

MARCELO SOTTO, ADMINISTRATOR OF THE ESTATE OF FILEMON SOTTO, PETITIONER, VS. PILAR TEVES, FLORENTINO TEVES, DULCE TEVES KIAMKO, ASSISTED BY HUSBAND FELIPE KIAMKO, DOLORES TEVES ...

G.R. No. L-38018. October 31, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for review on certiorari of the Resolution of the Court of Appeals, Special Division of Five[1] dated Sept. 14, 1973 in CA-G.R. No. 44351-R which reconsidered the decision of the Eighth Division[2], same Court dated November 25, 1972 and from the Resolution dated December 13, 1973 of the said Special Division of Five, denying the motion for reconsideration of the previous Resolution. The dispositive portion of the appealed Resolution states:

"WHEREFORE, the decision rendered in the above-entitled case is hereby reconsidered. The appealed judgment is hereby reversed and set aside. Plaintiffs are hereby declared the absolute owners of Lots Nos. 7547, 842, 2179-A, 123 and 1370. Reconveyance and delivery of possession of the aforesaid five lots to plaintiffs are hereby ordered. Defendant is hereby sentenced to pay plaintiffs the sum corresponding to P4,500.00 a month from October 10, 1966 until the reconveyance and delivery of possession as above ordered have been effected, with legal interest thereon from said date until fully paid, and the sum of P5,000.00 as and for attorney's fees, with costs of both instances against the defendant."[3]

The voluminous records and pleadings in this case establish the following undisputed facts which are stated in the appealed Resolution of the Special Division of Five dated Sept. 14, 1973, as follows:

"Subject of the plaintiffs' action for declaration of ownership and/or reconveyance, and for the recovery of possession, rentals, damages and attorney's fees, are five (5) parcels of land, all located in Cebu City, more particularly described in the complaint, and denominated as Lots Nos. 7547, 842, 2179-A, 123 and 1370. There is no dispute as to the fact that the aforesaid properties originally belonged to the conjugal partnership of the spouses Florentino Rallos and Maria Fadullon. When Florentino Rallos died on March 14, 1912 in the City of Cebu, the parcels of land in question, together with the other properties comprising the estate of the deceased, descended in testate succession to his sole heirs, his widow, Maria Fadullon, and two children, named Concepcion Rallos and Carmen Rallos. The lawyer to whom the Rallos heirs entrusted the settlement of the estate was Atty. Filemon Sotto.

Shortly after the closure of the probate proceeding in 1913, Atty. Sotto married Carmen Rallos. Carmen died in 1945 without leaving any issue. Concepcion died later leaving many children. Maria Fadullon predeceased her

two daughters. Atty. Sotto died intestate on October 10, 1966.

Competing for the ownership of the five lots are the direct descendants and blood relatives of Florentino Rallos and Maria Fadullon, opposed by the administrator of the intestate estate of Atty. Sotto. The children of Concepcion Rallos, or the grandchildren of Florentino Rallos and Maria Fadullon, some of whom are assisted by their spouses, are the plaintiffs in this case. Defendant administrator represents Atty. Sotto's children out of wedlock. It is claimed by the defendant that Atty. Sotto was at the time of his death the owner of the five lots in question.

In life, Atty. Filemon Sotto was a very prestigious man. He wielded tremendous social and political influence. Successively, he was municipal councilor, vice-president of Cebu City, Assemblyman, Senator and Delegate to the Constitutional Convention of 1934. He was editor and publisher of many newspapers among which was the famous "La Revolucion" which featured quite prominently in the celebrated Wood-Sotto libel case. When his life, however, was almost at an end, he was declared incompetent. In 1962, while Atty. Sotto was under guardianship, Cesar Sotto, his nephew and protegee and one of the guardians judicially appointed to take care of his estate, delivered to Pilar Teves, one of the herein plaintiffs, certain documents which had lain in secrecy in the private files of Atty. Sotto. All along, the direct descendants and blood relatives of Florentino Rallos had rested on the belief that the properties in question, which are the fruits of the sweat and toil of their grandfather, would one day be delivered unto them. The revelation of Cesar Sotto, however, led the plaintiffs to the discovery that all the properties in question were now titled in the name of Atty. Sotto, and were in danger of falling into the hands of his children out of wedlock, who are total strangers to the spouses Rallos and Fadullon. Upon such discovery, the plaintiffs initiated the present lawsuit forthwith."

On June 13, 1967, the herein private respondents filed suit in the Court of First Instance of Cebu against petitioner Marcelo Sotto, as administrator of the intestate estate of Filemon Sotto, for the recovery of possession and ownership of the 5 parcels of land described in the complaint, with damages. The complaint was based mainly upon the theory that a trust relation was established and created with respect to the said properties, with Atty. Filemon Sotto as trustee and as cestuis que trust, his mother-in-law, Maria Fadullon Vda. de Rallos; his wife, Carmen Rallos; and his sister-in-law, Concepcion Rallos (predecessor in interest of herein private respondents); and that in gross violation of the trust reposed upon him by Concepcion Rallos and after her death, by her heirs, the said Atty. Filemon Sotto, through sheer manipulation, fraudulent acts and means, non-existent and void decrees, fictitious sales and transfers, succeeded in causing the transfer of the ownership of the properties to the name of his wife Carmen Rallos, and finally to his name alone.

The complaint alleged five causes of action. Under the first cause of action, it is alleged that on January 25, 1913, Atty. Filemon Sotto as counsel, not only for the widow, Maria Fadullon Vda. de Rallos, but also for her daughters, Carmen Concepcion both surnamed Rallos, filed a motion in said Special Proceedings No. 365-0 praying to relieve the executrix Maria Fadullon Vda. de Rallos from presenting a project of partition inasmuch as his clients had the desire to conserve pro-indiviso the properties in their possession, which motion[4] is as follows:

"MOCION SOBRE LA DISPOSICION DE LOS BIENES

Maria Fadullon, conyuge viuda de Florentino Rallos, y sus hijas Carmen Rallos y Concepcion Rallos, unicas

herederas de dicho finado, comparecen hoy por medio del Abogado Filemon Sotto para exponer le que sigue:

Que habiandose hecho por el Juzgado una declaracion de "unicas herederas" de los bienes del finado Florentino Rallos en favor de las comparecientes, y siendo todas ellas mayores de edad, pidan al Juzgado que se la releve a la Albacea de presentar cualquier proyecto de reparticion, pues las exponentes tienen el preposito de conservar por ahora "por indivisos" los susodichos bienes, en poder de alias mismas.

Cebu, 25 Enero de 1913.

(SGD.) FILEMON SOTTO

Abogado de la mocionantes

Maria Fadullon y sus hijas Carmen y Concepcion Rallos manifiestan. Que son la mismas mencionadas en la preinserta mocion y que estan conformes con todo el contenido de la misma.

Cebu, 25 de Enero de 1913.

(SGD.) CONCHITA RALLOS DE TEVES

(SGD.) CARMEN J. RALLOS

(SGD.) MARIA F. VDA. DE RALLOS"

Upon approval by the Court of the above quoted Mocion Sobre La Disposicion de los Bienes, the said probate proceedings was terminated.

The complaint further alleged that at that time Atty. Filemon Sotto (then known as Don Filemon Sotto) was still single, but he already enjoyed considerable prestige and influence and was well-known for his sagacity, he having become a municipal councilor, municipal vice-mayor, fiscal and assemblyman; that he married Carmen J. Rallos on Sept. 27, 1913 and he later became senator, delegate to the Constitutional Convention and editor, besides being a practicing lawyer.

It is furthermore alleged that Atty. Filemon Sotto, having married Carmen Rallos, thereby virtually making him a member of the Rallos family, was looked upon as the head of the Rallos family to look after the properties inherited from the deceased Florentino Rallos including the 5 parcels of land hereinbefore mentioned, thereby establishing a trust relation with Don Filemon Sotto as trustee of the said properties for the benefit of his mother-in-law Maria Fadullon Vda. de Rallos, his wife Carmen Rallos de Sotto and sister-in-law Concepcion Rallos and the heirs of the latter, as cestuis que trust; that the aforesaid trust reposed upon him continued even after the deaths of Maria Fadullon Vda. de Rallos, Carmen Rallos de Sotto and Concepcion Rallos, the latter who married twice, first to Mariano Teves and second to Mariano Camara, and lasted up to Don Filemon Sotto's death

on October 10, 1966; that on November 29, 1916, Don Filemon Sotto in violation of the trust reposed upon him by, and his duty as attorney for, the heirs of the deceased Florentino Rallos, illegally caused Decree No. 64101 dated Jan. 26, 1918 to be issued in Case No. 9, G.R.L.O. No. 9465 of the Court of First Instance of Cebu on the entire Lot No. 7547 in question, in the name alone of Carmen Rallos de Sotto, the wife of Filemon Sotto, to the great prejudice and damage of the other co-owners thereof namely, Maria Fadullon Vda. de Rallos and Concepcion Rallos de Camara; that said Decree is inexistent, null and void ab initio and without force and effect for it should have been issued not in the name of Carmen Rallos de Sotto but in the names of Maria Fadullon Vda. de Rallos -1/2 share and the remaining 1/2 share thereof in the names of Carmen Rallos de Sotto and Concepcion Rallos de Camara in equal proportion of 1/4 share each; that on February 9, 1918, as a result of the said inexistent, null and void Decree No. 64101, Original Certificate of Title No. 1034 was issued in the name of Carmen Rallos de Sotto, wife of Filemon Sotto; that sometime in 1922, Atty. Filemon Sotto had caused Lot No. 7547 to be transferred by his wife to the name of another person as a result of which O.C.T. No. 1034 was cancelled and Transfer Certificate of Title No. 6278 was issued, for fear that said lot might be attached in connection with the libel suit filed against the newspaper, La Revolucion edited by Don Filemon Sotto at the instance of the then Gov. Gen. Leonard Wood; that on June 5, 1933, Don Filemon Sotto caused Transfer Certificate of Title No. 6278 of Lot 7547 to be reconveyed not in the name of his wife but in his own name under Transfer Certificate of Title No. 12740 and was thereafter reconstituted administratively by the guardian of his properties as Transfer Certificate of Title No. RT-6890 in the name of Filemon Sotto, widower, and finally the present Certificate of Title No. 27710 was issued by the Register of Deeds in the name of Filemon Sotto, widower.

Under the second, third, fourth and fifth causes of action, respondents alleged specific similar violations of the trust relation reposed upon him with respect to the other 4 parcels of land in that Atty. Filemon Sotto illegally caused said lots to be registered either in the name of his wife Carmen Rallos de Sotto alone or jointly with Maria Fadullon Vda. de Rallos, to the prejudice of the other co-owner, Concepcion Rallos, and thereafter thru manipulations and fraudulent means, unregistered deeds of sale, fictitious and simulated transfers, incumbrances and reconstitution, these properties were in gross violation of the trust reposed upon him by the heirs, finally titled in the name alone of Carmen Rallos de Sotto and ultimately to that of his name as Don Filemon Sotto, widower.

Under the sixth cause of action, demand was made for the payment of rental income of the lots in question at P4,500.00 a month from Oct. 10, 1966 until delivery of possession and ownership of said lots as actual or compensatory damages, P20,000.00 as moral damages, P10,000.00 as exemplary damages and P20,000.00 for professional services.

Answering the complaint, petitioner Marcelo Sotto as administrator of the estate of Atty. Filemon Sotto, denied that there was any trust relation between Don Filemon Sotto on one hand and Maria Fadullon Vda. de Rallos, Carmen Rallos and Concepcion Rallos on the other; that granting that such relationship existed between Don Filemon Sotto and Concepcion Rallos, such a relationship could not have endured until the death of Don Filemon Sotto; that the decree of Lot No. 7547 was issued in the name of Carmen Rallos pursuant to an agreement among the heirs of Florentino Rallos that this parcel of land, together with the other parcels of land involved in this case, be adjudicated to Carmen Rallos as her share in the estate of Florentino Rallos, in the same manner that several parcels of land were likewise adjudicated to, and decrees issued in the name of Concepcion Rallos, as her share in the estate of Florentino Rallos; that the partition agreement adjudicating Lots No. 7547 and 1/2 each of Lots Nos. 842, 2179-A and Lots Nos. 123 and 1370 were adjudicated to Carmen Rallos and the other halves of Lot Nos. 842 and 2179 were adjudicated to Maria Fadullon Vda. de Rallos and decrees were accordingly issued later on by the Cadastral Court relative to the said properties of land in pursuance to said partition agreement; that more than 1 year having elapsed from their issuance, the decrees had become indefeasible; that the parcels of land, having been transferred to the purchasers for value and in good faith, the present action for reconveyance will not

prosper; that the plaintiffs have no cause of action as the same is barred by prescription, laches and estoppel; and assuming that there was any trust relation between Atty. Sotto Concepcion Rallos, the trust was repudiated by Atty. Filemon Sotto a long time ago as shown by the series of transfers of these lots made by him personally. A counterclaim for exemplary damages, moral damages and attorney's fees were also set up.

The issues having been joined and trial concluded, the Court of First Instance of Cebu rendered its decision[5] dismissing the complaint, holding that no express trust relation existed between Atty. Filemon Sotto on one hand and Maria Fadullon Vda. de Rallos, Carmen Rallos and Concepcion Rallos on the other with respect to the lots in question; that there was no implied trust subsisting between Atty. Sotto and the said heirs and that there was actual partition between them whereby the 5 lots were given to Carmen Rallos as her share; that Carmen Rallos exercised acts of ownership over the 5 city lots in question to the exclusion of Concepcion Rallos and Maria Fadullon Vda. de Rallos, registering them in her name under the Torrens system; that Concepcion Rallos and her children after her death were thus notified constructively and actually by Carmen Rallos de Sotto's raising the flag of exclusive ownership and repudiation of the trust relation, if there was any, and since then the period of prescription of 10 years for bringing the action tolled against an implied trust. Laches or inaction on the part of Concepcion Rallos and her heirs have thus rendered their demand stale or no longer enforceable.

The heirs of Concepcion Rallos appealed to the Court of Appeals. In the Decision[6] promulgated Nov. 25, 1972, the Court of Appeals, Eighth Division, affirmed the judgment of the lower court. The appellate court agreed with the conclusion of the lower court that no express trust was created between Atty. Filemon Sotto and the heirs of Florentino Rallos by the mere signing of the Mocion in behalf of the heirs of Florentino Rallos; that when the surviving heirs of the deceased manifested in the petition filed by Atty. Filemon Sotto during the probate of the will that it is their desire not to partition the estate so as to preserve and maintain co-ownership over the properties, there can be no doubt that by direct and positive acts in holding the estate pro-indiviso, they intended to create an express trust among themselves; that Filemon Sotto who merely represented the heirs in that probate proceedings and filed the petition in court was not made a co-trustee by reason of his marriage to Carmen Rallos even if he was the lawyer of the Rallos family enjoying the prestige of being a prominent lawyer with political influence; that the estate of Florentino Rallos was already partitioned whether in 1925, prior or subsequent thereto, does not matter but the fact is that the Original Transfer Certificates of Title covering the 5 parcels of land were originally issued in the name of Carmen Rallos alone with respect to Lot No. 7547 and jointly in the name of Carmen Rallos and Maria Fadullon Vda. de Rallos as regards Lots Nos. 842, 2179A, 123 and 1370, to the exclusion of Concepcion Rallos; that there was repudiation of the trust relation among the co-owners, the date of which the Court can only be guided by the registration and issuance of the certificates of title when Carmen Rallos put the stakes of exclusive ownership over the lands and repudiated whatever trust was reposed in her by her co-heirs; that from the moment Carmen Rallos asserted her title over the questioned properties, the statute of limitation operated against her co-heirs, irrespective of plaintiffs' pretension that they discovered much too late that the 5 lots were already titled in the name of Carmen Rallos, for such discovery is deemed to have taken place when the certificates of title to the properties were issued in favor of Carmen Rallos.

The above decision of the Appellate Court having been assailed on a Motion for Reconsideration[7] filed by plaintiffs-appellants, now the herein private respondents, the Court of Appeals, Special Division of Five, reversed the said decision in its Resolution of Sept. 14, 1973. The Court, however, agreed with the ruling of the original decision declaring that the heirs of Florentino Rallos had "by manifesting to the probate court that it was their desire to preserve and maintain the ownership of the inherited properties thereby intended and created by direct and positive acts an express trust among themselves," as it was in conformity with the evidence and the law.[8] The court also noted that "(t)he parties ceased to debate the question as to whether or not an express trust was created by and among the Rallos heirs after our decision was promulgated. They came to agree that such a

relationship was indeed created and that it existed. In the present motion for reconsideration, the dispute centers on the issue as to whether the express trust subsisted or it was repudiated. The parties are also in disaccord on the question as to whether Atty. Sotto should be considered a party in the express trust or should be regarded merely as a constructive trustee." [9]

The respondent Court of Appeals said that upon the facts and under the law, Atty. Sotto can be regarded as the constructive trustee of his wife and of the widow and descendants of Florentino Rallos; that Atty. Sotto's special relations with the Rallos heirs inhibited him from any act or conduct that could put his interests above or in direct collision with the interests of those who had reposed their trust and confidence in him.

The Court also found that the trust continued to subsist and did not terminate in 1925 by an adjudication of the lots to Carmen Rallos, for no such adjudication took place; that the registration of the lots was not the result of such adjudication or partition and said registration did not amount to a repudiation of the express trust. The titling of the lots in the names of Carmen Rallos and Maria Fadullon Vda. de Rallos was done in their capacities as trustees and not as absolute and exclusive owners thereof. In 1925 an oral agreement founded upon and in reaffirmation of the 1913 written agreement was reached among the Rallos heirs under which the 5 lots would remain under co-ownership of the 3 heirs, with Carmen Rallos as administratrix who would be entitled to a lifetime of usufruct of the properties but upon her death, ownership of the lots would devolve to Concepcion Rallos and her heirs. The Court ruled that Carmen Rallos could not legally deprive Concepcion Rallos and her heirs of their rights to the properties through the execution of a will in favor of her husband Filemon Sotto, considering that the same were trust properties held by her in trust for the benefit of Concepcion Rallos and her heirs, hence, Atty. Filemon Sotto must be deemed to have received the properties impressed with the subsisting trust, not for himself but for the benefit of the cestuis que trust.

Concluding, the Court said: "Upon the facts, under the applicable laws, and even on the basis of equity, plaintiffs are entitled to be declared the owners of the properties which admittedly originated from their ancestor and blood relative, their grandfather Florentino Rallos. As owners of the lots in question, plaintiffs are also entitled to the fruits thereof. x x x" [10]

Petitioner's motion for reconsideration having been denied, he now comes to Us to review the reversal of the original decision of the appellate court and makes the following assignment of errors:

I. The Court of Appeals erred in finding that an express trust was created among the heirs of Florentino Rallos by virtue of the Mocion Sobre la Disposicion de los Bienes filed by Filemon Sotto.

II. The Court of Appeals erred in not finding that the legal relationships created by the said Mocion Sobre La Disposicion De Los Bienes was a simple co-ownership.

III. The Court of Appeals erred in finding that Don Filemon Sotto became a co-trustee by virtue of his subsequent marriage to Carmen Rallos.

IV. The Court of Appeals erred in not finding that the heirs of Florentino Rallos entered into an actual, effective and mutually accepted partition of the estate.

V. The Court of Appeals erred in finding that an express trust existed by the use of parol evidence, disregarding the weight of a torrens title and a public document mutually admitted by the parties.

VI. The Court of Appeals erred in not finding that even if an express trust was created, the same was expressly repudiated by both parties.

VII. The Court of Appeals erred in not finding the respondents guilty of laches and estoppel.

The first and second assignments of error relate to the *Mocion Sobre la Disposicion de los Bienes*, hence We are constrained to consider and resolve them together. Petitioner faults the Court of Appeals in finding that an express trust was created among the heirs of Florentino Rallos by virtue of the *Mocion* filed by Atty. Sotto, and in not finding that the legal relationship created by the *Mocion* was a simple co-ownership. Petitioner contends that the "motion is very clear and categorical and the only purpose of that Motion is to keep the properties in a co-ownership by the heirs of Florentino Rallos, not to create a relationship of express trust among the heirs." [11] He argues that "(s)ince the alleged source of express trust is a written document, applying therefore the document aforecited it is necessary that the document expressly state and provide for the express trust," [12] and that it is a contradiction in terms for the Court of Appeals to imply from the document an express trust.

Petitioner's contention is without merit. It may be true that the heirs of Florentino Rallos intended and desired to keep the properties in co-ownership pro-indiviso when they signed the *Mocion* filed in their behalf by Atty. Filemon Sotto in the probate proceedings to terminate the same but the legal effect of said agreement to preserve the properties in co-ownership as expressed in writing and embodied in the *Mocion* was to create a form of an express trust among themselves as co-owners of the properties. In the case of *Castrillo, et al. vs. Court of Appeals, et al.*, 10 SCRA 549, the Supreme Court, speaking thru Chief Justice Makalintal, said that "co-ownership is a form of trust and every co-owner is a trustee for the other." In co-ownership, the relationship of each co-owner to the other co-owners is fiduciary in character and attribute. Whether established by law or by agreement of the co-owners, the property or thing held pro-indiviso is impressed with a fiducial nature that each co-owner becomes a trustee for the benefit of his co-owners and he may not do any act prejudicial to the interest of his co-owners.

Under the law on Trusts, it is not necessary, as petitioner insists, that the document expressly state and provide for the express trust, for no particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended. (Art. 1444, N.C.C.). An express trust is created by the direct and positive acts of the parties, by some writing or deed or will or by words evidencing an intention to create a trust. (*Cuaycong, et al. vs. Cuaycong, et al.*, G.R. No. L-21616, Dec. 11, 1967).

We agree with the findings of the respondent Court of Appeals that an express trust was created by the heirs of Florentino Rallos in respect to the properties in litigation when they agreed to preserve said properties in co-ownership among themselves as manifested and expressed into writing and filed as a pleading captioned *Mocion Sobre la Disposicion de los Bienes*. Incidentally, this is the same finding of the original decision of the Eighth Division, same Court which was, however, reconsidered on other grounds. We find no reason to disturb this finding of the respondent Court, the same being in accordance with law and the facts as clearly established.

We now consider the third assignment of error. Petitioner contends that the Court of Appeals erred in finding that Don Filemon Sotto became a co-trustee by virtue of his subsequent marriage to Carmen Rallos. Petitioner, while admitting that as a lawyer some form of trust devolved upon the shoulders of Filemon Sotto; that as the husband of Carmen Sotto, some form of trust devolved on his shoulders; that because of overwhelming social and political

standing during his time some form of trust was carried by Filemon Sotto,[13] argues that this is not the Trust that is defined in our Civil Code most especially if it is the express trust under Articles 1441 and 1444 which is relied upon by the respondent Court of Appeals, Special Division of Five. The trust on the shoulder of Filemon Sotto as the family lawyer in the intestate proceedings of Florentino Rallos was only coterminous with the duration of the proceedings itself. The trust on the shoulder of Filemon Sotto by virtue of his marriage to Carmen Rallos was only as much as the trust on the shoulders of the two husbands of Concepcion Rallos, Mariano Teves and Mariano Camara, and this trust is not the trust defined in our Civil Code on express trust." [14]

We find no merit in petitioner's contention. In the first place, petitioner's argument is based on an incorrect assumption. Petitioner assumes that the respondent Court of Appeals found the existence of an express trust between Atty. Filemon Sotto and the heirs of Florentino Rallos, which is not correct. What the appellate court held is that Atty. Sotto can be regarded as the constructive trustee of his wife and of the widow and descendants of Florentino Rallos. In fact the Court declared, thus

"Upon the record, we have no doubt but that there existed more than mere professional relationship of attorney and client between Atty. Sotto and the members of the family of Florentino Rallos. Shortly after the closure of the testate proceeding, Atty. Sotto contracted marriage with one of the daughters of Florentino Rallos. The attorney thereby became not only a family lawyer but also an actual member of the Rallos family by affinity. By reason of his marriage to Carmen Rallos, and on account of his prestige and tremendous social and political influence, Atty. Sotto enjoyed and exercised a personal, domestic, social, political and moral ascendancy and superiority not only over his wife but also over Maria Fadullon, Concepcion Rallos, and the latter's children. The evidence reveals that the Ralloses looked up to Atty. Sotto as protector and benefactor, as one on whom they could repose their trust and confidence and who would take care of the properties inherited from Florentino Rallos, and on his part, Atty. Sotto acknowledged his position as protector of the rights and interests of the Rallos family. Like a pater familias, he attended to the financial and medical needs of the direct descendants of Florentino Rallos and Maria Fadullon (Exhs. U and T). When one of the five parcels in question, Lot 7547, was being claimed by a certain Manuel Ocejo, Atty. Sotto represented the Rallos family as defendants in Civil Case No. 1641 of the Court of First Instance of Cebu, and the lot was adjudicated in favor of the Rallos family. The acts and conduct of the Ralloses and Atty. Sotto fostered a close and fiduciary relationship between them. Upon the facts and under the law, Atty. Sotto can be regarded as the constructive trustee of his wife and of the widow and descendants of Florentino Rallos. For the settled rule is that:

"The relation between parties, in order to be a "fiduciary relation" need not be legal, but may be moral, social, domestic or merely personal; and where by reason of kinship, business association, disparity in age or physical or mental condition or other reason, the grantee is in an especially intimate position with regard to another and the latter reposes a degree of trust and confidence in the former, confidential relationship exists which prohibits the one entrusted from seeking a selfish benefit for himself during the course of relationship, and affords a basis for imposing a constructive trust.' (89 CJS, Art. 151, pp. 1054-1057)

Atty. Sotto's special relationship with the Rallos heirs inhibited him from any act or conduct that would put his interests above, or in direct collision with, the interests of those who had reposed their trust and confidence in him." [15]

Secondly, it is also not quite correct for petitioner to claim that the respondent Court ruled that Don Filemon Sotto

became a co-trustee by virtue of his subsequent marriage to Carmen Rallos. The truth of the matter is that, according to the Court, Atty. Sotto became a constructive trustee not only by reason of his marriage to Carmen Rallos but also on account of his prestige and tremendous social and political influence, also because Atty. Sotto enjoyed and exercised a personal, domestic, social, political and moral ascendancy and superiority over his wife, over Maria Fadullon, Concepcion Rallos and the latter's children, besides being the protector of the rights and interests of the Rallos family acting like a pater familias attending to their financial and medical needs, as well as the family lawyer.

We are in full accord with these findings and conclusion of the respondent Court as the same are final, conclusive and binding upon Us, there being no exceptional circumstances or reasons to review or revise the same.

With respect to the fourth assignment of error, petitioner impugns the Court of Appeals in not finding that the heirs of Florentino Rallos entered into an actual, effective and mutually accepted partition of the estate. Petitioner claims that partition of the inherited properties took place between the heirs in 1925 in accordance with which the 5 parcels of land under litigation were adjudicated to Carmen Rallos and that by reason of the partition and adjudication, the lots were granted to Carmen Rallos and titles were secured and issued in her favor and name.

On the other hand, the private respondents claim that there was such a partition agreed upon in 1925 when, on the occasion of the visit of Maria Fadullon Vda. de Rallos and Carmen Rallos to Concepcion Rallos after the latter's delivery of a child, it was agreed that the properties in Carmen, Cebu and one lot in Basak, Cebu City, all assessed at P9,000.00 were to remain with Concepcion Rallos, while the 5 lots now in litigation, then owned in common among the three heirs, and assessed at P55,000.00 would be administered by Carmen Rallos, the fruits thereof to be received by Carmen Rallos during her lifetime and that upon the death of Carmen the properties will devolve to Concepcion and to her children.

The respondent Court rejected petitioner's claim of partition and adjudication, declaring that -

"We cannot embrace the theory advanced by defendant, which is bereft of evidentiary support, that in 1925, on the occasion of the visit paid by Maria Fadullon and Carmen Rallos to Concepcion Rallos, the five lots in question were adjudicated to Carmen Rallos. To begin with, there is no concrete evidence of record on which to lay such claim. It is our belief that the realities of the situation of the parties and the practicable and equitable utility of the inheritance of Florentino Rallos are better determinants of the question as to whether defendant's theory would be accepted or rejected. Carmen Rallos was admittedly without any child to support. On the other hand, Concepcion Rallos was burdened with many children. The lots in Carmen and Basak, which were allowed to be retained by Concepcion, were assessed at a mere P9,000.00, whereas the five lots in question had an assessed value of P55,000.00 in 1925. It is very difficult to believe that Carmen Rallos and Maria Fadullon had gone to Concepcion, on the occasion when another child had just been added to the latter's burden, to tell her that they were depriving her of a valuable share in the inheritance, such share to be given to Carmen who was childless. Such theory of defendant is utterly un-Filipino and is thoroughly irreconcilable with our customs and ways of treating close relatives. The more probable and believable is the testimony of Pilar Teves that Maria Fadullon and Carmen Rallos came to Concepcion, as Magis bearing gifts, to tell her that the five lots would go to her and to her children upon Carmen's death. The testimony of Pilar jibes with the evidence that Florentino Rallos had expressed the wish that a portion of the inherited properties should be devoted to defray the expenses for the education of his grandchildren." [16]

We uphold the stand of the respondent Court of Appeals, Special Division of Five in giving credence and belief to respondents' claim of partition as testified to by Pilar Teves, one of the private respondents, because the Court's findings and its ruling is based on the grounds of human experience, the ordinary course of things and our own

native customs, culture and tradition to revere the memory of our ancestor by keeping intact the estate in inheritance as long as possible, and to help one's brothers and sisters to benefit from the sweat and toil of our parents, rather than dispossess them or given the inheritance away to perfect strangers, strangers to family ties and filial affection. It is unconscionable and contrary to morals that a parent should deprive his children of what lawfully belongs to them. (*De Guzman vs. Aquino*, 34 SCRA 236).

Petitioner's version of the partition and adjudication is, from a factual viewpoint, clearly untenable; it is even inconsistent with his evidence. The facts show that all the lots were registered originally before the alleged partition and adjudication in 1925. Lots 123 and 1370 were registered on Sept. 23, 1913; Lot 842 on Feb. 5, 1918; Lot 2179-A on June 17, 1921 and Lot 7547 on Feb. 9, 1918. Based on their respective dates, the acts of registration preceded the supposed partition and adjudication which inexplicably reversed the usual order of occurrence which is, that partition and adjudication normally precede registration. More than that, the first 4 lots mentioned above were registered jointly in the names of Maria Fadullon Vda. de Rallos and Carmen Rallos, which strongly belied petitioner's contention that all the 5 lots were adjudicated to Carmen Rallos alone. The conclusion is inescapable that petitioner's version did not take place and that the registration of the lots could not have resulted from the supposed partition and adjudication.

As We have heretofore stressed, the findings of fact of the Court of Appeals are conclusive. Likewise, question of credibility is left to the Court of Appeals. (*De Garcia vs. Court of Appeals*, 37 SCRA 129). Appreciation of evidence is within the domain of the Court of Appeals because its findings of facts are not reviewable by the Supreme Court. (*Talosig vs. Vda. de Nieba*, 43 SCRA 472; *Tiongco vs. de la Merced*, 58 SCRA 89). The Supreme Court will not review findings of facts of the Court of Appeals. (*Evangelista & Co. vs. Santos*, 51 SCRA 416).

On appeal from a decision of the Court of Appeals, the findings of fact made in said decision are final, except: (1) When the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) When the inference is manifestly mistaken, absurd or impossible; (3) When there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee. (*Napolis vs. Court of Appeals*, 43 SCRA 301). In the case at bar, We are convinced and satisfied that the above exceptions do not obtain.

Petitioner exacerbates that the Court of Appeals erred in finding that an express trust existed by the use of parol evidence, disregarding the weight of a torrens title and a public document mutually admitted by the parties, in his fifth assignment of error.

We reject petitioner's contention as baseless. In the first place, the respondent Court did not find that an express trust existed by the use of parol evidence. Actually, the Court, on this point said: "On the basis of undisputed facts, we held in our decision that the heirs of Florentino Rallos, by manifesting to the probate court that it was their desire to preserve and maintain the co-ownership over the inherited properties, thereby intended and created, by direct positive acts, an express trust among themselves. (pp. 19, 24, Decision). It is our view that this holding should be maintained because it is in conformity with the evidence and the law." [17] In a later portion of the Resolution appealed from, the Court said: "As early as in 1913, the Rallos heirs had already agreed expressly and in writing that the five parcels shall remain in co-ownership, and that in regard to them each one of the heirs shall be a trustee for the others." [18]

In the second place, the oral testimony of Pilar Teves simply affirmed the existence of such trust relation; it gave proof that the heirs desired to continue the express trust and co-ownership over the five lots. It was not necessary

that the heirs create a new agreement of co-ownership over the said properties. They merely reiterated their written agreement made in 1913 that the five parcels would be preserved in co-ownership but made provisions for their administration, collection of rentals and final disposition upon the death of Carmen Rallos.

There is, therefore, no violation of Art. 1443, N.C.C. which provides that "no express trust concerning an immovable or any interest therein may be proved by parol evidence," as the same is not applicable herein.

As to the pretension that the respondent appellate court disregarded the weight of a torrens title and a public document mutually admitted by the parties, the latter referring to the will executed by Carmen Rallos in 1942 bequeathing all her properties to her husband, Atty. Filemon Sotto, petitioner's reasoning holds no water because from the very nature of a trust relation which existed between Carmen Rallos and her co-owners, she cannot obtain and secure a torrens title to the properties in her name much less dispose of them by testament to her husband, a constructive trustee, to the prejudice and deprivation of the rights and interests of said co-heirs.

A fiduciary relationship may exist even if the title to the property subject to the trust appears in the name of the trustee alone, because in cases of trusteeship, the legal title usually appears in the name of the trustee, while the equitable title remains with the cestui que trust. (*Palma vs. Cristobal*, 77 Phil. 712). True it is that Torrens titles were issued in the name of Carmen Rallos, but the principle holds that a trustee who takes a Torrens title in his name cannot repudiate the trust by relying on the registration, which is one of the well-known limitations upon the finality of a decree of title. (*Alvarez, et al. vs. Espiritu*, L-18833, August 14, 1965, 14 SCRA 892; *Paterno Vda. de Padilla vs. Bibby de Padilla*, 74 Phil. 377; *Nery vs. Lorenzo*, L-23096, April 27, 1972, 44 SCRA 431, 439 and the cases cited therein).

Neither can the will executed by Carmen Rallos deprive the private respondents of their ownership over the five parcels of land. These lots were trust properties; Carmen Rallos was holding them in trust for her sister Concepcion Rallos and the latter's children. Not being the absolute owner thereof, Carmen Rallos could not legally convey their ownership by including them in their will. To all intents and purposes, the will and last testament of Carmen Rallos was merely a vehicle of an existing trust and therefore, Atty. Filemon Sotto must be deemed to have received the properties not for himself but for the benefit of the cestui que trust. And as a trustee of these trust properties, Atty. Sotto never alienated or disposed any of these properties during his lifetime, thereby recognizing his position as trustee and that he held them for the benefit and interest of the cestuis que trust.

On the penultimate and ultimate assignments of error, petitioner fulminates against the appellate court in not finding that, assuming that an express trust was created, the same was expressly repudiated by the parties and in not finding respondents guilty of laches and estoppel.

The resolution of these supposed errors, the 6th and the 7th, must follow as a consequence to Our ruling a propos petitioner's 4th and 5th assignments of error. We sustained the respondent Court in rejecting petitioner's version of the partition and adjudication and that the registration of the lots could not have resulted from the supposed partition and adjudication. We affirmed that the express trust and co-ownership over the 5 parcels of land created and agreed in 1913 by and among the Rallos heirs did not terminate in 1925 but subsisted and was maintained by them thereafter. We also declared that the registration of the 4 lots in the names of Carmen Rallos and Maria Fadullon Vda. de Rallos and 1 lot in favor of Carmen Rallos alone was done in their capacities as trustees and not as absolute or exclusive owners, and not only in their own behalf and benefit but also for the other co-owner, Concepcion Rallos.

With these previous pronouncements in mind, We must overrule petitioner's stand that the trust was expressly repudiated by the parties although he makes capital of the fact of registration of the properties in the names of

Carmen Rallos and Maria Fadullon Vda. de Rallos, contending strongly that such registration is evidence of repudiation of the express trust. The rationale of Our conclusion in meeting petitioner's 4th assignment of error, including the authorities cited thereunder, holds with equal force and persuasion over petitioner's contention of alleged repudiation by the parties. The registration of the property in the name of the trustee in possession thereof must be deemed to have been effected for the benefit of the cestui que trust. (*Severino vs. Severino*, 44 Phil. 343; *Baretto vs. Tuason*, 50 Phil. 888).

Petitioner points to the fact that Concepcion Rallos had expressly repudiated the trust by selling the Basak properties which were converted into a subdivision, as well as to acts of exclusive ownership over the properties of the estate by each of the co-owners to show that the trust relationship and co-ownership was repudiated, renounced and terminated when the parties agreed to an actual partition of the estate. Petitioner's advocacy is futile. Besides the falsity of its basis for the reason that We found no partition as theorized by petitioner and that the trust relation subsisted and was maintained in 1925 and thereafter, the acts of exclusive ownership pointed by petitioner do not appear to be clear, open and unequivocal repudiation of the trust. Thus -

1. The sale by Concepcion Rallos of some of the properties originally forming part of the estate of Florentino Rallos cannot be considered as a repudiation of the express trust by Concepcion herself. Said properties were given to her in the aforementioned agreement testified to by Pilar Teves and did not form part of the five parcels of land over which an express trust was established in 1913 and reiterated in 1925.

2. With respect to Lots 123 and 1370, Atty. Filemon Sotto, soon after the creation of the express trust in 1913, caused the registration of these two lots and the issuance of Original Certificate of Title No. 251-253 dated Sept. 23, 1913 in the names of Maria Fadullon and Carmen Rallos, to the exclusion of Concepcion Rallos. Thereafter, Atty. Sotto caused the deed of sale to be executed by Maria Fadullon whereby she purportedly sold her share in the two lots to Carmen Rallos, and by virtue of such deed, Atty. Sotto was able to obtain Transfer Certificate of Title in the name of his wife Carmen Rallos. That the registration of these two lots took place in 1913, barely 8 months after the creation of the express trust, and being inconsistent with the terms of said Motion that they preserve the inheritance in co-ownership and in equal shares, do not clearly show that Carmen Rallos intended to repudiate their original agreement as contained in the Motion. Since the titles were issued in the name of Carmen Rallos thru the professional services of her lawyer-husband Atty. Filemon Sotto, it is more believable and consistent with the express trust relation created under the Motion dated and filed on Jan. 25, 1913 that the title was taken in the name of Carmen Rallos but for the benefit of the other heirs, namely Maria Fadullon Rallos and Concepcion Rallos.

3. With respect to Lot 2179-A, the Original Certificate of Title was obtained by Atty. Filemon Sotto on June 17, 1921 in the name of Maria Fadullon de Rallos and Carmen Rallos, again excluding Concepcion Rallos. When Gov. Gen. Wood sued Atty. Sotto for damages in the famous Wood-Sotto libel case, Atty. Sotto, fearful of the issuance of attachments proceedings, caused Maria Fadullon and Carmen Rallos to sell Lot 2179-A in favor of the spouses Agustin Jereza and Beatriz de Jereza, in whose names the Original Certificate of Title were then transferred. However, Atty. Sotto obliged the Jerezas to execute a counter deed of sale in his favor and consequently a Transfer Certificate of Title was issued in the name of Atty. Filemon Sotto. The fictitious transfer of the lot to the Jereza spouses which was proved by the testimony of the Private Secretary of Atty. Filemon Sotto does not indicate a clear repudiation of the trust or of the co-ownership; the alleged repudiation was not open, public and deliberate. The acts, on the contrary, were secretive and fraudulent assertions of exclusive ownership.

4. With regards to Lot 842, the same was registered on Feb. 5, 1918 in the name of Carmen Rallos and her mother Maria Fadullon Rallos, also to the exclusion of Concepcion Rallos. A deed of sale executed by Maria Fadullon purported to sell her 1/2 share of the lot in favor of Concepcion Rallos. This deed was among the documents kept in the private files of Atty. Sotto which were delivered by Cesar Sotto to the respondents. This deed was not registered in the Office of the Register of Deeds but was kept secret in the files of Atty. Sotto. Thereafter, another deed was registered whereby Maria Fadullon sold her share to Carmen Rallos and upon the registration of the latter deed, title was consolidated in the name of Carmen Rallos, who was issued a new Transfer Certificate of Title. That the deed of sale supposedly asserting a claim of ownership and transfer thereof was kept under seal of secrecy cannot be considered as unequivocal acts of repudiation of the trust and of the co-ownership. Although the title to the lot was finally consolidated in the name of Carmen Rallos thru this secret manner, We must regard the registration to be for the benefit of the other co-heirs who cannot be prejudiced by such furtive and stealthy act.

The finding of the respondent Court of Appeals that "(t)he issuance of titles and the execution of the purported sales and transfers, which all culminated in Atty. Sotto's acquisition of titles in his name, occurred during the existence of the express trust, and were shrouded by a cloud of secrecy, at least as far as Concepcion Rallos was concerned. All the papers and documents pertaining to the issuance of titles and to the transfers and sales were kept in Atty. Sotto's possession, and concealed from the knowledge of Concepcion Rallos. At the time Concepcion Rallos was being deprived of a valuable share in the inheritance, she was kept completely in the dark. Under the facts, appellee cannot rely on the certificates of title in the names of Atty. Sotto to defeat the plaintiffs' right and cause of action,"[19] clearly appears to be correct and well-founded that the same will not be disturbed by Us in the present petition for review on certiorari.

In *Diaz, et al. vs. Gorricho and Aguado*, 103 Phil. 261, the Supreme Court, speaking thru Justice J.B.L. Reyes, said: "The express trusts disable the trustee from acquiring for his own benefit the property committed to his management or custody, at least while he does not openly repudiate the trust, and makes such repudiation known to the beneficiary or cestui que trust. For this reason, the old Code of Civil Procedure (Act 190) declared that the rules on adverse possession do not apply to "continuing and subsisting" (i.e., unrepudiated) trusts."

In *Valdez, et al. vs. Olarga, et al.*, 51 SCRA 71, the Supreme Court, with Acting Chief Justice Makalintal as ponente, held: "And from the standpoint of acquisitive prescription, or prescription of ownership, this Court has held in numerous decisions involving fiduciary relations such as those occupied by a trustee with respect to the cestui que trust that as a general rule the former's possession is not adverse and therefore cannot ripen into a title by prescription. Adverse possession in such a case requires the concurrence of the following circumstances: (a) that the trustee has performed unequivocal acts of repudiation amounting to an ouster of the cestui que trust; (b) that such positive acts of repudiation have been made known to the cestui que trust; and (c) that the evidence thereon should be clear and conclusive."

In the light of the above doctrinal rulings, We rule that the registration of the lots in the names of Carmen Rallos and her mother Maria Fadullon Vda. de Rallos and their subsequent transfers and consolidation to Carmen Rallos' name alone in a manner shown to be fictitious, fraudulent and secretive, thereby keeping the cestuis que trust in the dark did not constitute acts of repudiation of the express trust. Such registrations were ineffective and not binding upon the cestui que trust. We are persuaded and convinced that the circumstances required by said decisions are not present in the case at bar.

Petitioner finally raises a number of points which according to him constitute acts of repudiation by Concepcion Rallos such as her failure and that of her heirs to oppose the probate of the will of Carmen and that this failure also constitute laches; that the failure of the three inventories of properties submitted in the intestate proceedings of Concepcion Rallos to include the five parcels of land in question is a repudiation; that this omission has also

placed the respondents in estoppel to claim now the properties; and that the failure of respondents to take any action to recover the properties during the lifetime of Filemon Sotto constitute laches.

Laches has been defined as 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; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. (Tijam, et al. v. Sibonghanoy, et al., No. L-21450, April 15, 1968, 23 SCRA 29, 35). The defense of laches is an equitable one and does not concern itself with the character of the defendant's title, but only with whether or not by reason of the plaintiff's long inaction or inexcusable neglect he should be barred from asserting his claim at all. (Pabalate v. Echarri, Jr., 35 SCRA 518).

Estoppel, on the other hand, rests on this rule: whenever a party has, by his declaration, act or omission, intentionally and deliberately led the other to believe a particular thing true, and to act, upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it." (De Castro vs. Ginete, L-30058, March 28, 1969, 27 SCRA 623). Estoppel has its origin in equity and being based on moral and natural justice, finds applicability whatever and whenever the special circumstances of a case so demand. (Castrillo vs. Court of Appeals, L-18046, March 31, 1964, 10 SCRA 549; Beronilla vs. Government Service Insurance System, L-21723, November 26, 1970, 36 SCRA 44).

In determining whether a delay in seeking to enforce a right constitutes laches, the existence of a confidential relationship between the parties is an important circumstance for consideration, a delay under such circumstances not being so strictly regarded as where the parties are strangers to each other. The doctrine of laches is not strictly applied between near relatives, and the fact that the parties are connected by ties of blood or marriage tends to excuse an otherwise unreasonable delay.

The claim that the heirs of Concepcion Rallos are guilty of laches and are estopped from claiming the properties deserves scant consideration, for in fiduciary relationship, the beneficiaries have the right to rely on the trust and confidence reposed in the trustee. In the case at bar, there being no effective repudiation of the express trust created by and among the Rallos heirs, the defense of laches invoked by petitioner is unavailing. (Buencamino, et al. vs. Matias, et al., 16 SCRA 849; Julio vs. Dalandan, et al., G.R. No. L-19012, October 30, 1967). Moreover, under the facts established and showing the complete dominance of Atty. Sotto over the heirs and descendants of the Rallos family, the confidential relationship between the parties connected by ties of marriage and the reliance of the heirs with complete and absolute confidence in their uncle-in-law, Atty. Sotto, who, however, kept the heirs in total ignorance and suppressed from them the real truth regarding said properties that they were already registered in Atty. Sotto's name as finally revealed to them by Cesar Sotto, the nephew and protegee of Atty. Sotto and were in danger of being lost to total strangers, the doctrine of laches is not strictly applicable. Furthermore, Atty. Sotto received from his wife, Carmen Rallos, the properties under her will fully impressed with their fiduciary character and in the full knowledge that said properties were trust properties as far back in 1913 when he drafted and prepared the Mocion Sobre la Disposicion de los Bienes and filed the same in the probate proceedings. This knowledge he carried into his marriage with Carmen Rallos and throughout his lifetime so that the will executed by Carmen Rallos bequeathing the properties to her husband, Atty. Sotto, was merely a vehicle of an existing trust. He thereby became a trustee of the trust properties, not as an innocent third party and neither for a valuable consideration. Notwithstanding the fact that the titles to the properties were ultimately transferred to the name of Atty. Filemon Sotto, widower, through administrative proceedings, the titling thereof must be regarded as for the benefit and interest of the cestui que trust, the private respondents herein.

In passing, it must be mentioned here that Don Filemon Sotto was a distinguished figure in the political history of the nation, having been elected a delegate from Cebu to the Constitutional Convention that formulated the 1935

Philippine Constitution. In recognition of his wisdom and sagacity, Don Filemon was chosen Chairman of the Committee of Seven that drafted and sponsored the 1935 Philippine Constitution. It is to the great credit and commendation to the moral integrity of Don Filemon that having preserved and maintained the properties in question under his name without alienating or transferring them to third persons, and realizing the responsibilities of the trust reposed in him, he must have intended said properties to be restored to their rightful owners who are the Rallos heirs, the private respondents herein.

We are satisfied that respondents, upon discovery of the fraudulent transfers, fictitious sales and concealed deeds relating to the trust properties which were revealed to them by Cesar Sotto, the very nephew and protegee of Atty. Filemon Sotto and guardian appointed over the latter's estate, promptly and seasonably filed the present action for reconveyance. There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court and since laches is an equitable doctrine, its application is controlled by equitable considerations. It cannot be invoked to defeat justice or to perpetrate fraud and injustice. It would be rank injustice and patently iniquitous to deprive the lawful heirs of their rightful inheritance.

Private respondents are entitled to the relief prayed for, which is for the reconveyance of the properties to them. Since their grandmother, Maria Fadullon Vda. de Rallos died in 1938, her pro-indiviso share in the properties then owned in co-ownership descended by intestacy to her daughters, Concepcion and Carmen. Upon Carmen's death in 1945 without issue, the properties devolved to Concepcion pursuant to their agreement in 1925 as testified to by Pilar Teves. When Concepcion Rallos died, her heirs, who are now the private respondents, are entitled to these properties and should be declared owners thereof. They are also entitled to the fruits thereof, the rentals of the properties, including damages and attorney's fees as assessed by the appellate court which We find just and reasonable.

WHEREFORE, IN VIEW OF THE FOREGOING, the judgment appealed from is hereby affirmed, with costs against the petitioner.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Fernandez, JJ., concur.

[1] Penned by Justice Reyes, A., concurred by Justices Concepcion, Barcelona and San Diego.

[2] Penned by Martin, J., with Justice Reyes and Justice Bello, concurring.

[3] p. 139, Records, Vol. I.

[4] Record on Appeal, pp. 64-65.

[5] Record on Appeal, pp. 329-361.

[6] Records, Vol. I, pp. 60-89.

[7] Records, Vol. I, pp. 90-111.

[8] Records, Vol. I, Resolution, p. 117.

[9] Records, Resolution, p. 118.

[10] Records, Vol. I, Resolution, p. 138.

- [11] Brief of Petitioner, p. 31.
- [12] Brief of Petitioner, p. 31.
- [13] Petitioner's Brief, p. 37.
- [14] Petitioner's Brief, p. 37.
- [15] Records, pp. 118-120.
- [16] Records, Vol. I, Resolution, pp. 123-124.
- [17] Records, Vol. I, Resolution, p. 117.
- [18] Records, Vol. I, Resolution, p. 122.
- [19] Records, Vol. I, Resolution, pp. 137-138.

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