

FIRST DIVISION

[G.R. Nos. 120784-85, January 24, 2001]

**SPOUSES WARLITO BUSTOS AND HERMINIA REYES-BUSTOS,
PETITIONERS, VS. COURT OF APPEALS, SPOUSES VENANCIO
VIRAY AND CECILIA NUNGA-VIRAY, RESPONDENTS.**

D E C I S I O N

PARDO, J.:

The case before the Court is an appeal *via* certiorari seeking to set aside the decision of the Court of Appeals^[1] modifying that of the Regional Trial Court, Pampanga, Macabebe, Branch 55^[2] and the resolution denying reconsideration.^[3]

Paulino Fajardo died intestate on April 2, 1957.^[4] He had four (4) children, namely: Manuela, Trinidad, Beatriz and Marcial, all surnamed Fajardo.

On September 30, 1964, the heirs executed an extra-judicial partition^[5] of the estate of Paulino Fajardo. On the same date, Manuela sold her share to Moses^[6] G. Mendoza, husband of Beatriz by deed of absolute sale.^[7] The description of the property reads as follows:

"A parcel of an irrigated riceland located in the barrio of San Isidro, Masantol, Pampanga. Bounded on the North, by Paulino Fajardo; on the East, by Paulino Fajardo; on the South, by Eleuterio Bautista; and on the West, by Paulino Guintu. Containing an area of 5,253 sq. mts., more or less. Declared under Tax Declaration No. 3029 in the sum of P710.00."

At the time of the sale, there was no cadastral survey in Masantol, Pampanga. Later, the cadastre was conducted, and the property involved in the partition case were specified as Lots 280, 283, 284, 1000-A and 1000-B. The share of Manuela, which was sold to Moses, includes Lot 284 of the Masantol Cadastre and Lot 284 was subdivided into Lots 284-A and 284-B.

Trinidad was in physical possession of the land. She refused to surrender the land to her brother-in-law Moses G. Mendoza, despite several demands.

On September 3, 1971, Moses filed with the Court of First Instance, Pampanga a complaint for partition claiming the one fourth ($\frac{1}{4}$) share of Manuela which was sold to him.^[8]

During the pendency of the case for partition, Trinidad Fajardo died. On December 15, 1984, the heirs executed an extra-judicial partition of the estate of Trinidad Fajardo. On February 16, 1987, Lucio Fajardo Ignacio, son of Trinidad sold Lot 284-B to spouses Venancio Viray and Cecilia Nunga-Viray.

On February 8, 1989, the Regional Trial Court, Pampanga, Macabebe, Branch 55 rendered a decision in favor of Moses G. Mendoza, the dispositive portion of which provides:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants, and hereby orders -

- "1. The division and partition of the parcel of land identified and described earlier with the aid and assistance of a qualified surveyor, segregating therefrom an area equivalent to $\frac{1}{4}$ portion to be taken from the vacant right eastern portion which is toward the national road the same to be determined by one (or the said surveyor) standing on the subject land facing the municipal road, at the expense of the plaintiffs;
- "2. The said $\frac{1}{4}$ portion segregated shall be a fixed portion, described by metes and bounds, and shall be adjudicated and assigned to the plaintiffs;
- "3. In case of disagreement as to where the said right eastern portion should be taken, a commission is hereby constituted, and the OIC-Clerk of Court is hereby appointed chairman, and the OIC-Branch Clerk of Court of Branches 54 and 55 of this Court are hereby appointed members, to carry out the orders contained in the foregoing first two paragraphs;
- "4. The defendants to pay the plaintiffs the sum of P500.00 as attorney's fees, and to pay the costs of the proceedings.

"SO ORDERED."^[9]

On September 13, 1991, Moses sold the subject land to spouses Warlito Bustos and Herminia Reyes-Bustos.

In the meantime, on November 6, 1989, spouses Venancio Viray and Cecilia Nunga-Viray, buyers of Lucio Ignacio's share of the property, filed with the Municipal Circuit Trial Court, Macabebe-Masantol, Pampanga an action for unlawful detainer^[10] against spouses Bustos, the buyers of Moses G. Mendoza, who were in actual possession as lessees of the husband of Trinidad, Francisco Ignacio, of the subject land.

The municipal circuit trial court decided the case in favor of spouses Viray. Subsequently, the trial court issued writs of execution and demolition, but were stayed when spouses Bustos filed with the Regional Trial Court, Pampanga, Macabebe, Branch 55,^[11] a petition for certiorari, prohibition and injunction.

On December 18, 1992, the regional trial court rendered a decision, the dispositive portion of which reads:

"WHEREFORE, premises considered, this case, is as it is hereby, dismissed. The preliminary injunction is ordered dissolved and the petitioners and Meridian Assurance Corporation are hereby ordered jointly and severally, to pay the private respondents the sum of P20,000.00 by way of litigation expenses and attorney's fees, and to pay the cost of the proceedings."^[12]

In time, the spouses Bustos appealed the decision to the Court of Appeals.^[13]

On February 27, 1989, Lucio Fajardo Ignacio also appealed the decision to the Court of Appeals.^[14]

Upon motion for consolidation of the petitioners, on August 9, 1993, the Court of Appeals resolved to consolidate CA-G. R. SP No. 30369 and CA-G. R. CV No. 37606.^[15]

On August 26, 1994, the Court of Appeals promulgated its decision in the two cases, the dispositive portion of which provides:

"WHEREFORE, in view of all the foregoing, consolidated judgment is hereby rendered for both CA-G. R. SP No. 37607 and CA-G. R. SP NO. 30369 as follows:

"1. The appeal docketed as CA-G. R. CV No. 37607 is dismissed; Moses Mendoza is declared as owner of the $\frac{1}{4}$ undivided share previously owned by Manuela Fajardo; and the decision of the Regional Trial Court dated February 8, 1989 in Civil Case No. 83-0005-M is affirmed but MODIFIED as follows:

"WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants, and hereby orders -

- "1. A relocation survey to be conducted (at the expense of the plaintiffs) to retrace the land subject of the deed of sale dated September 30, 1964 between Manuela Fajardo and Moses Mendoza;
- "2. The division and partition of said relocated land by segregating therefrom an area equivalent to $\frac{1}{4}$ portion to be taken from the vacant right eastern portion which is toward the national road, the same to be determined by one standing on the subject land facing the municipal road, at the expense of the plaintiff-appellees;
- "3. The said $\frac{1}{4}$ portion segregated shall be a fixed portion, described by metes and bounds, and shall be adjudicated and assigned to the plaintiffs-appellees;