificate of title, and for the partition of the subject property. Petitioners assert that the CA ruled on an issue not raised in the pleadings; and substituted the respondents' action with an entirely new action for quieting of title.

The argument is specious.

The allegations in respondents' complaint read in part:

2) That [respondents] are co-owners of one-third (1/3) portion pro indiviso of the residential lot where their residential house was constructed known as 1648 Main Street, Paco, Manila, covered by Transfer Certificate of Title No. 122489; x x x

3) That in their agreement with the lot owner, the name of the [respondent] Celso P. Quijano appears as one (1) of the Second Party [sic] who purchased the lot at the purchase price of P50,000.00 with P40,000.00 as down payment and the balance of P10,000.00 shall be paid on or before July 14, 1976, wherein the [respondent] Celso P. Quijano have (sic) paid the sum of P5,000.00 on the same due date of July 14, 1976;

4) That when the Deed of Absolute Sale was executed by the Vendor, the name of the [respondent] Celso P. Quijano, marr[ie]d to Mina Ney Quijano was omitted and the purchase price appeared to be only P20,000.00 and not P50,000.00 as appearing in their Agreement, thus when the Absolute Deed of Sale was presented to the Register of Deeds of Manila, only the names of Manuel P. Ney and Romulo P. Ney appeared as the registered owners in the above-mentioned Transfer Certificate of Title No.122489;

5) That Celso Quijano, however, was able to secure a Certification from the Vend[o]r Luz J. Lim the true and correct selling price agreed upon is P50,000.00 and the Vendees were Manuel P. Ney, Romulo P. Ney and [respondent] Celso Quijano and that the amount of P20,000.00 put in the Deed of Sale was at the instance of the Vendor with the consent of the

Vendees;

6) That sometime in March 1991, [respondents] requested from the [petitioners] to segregate their Title to the one-third (1/3) portion of the lot [sic] where their house was constructed with an area of about forty (40) square meters more or less and [petitioners] agreed and executed a Deed of Reconveyance, but when [respondent] Celso P. Quijano presented the document to the Register of Deeds of Manila it [sic] was rejected because he can not present the Owner's copy;

x x x x

8) That from the records of the Register of Deeds of Manila, [respondent] Celso P. Quijano discovered that the whole property was mortgaged with [sic] the Metropolitan Bank & Trust Company, thus [respondents] were constrained to execute and register their adverse claim that they are co-owners of one-third (1/3) portion of the lot and their residential house therein;

9) That after the registration of the [respondent's] adverse claim, the Register of Deeds through Expedito A. Javier notified the [petitioners] to surrender the Owner's duplicate copy of Transfer Certificate of Title No. 122489 in order that a Memorandum be made thereon for the Notice of Adverse Claim, but the request of the Register of Deeds was not honored by the [petitioners];

x x x x

12) That by reason of the [petitioners'] refusal to surrender the Owner's copy of the Title to the Register of Deeds of Manila for partition and reconveyance, [respondents] were constrained to engage the services of counsel to protect their interest at an agreed amount of P50,000.00 as and for attorney's fees.

These allegations make out a case for reconveyance. That reconveyance was one of the reliefs sought was made abundantly clear by respondents in their prayer, viz.:

WHEREFORE, it is respectfully prayed that after due hearing judgment be rendered in favor of the [respondents] and against the [petitioners] ordering the latter as follows:

a) To surrender the Owner's copy of TCT No. 122489 to the Court or if refused that an Order be issued ordering the Register of Deeds of Manila to issue to the [respondents] their co-owner's copy if [sic] the Title;

b) Ordering the partition of the lot into equal shares of forty (40) square meters more or less and the lot where the [respondents'] residential house is constructed known as 1648 Main Street, Paco Manila be awarded and be reconveyed to the [respondents] as their share;