

**AUXILIADORA ANGELES MELCHOR, VITERBO ANGELES (DECEASED)  
REP. BY HIS WIFE ADELFA BALIGUAT-ANGELES, ANTERO G.  
ANGELES (DECEASED) REP. BY HIS WIFE ROSALINDA  
MASANGKAY-ANGELES, IGME...**

Ponente: QUIJANO-PADILLA, J.

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**QUIJANO-PADILLA, J.:**

This is an appeal[1] from the Decision[2] dated March 3, 2006 of the Regional Trial Court (RTC), Branch 5, Kalibo, Aklan in Civil Case No. 6430 for Annulment of Document and Partition with Damages. The assailed decision dismissed the instant complaint for lack of cause of action.

**The Antecedents**

This case stemmed from a complaint for annulment of document and partition with damages[3] filed by plaintiffs-appellants against defendants-appellees on March 5, 2002 and docketed as Civil Case No. 6430. The parties in this case are the great grandchildren of Juan Saluta, who died intestate on September 25, 1928 at Poblacion, Ibajay, Aklan, leaving behind a parcel of land, the subject property, bounded more particularly described as follows:

“A parcel of rice land and residential land, located at Brgy. Agbago, Ibajay, Aklan, with an area of approximately SIX THOUSAND FIVE HUNDRED FIFTY TWO (6,552) square meters, more or less; Bounded on the North by Lot Nos. 8477, 8482 and 8483; on the East by Lot Nos. 8484, 8488, 8485, and 8486; on the South by Lot Nos. 8485, 8440, 8897; and on the West by Lot Nos. 8477, 8465, 8464, and 8485; and assessed at P12,510.00 under ARP/Tax Declaration No. 93-002-0370 in the name of the late Juan Saluta for the year 1994. This land is also identified as Lot No. 8484 of the cadastral survey of Ibajay, Aklan.”[4]

The late Juan Saluta was survived by four (4) children, namely: Basilisa, Soledad, Silverio and Rafael, all surnamed Saluta. Basilisa Saluta was married to Alejandro Angeles with whom she had three (3) children, namely: Conegunda Angeles-Saus, who was survived by six (6) children, namely: Jaime, Tomas, Juanito, Basilisa, Benigno and Emiliana, all surnamed Saus; Filemon Angeles, who was survived by eight (8) children namely: Auxiliadora, Viterbo (deceased), Antero (deceased), Emilio, Lorenzo, Luz (deceased), Nicanora and Margarita, all surnamed Angeles; and Paz, who was married to Alejandro Sollano and begot three (3) children, namely: Margarita Sollano-Maglantay, Remedios Sollano-Andrade and Bernardita Sollano-Urbano. According to plaintiffs-appellants, the respective shares of Soledad and Silverio Saluta were purchased by Conegunda Angeles-Saus while the share of Rafael Saluta was purchased by Filemon Angeles from his daughter, Florenda Saluta-Sespeñe. Allegedly, plaintiffs-appellants as well as the children of Conegunda Angeles-Saus have been in possession and usufruct of the above-described property in common for many years and they divided the shares in the produce every crop year according to their respective shares.[5]

That on September 1, 1998, the children of Conegunda Angeles-Saus executed a Deed of Quitclaim with Adjudication,[6] duly notarized, wherein it was stated that they were the only surviving grandchildren of Juan

Saluta and that the subject property was the exclusive share of Conegunda Angeles-Saus in the estate of her deceased grandfather, Juan Saluta, which she in turn gave to defendant-appellee Juanito Saus as his share or as an advance inheritance. By virtue of such deed, defendant-appellee Juanito Saus was able to transfer in his name the tax declaration[7] of the subject property.[8]

The said act of giving the entire property to defendant-appellee Juanito Saus, according to plaintiffs-appellants, is null and void in so far as the share of Filemon Angeles and Paz Angeles-Sollano are concerned. Upon learning thereof and the subsequent act of defendant-appellee Juanito Saus in making known to the tenant-cultivator of the subject property that he is the sole owner of the said property and that the produce from every harvest be given to him, plaintiffs-appellants protested but their demands were simply dismissed by defendant-appellee Juanito Saus. They referred the matter to the Lupon Tagapamayapa but no settlement was reached. Hence, the instant complaint seeking for the declaration of the Deed of Quitclaim and Adjudication as null and void in so far as the shares of the plaintiffs-appellants are concerned, ordering the defendants-appellees to pay moral and exemplary damages, and ordering the partition of the subject property in the following manner:

- (a) 2,184 square meters, more or less, of the subject property as the share of Filemon;
- (b) 546 square meters, more or less, of the subject property as the share of the children of Paz;
- (c) the remaining 3,822 square meters, more or less, as the share of the children of Conegunda or defendant-appellee Juanito Saus.[9]

In their Answer,[10] defendants-appellees denied the material allegations in the Complaint and prayed for the dismissal of the instant complaint grounded on the following arguments: that the late Juan Saluta does not own the subject property; that the share or interest of Rafael Saluta over the subject property had already been purchased and/or waived or verbally donated by him in favor of Conegunda Saus; that Conegunda Saus had been in the exclusive possession of the subject property for more than 50 years and upon her death was succeeded by her children; that plaintiffs-appellants never possessed nor usufructed the subject property or any portion thereof except for one cropping when they took the landowner's share from the tenant-cultivator by misrepresenting that the defendants-appellees were in the United States when in fact they were only in Malolos, Bulacan; that during the lifetime of Filemon Angeles, he had already waived and given whatever share he had over the subject property to Conegunda Saus for the reason that most of the time he and his family were dependent for support upon and indebted to Conegunda Saus and therefore has given his share over the said land; likewise, during the lifetime of Paz Sollano, she waived and gave her share over the said land in favor of Conegunda Saus as Paz was dependent upon and indebted to Conegunda; and defendant-appellee Juanito Saus denied that he made himself known to the tenant-cultivator as the owner of the subject property only upon the execution of the assailed Deed of Quitclaim but instead, the tenant-cultivator had long recognized the exclusive ownership of the subject property by Conegunda Saus and her children.[11]

By way of affirmative defenses, defendants-appellees alleged that during the lifetime of Conegunda Saus, she had possessed and usufructed the subject property for more than 50 years under claim of exclusive ownership and upon her death, that said land was possessed and usufructed exclusively by her children and later by the defendants-appellees. That assuming without admitting that the subject property was inherited by the heirs of Juan Saluta, whatever share the plaintiffs-appellants may have over the said land had already been acquired by Conegunda Saus in the manner alleged in the preceding paragraphs and that Conegunda Saus and her heirs have continuously possessed and usufructed that subject land over the years without any protest or objections from the plaintiffs-appellants, hence, their rights over the subject land is already barred by prescription, laches or estoppel. In turn, as counterclaim, defendants-appellees sought for an award of attorney's fees and litigation expenses.[12]

After the pre-trial conference,[13] the trial court proceeded to try the case on the merits. The plaintiff-appellee

presented three (3) witnesses, namely: Albino Saus and plaintiffs-appellants Auxiliadora A. Melchor and Margarita Saluta. Their testimonies were summarized by the RTC as follows:

“Albino Saus testified that: he is a resident of Barangay Aslum, Ibaday, Aklan since 1951; he knows Mrs. Auxiliadora Angeles-Melchor as his aunt and being the first cousin of his father Jaime Saus; Juanito Saus is the brother of his father; the land subject of this case is located at Brgy. Agbago and owned by his great grandfather Juan Saluta; he had been to this land in the year 1966-67 and it is planted with rice; it is tenanted by Julian Calizo who pay rental to Conegunda and Filemon Angeles; Conegunda is the mother of Juanito Saus (sic); Felimon is the father of Auxiliadora; the rental is seven (7) cavans of palay per cropping; his grandmother Conegunda is giving Filemon (Lolo Imo) two (2) cavans; he was staying in the house of his grandmother in Brgy. Aslum; his grandmother died in 1982.

On cross examination, he averred that he does not know the area of the land nor its boundary owners; when he got married in 1980, he constructed his own house; he has not overtaken in life Juan Saluta nor his children; in 1966, he went to the land in question to get rentals per instruction of his grandmother; he personally received the rental for the year 1966 from Julian Calizo he could not remember when Felimon died although his grandmother died earlier; Filemon lives in a different house from that of Conegunda and is fifty meters away from each other; he was not yet in school when Paz Fernandez died; Julian Calizo is already dead and it is his son “Ikot” who is tenanting the land.

Auxiliadora Angeles-Melchor testified, that: her co-plaintiffs are her siblings and first cousins; her parents are Felimon Angeles and Teodora Garcia; his father Felimon is the grandson of Juan Saluta; Filemon is the son of Basilisa who is the daughter of Juan Saluta; her first-cousins are the siblings of her aunt Paz who is the sister of her father; she was authorized to file this case by virtue of the Special Power of Attorney (Exh. B); defendants Juanito Saus and Virginita Saus are his first cousins because her father and their mother (Conegunda Saus) are siblings; the property in question is owned by Juan Saluta as evidenced by Tax Declaration No. 93-002-0370 (Exh. E); when she first came to know about the land, it was tenanted by Isidro Sijera then by Julian Calizo and now by his son Ikot Calizo; Isidro was paying seven (7) cavans per cropping as rental; it was Conegunda Saus (sic) who was receiving the rental; in turn, Conegunda gave them two (2) cavans to Paz, two (2) cavans and one (1) cavan for payment of taxes; during the tenancy of Julian Calizo, they received three cavans of rice from Conegunda; Conegunda was paying for the taxes being the administrator of the property; they received their share every four (4) years because it's a rotation basis (liburan); “liburan” means that in every cropping, different heirs received the rentals; the four heirs receiving rentals for every year in a span of four years were Soledad, Silverio, Rafael and Basilisa who are the children of Juan Saluta; Basilisa is her grandmother and also by Juanito Saus; the share of Soledad and Silverio were sold to Conegunda; Juan Saluta is the grandfather of Conegunda; the share of Rafael was bought by their father as evidenced by a Deed of Absolute Sale of Realty a portion only executed by Florenda Sespeñe in favor of Felimon Angeles (Exh. I); Florenda is the daughter of Rafael; Felimon Angeles is her father and the document was executed on May 31, 1973; the land of Juan Saluta in Agbago consist of twenty gantas of rice seedlings; the property being sold according to the document is covered by tax declaration in the name of Andres Saus there was error in the tax declaration and one of the heirs of Rafael Saluta made a move to cure the error by executing a Deed of Extra Judicial Settlement with Confirmation of Sale executed by Helen Saluta dated September 20, 2001 (Exh. J); Rafael Saluta is the uncle of Helen Saluta Abasado because her father is Florencio Saluta; Florencio is the son of Rafael Saluta; the share of Rafael Saluta is ten (10) cavans for one (1) year in 1977; after 1977, they were not able to receive their share because the land was mortgaged by Conegunda to Opet Sasis and Ening Calizo; they complained to the barangay but nothing happened; the land is no longer mortgaged but is already in the name of Juanito Saus as evidenced by Tax Declaration 93-002-1353 (Exh. H) by virtue of Deed of Quitclaim and Adjudication (Exh. F); after the mortgaged (sic) was redeemed in 2001, she received rentals consisting of eight (8) cavans from tenant Federico Calizo; she did not receive anymore rentals because Juanito Saus claimed the land as his own; after securing a certification to file action from Lupong Tagapamayapa of Brgy. Agbago, she filed this instant case.

On cross-examination, she maintained, that: [s]he was (sic) not overtaken in life Juan Saluta nor his wife whom she does not know her name; she was able to secure a copy of the death certificate of Juan Saluta from the Parish of St. Peter the Apostle, Ibajay, Aklan who died on September 25, 1928; she was born in 1939; she knows the children of Juan Saluta namely Rafael, Silverio, Soledad and Basilisa who are now deceased; she has not overtaken in life the children of Juan Saluta; she is the heir of Juan Saluta because her father is the son of Basilisa; her father is Felimon Angeles who died in 1986; her mother died on February 22, 2003; her predecessor-in-interest did not file an action for partition during their lifetime; their house is near the house of Lola Goning (Conegunda, mother of Juanito Saus); while she was still young, the land was tenanted by Isidro Sijera who is already deceased; Isidro was taken out as tenant by her aunt Florenda Saluta; the four (4) children of Juan took turns in administering the land; she does not remember when the heirs of Rafael, Silverio, Soledad or Basilisa possess the land; actually, the heirs does (sic) not possess the land but were given only their share; they received their share from Conegunda during the lifetime of their father; the share of Silverio and Soledad was purchased by Conegunda; Julian Calizo is dead and was succeeded by his son Ikot Calizo as tenant; they were not given their share since 1996 or 1998; the land was mortgaged by Basilisa Sitjar, Virginita Saus nad Emiliana Magbiray but she has (sic) not know if there was any document of mortgage; Ikot Calizo gave the landowner's share to Juanito Saus when the latter redeemed the property in 2000; she does not know the year when it was their turn to get their share; taxes were paid by Conigunda; her father Felimon Saluta died on September 19, 1987 at the age of 78.

Margarita Saluta testified, that: she is a resident of Ibajay, Aklan since birth, October 17, 1956; Auxiliadora Angeles-Melchor is her sister; she knows the land in question located at Agbago, Ibajay; she went to the land to get the share of his father from Julian Calizo who gave her three (3) cavans of palay; in 1976, they also received their share of the produce from the land; after that, she could not remember Julian Calizo gave their share.

On cross-examination, she confirmed that: she was 16 years old when she went to the land in question which has an area of 6,852 sq. m.; Julian Calizo died in the year 1970; there is a written contract of tenancy between Julian Calizo and her father but she had not seen it; in 1972, when Julian Saluta (Calizo) gave her three cavans of palay she was fourteen years old; the palay was then boarded in a tricycle but does not know who own (sic) it.”[14]

Plaintiffs-appellants then rested after the documentary evidence were formally offered[15] and admitted.[16] Thereafter, defendants-appellees presented their testimonial evidence with the testimonies of Federico Calizo and defendant-appellee himself, and their testimonies were as follows:

“Federico Calizo, testified that: he knows Auxiliadora Angeles-Melchor, late Antero Angeles and his wife Rosalinda Masangkay-Angeles and defendants spouses Juanito and Virginita Saus; he knows the land in question situated at Brgy. Agbago, Ibajay, Aklan which is a riceland with an area of about half a hectare; he is tenanted the land since 2000; after his father Julian Calizo died in 1998, his other siblings Pedro, Julian Jr. and Lorna took turns in tenanted the land; his father started tenanted the land in the 70's; while still single, he stayed in the house of his father inside the land in question; he help (sic) his father in cleaning the riceland and also during harvest time, his father give (sic) the landowner's share to Coning Saus, mother of Juanito Saus; his father give Coning Saus eight (8) cavans every harvest; he has never seen Auxiliadora Melchor took palay from his father and only once while he was already the tenant because according to her the land is part of their inheritance; Auxiliadora was then accompanied by her sibling whom he knows as Nonoy, a teacher; Juanito Saus came to know about the eight (8) cavans of palay he gave to Auxiliadora; Juanito Saus reported the matter to the Agrarian Office of Ibajay and he was summoned to appear thereat; he was directed to give the owner's share to Juanito Saus; during the time that his father was tenanted, the land was mortgaged to Opet Sasis by Coning Saus and his father gave the landowner's share to Opet Sasis; that land was mortgaged to Opet Sasis for more than ten (10) years; the land was redeemed by Juanito and Meley Saus from Angelina Calizo because after Opet Sasis, it was again mortgaged to Angelina; when it was mortgaged to Angelina, the

landowner's share was given to her.

On cross-examination, he confirmed that they have their own house in Agbago but when his father tenanted the land of Conegunda Saus he built a house thereat; his other siblings stayed at their old house; Conegunda Saus died in 1982; Conegunda mortgaged the land to Opet Sasis maybe in 1975; it was Mely and Juanito Saus who mortgaged the land to Angelina Calizo; when he gave eight (8) cavans to Auxiliadora, he did not get the consent of Juanito; they have agreed at the Agrarian Office that Auxiliadora will return the eight (8) cavans to him but failed to fulfill up to now.

Juanito Saus testified, that: the plaintiffs are his first cousins; the adjoining owners of the irrigated ricleand in Agbago are Magsangkay on the North, Deocales on the East, Santa Maria on the South and Sijera and Masangkay on the West; his mother is Conegunda Angeles Saus and they are possessing the land; his mother died in 1982; his father Andres Saus died in 1969; he is now possessing and usufructing the land; the land was tenanted by Isidro Sijera and then Julian Calizo and presently Federico Calizo; Isidro and Julian are now deceased; there is an Agricultural Leasehold Contract between his mother and Julian Calizo (Exh. 1) executed on August 27, 1976; before 1976, there is no Agrarian Reform Office yet; he was born in 1936 and maybe Isidro Sijera tenanted the land in 1955; Isidro Sijera and Julian Calizo delivers (sic) the landowner's share in their house at Poblacion, Ibajay, Aklan, his mother mortgaged the land to Opet Sasis in 1965 and the landowner's share was delivered to Opet; there is no written contract of mortgage; the land was again mortgaged to Angelina Calizo by him and his younger sister Emiliana Magbiray and attested by affidavit dated May 29, 1989 (Exh. 2); the landowner's share was delivered to Angelina Calizo during the period of mortgage; the mortgaged (sic) was redeemed as attested by Discharge of Real Estate dated June 4, 1999 (Exh. 3); after that date, their tenant Federico Calizo deliver (sic) the landowner's share to him; plaintiffs were able to get landowner's share once in 2000 from Federico when they harassed the latter; at that time, he was in Manila as her wife is teaching there and when he went home he ask (sic) Federico to pay him the eight (8) cavans of palay which the plaintiff got; his mother Conegunda, Felimon and Paz Angeles are siblings; the plaintiffs are children of Felimon and Paz, the land is declared in his name under ARP/TD 93-002-1353; the supporting documents is the Deed of Quitclaim and adjudication (Exh. 5) signed by Jaime, Tomas, Basilisa Saus-Sitjar who are his siblings; their document has publication as attested by affidavit executed by Jonathan Gustilo on November 28, 1998 (Exh. 6); Felimon and Paz has never taken possession of the land in question because their share on the land is not enough to pay for the loan extended by his mother; Felimon, Paz and his mother's house are near each other; the loan obligation was paid by their share on the land in question; it was surveyed for Conegunda Angeles as shown by certification (Exh. 8) from DENR, Kalibo; they are the ones paying the taxes; when he found out that Federico Calizo gave eight (8) cavans of palay to the plaintiff in 2000; he filed a complaint against Federico before the Municipal Agrarian Reform Office (MARO); the decision of the MARO was for Federico Calizo to return back to him the landowner's share which he did.

On cross-examination, he affirmed that: he is a seaman plying an inter island vessel; he left Ibajay for Manila in 1957; the declaration found in the Assessor's Office shows that the land was declared in the name of Julian Saluta but in the Bureau of Lands it is under the name of Conegunda; he has not overtaken in life Juan Saluta; Paz and Felimon asked from them money every time they are in need and the last time was when their whole family went to Manila and they have no money for their fares; their loan obligation was paid by their share on the land but there is no written document about it.”[17]

After defendants-appellees had rested, the parties were directed to submit their respective Memoranda[18] and thereafter, the case was then deemed submitted for decision.[19]

### The Ruling of the RTC

After due proceedings, on March 3, 2006, the RTC issued its Decision[20] in favor of defendants-appellees. The dispositive portion of said Decision reads:

WHEREFORE, for lack of cause of action, the instant complaint, should be as it is hereby DISMISSED.[21]

Aggrieved, plaintiffs-appellants appealed before Us assigning the following errors:

I.

THE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT DESPITE ITS FINDING OF FACTS THAT THE LAND IN QUESTION BELONGS TO THE ESTATE OF THEIR PREDECESSOR-IN-INTEREST JUAN SALUTA.

II.

THE TRIAL COURT ERRED IN FINDING THAT THE SHARE OF RAFAEL SALUTA CONSISTING OF ONE-FOURTH (1/4) OF THE ENTIRE ESTATE WAS ALREADY ACQUIRED BY CONEGUNDA ANGELES SAUS, MOTHER OF DEFENDANT[,] FROM RAFAEL'S HEIRS.[22]

This Court's Ruling

The instant appeal is bereft of merit.

The foregoing issues being interrelated, they will be discussed jointly hereunder.

Trial Court's Findings Of Facts Are Accorded Due Respect On Appeal

Plaintiffs-appellants' arguments rest on the oft-repeated pronouncement that the 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 observe the demeanor of the witnesses while testifying.[23]

The rule that the trial court's findings of facts are accorded due respect on appeal is not without exceptions. It is not applicable where there are strong and cogent reasons as when the trial court's findings are not supported by the evidence or when the trial court failed to consider material facts which would have led to a conclusion different from what was stated in its judgment or when the trial court's decision was attended by grave abuse of discretion amounting to lack of jurisdiction.[24]

Unfortunately for the plaintiffs-appellants, however, We have made a close hard look into the bases for the trial court's decision and found none of the foregoing exceptions as obtaining herein to warrant a re-examination or reversal of the trial court's finding.

We affirm the decision of the RTC based on the foregoing reasons:

First, the plaintiffs-appellants failed to duly establish that the subject property remained in the estate of Juan Saluta which could be the subject of partition.

The RTC, in dismissing the complaint, held that the co-ownership among the heirs or between the parties in this case has long been terminated and there is no more property to be partitioned between them, thus:

“The evidence of the defendants further show that the share of Rafael had already been acquired by Conegunda Angeles-Saus from Rafael's heirs and therefore the ownership of the whole property declared in the name of Juan Saluta has been acquired by her long ago. Hence, the co-ownership among the heirs or between the plaintiffs or the defendants has long been terminated and there is no more property to be partitioned between them.

The allegations of the plaintiffs that they took turns (liburan) in possessing and usufructing the property is belied by the evidence of the defendants that the property has been tenanted for a long time and the tenants

have given the landowner's share to Conegunda and now to the defendants themselves and not to the plaintiffs. During the time that the property was mortgaged to other persons by Conegunda and later by defendants, the mortgagee possessed and usufructed the property and they never give any share of the proceeds to the plaintiffs.”[25]

On the basis of the evidence at hand, defendants-appellees have convincingly established that Conegunda Saus, mother of defendant-appellee Juanito Saus, exclusively owned and possessed the subject property during her lifetime and upon her death, by her children and later by the defendants-appellees, based on the following facts: an Agricultural Leasehold Contract was executed on August 27, 1976 between Conegunda and Julian Calizo but prior thereto, the land in question was already tenanted by Isidro Sijero and since the year 2000 up to present, the said land is tenanted by Federico Calizo; these tenant-cultivators deliver the landowner's share in the produce consisting of eight (8) cavans of palay to Conegunda Saus and later to defendants-appellees; Conegunda Saus previously mortgaged the subject property to Opet Sasis in 1965 and during that time, the landowner's share in the produce was delivered to Opet Sasis; later, the subject property was again mortgaged to Angelina Calizo by defendant-appellee Juanito Saus and the landowner's share in the produce was likewise delivered to Angelina during the period of the mortgage; on June 4, 1999, the mortgage was paid or settled by defendants-appellees and thereafter, the landowner's share was delivered to the latter; the subject property was surveyed in the name of the heirs of Conegunda Saus as shown by the Certification from the Community Environment and Natural Resources Office (CENRO); taxes on the subject property was paid by the defendants-appellees as shown by the official receipts and Certification issued by the Municipal Treasurer of Ibaday, Aklan; the land is declared in the name of defendant-appellee Juanito Saus under ARP/TD 93-002-1353; and the subject property was given to defendant-appellee Juanito Saus by his mother, Conegunda Saus, as his share in the estate of the latter as evidenced by the Deed of Quitclaim with Adjudication executed by Juanito's siblings.

As a rule, tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's bona fide claim of acquisition of ownership.[26]

Moreover, while tax declarations and realty tax receipts do not conclusively prove ownership, they may constitute strong evidence of ownership when accompanied by possession for a period sufficient for prescription.[27]

Based from the records, defendants-appellees have long been in actual possession and occupation as evident in the acts of dominion exercised by them over the subject property. In fact, defendants-appellants and their predecessor-in-interest Conegunda Saus have been in possession of the subject property for more than thirty (30) years already, without the plaintiffs-appellants objecting or protesting to their possession and occupation thereof.

Considering that plaintiffs-appellants have been in possession of the property for a long period of time, there is legal basis for their use of tax declarations and realty tax receipts as additional evidence to support their claim of ownership.

For their part, plaintiffs-appellants failed to present evidence to rebut the fact of exclusive and continuous possession over the subject property by Conegunda Saus and her successors-in-interest. In fact, they were not able to show proof of their possession over the subject property, much less their receipt of their share of the produce for every crop year.

Second, plaintiffs-appellants cause of action is barred by prescription.

Even assuming arguendo that the parties in this case are co-owners pro-indiviso of the subject property, acquisitive prescription in favor of defendants-appellees had already set in.

It is a hornbook doctrine that the possession of a co-owner is like that of a trustee and shall not be regarded as adverse to the other co-owners but in fact as beneficial to all of them so much so that each co-owner may demand at anytime the partition of the common property and that this implies that an action to demand partition is imprescriptible or cannot be barred by laches.[28]

While the right of action to demand partition does not prescribe, acquisitive prescription may set in where one of the co-owners openly and adversely occupies the property without recognizing the co-ownership.[29] The statute of limitations operates, as in other cases, from the moment such adverse title is asserted by the possessor of the property.[30]

The elements constituting adverse possession by a co-owner against another co-owner or cestui que trust are: (i) that he has performed unequivocal acts of repudiation amounting to an ouster of the cestui que trust or other co-owners; (ii) that such positive acts of repudiation have been made known to the cestui que trust or the other co-owners; and (iii) that the evidence thereon must be clear and convincing.[31]

Granting that plaintiffs-appellants, as well as their predecessors-in-interest, were initially co-owners of the subject property, nevertheless, acquisitive prescription in favor of defendants-appellees had already set in. Defendants-appellees had performed unequivocal acts of repudiation. This is shown by the unrebutted testimony of defendant-appellee Juanito Saus who declared that her mother, Conegunda Saus, had exclusively owned and possessed the subject property for more than 30 years already and they had been receiving the landowner's share in the produce every crop year, to the exclusion of all others and the fact that defendants-appellees and their mother Conegunda Saus paid the realty taxes thereon as exclusive owners thereof. Moreover, plaintiffs-appellants admitted in their Complaint that defendants-appellees arrogated unto themselves the use and enjoyment of the subject property, to their exclusion.

Article 1134, in connection with Article 1137, of the Civil Code respectively provides:

ART. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

ART. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

From the moment Conegunda Saus occupied and claimed to be the absolute and exclusive owner of the subject property and denied her siblings any share therein up to the time of her death, the question involved is no longer one of partition but of ownership in which case imprescriptibility of the action for partition can no longer be invoked. The adverse possession by Conegunda Saus and her successors-in-interest herein defendants-appellees as exclusive owner/s of the subject property having entailed a period of more than 30 years at the time of the filing of this case, ownership by prescription had vested in them.

Given the foregoing observations, this Court is given all the more reason to reject plaintiffs-appellants' theory that the subject property still belonged to the estate of Juan Saluta which is co-owned by them pro indiviso and as such, should be partitioned among them because the same is not only bereft of any sufficient substantiation but likewise illogical and unworthy of belief.

All told, there is no reason for Us to disturb the weight and credence accorded by the RTC to the evidence of the

defendants-appellees, over the protestations of the plaintiffs-appellants.

Wherefore, premises considered, the instant appeal is DENIED. The Decision dated March 3, 2006 issued by the RTC, Branch 5, Kalibo, Aklan in Civil Case No. 6430 is hereby AFFIRMED IN TOTO.

**SO ORDERED.**

Hernando, and Francisco,[\*] JJ., concur.

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[\*] Acting Third Member per Office Order No. 15-14-GTI dated June 30, 2014.

[1] See Notices of Appeal, records, page 214.

[2] Penned by Judge Elmo F. Del Rosario, records, pages 195-207.

[3] See Complaint, records, pages 2-7.

[4] See page 2 of Complaint, records, page 3.

[5] See Complaint, *supra* at note 3.

[6] Exhibit “5”.

[7] ARP/TD No. 93-002-1353, Exhibit “4”.

[8] See Complaint, *supra* at note 3.

[9] See Complaint, *supra* at note 3.

[10] Records, pages 56-59.

[11] See Answer, *supra* at note 10.

[12] See Answer, *supra* at note 10.

[13] See Pre-Trial Order, records, pages 93, 94-95.

[14] Pages 2-5 of Decision, records, page 196-199.

[15] See Formal Offer of Exhibits, records, pages 152-154.

[16] Order dated August 10, 2004, records, page 156.

[17] Pages 7--9 of Decision, records, page 201-203.

[18] Order dated October 24, 2005, records, page 189.

[19] Order dated December 5, 2005, records, page 193.

[20] *Supra*, at note 2.

[21] See page 913 of Decision, records, page 207.

[22] Rollo, pages 34-35.

[23] *Capco v. Macasaet*, G.R. No. 90888, September 13, 1990; *Chase v. Buencamino*, 136 SCRA 605 (1985).

[24] *Capco v. Macasaet*, *supra*.

[25] See page 13 of Decision, records, page 207.

[26] Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago, G.R. No. 151440. June 17, 2003.

[27] Abejaron v. Nabasa, 411 Phil. 552, June 20, 2001; Santiago v. Court of Appeals, 334 SCRA 454, June 28, 2000; Serna v. Court of Appeals, 368 Phil. 1, June 18, 1999; Director of Lands v. Court of Appeals, 367 Phil. 597, June 17, 1999; Lazatin v. Court of Appeals, 211 SCRA 129, July 3, 1992; Republic of the Philippines v. Court of Appeals, 131 SCRA 532, August 31, 1984.

[28] Capitle v. Vda. De Gaban, G.R. No. 146890, June 8, 2004; Salvador vs. Court of Appeals, 243 SCRA 23; De Castro vs. Echarri, 20 Phil. 23.

[29] Capitle v. Vda. De Gaban, supra; Cordova vs. Cordova, 102 Phil. 1182; Heirs of Segunda Manungding vs. Court of Appeals, 276 SCRA 601.

[30] Capitle v. Vda. De Gaban, supra; Ramos vs. Ramos, 45 Phil. 362; Bargayo vs. Camumot, 40 Phil. 857.

[31] Capitle v. Vda. De Gaban, supra; Salvador vs. Court of Appeals, supra.

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