

SECOND DIVISION

[G.R. No. 108228, February 01, 2001]

**SPOUSES MANUEL AND SALVACION DEL CAMPO, PETITIONERS,
VS. HON. COURT OF APPEALS AND HEIRS OF JOSE REGALADO,
SR., RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

This is a petition for review on *certiorari* of a decision of the Court of Appeals which affirmed the judgment of the Regional Trial Court of Roxas City, Branch 15 in Civil Case No. V-5369, ordering the dismissal of the action for repartition, resurvey and reconveyance filed by petitioners.

Pure questions of law are raised in this appeal as the following factual antecedents are undisputed:

Salome, Consorcia, Alfredo, Maria, Rosalia, Jose, Quirico and Julita, all surnamed Bornales, were the original co-owners of Lot 162 of the Cadastral Survey of Pontevedra, Capiz under Original Certificate of Title No. 18047. As appearing therein, the lot, which consisted of a total area of 27,179 square meters was divided in aliquot shares among the eight (8) co-owners as follows:

Salome Bornales	4/16
Consorcia Bornales	4/16
Alfredo Bornales	2/16
Maria Bornales	2/16
Jose Bornales	1/16
Quirico Bornales	1/16
Rosalia Bornales	1/16
Julita Bornales	1/16

On July 14, 1940, Salome sold part of her 4/16 share in Lot 162 for P200.00 to Soledad Daynolo. In the Deed of Absolute Sale signed by Salome and two other co-owners, Consorcia and Alfredo, the portion of Lot 162 sold to Soledad was described as having more or less the following measurements:

63-1/2 meters from point "9" to "10", 35 meters from point "10" to point "11", 30 meters from point "11" to a certain point parallel to a line drawn from points "9" to "10"; and then from this "Certain Point" to point "9" and as shown in the accompanying sketch, and made an integral part of this deed, to SOLEDAD DAYNOLO, her heirs and assigns.^[1]

Thereafter, Soledad Daynolo immediately took possession of the land described above and built a house thereon. A few years later, Soledad and her husband, Simplicio Distajo, mortgaged the subject portion of Lot 162 as security for a P400.00 debt to Jose Regalado, Sr. This transaction was evidenced by a Deed of

Mortgage^[2] dated May 1, 1947.

On April 14, 1948, three of the eight co-owners of Lot 162, specifically, Salome, Consorcia and Alfredo, sold 24,993 square meters of said lot to Jose Regalado, Sr.

On May 4, 1951, Simplicio Distajo, heir of Soledad Daynolo who had since died, paid the mortgage debt and redeemed the mortgaged portion of Lot 162 from Jose Regalado, Sr. The latter, in turn, executed a Deed of Discharge of Mortgage^[3] in favor of Soledad's heirs, namely: Simplicio Distajo, Rafael Distajo and Teresita Distajo-Regalado. On same date, the said heirs sold the redeemed portion of Lot 162 for P1,500.00 to herein petitioners, the spouses Manuel Del Campo and Salvacion Quiachon.

Meanwhile, Jose Regalado, Sr. caused the reconstitution of Original Certificate of Title No. 18047. The reconstituted OCT No. RO-4541 initially reflected the shares of the original co-owners in Lot 162. However, title was transferred later to Jose Regalado, Sr. who subdivided the entire property into smaller lots, each covered by a respective title in his name. One of these small lots is Lot No. 162-C-6 with an area of 11,732 square meters which was registered on February 24, 1977 under TCT No. 14566.

In 1987, petitioners Manuel and Salvacion del Campo brought this complaint for "repartition, resurvey and reconveyance" against the heirs of the now deceased Jose Regalado, Sr. Petitioners claimed that they owned an area of 1,544 square meters located within Lot 162-C-6 which was erroneously included in TCT No. 14566 in the name of Regalado. Petitioners alleged that they occupied the disputed area as residential dwelling ever since they purchased the property from the Distajos way back in 1951. They also declared the land for taxation purposes and paid the corresponding taxes.

On April 1, 1987, summons were served on Regalado's widow, Josefina Buenvenida, and two of her children, Rosemarie and Antonio. Josefina and Rosemarie were declared in default on May 10, 1989 because only Antonio filed an answer to the complaint.

During trial, petitioners presented the Deed of Absolute Sale^[4] executed between Soledad Daynolo and Salome Bornales as well as the Deed of Mortgage^[5] and Deed of Discharge^[6] signed by Jose Regalado, Sr. The Deed of Absolute Sale^[7] showing the purchase by the Del Campos of the property from the Distajos was likewise given in evidence.

Despite the filing of an answer, Antonio failed to present any evidence to refute the claim of petitioners. Thus, after considering Antonio to have waived his opportunity to present evidence, the trial court deemed the case submitted for decision.

On November 20, 1990, the trial court rendered judgment dismissing the complaint. It held that while Salome could alienate her *pro-indiviso* share in Lot 162, she could not validly sell an undivided part thereof by metes and bounds to Soledad, from whom petitioners derived their title. The trial court also reasoned that petitioners could not have a better right to the property even if they were in physical possession of the same and declared the property for taxation purposes, because

mere possession cannot defeat the right of the Regalados who had a *Torrens* title over the land.

On appeal, the Court of Appeals affirmed the trial court's judgment, with no pronouncement as to costs.^[8]

Petitioners now seek relief from this Court and maintain that:

I.

THE FACT THAT THE SALE OF THE SUBJECT PORTION CONSTITUTES A SALE OF A CONCRETE OR DEFINITE PORTION OF LAND OWNED IN COMMON DOES NOT ABSOLUTELY DEPRIVE HEREIN PETITIONERS OF ANY RIGHT OR TITLE THERETO;

II.

IN ANY EVENT, HEREIN PRIVATE RESPONDENTS ARE ALL ESTOPPED FROM DENYING THE RIGHT AND TITLE OF HEREIN PETITIONERS.^[9]

In resolving petitioners' appeal, we must answer the following questions: Would the sale by a co-owner of a physical portion of an undivided property held in common be valid? Is respondent estopped from denying petitioners' right and title over the disputed area? Under the facts and circumstances duly established by the evidence, are petitioners entitled to 'repartition, resurvey and reconveyance' of the property in question?

On the *first issue*, it seems plain to us that the trial court concluded that petitioners could not have acquired ownership of the subject land which originally formed part of Lot 162, on the ground that their alleged right springs from a void sale transaction between Salome and Soledad. The mere fact that Salome purportedly transferred a definite portion of the co-owned lot by metes and bounds to Soledad, however, does not *per se* render the sale a nullity. This much is evident under Article 493^[10] of the Civil Code and pertinent jurisprudence on the matter. More particularly in *Lopez vs. Vda. De Cuaycong, et.al.*^[11] which we find relevant, the Court, speaking through Mr. Justice Bocobo, held that:

...The fact that the agreement in question purported to sell a *concrete portion* of the hacienda *does not render the sale void*, for it is a well-established principle that *the binding force of a contract must be recognized as far as it is legally possible to do so*. "Quando res non valet ut ago, valeat quantum valere potest." (When a thing is of no force as I do it, it shall have as much force as it can have.)^[12]

Applying this principle to the instant case, there can be no doubt that the transaction entered into by Salome and Soledad could be legally recognized in its entirety since the object of the sale did not even exceed the ideal shares held by the former in the co-ownership. As a matter of fact, the deed of sale executed between the parties expressly stipulated that the portion of Lot 162 sold to Soledad would be taken from Salome's 4/16 undivided interest in said lot, which the latter could validly transfer in whole or in part even without the consent of the other co-owners. Salome's right to sell part of her undivided interest in the co-owned property is