

SECOND DIVISION

[G.R. NO. 163081, June 15, 2007]

**ANITA UNGAB-VALEROSO, JOINED IN BY HER HUSBAND,
RUSELO VALEROSO, PETITIONERS, VS. AMANCIA UNGAB-
GRADO, FELIX UNGAB, REPRESENTED BY HIS SON ROSENDO
UNGAB, ESPENILA UNGAB-JAICTIN AND RUSTICINA UNGAB-
TAMALA, RESPONDENTS.**

DECISION

QUISUMBING, J.:

This petition for review assails both the Decision^[1] dated September 19, 2003 of the Court of Appeals in CA-G.R. CV No. 68895 and its Resolution^[2] dated March 2, 2004, which denied petitioners' motion for reconsideration. The Court of Appeals had affirmed with modification the Decision^[3] dated December 20, 1999 of the Regional Trial Court (RTC) of Iligan City, Branch 3, in Civil Case No. 4048.

The antecedent facts, borne by the records, are as follows:

Subject of this case is a 14.3375-hectare land in Binuni, Kolambugan, Lanao (now Binuni, Bacolod, Lanao del Norte) registered in the name of Timoteo Ungab under Original Certificate of Title (OCT) No. (P-41)-1,550.^[4] Petitioner Anita Ungab is the only child of Timoteo, now deceased. Respondent Felix Ungab is the brother of Timoteo while the other respondents are the heirs of Timoteo's other brothers and sisters, namely Simeona, Eugenia, Lorenzo, Lazaro, and Margarito.

In 1972, the heirs of Ciriaco Ungab filed a complaint docketed as Civil Case No. II-74 in the Court of First Instance (CFI) of Iligan City, Lanao del Norte against the brothers, sisters and heirs of Timoteo for the partition, accounting and reconveyance of the subject land. When the case was called for trial, the parties submitted a written compromise agreement.

On February 15, 1973, the CFI rendered judgment adopting *in toto* the compromise agreement. The decretal portion reads:

WHEREFORE, judgment is hereby rendered as follows: (1) that the plaintiffs will be given an area of 4,779 square meters of the coconut land which is a portion of the titled land in the name of Heirs of Timoteo Ungab, under Original Certificate of Title No. T-41 (should be P-41), Homestead Patent No. V-4777, located at Binoni, Bacolod, Lanao del Norte (formerly Kolambugan, Lanao); (2) that defendants are entitled to an area of 138,596 square meters (13.8596 Has.) from said titled land abovementioned; (3) that the expenses for segregation survey of the 4,779 square meters will be shouldered equally among the nine (9) heirs – 3 heirs representing the plaintiffs and the 6 heirs representing the

defendants; (4) that the squatters of the above-described titled parcels of land to wit: (a) Dioscoro Bucu, (b) Porferio Sugabo, (c) heirs of Severo Bucu, (d) Jesus Bucu, (e) and others inside the said titled land will be ejected with damages thru Court action, all expenses will be borne equally among the heirs aforementioned, for each recovery; and whatever damages that will be awarded by the court in said ejectment action will be equally divided among the nine sets of heirs, as well as the produce of the income of the squatted area; (5) that meantime that the squatters on the land will not be as yet finally ejected, the 4,779 square meters of the plaintiffs' will not as yet be segregated and plaintiffs cannot as yet enjoy the produce, and income thereof, until the squatters will be ejected; and all expenses of the ejectment suits against the squatters will be borne by Margarito Ungab and his wife, subject to the reimbursement with receipts upon the final ejectment of the squatters by all nine sets of heirs aforementioned; (6) the portion pertaining to Simona Ungab is acknowledged to have been sold under Pacto de Retro for the sum of P3,000.00 more or less (the Pacto de Retro Sale consideration controls) unto Margarito Ungab and wife which should be paid likewise by the nine sets of heirs both plaintiffs and defendants; (8) all other prayers and remedies invoked in the complaint and counter-complaint are hereby denied, and (9) no costs is adjudged in this proceeding.

SO ORDERED.^[5]

The parties did not have the land partitioned but divided the proceeds of the land in accordance with the decision. However, in December 1996, Anita refused to give respondents their respective shares. Respondents then filed against petitioners Anita and her husband Ruselo Valeroso, a complaint for recovery of possession, partition, enforcement of compromise agreement and damages docketed as Civil Case No. 4048 with the RTC of Iligan City.

During the pre-trial, respondents presented in court the affidavit dated March 13, 1939 of Timoteo acknowledging that he co-owned with his brothers and sisters, Simeona, Eugenia, Lorenzo, Lazaro, Felix and Margarito, a parcel of land with an area of 18.8993 hectares in Binuni, Kolambugan, Lanao under Homestead Application No. 218565.^[6] Respondents also presented the Affidavit of Acknowledgment dated August 4, 1960 of Anita Ungab and her mother Aurelia Ungab acknowledging the rights of Simeona, Eugenia, Lorenzo, Lazaro, Felix and Margarito as co-owners of the land.^[7]

In their defense, the Spouses Anita and Ruselo claimed that Anita exclusively owns the land as sole heir of Timoteo. They maintained that the decision in Civil Case No. II-74 had become dormant and could no longer be executed. Besides, they aver, Anita was not privy to the compromise agreement, which led to the decision in Civil Case No. II-74.

On December 1999, the RTC held that the compromise agreement bound all the parties thereto including their heirs and assigns, and Timoteo's affidavit whose presumption of regularity petitioners failed to overcome, and the compromise agreement created an express trust which has not yet prescribed. The RTC ruled as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs (herein respondents) and against the defendant, Anita Ungab-Valeroso ordering the latter:

1) To have the property, OCT No. (P-41)-1,550, partitioned for her to retain only one-seventh (1/7) share; another one-seventh (1/7) to Felix Ungab and the remaining 5/7 to the heirs of Simeona, Eugenia, Lorenzo, Lazaro, and Margarito, all surnamed Ungab;

2) To reimburse Amancia Ungab-Grado and Espenila Ungab Jaictin the sum of P24,000.00 for their shares for three (3) years at a rate of P2,000.00 per harvest in every three (3) months; the sum of P24,000.00 for plaintiff Felix Ungab and another P24,000.00 for Rusticina Ungab-Tamala;

3) To pay plaintiffs attorney's fees and appearance fees of P30,000.00.

SO ORDERED.^[8]

Petitioners elevated the case to the Court of Appeals, which affirmed the trial court's decision but deleted the award of attorney's fees. It held there is evidence showing that the land under OCT No. (P-41)-1,550 was owned in common by the parties, and that Anita is estopped by her own act of signing the Affidavit of Acknowledgment dated August 4, 1960 from denying the co-ownership.

The dispositive portion of the decision dated September 19, 2003 of the Court of Appeals states:

WHEREFORE, premises considered, the decision dated December 20, 1999, of the Regional Trial Court of Iligan City, Twelfth Judicial Region, Branch 3, in Civil Case No. 4048 is hereby **AFFIRMED** with **MODIFICATION** as to attorney's fees, the award thereof is deleted. Costs against the appellants.

SO ORDERED.^[9]

Petitioners moved for reconsideration but it was denied in the Resolution dated March 2, 2004. Petitioners now come before us raising the following issues:

I.

WHETHER OR NOT RESPONDENTS ARE CO-OWNERS OF THE PARCEL OF LAND COVERED BY OCT No. (P-41)-1,550;

II.

WHETHER OR NOT RESPONDENTS' SUIT FOR PARTITION IN THE COURT BELOW IS LEGALLY PROPER.^[10]

The main issue before us is: Did the Court of Appeals commit a reversible error of law which merits review by this Court under Rule 45 of the Rules of Court?

We rule in the negative.