

## SECOND DIVISION

[ G.R. No. 152862, July 26, 2004 ]

**TERESITA S. REYES-DE LEON PETITIONER, VS. VICENTE B. DEL ROSARIO, RESPONDENT.**

### D E C I S I O N

**TINGA, J.:**

This is a petition for review seeking to set aside the 15 August 2000 *Order*<sup>[1]</sup> of the Regional Trial Court, Branch 6, Cebu City, 7th Judicial Region as well as its 19 February 2002 *Order*,<sup>[2]</sup> denying petitioner's *Motion for Reconsideration*.

The instant case traces its origin to an action for Partition filed by Pantaleon U. del Rosario and his son, respondent Vicente B. del Rosario, before the Regional Trial Court, 7th Judicial Region, Branch 11 of Cebu City. In the *Amended Complaint*,<sup>[3]</sup> petitioner Teresita Reyes-de Leon was impleaded as a defendant, being one of the heirs of the late spouses Pantaleon S. del Rosario and Ceferina Llamas. Plaintiffs therein, Pantaleon U. del Rosario and Vicente B. del Rosario, are cousin and nephew, respectively, of the petitioner. The case involved several parcels of land collectively grouped as follows: "Tupas Properties," "Asinan Properties," "Figueroa Property," "Barili Properties," "Mambaling Properties," "Negros Properties," and "Other Properties."<sup>[4]</sup> Plaintiffs therein claimed that petitioner executed a deed of absolute sale in favor of Vicente B. del Rosario covering all of her shares in the properties sought to be partitioned.<sup>[5]</sup>

In her *Answer* dated 10 November 1998, petitioner claimed that she did not execute any deed of sale in favor of Vicente B. del Rosario.<sup>[6]</sup> She further averred that the only portions of her inheritance she ever sold were her shares in the Asinan and Negros properties, which she sold in favor of Pantaleon U. del Rosario, and the late Vicente S. del Rosario.<sup>[7]</sup>

In December 1999, petitioner filed a *Complaint* for declaration of nullity of deed of sale with damages before the Regional Trial Court of Cebu City.<sup>[8]</sup> She stated that on 14 December 1983, she sold her one-half (1/2) share in the Asinan Properties to Pantaleon U. del Rosario, respondent's father.<sup>[9]</sup> However, petitioner was shocked when, sometime in August 1996, she learned from her cousins, who were defendants in the initial partition case filed by the respondent, that respondent Vicente B. del Rosario was claiming all of her shares in the estate of Ceferina Llamas, her maternal grandmother. The claim is based on a deed of absolute sale purportedly signed by petitioner on 20 January 1985,<sup>[10]</sup> which according to her, covers the same Asinan properties sold to respondent's father and for the same consideration. However, the deed, she further alleged, fraudulently added the phrase "including any and all of her shares, rights and interests on all other real

estate properties together with their improvements which she acquired by inheritance from the estate of the late Ceferina Llamas Vda. De Del Rosario.”<sup>[11]</sup> In addition, petitioner sought to recover ₱500,000.00, as moral damages for respondent’s refusal to admit the nullity of the deed, and for his continued and unjust claim over her properties.

Upon the filing of the *Complaint* for declaration of nullity, petitioner moved for the suspension of the partition proceedings. On 19 January 2000, Judge Victorino U. Montecillo, presiding judge of the partition court, granted the motion with the following order, to wit:

“In her motion dated December 20, 1999 defendant Teresita de Leon prayed for the suspension of the trial of this case on the ground that plaintiff Vicente B. del Rosario would have no cause of action in the instant case should she prevail in Civil Case No. CEB-24698 wherein she sought to declare as null and void the deed of sale she allegedly issued in favor of Vicente B. del Rosario. Plaintiffs filed an opposition stating that by filing Civil Case No. CEB-24698 movant is guilty of forum shopping and splitting a cause of action.

. . . .

Movant’s cause of action in Civil Case No. CEB-24698 is entirely different which cannot and should not be incorporated in the instant case. Since the partition sought by plaintiffs in the instant case includes the properties subject of Civil Case No. CEB-24896 there is merit in movant’s motion to suspend this case.”<sup>[12]</sup>

Meanwhile, respondent filed a *Motion to Dismiss*<sup>[13]</sup> petitioner’s *Complaint*, alleging that, having failed to raise the issue of nullity as a compulsory counterclaim in her *Answer* in the partition case, petitioner is barred from filing the action for declaration of nullity following Section 2, Rule 9 of the Rules of Court.<sup>[14]</sup> Furthermore, he alleged that petitioner is guilty of forum-shopping since the same transactions and essential facts and circumstances are involved in the action for declaration of nullity and in the partition case.<sup>[15]</sup>

In the interim, the partition case was raffled to Branch 5, RTC Cebu which was then presided by Judge Ireneo Lee Gako, Jr. In an *Order* dated 14 July 2000,<sup>[16]</sup> the new partition court set the preliminary conference for the case, and in fact held a preliminary conference on 29 July 2000. In its *Order* dated 15 August 2000,<sup>[17]</sup> the partition court ordered the parties to submit to the court a list of uncontested properties. As a result of the preliminary conference, the parties agreed to partition an uncontested portion of the estate.<sup>[18]</sup>

Likewise on 15 August 2000, the *Complaint* for declaration of nullity was eventually dismissed by Branch 6, RTC Cebu, this time presided by Judge Ireneo Lee Gako, Jr. The trial court ratiocinated that the issue of ownership should be determined and resolved in the partition case.<sup>[19]</sup> It also noted that the filing of a separate action to determine the real owner of the properties in issue and sought to be partitioned would result in multiplicity of suits.<sup>[20]</sup> Petitioner sought the reconsideration of the

*Order* dated 15 August 2000, but the same was denied in the trial court's 19 February 2002 *Order*, issued this time by Judge Anacleto L. Caminade.<sup>[21]</sup> Hence, the instant petition.

While the petition was pending, petitioner died and was substituted by her heirs, namely: Michael Alain Reyes De Leon and Isidro de Leon.<sup>[22]</sup>

Petitioner raises the following issues:<sup>[23]</sup>

- I. Whether or not a party raising the defense of inexistence or nullity of deed of sale in a partition case (which deed is made as one of the bases of the plaintiff's prayer for partition therein) is barred from filing an entirely separate action for declaration of nullity of the same deed on the ground of multiplicity of suits and forum-shopping.
- II. Whether or not the final January 19, 2000 Order of the trial court in the partition case (suspending the proceeding therein on the ground that the Declaration of Nullity of Deed of Sale cannot be incorporated in the partition case) will be adversely affected by the dismissal of the instant case.

On the other hand, respondent submits a lone issue, to wit:

- III. Whether or not this petition should be dismissed on the ground of *litis pendentia* and forum-shopping because of the pendency of the partition case.

The parties are agreed that the issues of forum-shopping and *litis pendentia* are determinative of this case. Essentially, however, the two issues are two sides of a coin.

The petition which raises only questions of law is devoid of merit.

Forum-shopping consists of filing multiple suits in different courts, either simultaneously or successively, involving the same parties, to ask the courts to rule on the same or related causes and/or to grant the same or substantially same reliefs,<sup>[24]</sup> on the supposition that one or the other court would make a favorable disposition.<sup>[25]</sup>

In the case of *Ayala Land, Inc., v. Valisno*,<sup>[26]</sup> we held that:

"Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other. *Litis pendentia* requires the concurrence of the following requisites:

1. Identity of parties, or at least such parties as those representing the same interests in both actions;
2. Identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and

3. Identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res adjudicata* in the other case.”<sup>[27]</sup>

As can be clearly seen from the records of the case, the parties in Civil Case CEB-17236, or the partition case, are likewise the parties in Civil Case CEB-24698, the action for declaration of nullity. In the latter case, they filed the complaint or were impleaded, as the case may be, on account of their purported shares in the very estate sought to be partitioned in the former. In both cases, petitioner asserted that she did not sell to respondent any of her shares in the estate except in two properties and on that basis sought the declaration of nullity of the disputed deed of absolute sale relied upon by the respondent. Consequently, the determination of ownership in either case would amount to *res adjudicata* in regard to the other.

The question of validity or nullity of the deed of sale, as well as the claim for damages, is necessarily and logically intertwined with the partition case. Only the shares in the lots which are determined to have been validly sold to the respondent may be included in the action for partition. Conversely, shares in the lots which were not validly disposed of by the petitioner shall have to be excluded in the order of partition. Indeed, only properties owned in common may be the object of an action for partition. Put elsewise, an order of partition presupposes a state of co-ownership as the status *quo ante*. This is implicit from Rule 69<sup>[28]</sup> on Partition which provides in Section 2 thereof that if after trial the court finds that the plaintiff is entitled to the partition sought, “it shall order the partition of the real estate among all the parties in interest.” Of course, this rule of procedure carries out the substantial right conferred by the Civil Code on co-owners. Article 494 of the Code provides that “(e)ach co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.”

The issue of ownership or co-ownership, to be more precise, must first be resolved in order to effect a partition of properties. This should be done in the action for partition itself. As held in the case of *Catapusan v. Court of Appeals*:<sup>[29]</sup>

“In actions for partition, the court cannot properly issue an order to divide the property, unless it first makes a determination as to the existence of co-ownership. The court must initially settle the issue of ownership, the first stage in an action for partition. Needless to state, an action for partition will not lie if the claimant has no rightful interest over the subject property. In fact, Section 1 of Rule 69 requires the party filing the action to state in his complaint the “nature and extent of his title” to the real estate. Until and unless the issue of ownership is definitely resolved, it would be premature to effect a partition of the properties. xxx.”

In the case of *Viloria v. Court of Appeals*,<sup>[30]</sup> the heirs of deceased co-owners of a parcel of land sought the partition thereof. The surviving co-owner opposed the action, contending that the deceased co-owners had sold and conveyed their shares to him prior to their demise. The trial court ruled that the decedents remained co-owners of the lot as there was no effective conveyance of their shares which upon their demise were inherited by their heirs. On appeal, the Court Appeals affirmed

the ruling of the trial court, with the modification that the deed of sale which defendant therein relied upon was not valid as such since it merely constituted an express trust. Before this Court, petitioner ascribed to the appellate court grave error in assuming jurisdiction over the validity of the deed of sale as it was never raised as an issue in the partition case. We held that:

“xxx. In the action for partition private respondents claimed that they were co-owners of the property subject thereof hence entitled to their share, while petitioner denied their claim by asserting that their rights were supplanted by him by virtue of the deed of absolute sale. As a result, the issue of co-ownership and the legality of the 1965 sale have to be resolved in the partition case. As enunciated in *Catapusan v. CA*, until and unless the issue of ownership is definitely resolved, it would be premature to effect a partition of the properties. Thus, the appellate court did not exceed the limits of its jurisdiction when it ruled on the validity of the 1965 sale.”<sup>[31]</sup>

The trial court pursued the same tack in this case. It held that as the partition court, it should determine and resolve the issue of ownership of the properties subject of the disputed deed of absolute sale. As it pointed out, petitioner had already raised the allegation of nullity as a defense. It also agreed with the respondent that petitioner raised in the partition case the issue of “whether or not defendant Teresita de Leon validly sold all her shares in the inheritance to plaintiff Vicente B. del Rosario.”<sup>[32]</sup>

Moreover, in the Verification<sup>[33]</sup> for the *Complaint* for declaration of nullity, petitioner claimed that “I have not commenced any other action or court proceeding involving the same issues in the Supreme Court, the Court of Appeals, or in any other Tribunals or Agency,” and that “to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or in any other Tribunals or Agency.” The veracity of these statements is belied by petitioner herself. In her *Complaint*, petitioner alleged that herein respondent is claiming all of her shares in the estate of Ceferina Llamas, based on a deed of absolute sale purportedly signed by her,<sup>[34]</sup> and that she was informed of the existence of the said instrument by her cousins when the same was alleged in the partition case.<sup>[35]</sup> She even filed her *Answer* to the *Amended Complaint* and claimed therein that she did not sell any share, much more all of her shares to respondent. It is thus clear that she was aware of the partition case and that she even participated therein when she filed her *Complaint*.

Doubtlessly, petitioner made a false or untrue certification of non-forum shopping.

To split the proceedings into declaration of nullity of the deed of sale and trial for the partition case, or to hold in abeyance the partition case pending resolution of the nullity case would result in multiplicity of suits, duplicitous procedure and unnecessary delay, as the lower court observed.<sup>[36]</sup> The conduct of separate trials of the parties’ respective claims would entail a substantial duplication of effort and time not only of the parties but also of the courts concerned. On the other hand, it would be in the interest of justice if the partition court hears all the actions and incidents concerning the properties subject of the partition in a single and complete proceeding.