THY WILL BE DONE by Atty. Angelo M. Cabrera

PARTITIONING A FAMILY HOME

Home can be many things to different people. To most of us it is where we grew up in, where our fond and cherished memories were molded, and now, where our families gather for a regular reunion. But sometimes, this place of comfort and memories can be the very source of conflict among family members.

Such was the case of the heirs of Mario, who died without a last will and testament in 1987. His wife Anna and their children Miguel and Leandro settled his estate taking the less cumbersome route of an extra-judicial settlement.

One of the properties Mario left behind was the family home. In accordance with the extra-judicial settlement, a new title for the said property was issued under the names of the wife and the two sons as co-owners. After some time, Anna and Leandro, expressed their desire to partition the family home and terminate the co-ownership. Miguel however, opposed the partition on the ground that the family home should remain since it still has a minor beneficiary in the person of his twelve year-old son, Miguelito.

He relied on Article 159 of the Family Code which provides that the family home shall continue despite the death of one or both spouses or of the unmarried head of the family for a period of ten years or for as long as there is a minor beneficiary. Miguel contended that that since his son, Miguelito, is still a minor and still resides in said family home the same cannot be the subject of any partitioning.

The issue raised before the Supreme Court was whether it is proper to partition a family home despite the refusal of a co-owner on the ground that a minor beneficiary still resides in the said home.

The Supreme Court in this case decided for the partition of the family home. It held that to be a beneficiary of the family home, three requisites must concur: (1) they must be among the relationships enumerated in Art. 154 of the Family Code; (2) they live in the family home; and (3) they are dependent for legal support upon the head of the family.

As to the first requisite, the beneficiaries of the family home under Art. 154 are: (1) The husband and wife, or an unmarried person who is the head of a family; and (2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate. The term 'descendants' contemplates all descendants of the person or persons

who constituted the family home without distinction; therefore, it must necessarily include the grandchildren and great grandchildren of the spouses who constitute a family home. *Ubi lex non distinguit nec nos distinguire debemos*. Where the law does not distinguish, we should not distinguish. Thus, Miguel's minor son, who is also the grandchild of the deceased, satisfies the first requisite.

As to the second requisite, minor beneficiaries must be actually living in the family home to avail of the benefits derived from Art. 159. Miguel has lived in the family home since 1994. This falls well within 10 years from the death of the decedent, hence, Miguelito satisfies the second requisite.

However, as to the third requisite, basic is the rule that grandchildren cannot demand support from their grandparents if they have parents who are capable of supporting them. The law first imposes the obligation of legal support upon the shoulders of the parents, especially the father, who is the head of his immediate family. Only in the default of parents is the obligation imposed on the grandparents.

Despite residing in the family home and being the grandson of the decedent, Miguelito cannot be considered as beneficiary contemplated under Article 154 because he does not qualify under the third requisite of being dependent on his grandmother for legal support. It is his father whom he is dependent on legal support, and who must now establish his own family home separate and distinct from that of his parents, being of legal age.

There is no showing that Miguel is without means to support his son; neither is there any evidence to prove that Anna, as the paternal grandmother, was willing to voluntarily provide for her grandson's legal support. On the contrary, Anna filed for the partition of the property which shows an intention to dissolve the family home, since there is no more reason for its existence after the 10-year period ended in 1997. With this finding, there is no legal impediment to partition the subject property. (GR No. 170829 NOVEMBER 20, 2006).

It is quite unfortunate that the family had to go through the great length of litigating against each other in court over their family home. I can only blame human nature on the one hand and our inheritance laws on the other. Human nature for the tendency to want and get more at the expense of family relations; and our inheritance laws because of the many provisions that ultimately force family members into co-ownership and consequently, family conflicts. I submit that it is high time that our inheritance laws undergo a comprehensive review.

Some say home is where the heart is. In my case, my home is my family.

This column is dedicated to educating the public about the importance and value of estate and succession planning. For comments or inquiries, you may email cabrera.am@amclawoffice.com.