

## SECOND DIVISION

[ G.R. No. 112260, June 30, 1997 ]

**JOVITA YAP ANCOG, AND GREGORIO YAP, JR., PETITIONERS,  
VS. COURT OF APPEALS, ROSARIO DIEZ, AND CARIDAD YAP,  
RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for review of the decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. No. CV-19650, affirming the dismissal by the Regional Trial Court<sup>[2]</sup> of Bohol of an action for partition of a parcel of land which petitioners had filed.

The land, with improvements thereon, was formerly the conjugal property of the spouses Gregorio Yap and Rosario Diez. In 1946, Gregorio Yap died, leaving his wife, private respondent Rosario Diez, and children, petitioners Jovita Yap Ancog and Gregorio Yap, Jr., and private respondent Caridad Yap as his heirs.

In 1954 and again 1958, Rosario Diez obtained loans from the Bank of Calape, secured by a mortgage on the disputed land, which was annotated on its Original Certificate of Title No. 622. When Rosario Diez applied again for a loan to the bank, offering the land in question as security, the bank's lawyer, Atty. Narciso de la Serna, suggested that she submit an extrajudicial settlement covering the disputed land as a means of facilitating the approval of her application. The suggestion was accepted and on April 4, 1961, Atty. de la Serna prepared an extrajudicial settlement, which the heirs, with the exception of petitioner Gregorio Yap, Jr., then only 15 years old, signed. The document was notarized by Atty. de la Serna on April 12, 1961. As a result, OCT No. 622 was cancelled and Transfer Certificate of Title No. 3447 (T-2411) was issued on April 13, 1961. On April 14, 1961, upon the execution of a real estate mortgage on the land, the loan was approved by the bank.

Rosario Diez exercised rights of ownership over the land. In 1985, she brought an ejectment suit against petitioner Jovita Yap Ancog's husband and son to evict them from the ground floor of the house built on the land for failure to pay rent. Shortly thereafter, petitioner Jovita Ancog learned that private respondent Rosario Diez had offered the land for sale.

Petitioner Ancog immediately informed her younger brother, petitioner Gregorio Yap, Jr., who was living in Davao, of their mother's plan to sell the land. On June 6, 1985, they filed this action for partition in the Regional Trial Court of Bohol where it was docketed as Civil Case No. 3094. As private respondent Caridad Yap was unwilling to join in the action against their mother, Caridad was impleaded as a defendant.

Petitioners alleged that the extrajudicial instrument was simulated and therefore void. They claimed that in signing the instrument they did not really intend to

convey their interests in the property to their mother, but only to enable her to obtain a loan on the security of the land to cover expenses for Caridad's school fees and for household repairs.

At the pre-trial conference, the parties stipulated:

1. That the parcel of land in question originally belonged to the conjugal partnership of spouses Gregorio Yap and Rosario Diez Yap;
2. That Gregorio Yap, Jr. is the legitimate child of spouses Gregorio Yap and Rosario Diez Yap;
3. That Gregorio Yap is not a party in the execution of the Extra Judicial Settlement of the Estate dated April 4, 1961;
4. That all the encumbrances found in TCT No. (3447) T-2411 which is now marked as Exh. C for the plaintiffs and Exh. 2 for the defendants as Entry No. 6719, 6720, 11561 and 11562 are admitted by the plaintiffs subject to the condition that the Extra Judicial Settlement of Estate dated April 4, 1961, was made by the parties that the same was only for the purpose of securing a loan with the Philippine National Bank.<sup>[3]</sup>

The trial court rendered judgment dismissing petitioners' action. It dismissed petitioners' claim that the extrajudicial settlement was simulated and held it was voluntarily signed by the parties. Observing that even without the need of having title in her name Rosario Diez was able to obtain a loan using the land in question as collateral, the court held that the extrajudicial settlement could not have been simulated for the purpose of enabling her to obtain another loan. Petitioners failed to overcome the presumptive validity of the extrajudicial settlement as a public instrument.

The court instead found that petitioner Ancog had waived her right to the land, as shown by the fact that on February 28, 1975,<sup>[4]</sup> petitioner's husband, Ildefonso Ancog, leased the property from private respondent Diez. Furthermore, when the spouses Ancog applied for a loan to the Development Bank of the Philippines using the land in question as collateral, they accepted an appointment from Rosario Diez as the latter's attorney-in-fact.<sup>[5]</sup>

The court also found that the action for partition had already prescribed. The registration of the land under private respondent Rosario Diez's name amounted to a repudiation of the co-ownership. Therefore, petitioners had ten (10) years from April 13, 1961 within which to bring an action to recover their share in the property. While it is true that petitioner Gregorio Yap, Jr. was a minor at the time the extrajudicial settlement was executed, his claim, according to the court, was barred by laches.

On appeal, the Court of Appeals upheld the validity of the extrajudicial settlement and sustained the trial court's dismissal of the case. The appellate court emphasized that the extrajudicial settlement could not have been simulated in order to obtain a loan, as the new loan was merely "in addition to" a previous one which private respondent Diez had been able to obtain even without an extrajudicial settlement.

Neither did petitioners adduce evidence to prove that an extrajudicial settlement was indeed required in order to obtain the additional loan. The appellate court held that considering petitioner Jovita Yap Ancog's educational attainment (Master of Arts and Bachelor of Laws), it was improbable that she would sign the settlement if she did not mean it to be such. Hence, this petition. Petitioners contend that the Court of Appeals erred:

**I. IN SUSTAINING THE TRIAL COURT RULING THAT THE CONTESTED EXTRAJUDICIAL SETTLEMENT (EXHIBIT "B") IS NOT A SIMULATED ONE;**

**II. IN BLOATING THE EDUCATIONAL BACKGROUND OF PETITIONER JOVITA YAP ANCOG AND USING THE SAME AS ARGUMENT AGAINST HER CLAIM THAT SAID EXHIBIT "B" WAS INDEED A SIMULATED DOCUMENT;**

**III. IN SUSTAINING THE TRIAL COURT'S RULING THAT PETITIONERS' ACTION FOR PARTITION HAS PRESCRIBED;**

**IV. IN RULING THAT PETITIONER GREGORIO YAP, JR., ONE OF THE CO-OWNERS OF THE LITIGATED PROPERTY, HAD LOST HIS RIGHTS TO THE PROPERTY THROUGH PRESCRIPTION OR LACHES.**

We hold that both the trial court and the Court of Appeals correctly acted in upholding the extrajudicial settlement but erred in ruling that petitioner Gregorio Yap, Jr. was barred by laches from recovering his share in the property in question.

To begin with, it is settled that the findings of facts of the Court of Appeals are conclusive upon the parties and are not reviewable by this Court when they are an affirmation of the findings of the trial court.<sup>[6]</sup> In this case, the trial court and the Court of Appeals found no evidence to show that the extrajudicial settlement was required to enable private respondent Rosario Diez to obtain a loan from the Bank of Calape. Petitioners merely claimed that the extrajudicial settlement was demanded by the bank.

To the contrary, that the heirs (Jovita Yap Ancog and Caridad Yap) meant the extrajudicial settlement to be fully effective is shown by the fact that Rosario Diez performed acts of dominion over the entire land, beginning with its registration, without any objection from them. Instead, petitioner Jovita Ancog agreed to lease the land from her mother, private respondent Rosario Diez, and accepted from her a special power of attorney to use the land in question as collateral for a loan she was applying from the DBP. Indeed, it was private respondent Diez who paid the loan of the Ancogs in order to secure the release of the property from mortgage.

Petitioner Jovita Yap Ancog contends that she could not have waived her share in the land because she is landless. For that matter, private respondent Caridad Yap is also landless, but she signed the agreement.<sup>[7]</sup> She testified that she did so out of filial devotion to her mother.

Thus, what the record of this case reveals is the intention of Jovita Ancog and Caridad Yap to cede their interest in the land to their mother Rosario Diez. It is immaterial that they had been initially motivated by a desire to acquire a loan.