

SECOND DIVISION

[G.R. No. 108580, December 29, 1998]

**CLARITA P. HERMOSO AND VICTORIA P. HERMOSO,
PETITIONERS, VS. COURT OF APPEALS, SPOUSES CEFERINO C.
PALAGANAS, AZUCENA R. PALAGANAS AND DR. AMANDA
C.PALAGANAS, RESPONDENTS.**

D E C I S I O N

MARTINEZ, J.:

This petition seeks the review of the decision dated July 24, 1992^[1] of the Court of appeals which reversed the decision dated February 15, 1990 of the Regional Trial Court of Bulacan in an action for legal redemption instituted by the petitioners against the private respondents. The motion for reconsideration of petitioners was likewise denied by the respondent court in its resolution dated December 22, 1992.^[2]

There is not much dispute about the background facts, thus we quote with favor the factual antecedents as summarized by the Court of Appeals, to wit:

"Emilio Hermoso, now deceased, and plaintiff Clarita Hermoso were husband and wife whose union was blessed with the following children: Rogelio, Victoria (another plaintiff-appellee), Agustinito and Danilo Ciriaco, all surnamed Hermoso (the latter two being third party defendants-appellees). Emilio Hermoso died on June 22, 1957, leaving as his surviving heirs, his wife Clarita, and the four above-named children. Among the properties left by Emilio Hermoso is an undivided one-third portion of a parcel of land, the whole of which consisting of 7,842 square meters, more or less, is now covered by OCT No. 0-1054 (M) issued in 1983, situated at Calvario, Meycauayan, Bulacan.

"The property was originally owned by Agrifina Francia and the ownership thereof was transmitted upon her death to her three (3) children, to wit: Isidro, Consolacion, and Emilio (herein appellees' predecessor-in-interest) in the proportion of one-third (1/3) each. Consolacion Hermoso, married to Manuel Cruz, later bought the one-third (1/3) undivided share of her brother, Isidro Hermoso. Thus, as indicated in OCT No. 0-1054 (M), Consolacion Hermoso owns two-thirds (2/3) thereof and the remaining one-third (1/3) is in the name of the Heirs of Emilio Hermoso [Exhibit 'A'].

"On May 29, 1974, the Heirs of Emilio Hermoso executed a duly notarized 'Agreement' Exh. "1-A"], the pertinent portion of which reads, as follows:

'2. That it is hereby agreed that for the convenience of all parties the following shall be observed in the partition of the

above-mentioned properties: that the share of CLARITA P. CARIN shall in all cases be adjacent to the properties adjudicated to CONSOLACION HERMOSO CRUZ; then following by the shares pertaining to DANILO CIRIACO HERMOSO, VICTORINA P. HERMOSO, ROGELIO P. HERMOSO and AGUSTINITO P. HERMOSO, respectively, **except in the partition of the parcel of land situated in Calvario, Meycauayan, Bulacan,** which is the subject of the DEED OF EXCHANGE above-mentioned, in which case the **share pertaining to CLARITA P. CARIN shall be adjacent to the stonewall that segregates the share of CONSOLACION HERMOSO CRUZ, then followed by the shares pertaining to ROGELIO P. HERMOSO, DANILO CIRIANO HERMOSO, VICTORINA P. HERMOSO, and AGUSTINITO P. HERMOSO, at the extreme end, respectively'** [Emphasis and underscoring Ours]

"Sometime in July, 1979, third party defendants-appellees Agustinito hermoso and Danilo Hermoso ('Hermoso brothers' for brevity) offered to sell their respective shares to the land in dispute to one Benjamin Palaganas, brother of appellees Ceferino Palaganas and Amanda Palaganas, who are old family acquaintances of the Hermosos since the lifetime of their late landlord, Don Marcos Hermoso.

"Upon being shown a copy of the duly notarized 'Agreement' [Exh. '1-A'], Ben Palaganas, together with the Hermoso brothers, approached Atty. Ireneo E. Guardiano concerning the preparation of a contract of sale, with the latter noting that the shares offered for sale are separated by the share of Victoria Hermoso; hence, it would be more feasible for Danilo Ciriaco to execute a deed of exchange with his sister, Victoria [TSN, 29 October 1986, p. 8]. A 'Deed of Exchange' [Exh. '11'] was thereafter drawn and signed by Danilo Ciriaco Hermoso but the same was not however signed by Victoria Hermoso.

"Nonetheless, this transaction did not materialize for the reasons that Clarita Carin subsequently offered to redeem the shares sold by her children by returning the amount already received by her son, Agustinito. By reason of their good relations and it appearing that the sale was made without the knowledge and consent of Clarita Carin, Ben Palaganas accepted the offer without suspicion.

"In the month of October of the same year, Agustinito, then reviewing for the Bar Examinations, and Danilo, in dire need of money, for the second time offered to sell their respective shares to Ben Palaganas who acted for and in behalf of his brother, Dr. Ceferino Palaganas, and sister, Dr. Amanda Palaganas (Palaganases, for brevity), this time giving assurance that their mother (Clarita Carin) had already consented to the transaction and that they could convince their sister, Victoria, to finally agree to an exchange of shares with Danilo. Elated with this development, the Palaganases even offered a higher price [P500,000.00] for the sale.

"Thus, with these assurances, the parties executed on January 30, 1980

a duly notarized 'Deed of Absolute Sale Over Two Undivided Shares To A Parcel of Land' (Annex 'B,' Plaintiffs-Appellees; Exhibit 2, Appellants) with the Hermoso brothers receiving P300,000.00 upon the execution of the contract, P100,000.00 to be paid upon the eviction of the squatters/tenants thereon, and the balance of P100,000.00 to be paid upon the issuance of title in the name of the vendees.

"Upon the commencement of the present action (October 8, 1984), the Hermoso brothers have already received a total amount of P401,500.00 with the last condition---transfer of title---not having been yet fulfilled.

"Contrary to the assurances made by the Hermoso brothers, plaintiffs-appellees allegedly came to have known of the transaction only sometime between May, 1983 and January, 1984 (Complaint, par. 8 in relation to TSN, 21 Nov. 1984, p. 32, Victoria Hermoso). Thereafter, plaintiffs-appellees allegedly made arrangements to negotiate for the redemption of the shares sold by the Hermoso brothers. This time, however, the Palaganases were not so open to the idea of the offered repurchase for the value of the property in dispute had considerably increased and that they have already set foothold on said property by reason of their investments and the plans made for its development. Furthermore, they relied upon the assurances made by the Hermoso brothers that the transaction is known to Clarita Carin and Victoria Hermoso."^[3]

Consequently, considering the adamant refusal of the private respondents to resell the disputed lots, petitioners on October 8, 1984 filed a complaint for legal redemption before the Regional Trial Court of Bulacan, Branch 7, Malolos, with prayer for the issuance of a writ of preliminary injunction to enjoin defendants third-party plaintiffs from proceeding with the construction of the building thereon. The trial court issued the writ prayed for. After trial on the merits, the court *a quo* issued its decision dated February 15, 1990, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants and third-party defendants as follows:

1. Ordering the defendants to allow the redemption of the shares sold to them by their vendors, the third party defendants herein, and upon payment of the amount of Four Hundred One Thousand Five Hundred (P401,500.00) Pesos, to surrender the possession of the portion of the land covered by OCT No.0-1054 (N), together with whatever improvement they have constructed on the property, to the plaintiffs;
2. Ordering the defendants to pay the plaintiffs, the amount of Twenty Thousand (P20,000.00) Pesos by way of actual damages to cover the transportation expenses of the plaintiffs from Cebu to Malolos and back and also attorney's fees in the amount of Fifteen Thousand (P15,000.00) Pesos which plaintiffs have paid or are bound to pay their counsel;
3. Ordering the third party defendants to pay the defendants, damages by way of legal interest in the amount computed at the rate of twelve (12%) per cent of the P401,500.00 which shall commence from the date of the filing of the complaint on October 8, 1984 until the said amount of

P401,500.00 shall have been completely paid to the defendants by the said plaintiffs.

Costs against the defendants."^[4]

On appeal, the issues were simplified by the respondent court as follows:

1. Whether or not the property in dispute is still co-owned or has actually been partitioned thereby terminating the co-ownership;
2. If otherwise, whether or not the plaintiffs-appellees could still exercise the rights of redemption.

The respondent court disagreed with the findings of the trial court and was of the view "that laws and jurisprudence favor the appellants, hence we reverse." The dispositive portion of the appellate court's decision reads:

"WHEREFORE, premises considered, the judgment appealed from is hereby REVERSED, and a new one is entered dismissing the Complaint and ordering Third-Party Defendants to pay on the Third Party Complaint, the Third Party Plaintiffs the amount of P10,000.00 by way of attorney's fees.

"The parties shall bear their respective costs."^[5]

In this petition for review, Clarita P. Hermoso, now Clarita Carin after her remarriage, and her daughter Victoria P. Hermoso, raise the following grounds:

"I.

THE RESPONDENT COURT ERRED IN NOT AGREEING WITH THE HOLDING OF THE TRIAL COURT THAT THE AGREEMENT, MARKED AS EXHIBIT '1-A,' IS NOT A DEED OF PARTITION BUT IS A MERE SCHEME AS TO HOW TO PARTITION THE PROPERTY IN QUESTION WHICH IS TEMPORARY IN CHARACTER AND SUBJECT TO CHANGE AT ANY TIME AND IS NULL AND VOID AS FAR AS PETITIONER VICTORIA P. HERMOSO IS CONCERNED BECAUSE SHE WAS STILL A MINOR WHEN SAID AGREEMENT WAS EXECUTED AND HER CO-PETITIONER CLARITA P. HERMOSO HAD NO AUTHORITY TO SIGN SAID AGREEMENT IN HER BEHALF;

II.

THE RESPONDENT COURT ERRED IN NOT HOLDING THAT THE PROPERTY IN QUESTION WAS STILL UNDIVIDED AND WAS STILL UNDER CO-OWNERSHIP DESPITE THE EXECUTION OF THE AGREEMENT MARKED AS EXHIBIT '1-A' BECAUSE CONSOLACION HERMOSO, CO-OWNER OF 2/3 OF SAID PROPERTY, WAS NOT A PARTY TO SAID AGREEMENT;

III.

THE RESPONDENT COURT ERRED IN COUNTING THE DATE WHEN THE RIGHT OF REDEMPTION SHOULD BE EXERCISED FROM THE TIME THE PETITIONERS MADE A FORMAL OFFER TO REDEEM INSTEAD OF FROM

THE TIME THE PETITIONERS STARTED NEGOTIATING FOR THE REDEMPTION OF THE TWO UNDIVIDED SHARES AFTER THEY WERE CERTAIN THAT SAID UNDIVIDED SHARES WERE SOLD TO THE PRIVATE RESPONDENTS."^[6]

The trial and appellate courts disagreed as to the interpretation to be given to the agreements and contracts and to the notice of sale involved in this case.

In the trial court, petitioners posited the theory that the disputed land is still under co-ownership. On the basis of the same documentary evidence, the private respondents contend that what the two brothers sold was already definite since partition had already been effected.

The first two (2) grounds for this petition refer to the nature of the land sold to the respondents. The question is: Was it still under co-ownership or had it already been partitioned and divided among the co-owners?

In finding that the parcel of land covered and described in OCT No. 0-1054 (M) had not been divided or partitioned among the co-owners, the trial court said:

"In fact, there is no division yet between the spouses, Manuel Cruz and Consolacion Hermoso Cruz on one hand and the Heirs of Emilio Hermoso on the other. This fact of co-ownership is easily discernible in the title itself which has not yet been cancelled, and therefore still subsisting.

'Therefore, it is ordered by the Court that said land be registered in accordance with the provisions of the Land Registration Act, as amended, in the name of said spouses, Manuel C. Cruz and Consolacion Hermoso; and heirs of Emilio Hermoso, namely: Clarita Pajo, Victoria Hermoso, Rogelio Hermoso, Agustinito Hermoso, and Danilo Hermoso as their exclusive property, --'

"The documents relating to the shares of the third party defendants readily show this fact of co-ownership. Thus, in the untitled instrument introduced by the defendants marked as Exhibit 3 which is an agreement to sell purportedly bearing the date October 10, 1979 signed by the Hermoso brothers, Agustinito and Danilo and stating how the P500,000.00 consideration of the sale shall be paid, what was referred to have been sold were the shares, rights and interests over the land of the said vendors. This document states, among others:

'That we have agreed to sell, transfer and convey unto spouses Dr. Ceferino C. Palaganas and Azucena R. Palaganas, both of legal age, Filipinos and with residence and postal address at Bañga, Meycauayan, Bulacan all our shares, rights and interests over the above-described parcel of land free from all liens and encumbrances under the following terms and conditions x x x' Cf. Exhibit 3, def., underlining supplied.

"The document signed by the two brothers on January 30, 1980 was obviously prepared at the instance of Ben Palaganas. Acknowledged before Notary Public Irineo Guardiano whose advice was sought by Ben Palaganas, its title is immediately revealing, as it is titled 'Deed of