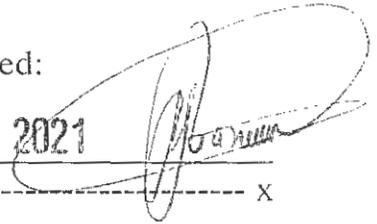


SECOND DIVISION

G.R. No. 246096 – Spouses Rol, *Petitioners v. Racho, Respondent.*

Promulgated:

JAN 13 2021



x ----- x

CONCURRING AND DISSENTING OPINION

LAZARO-JAVIER, J.:

Notably, Loreto Urdas died without any surviving descendants, ascendants, nor spouse. Thus, by operation of law, his siblings, *i.e.*, Fausto Urdas, Sr., Chita Urdas, Maria Urdas Baclig, and Isabel Urdas Racho, succeeded to his estate comprising of Lot No. 1559.

According to Article 1078 of the Civil Code, where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to payment of debts of the deceased. Hence, Fausto, Chita, Maria, and Isabel have become co-owners of Lot No. 1559, subdivided into Lot No. 1559-A and Lot No. 1559-B.

Markedly, the Ponente held that as co-owners, specifically of Lot No. 1559-A, Fausto, Chita, Maria, and Isabel are free to dispose of their undivided aliquot shares therein, which shall be limited to the portions they may be allotted upon partition. Verily, an heir is only allowed to alienate his or her successional rights or undivided interest therein.

The question: **Did Fausto, Chita, and Maria, together with Allan who was not a legal successor to the estate, validly execute the Extrajudicial Settlement with Sale?** My answer is **yes to the extent of their aliquot portions** – the three siblings, in their capacity as co heirs and co-owners, validly subdivided Lot No. 1559 into Lot No. 1559-A and Lot No. 1559-B, then validly sold Lot No. 1559-A to petitioners, and adjudicated Lot No. 1559-B to Allan. Although Allan himself was not a legal successor to the estate, by virtue of the adjudication in his favor, he nonetheless became the owner of Lot No. 1559-B but again only to the extent of the  $\frac{3}{4}$  aliquot shares of the three aforementioned siblings. Needless to state, the aliquot share of Isabel, who did not participate therein or had no notice thereof, is deemed excluded.

Having become the new owner or assignee of the undivided  $\frac{3}{4}$  interest in Lot No. 1559-B, Allan was deemed to have validly sold it almost two decades later to petitioners via a Deed of Sale of a Portion of Land dated September 26, 2011.



In fine, it is my respectful view that Allan's participation in the extrajudicial settlement and the conveyance in his favor of Lot No. 1559-B plus his subsequent sale thereof to petitioners are valid to the extent of  $\frac{3}{4}$  pertaining to the undivided shares of the three siblings, sans Isabel.

Notably, it has been more than half a century since the passing of Loreto Urdas. Petitioners have been in open, continuous, and peaceful possession of Lot No. 1559-A since 1993 and Lot No. 1559-B since 2010, until Isabel disturbed the same by filing the instant complaint in 2013. **Evidently, a lot of water had passed under the bridge since the passing of Loreto and the execution of the Extrajudicial Settlement with Sale and Deed of Sale of a Portion of Land. The practical thing to do now, is to simply acknowledge petitioners'  $\frac{3}{4}$  interest and Isabel's  $\frac{1}{4}$  interest over the subdivided lot. There is no need to render nugatory the Extrajudicial Settlement with Sale in its entirety.**

To emphasize, upon the death of Loreto, Fausto, Chita, Maria, and Isabel became co-owners of Lot No. 1559, which was subdivided into Lot No. 1559-A and Lot No. 1559-B. Thus, Fausto, Chita, and Maria collectively have  $\frac{3}{4}$  interest over the subdivided lot, while Isabel has  $\frac{1}{4}$  interest over the subdivided lot. **Isabel only has the right to a minority share over the subdivided lot. Undoubtedly, the minority share of Isabel cannot prejudice the joint majority share of Fausto, Chita, and Maria. More, as co-owners of such lot, Fausto, Chita, and Maria had every right to dispose of their collective majority share.** Significantly, Article 493 of the Civil Code provides that each co-owner shall have the full ownership of his or her part and of the fruits and benefits pertaining thereto, and he or she may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. The effect of the alienation or the mortgage, with respect to the co-owners, however, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

**ACCORDINGLY**, I vote to partially grant the petition. The Decision dated September 13, 2018 and the Resolution dated February 13, 2019 of the Court of Appeals in CA-G.R. CV No. 105722 should be **AFFIRMED** with **MODIFICATION**, as follows:

- (a) Petitioners Benny and Normita Rol and respondent Isabel Urdas Racho are declared co-owners of Lot No. 1559-A, with the former having  $\frac{3}{4}$  interest and the latter having  $\frac{1}{4}$  interest therein; and
- (b) Petitioners Benny and Normita Rol and respondent Isabel Urdas Racho are declared co-owners of Lot No. 1559-B, with the former having  $\frac{3}{4}$  interest and the latter having  $\frac{1}{4}$  interest therein.

  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*