

Republic of the Philippines
REGIONAL TRIAL COURT
11th Judicial Region
Branch 57
Mabini, Davao de Oro
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**FORTUNE EVE AYON and
FRUBY MAY AYON**
represented by **MERCY
AYON,**

Plaintiffs,

CIVIL CASE NO. 68-2021

for

SPECIFIC PERFORMANCE

- versus -

**ANTONINA VIRTUCIO and
HEIR OF PACIFICO
VIRTUCIO., MICHAEL ALLAN
VIRTUCIO,**

Defendants.

X ----- X

DECISION

This is a complaint for specific performance filed by plaintiffs FORTUNE EVE AYON and FRUBY MAY AYON represented by MERCY AYON (plaintiffs, for brevity) against defendants ANTONINA VIRTUCIO and HEIR OF PACIFICO VIRTUCIO., MICHAEL ALLAN VIRTUCIO (defendants) who sold to plaintiffs a total of Eighty Thousand Two Hundred Fifty Three (80,253) square meters of land from that covered by **Transfer Certificate of Title No. T-20640**.

FACTS OF THE CASE

Plaintiffs alleged in their complaint that on August 17, 2001, they bought from defendants two portions of a parcel of land covered by **Transfer Certificate of Title No. T-20640**¹ situated in the Barrio of Bongabong, Municipality of Pantukan, Province of Davao del Norte (now Province of Davao de Oro) for the total

¹ Rollo, pp. 80-84.

any

amount of Two Hundred Forty Thousand Pesos (Php240,000.00), as follows:

AREA	DESCRIPTION	CONSIDERATION
40,253 sq. m.	Lot C-3, Psd-11-061528	Php120,000.00
40,000 sq. m.	Lot C-2, Psd-11-061528	Php120,000.00

Separate deeds of sale² were executed on the said date between plaintiffs and defendant PACIFICO VIRTUCIO, JR. in representation of Antonina Virtucio, Erlinda Virtucio, Estela Virtucio, and Elsie Virtucio, by virtue of a Special Power of Attorney³ executed on December 28, 1997. It must be noted that no signature appears above the name ANTONINA VIRTUCIO on the said Special Power of Attorney.

Since the sale, plaintiffs have been in possession of the said portions of land up to the present.

A demand was made to defendants for the delivery of the owner's duplicate copy of **Transfer Certificate of Title No. T-20640** to process the registration of the same and its consequent transfer under the names of plaintiffs, but the demand remained unheeded.

A perusal of **Transfer Certificate of Title No. T-20640** will show that it is registered under the name of ANTONINA VIRTUCIO married to Pacifico Virtucio. It contains an area of One Hundred Thousand and Two Hundred Fifty Three (100,253) square meters, more or less.⁴ On page two thereof is an entry pertaining to the affidavit of ANTONINA VIRTUCIO dated 19 February 2002 executed before the Philippine Embassy of Ottawa, Canada stating that she had never executed any power of attorney to dispose, sell or mortgage the property covered by the certificate of title.⁵

To protect the interest of plaintiffs, they executed affidavits of adverse claim⁶ and caused the annotation of the same on **Transfer Certificate of Title No. T-20640** on April 20, 2016.

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² Rollo, pp. 74-77.

³ Rollo, pp. 85-86.

⁴ Rollo, p. 80.

⁵ Rollo, p. 81.

⁶ Rollo, pp. 78-79.

Despite the lapse of time, defendants refused to surrender the owner's duplicate copy of **Transfer Certificate of Title No. T-20640**, hence, this complaint.

On January 26, 2021, summons were issued to defendants.⁷ However, the Sheriff's Return of Summons dated March 22, 2021⁸ stated that after two attempts, defendants cannot be served promptly in person as they were not around in their residence. In the interim, no responsive pleading was filed.

In consideration of the motion to declare defendants in default, the Court Sheriff was directed to make another three attempts on two different dates to effect service of summons, pursuant to Section 6, Rule 14 of the Rules of Court, as amended.⁹

On July 30, 2021, service of summons was made in compliance with the Court's directive, but defendants are no longer residing in the last given address.¹⁰

Having failed to file answer, defendants were declared in default.¹¹ Hence, the Court allowed the plaintiffs to present their evidence ex-parte.

During hearing, plaintiff FRUBY MAY AYON and her mother, MERCY AYON, were presented as witnesses who both identified their Judicial Affidavits¹². Witness MERCY AYON identified the following exhibits: **(1)** Special Power of Attorney in favor of MERCY AYON;¹³ **(2)** Deed of Sale executed by defendants in favor of plaintiff FRUBY MAY AYON;¹⁴ **(3)** Deed of Sale executed by defendants in favor of plaintiff FORTUNE EVE AYON;¹⁵ **(4)** Affidavit of Adverse Claim executed by plaintiff FRUBY MAY AYON;¹⁶ **(5)** Affidavit of Adverse Claim executed by plaintiff FORTUNE EVE AYON;¹⁷ **(6)** certified true copy of **Transfer Certificate of Title No. T-20640**;¹⁸ and **(7)** Special Power of

⁷ Rollo, pp. 29-30.

⁸ Rollo, p. 31.

⁹ Rollo, p. 34.

¹⁰ Rollo, p. 35.

¹¹ Rollo, p. 36.

¹² Rollo, pp. 18-25.

¹³ Rollo, pp. 72-73.

¹⁴ Rollo, pp. 74-75.

¹⁵ Rollo, pp. 76-77.

¹⁶ Rollo, p. 78.

¹⁷ Rollo, p. 79.

¹⁸ Rollo, pp. 80-84.

Attorney executed by defendants in favor of Pacifico Virtucio, Jr.¹⁹

On July 10, 2023, plaintiffs terminated presentation of evidence and submitted formal offer of exhibits.²⁰ Thereafter, the Court issued an Order²¹ admitting the same in evidence.

ISSUES

1. WHETHER DEFENDANTS ARE OBLIGED TO DELIVER TO THE PLAINTIFFS THE OWNER'S DUPLICATE COPY OF TRANSFER CERTIFICATE OF TITLE NO. T-20640; and
2. WHETHER THE OWNER'S DUPLICATE COPY OF TRANSFER CERTIFICATE OF TITLE NO. T-20640 MAY BE INVALIDATED AND A NEW ONE ISSUED, UPON THE REFUSAL OR FAILURE OF THE DEFENDANTS TO DELIVER SAID CERTIFICATE OF TITLE TO THE PLAINTIFFS.

RULING

The deeds of sale subject matter of this case are null and void

This is one of those cases when co-heirs who are co-owners sell a definite portion which is more than their ideal share of an undivided parcel of land.

As borne out by the records, the following facts are established: **(1)** the parcel of land covered by **Transfer Certificate of Title No. T-20640** (subject property) has not been partitioned, hence, undivided; **(2)** the registered owner thereof is ANTONINA VIRTUCIO married to Pacifico Virtucio;²² **(3)** the Special Power of Attorney²³ executed on December 28, 1997 in favor of Pacifico Virtucio, Jr. does not bear the signature of ANTONINA VIRTUCIO; and **(4)** there is an annotation²⁴ on the second page of the subject certificate of title which pertains to the affidavit executed by ANTONINA VIRTUCIO stating that she had never executed any power of attorney to dispose, sell or

¹⁹ Rollo, pp. 85-86.

²⁰ Rollo, pp. 68-86.

²¹ Rollo, p. 87.

²² Rollo, p. 80.

²³ Rollo, pp. 85-86.

²⁴ Rollo, p. 81.

mortgage the subject property. It is also extant in the records that **(5)** the subject property contains an area of **100,253 square meters** and **(6)** a total of **80,253 square meters** were sold to the plaintiffs, as evidenced by the deeds of sale²⁵ executed on August 17, 2001.

Based on the Special Power of Attorney²⁶ executed by Erlinda Virtucio, Estela Virtucio, and Elsie Virtucio in favor of Pacifico Virtucio, Jr., the status of ANTONINA VIRTUCIO is widow. Hence, it may be presumed that one-half of the subject property has become the estate of the deceased spouse of ANTONINA VIRTUCIO, considering that the other half is the conjugal share of ANTONINA VIRTUCIO. As such, the children of the deceased, whether legitimate or illegitimate, being intestate legal heirs, only have an interest with respect to the other half, that is, **only 50,126.5 square meters**, which they will still have to share with their mother, ANTONINA VIRTUCIO, pursuant to Article 996 of the Civil Code, which states that *"if a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children."* Otherwise put, upon the death of her husband, ANTONINA VIRTUCIO and the children of the deceased have become co-owners with respect to the **50,126.5-square-meter** portion.

Considering that ANTONINA VIRTUCIO who owns more than one half of the subject property did not consent to the sale made by Erlinda Virtucio, Estela Virtucio, Elsie Virtucio, and Pacifico Virtucio, Jr., the latter can only sell or convey their respective ideal shares in the **50,126.5-square-meter** portion of the subject property. However, they do not have the right to sell or convey the **definite or specific portions** described as **Lot C-2** and **Lot C-3**. Hence, the deeds of sale in this case are null and void.

In **Cabrera v. Ysaac**²⁷, the Supreme Court stated that:

"Unless all the co-owners have agreed to partition their property, none of them may sell a definite portion of the land. The co-owner may only sell his or her proportionate interest in the co-ownership. **A contract of sale which purports to sell a**

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²⁵ Rollo, pp. 74-78.

²⁶ Rollo, pp. 85-86.

²⁷ JUAN P. CABRERA, Petitioner, vs. HENRY YSAAC, Respondent, G.R. No. 166790, November 19, 2014.