

SECOND DIVISION

[G.R. No. 134329, January 19, 2000]

**VERONA PADA-KILARIO AND RICARDO KILARIO PETITIONERS,
VS. COURT OF APPEALS AND SILVERIO PADA, RESPONDENTS.**

DECISION

DE LEON, JR., J.:

The victory^[1] of petitioner spouses Ricardo and Verona Kilario in the Municipal Circuit Trial Court^[2] in an ejectment suit^[3] filed against them by private respondent Silverio Pada, was foiled by its reversal^[4] by the Regional Trial Court^[5] on appeal. They elevated their cause^[6] to respondent Court of Appeals^[7] which, however, promulgated a Decision^[8] on May 20, 1998, affirming the Decision of the Regional Trial Court.

The following facts are undisputed:

One Jacinto Pada had six (6) children, namely, Marciano, Ananias, Amador, Higino, Valentina and Ruperta. He died intestate. His estate included a parcel of land of residential and coconut land located at Poblacion, Matalom, Leyte, denominated as Cadastral Lot No. 5581 with an area of 1,301.92 square meters. It is the northern portion of Cadastral Lot No. 5581 which is the subject of the instant controversy.

During the lifetime of Jacinto Pada, his half-brother, Feliciano Pada, obtained permission from him to build a house on the northern portion of Cadastral Lot No. 5581. When Feliciano died, his son, Pastor, continued living in the house together with his eight children. Petitioner Verona Pada-Kilario, one of Pastor's children, has been living in that house since 1960.

Sometime in May, 1951, the heirs of Jacinto Pada entered into an extra-judicial partition of his estate. For this purpose, they executed a private document which they, however, never registered in the Office of the Registrar of Deeds of Leyte.

At the execution of the extra-judicial partition, Ananias was himself present while his other brothers were represented by their children. Their sisters, Valentina and Ruperta, both died without any issue. Marciano was represented by his daughter, Maria; Amador was represented by his daughter, Concordia; and Higino was represented by his son, Silverio who is the private respondent in this case. It was to both Ananias and Marciano, represented by his daughter, Maria, that Cadastral Lot No. 5581 was allocated during the said partition. When Ananias died, his daughter, Juanita, succeeded to his right as co-owner of said property.

On June 14, 1978, Juanita Pada sold to Engr. Ernesto Paderes, the right of his father, Ananias, as co-owner of Cadastral Lot No. 5881.

On November 17, 1993, it was the turn of Maria Pada to sell the co-ownership right of his father, Marciano. Private respondent, who is the first cousin of Maria, was the buyer.

Thereafter, private respondent demanded that petitioner spouses vacate the northern portion of Cadastral Lot No. 5581 so his family can utilize the said area. They went through a series of meetings with the barangay officials concerned for the purpose of amicable settlement, but all earnest efforts toward that end, failed.

On June 26, 1995, private respondent filed in the Municipal Circuit Trial Court of Matalom, Leyte, a complaint for ejectment with prayer for damages against petitioner spouses.

On July 24, 1995, the heirs of Amador Pada, namely, Esperanza Pada-Pavo, Concordia Pada-Bartolome, and Angelito Pada, executed a Deed of Donation^[9] transferring to petitioner Verona Pada-Kilario, their respective shares as co-owners of Cadastral Lot No. 5581.

On February 12, 1996, petitioner spouses filed their Answer averring that the northern portion of Cadastral Lot No. 5581 had already been donated to them by the heirs of Amador Pada. They contended that the extra-judicial partition of the estate of Jacinto Pada executed in 1951 was invalid and ineffectual since no special power of attorney was executed by either Marciano, Amador or Higinio in favor of their respective children who represented them in the extra-judicial partition. Moreover, it was effectuated only through a private document that was never registered in the office of the Registrar of Deeds of Leyte.

The Municipal Circuit Trial Court rendered judgment in favor of petitioner spouses. It made the following findings:

"After a careful study of the evidence submitted by both parties, the court finds that the evidence adduced by plaintiff failed to establish his ownership over x x x Cadastral Lot No. 5581 x x x while defendants has [sic] successfully proved by preponderance of evidence that said property is still under a community of ownership among the heirs of the late Jacinto Pada who died intestate. If there was some truth that Marciano Pada and Ananias Pada has [sic] been adjudicated jointly of [sic] the above-described residential property x x x as their share of the inheritance on the basis of the alleged extra judicial settlement, how come that since 1951, the date of partition, the share of the late Marciano Pada was not transferred in the name of his heirs, one of them Maria Pada-Pavo and still remain [sic] in the name of Jacinto Pada up to the present while the part pertaining to the share of Ananias Pada was easily transferred in the name of his heirs x x x.

"The alleged extra judicial settlement was made in private writing and the genuineness and due execution of said document was assailed as doubtful and it appears that most of the heirs were not participants and signatories of said settlement, and there was lack of special power of attorney to [sic] those who claimed to have represented their co-heirs in the participation [sic] and signing of the said extra judicial statement.

"Defendants were already occupying the northern portion of the above-described property long before the sale of said property on November 17, 1993 was executed between Maria Pada-Pavo, as vendor and the plaintiff, as vendee. They are in possession of said portion of the above-described property since the year 1960 with the consent of some of the heirs of Jacinto Pada and up to the [sic] present some of the heirs of Jacinto Pada has [sic] donated x x x their share of [sic] the above-described property to them, virtually converting defendants' standing as co-owners of the land under controversy. Thus, defendants as co-owners became the undivided owners of the whole estate x x x. As co-owners of x x x Cadastral Lot No. 5581 x x x their possession in the northern portion is being [sic] lawful."^[10]

From the foregoing decision, private respondent appealed to the Regional Trial Court. On November 6, 1997, it rendered a judgment of reversal. It held:

"x x x [T]he said conveyances executed by Juanita Pada and Maria Pada Pavo were never questioned or assailed by their co-heirs for more than 40 years, thereby lending credence on [sic] the fact that the two vendors were indeed legal and lawful owners of properties ceded or sold. x x x At any rate, granting that the co-heirs of Juanita Pada and Maria Pada Pavo have some interests on the very lot assigned to Marciano and Ananias, nevertheless, said interests had long been sadly lost by prescription, if not laches or estoppel.

"It is true that an action for partition does not prescribe, as a general rule, but this doctrine of imprescriptibility cannot be invoked when one of the heirs possessed the property as an owner and for a period sufficient to acquire it by prescription because from the moment one of the co-heirs claim [sic] that he is the absolute owner and denies the rest their share of the community property, the question then involved is no longer one for partition but of ownership. x x x Since [sic] 1951 up to 1993 covers a period of 42 long years. Clearly, whatever right some of the co-heirs may have, was long extinguished by laches, estoppel or prescription.

"x x x

"x x x [T]he deed of donation executed by the Heirs of Amador Pada, a brother of Marciano Pada, took place only during the inception of the case or after the lapse of more than 40 years reckoned from the time the extrajudicial partition was made in 1951. Therefore, said donation is illegal and invalid [sic] the donors, among others, were absolutely bereft of any right in donating the very property in question."^[11]

The dispositive portion of the decision of the Regional Trial Court reads as follows:

"WHEREFORE, a judgment is hereby rendered, reversing the judgment earlier promulgated by the Municipal Circuit Trial Court of Matalom, Leyte, [sic] consequently, defendants-appellees are hereby ordered:

"1. To vacate the premises in issue and return peaceful possession to the

appellant, being the lawful possessor in concept of owner;

"2. To remove their house at their expense unless appellant exercises the option of acquiring the same, in which case the pertinent provisions of the New Civil Code has to be applied;

"3. Ordering the defendants-appellees to pay monthly rental for their occupancy and use of the portion of the land in question in the sum of P100.00 commencing on June 26, 1995 when the case was filed and until the termination of the present case;

"4. Ordering the defendants to pay to the appellant the sum of P5,000.00 as moral damages and the further sum of P5,000.00 as attorney's fees;

"5. Taxing defendants to pay the costs of suit."^[12]

Petitioners filed in the Court of Appeals a petition for review of the foregoing decision of the Regional Trial Court.

On May 20, 1998, respondent Court of Appeals rendered judgment dismissing said petition. It explained:

"Well-settled is the rule that in an ejectment suit, the only issue is possession de facto or physical or material possession and not de jure. Hence, even if the question of ownership is raised in the pleadings, the court may pass upon such issue but only to determine the question of possession, specially if the former is inseparably linked with the latter. It cannot dispose with finality the issue of ownership, such issue being inutile in an ejectment suit except to throw light on the question of possession x x x.

"Private respondent Silverio Pada anchors his claim to the portion of the land possessed by petitioners on the Deed of Sale executed in his favor by vendor Maria Pada-Pavo, a daughter of Marciano, son of Jacinto Pada who was the registered owner of the subject lot. The right of vendee Maria Pada to sell the property was derived from the extra-judicial partition executed in May 1951 among the heirs of Jacinto Pada, which was written in a Bisayan dialect signed by the heirs, wherein the subject land was adjudicated to Marciano, Maria Pavo's father, and Ananias Pada. Although the authenticity and genuineness of the extra-judicial partition is now being questioned by the heirs of Amador Pada, no action was ever previously filed in court to question the validity of such partition.

"Notably, **petitioners in their petition admitted** among the antecedent facts that Maria Pavo is one of the co-owners of the property originally owned by Jacinto Pada x x x and that the disputed lot was adjudicated to Marciano (father of Maria Pavo) and Ananias, and upon the death of Marciano and Ananias, their heirs took possession of said lot, i.e. Maria Pavo the vendor for Marciano's share and Juanita for Ananias' share x x x. Moreover, petitioners do not dispute the findings of the respondent court that during the cadastral survey of Matalom, Leyte, the share of Maria Pada Pavo was denominated as Lot No. 5581, while the share of