

NATIVIDAD DEL ROSARIO VDA. DE ALBERTO, IN HER INDIVIDUAL CAPACITY AND AS JUDICIAL GUARDIAN OF THE MINOR ANTONIO ALBERTO, JR. AND LOURDES ALBERTO, PETITIONERS, VS. THE HON. COURT...*G.R. No. L-29759. May 18, 1989*

Ponente: BIDIN, J.

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This is a petition for review on certiorari of the August 31, 1968 Decision of the Court of Appeals in CA-G.R. No. 34750-R* entitled "Antonio J. Alberto, Jr., thru his mother as his natural guardian, Andrea Jongco, plaintiff-appellant, vs. Natividad del Rosario Vda. de Alberto, in her individual capacity and as judicial guardian of the minors, Lourdes Alberto and Antonio Alberto, Jr., defendants-appellees", reversing the August 10, 1964 Decision** of the then Court of First Instance of Manila.

The case originated from a complaint for acknowledgment and partition filed on September 8, 1960 with the then Court of First Instance of Manila by the herein private respondent, a minor, 18 years of age, assisted by his mother, Andrea Jongco, as his natural guardian, against the herein petitioners (Record on Appeal, pp. 2-8). In the said Complaint, private respondent alleged, in substance, that in 1941 his alleged father, Antonio C. Alberto, and his mother, Andrea Jongco, lived together as husband and wife and as a result of which, he was born on September 10, 1942; that during the time that his alleged father and mother lived together as husband and wife and up to the time of his birth, both were single and had no legal impediment to marry each other; that after his birth, his father and mother continued living together as husband and wife, his father supporting them and introducing him to the public as his natural child; that even the family of his father recognized him as such; that on or about the year 1944, his father and mother separated, and subsequently, his father married herein petitioner Natividad del Rosario; that as a result of the marriage, two (2) children were born - herein petitioners Lourdes Alberto and Antonio Alberto, Jr.; that although his father was separated from his mother, he continued to support him and recognized him as his own child; that on July 3, 1949, his father died, and without notice to him, petitioner Natividad del Rosario Vda. de Alberto, on July 17, 1949, instituted before the then Court of First Instance of Manila an intestate proceedings for the estate of his deceased father, docketed therein as Special Proceedings No. 9092; that in the said intestate proceedings, petitioners deliberately omitted him as one of the heirs and for this reason they succeeded in having the properties of his deceased father adjudicated and partitioned among themselves; that the said intestate proceedings were terminated on November 9, 1953; that his father left properties valued at P74,963.81, and accordingly, as a natural child of his father, he is entitled to at least P18,000.00; and that he had absolutely no previous knowledge of the intestate proceedings and came to know about it only recently and thereupon made a demand from the petitioners who refused to give him his share. Accordingly, he prays that the petitioners be ordered to acknowledge him as the natural child of Antonio C. Alberto; that his one-fourth share be turned over to him; and that petitioners be sentenced to pay him the sum of P5,000.00 as attorney's fee and the cost of suit (Record on Appeals, pp. 2-9).

On September 21, 1960, petitioners filed a Motion to Dismiss on the grounds that (1) the cause of action is barred by prior judgment; and (2) that the cause of action is also barred by the statute of limitation (Ibid, pp. 9-19). To this motion, private respondents filed an opposition on October 22, 1960 (Ibid, pp. 20-58).

On November 11, 1960, the trial court issued an Order denying the Motion to Dismiss (Ibid, pp. 97-98).

On November 18, 1964, petitioners filed their Answer to the Complaint (Ibid, pp. 98-102).

On November 23, 1964, private respondent filed his Answer to Defendants' Counterclaim (Ibid, pp. 102-104). On August 10, 1964, the trial court rendered a decision in favor of the petitioners (Ibid, pp. 104-123). The dispositive portion of the Decision reads:

"Considering all the foregoing, the Court orders the dismissal of the complaint without pronouncement as to the costs. The counterclaim is also dismissed.

SO ORDERED."

Private respondent, not satisfied with the decision, appealed to respondent Court, and in a Decision promulgated on August 31, 1968 (Ibid, pp. 61-75), respondent Court reversed the decision of the trial court. The dispositive portion of the said Decision, reads:

"Wherefore, the decision appealed from is hereby reversed and set aside and another rendered declaring plaintiff Antonio J. Alberto, Jr., an acknowledged Natural Child of the deceased Antonio C. Alberto; declaring said plaintiff the owner pro indiviso of one-fifth (1/5) of the hereditary estate of Antonio C. Alberto; and ordering the defendants to deliver to plaintiff Antonio J. Alberto, Jr., his one-fifth (1/5) share in said estate, subject to the usufructuary rights of defendants Natividad del Rosario Vda. de Alberto pursuant to Articles 834 of the Old Civil Code, and to pay the costs of suit.

SO ORDERED."

On September 24, 1968, petitioners filed a Motion for Reconsideration, but the same was denied in a Resolution dated October 14, 1968 (Rollo, p. 77). Hence, the instant petition.

This Court, in a resolution dated November 27, 1968, resolved to give due course to the petition (Rollo, p. 91).

Petitioners assigned the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE COURT OF FIRST INSTANCE OF MANILA (TRIAL COURT) HAD NO JURISDICTION TO TAKE COGNIZANCE OF THE INSTANT CASE.

II

ASSUMING, ARGUENDO, THAT THE TRIAL COURT HAD JURISDICTION TO TAKE COGNIZANCE OF THE INSTANT CASE, THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT ALBERTO JR.'S CAUSE OF ACTION WAS NOT BARRED BY PRIOR JUDGMENT.

III

ASSUMING, ARGUENDO, THAT THE TRIAL COURT HAD JURISDICTION TO TAKE COGNIZANCE OF THE INSTANT CASE, THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT ALBERTO JR.'S CAUSE OF ACTION HAD NOT YET PRESCRIBED.

IV

ASSUMING, ARGUENDO, THAT THE TRIAL COURT HAD JURISDICTION TO TAKE COGNIZANCE OF THE INSTANT CASE, THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT ALBERTO, JR., IN NOT BRINGING THE INSTANT ACTION FOR AN UNREASONABLE LENGTH OF TIME, WAS GUILTY OF LACHES.

V

ASSUMING, ARGUENDO, THAT THE TRIAL COURT HAD JURISDICTION TO TAKE COGNIZANCE OF THE INSTANT CASE, THE HONORABLE COURT OF APPEALS GROSSLY ERRED IN REVERSING THE FINDINGS OF THE TRIAL COURT BY BASING ITS JUDGMENT ON A MISAPPREHENSION OF FACTS, GIVING CREDENCE TO THE TESTIMONIES OF ANDREA JONGCO AND OTHER WITNESSES OF RESPONDENT ALBERTO, JR., DESPITE THE SERIOUS CONTRADICTIONS, INCONSISTENCIES AND IMPROBABILITIES IN THEIR TESTIMONIES AS FOUND BY THE TRIAL COURT AND CATEGORICALLY STATED IN ITS DECISION.

VI

ASSUMING, ARGUENDO, THAT THE TRIAL COURT HAD JURISDICTION TO TAKE COGNIZANCE OF THE INSTANT CASE, THE HONORABLE COURT OF APPEALS COMMITTED A GROSS ERROR OF LAW AND A GRAVE ABUSE OF DISCRETION WHEN IT ARBITRARILY AND CAPRICIOUSLY DISREGARDED PETITIONERS' EVIDENCE.

VII

ASSUMING, ARGUENDO, THAT THE TRIAL COURT HAD JURISDICTION TO TAKE COGNIZANCE OF THE INSTANT CASE, THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT ALBERTO, JR., WAS AN ACKNOWLEDGED NATURAL CHILD OF THE DECEASED ALBERTO AND IN DECLARING HIM OWNER PRO-INDIVISO OF ONE-FIFTH OF THE HEREDITARY ESTATE OF THE DECEASED.

I.

It is the contention of petitioners that inasmuch as the instant case was filed on September 8, 1960, almost five (5) years after the enactment of R.A. No. 1401 - creating the Juvenile and Domestic Relations Court, the questions of paternity and acknowledgment fall beyond the jurisdictional pale of the Court of First Instance of Manila and instead comes within the exclusive original jurisdiction of the Juvenile and Domestic Relations Court. While petitioners admitted that this objection to lack of jurisdiction by the Court of First Instance of Manila over the subject matter of the present action had not been raised either in the said court or in the Court of Appeals and is brought to this Court for resolution for the first time on appeal, they contend that a party may object to the jurisdiction of the court over the subject matter of the action at any stage of the proceedings, even for the first time on appeal since lack of jurisdiction of the court over the subject matter cannot be waived. Such contention is untenable.

This Court has already ruled that the question of jurisdiction not raised in the trial court cannot be raised on appeal (*Dalman vs. City Court of Dipolog City*, Branch II, 134 SCRA 243 [1985]). Besides, a party who had voluntarily participated in the trial, like the herein petitioners, cannot later on raise the issue of the court's lack of jurisdiction (*Philippine National Bank vs. Intermediate Appellate Court*, 143 SCRA 299 [1986]; *Royales vs. Intermediate Appellate Court*, 127 SCRA 470 [1984]; *Tijam vs. Sibonghanoy*, 23 SCRA 29 [1968]). Moreover, there are no

more Juvenile and Domestic Relations Courts today. Under Batas Pambansa Blg. 129, the functions of the Juvenile and Domestic Relations Court have been transferred to the Regional Trial Courts (*Divinagracia vs. Bellosillo*, 143 SCRA 356 [1986]).

II.

Petitioners alleged that the intestate proceedings for the settlement of estate of the deceased Antonio C. Alberto (Special Proceedings No. 9092) had already been terminated on November 9, 1953 by the order of distribution directing the delivery of the residue of the estate to the persons entitled thereto and that in said proceedings the court also declared who are the heirs of the deceased. Consequently, the instant case which seeks to secure the recognition of Antonio J. Alberto, Jr. as an acknowledged natural child of the deceased in order to establish his rights to the inheritance is already barred by prior judgment (Petitioners' Brief, p. 47) despite private respondent's insistence that he had no knowledge or notice of the intestate proceedings of his alleged natural father (Record on Appeal, p. 21).

Petitioners' submission is impressed with merit.

This Court has invariably ruled that insolvency proceedings and settlement of a decedent's estate are both proceedings in rem which are binding against the whole world. All persons having interest in the subject matter involved, whether they were notified or not, are equally bound (*Philippine Savings Bank vs. Lantin*, 124 SCRA 483 [1983]). The court acquires jurisdiction over all persons interested, through the publication of the notice prescribed x x x and any order that may be entered therein is binding against all of them (*Ramon vs. Ortuzar*, 89 Phil. 741 [1951] citing in re *Estate of Johnson*, 39 Phil. 156). It was ruled further that a final order of distribution of the estate of a deceased person vests the title to the land of the estate in the distributees; and that the only instance where a party interested in a probate proceeding may have a final liquidation set aside is when he is left out by reason of circumstances beyond his control or through mistake or inadvertence not imputable to negligence. Even then, the better practice to secure relief is reopening of the same case by proper motion within the reglementary period, instead of an independent action, the effect of which, if successful, would be, as in the instant case, for another court or judge to throw out a decision or order already final and executed and reshuffle properties long ago distributed and disposed of (*Ramon vs. Ortuzar*, *supra*; *Santos vs. Roman Catholic Bishop of Nueva Caceres*, 45 Phil. 895).

III.

As to the issue of prescription, the Civil Code of the Philippines clearly provides:

"Art. 1100. The action for rescission on account of lesion shall prescribe after four years from the time the partition was made."

Intestate proceedings were terminated as alleged in the complaint itself on November 9, 1953 so that said four years prescriptive period expired on November 9, 1957. Hence, the present action filed on September 8, 1960 and which has for one of its objects the rescission of the agreement of partition among the petitioners, as approved by the intestate court, is already barred by prescription.

That an action for rescission is also the proper action in case of an alleged preterition of a compulsory heir by reason of alleged bad faith or fraud of the other persons interested, which is what the complaint in this case alleges in substance, is indicated in Article 1104 of the Civil Code as follows:

"Art. 1104. A partition made with preterition of any of the compulsory heirs shall not be rescinded, unless it be proved that there was bad faith or fraud on the part of the other persons interested; x x x."

It has also been ruled by this Court that the four years period provided in Article 1100 of the Civil Code (formerly Art. 1076 of the old Civil Code) should commence to run from the approval of the agreement of partition by the Court (Samson vs. Araneta, 60 Phil. 27, 36). Thus, in the case at bar, it is evident that the action to rescind the Agreement of Partition which was approved by the Court on November 9, 1953, had already prescribed when respondent filed the complaint in the case at bar on September 8, 1960.

While as a general rule the action for partition among co-owners does not prescribe so long as the co-ownership is expressly or impliedly recognized (Art. 494, Civil Code), petitioners herein had never recognized respondent as a co-owner or co-heir either expressly or impliedly. Consequently, the rule on non-prescription of action for partition of property owned in common (Art. 494) does not apply to the case at bar.

Moreover, private respondent cannot claim exemption from the effects of prescription on the plea of minority under the New Civil Code which provides:

"Art. 1108. Prescription, both acquisitive and extinctive, runs against:

(1) Minors and other incapacitated persons who have parents, guardians or other legal representatives;

x x x x x x x x"

Respondent Alberto, Jr. who has a living parent, his mother, Andrea Jongco, who in fact filed the complaint in the case at bar for him, falls squarely under the above-cited provision.

Granting arguendo that respondent is a natural child of the deceased Antonio Alberto, Sr., the action for recognition of natural child may be brought only during the lifetime of the presumed parent. And if the presumed father or mother died during the minority of the child, the latter may file the action within four (4) years from the attainment of majority (Art. 285 [1]). However, if the minor has a guardian as in this case, prescription runs against him even during minority (Wenzel, etc., et al. vs. Surigao Consolidated Mining, Inc., 108 Phil. 530 [1960]). In such case, the action for recognition must be instituted within four (4) years after the death of the natural father (Magallanes, et al. vs. Court of Appeals, et al., 95 Phil. 795 [1954]). Antonio C. Alberto, Sr., the alleged father, died on July 3, 1949. The complaint for acknowledgment and partition was filed eleven (11) years later, on September 8, 1960. Hence, prescription had set in.

Neither can it be claimed that the present action is in substance one for recovery of property in order to avoid the consequences of prescription, for as correctly stated by the petitioners, to be entitled to the recovery of the property from the estate. Alberto, Jr. must first rescind the partition and distribution approved by the intestate proceedings, otherwise, the recovery of any property from the petitioners is not possible. Be that as it may, such partition can no longer be rescinded having been already barred by the Statute of Limitations.

Furthermore, even granting that Article 1104 of the Civil Code does not apply and there is an injury to the rights of plaintiff, this action would still not prosper under Articles 1146 and 1149 of the same Code which provide that the action must be brought within four and five years, respectively, from the time the right of action accrues.

IV.

Petitioners' claim of laches is likewise tenable. The trial court in its findings clearly and unmistakably declared that respondent Alberto, Jr. is guilty of laches as follows:

"About 1944, Andrea Jongco said she learned of Antonio Alberto's marriage to Natividad del Rosario. Yet, she took no steps to protect the interests of her child, Antonio, although she was already confronted with the incontrovertible proof of Antonio's infidelity and the hollowness of his promises.

"It might be that Andrea Jongco was then relying on Antonio Alberto's not denying that Alberto, Jr. was his child, if such was the case. If this was so, however, how can we explain her inaction even after the death of Antonio Alberto in 1949, or until September 8, 1960, when she filed this action, Andrea kept silent, took no action to have her child recognized as the son of the alleged father. Her laches, as well as the inherent improbabilities in her testimony rendered it unworthy of belief.

"x x x It is evident that the plaintiff's case is adversely affected by his long delay in bringing this action. 'Undue delay in the separate enforcement of a right is strongly persuasive of lack of merit in this claim, since it is human nature for a person to assert his rights most strongly when they are threatened or invaded.' (Buenaventura vs. David, 37 Phil. 435-440)." (Record on Appeal, pp. 108-109).

This Court has consistently declared that laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence, could or should have been done earlier. The negligence or omission to assert a right within a reasonable time, warrants a presumption that the party entitled to assert it either has abandoned it or declined to assert it (Corro vs. Lising, 137 SCRA 541 [1985]; Tejido vs. Zamacoma, 138 SCRA 78 [1985]; De Castro vs. Tan, 129 SCRA 85 [1984]; Medija vs. Patcho, 132 SCRA 540 [1984]; Burgos, Sr. vs. Chief of Staff, Armed Forces of the Phil., 133 SCRA 800 [1984]; Gumonpin vs. CA, 120 SCRA 687 [1983]).

As pointed out by the trial court, there appears to be no explanation for the surprising delay in the filing of the complaint in the case at bar except perhaps, the fact that during the lifetime of the deceased Antonio Alberto, private respondents were receiving support until the latter died in 1949; but thereafter, they allowed more than ten years to elapse or until September 8, 1960 before they filed the present action to assert their rights despite Andrea Jongco's allegation that they stopped receiving support after Alberto, Sr.'s death.

On the other hand, there is merit in petitioners' allegations that such delay is prejudicial to them. Private respondents could have filed the action in 1944 when Andrea Jongco learned of the marriage of the deceased with petitioner Natividad del Rosario instead of waiting for 16 years when the supposed father's lips had been sealed by death and possible witnesses like Antonio Alberto, Sr.'s mother had become too old to give coherent testimony.

On this point, the Supreme Court ruled:

"The assertion of doubtful claims, after long delay, cannot be favored by the courts. Time inevitably tends to obliterate occurrences from the memory of witnesses, and even where the recollection appears to be entirely clear, the true clue to the solution of a case may be hopelessly lost. These considerations constitute one of the pillars of the doctrine long familiar in equity jurisprudence to the effect that laches or unreasonable delay on the part of a plaintiff in seeking to enforce a right is not only persuasive of a want of merit but may, according to the circumstances, be destructive of the right itself. *Vigilantibus non dormientibus equites subvenit.*" (Buenaventura vs. David, 37 Phil. 435, reiterated in Edralin vs. Edralin, 1 SCRA 227 [1961]).

The other explanation might have been the minority of Antonio Alberto, Jr. at the time of his supposed father's death. But such explanation as discussed earlier is unavailing even in case of prescription under Article 1108 of the Civil Code where minority does not stop the running of the prescriptive period for minors who have parents, guardians or legal representatives.

Thus, it is well established that "The law serves those who are vigilant and diligent and not those who sleep when the law requires them to act (Cui and Joven vs. Henson, 51 Phil. 606, 610; Bacolod-Murcia Milling Co. vs. Villaluz, Sept. 29, 1951, 90 Phil. 154). "The law does not encourage laches, indifference, negligence or ignorance. On the contrary, for a party to deserve the considerations of the courts, he x x x must show that he is not guilty of any of the aforesaid failings (Samson vs. Yatco, August 28, 1958; 104 Phil. 378).

V.

Finally on the merits of this case, petitioners would have this Court review and reverse the conclusions of fact of the Court of Appeals. As a general rule, this is a function this Court does not undertake. The established principle is that the factual findings of the Court of Appeals are final and may not be reviewed on appeal to this Court; except: (1) when the conclusion is grounded entirely on speculation, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd and impossible; (3) where there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the Court in making its findings went beyond the issues of the case, and the same are contrary to the admissions of both the appellant and the appellee; (6) when the findings of the Appellate Court are contrary to those of the trial court; (7) when the findings are without citation of specific evidence on which they are based (*Manlapaz vs. C.A.*, 147 SCRA 238-239 [1987]; *Guita vs. C.A.*, 139 SCRA 576 [1985]; *Sacay vs. Sandiganbayan*, 147 SCRA 593 [1986]).

It is readily evident that this case falls within one of the recognized exceptions to the rule, specifically that the findings of the Appellate Court are contrary to those of the trial court.

At the trial, the lower court in evaluating the evidence presented by the complainants is of the view that the testimony alone of Andrea Jongco is sufficient to totally discredit not only her testimony but also her entire case. Aside from being inherently improbable and the merit of her claim being adversely affected by her testimony and her long delay in bringing action, her testimony is contradicted by the testimonies of Jose, Zoilo and Pilar who are brothers and sister of the deceased Antonio Alberto and who have no pecuniary interest whatsoever in the outcome of the controversy. They testified that during the period Andrea Jongco claimed that Antonio Alberto, Sr. lived with her, the deceased in fact lived with his mother and brothers at the family residence except for his brief stint with the army (*Decision*, Civil Case No. 44164; *Record on appeal*, pp. 111-112).

More than that, the trial court found among others, that Andrea Jongco has had five children (aside from her son Antonio) with four different men. The assumption, therefore, is that she lived with at least four different men without being married to any of them. Thus, the trial court aptly ruled that "This propensity to promiscuous relationship with different men, render it unjust to state with definiteness that any particular person is the father of any one of her children." (*Ibid*, p. 121).

Other witnesses are Eufracia Cailan who allegedly took care of Antonio, the father, since the latter was a child and then of Antonio, the alleged son, and Encarnacion Peralta, an alleged former lessor of Andrea Jongco and Antonio Alberto. Their testimonies were, however, found by the trial court to be inherently improbable, inconsistent with human experience and deliberately invented to conform with the testimony of Andrea Jongco (*Ibid*, pp. 109-117).

On the other hand, the Court of Appeals in its decision gave more credence to the testimonies of Eufracia Cailan and Encarnacion Peralta and declared that their testimonies have sufficiently established the fact that Antonio J. Alberto, Jr. is the son of the late Antonio C. Alberto and Andrea Jongco which finds further proof in the birth certificate and the baptismal certificate of Alberto, Jr., (*Rollo*, pp. 6-11).

In this connection, it must be stated that in the case of *Reyes vs. Court of Appeals*, 135 SCRA 439 (1985), this Court, citing the cases of *Bercilles vs. GSIS*, 128 SCRA 53; *People vs. Villeza*, 127 SCRA 349; *Cid vs. Burnaman*, 24 SCRA 434; *Vudaurrazaga vs. C.A.*, 91 Phil. 492; and *Capistrano vs. Gabino*, 8 Phil. 135, ruled that a birth certificate not signed by the alleged father therein indicated, like in the instant case, is not competent evidence of paternity.

In casting doubt upon the credibility of petitioner Natividad's testimony, the Court of Appeals pointed out her

serious inconsistency on material points such as her claim that she was married to the deceased in 1941 and her later admission in the answer that they were married in 1944.

The record shows, however, that both admissions were correct, the first marriage was a secret civil marriage celebrated in Pililla, Rizal while the second was a religious ratification of the former. The lack of marriage certificate as evidence was also considered by the Court of Appeals as an impairment of credibility despite a certification to the effect that all pre-war records in the Municipality of Pililla Rizal were destroyed during the last war. Said Appellate Court is of the view that if they did plan to marry secretly at that time, they could have chosen a city or municipality near Manila and that Pililla must have been chosen as the place of the supposed marriage so that petitioners could have an apparent good reason for the non-presentation of the marriage certificate.

As aptly argued by the petitioners, such conclusion is purely conjectural. Besides petitioners' reasons for the choice of that place, the celebration of the marriage was positively confirmed by Damaso Herrera, one of the sponsors thereof.

In any event, it is a fundamental rule that conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case (*People vs. Pimentel*, 147 SCRA 29, 30 [1987]; *People vs. Grefiel*, 125 SCRA 108 [1983]; *Chase vs. Buencamino*, 136 SCRA 381 [1985]; *People vs. Fernandez*, 124 SCRA 248 [1983]; *Olangco vs. C.F.I. of Misamis Oriental*, 121 SCRA 338 [1983]; *Minuchechi vs. C.A.*, 129 SCRA 479 [1984]).

After a careful review of the records and the evidence presented by the contending parties, no cogent reasons could be found to justify the reversal of the findings of the trial court.

In view of the foregoing, there appears to be no need to discuss the last two assignments of errors.

WHEREFORE, the assailed decision of the Court of Appeals is hereby Reversed and the decision of the trial court is Reinstated. No costs.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

* Penned by Justice Carmelino J. Alvendia and concurred in by Justices Julio Villamor and Ruperto G. Martin.

** Penned by Judge Francisco Arca.

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