

**CYNTHIA D. GONZALES ESPILOY, DIVINO DEFEO GONZALES,
MACARIA D. GONZALES PINEDA, AND RODOLFO DEFEO GONZALES,
APPLICANTS-APPELLEES, VS. PRISCILLA REPIZO, BRIGIDA
GONZALES ARTIOLA,...**

CV No. 74550, May 25, 2010

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Court of Appeals

Before this Court is an[*] appeal from the Decision[1] dated January 21, 2002 of the Regional Trial Court, Fifth Judicial Region, Branch 45, Masbate City, in LRA Case No. N-480 entitled "In Re: Application for Registration of Title Over Real Property, Cynthia D. Gonzales Espiloy, Divino Gonzales, Macaria D. Gonzales Pineda and Rodolfo Defeo Gonzales, Applicants", the dispositive portion of which reads:

WHEREFORE, the applicants, CYNTHIA GONZALES ESPILOY, DIVINO GONZALES, MACARIA GONZALES PINEDA and RODOLFO GONZALES, residents of Masbate City, all Filipinos (sic) having a proper title of registration and confirmation over a parcel of land plotted and described under plan Ap-05-000570 and its accompanying technical descriptions, together with all its improvements existing thereon, situated at Brgy. Poblacion, City of Masbate, this Court hereby orders for the confirmation and registration of said land pursuant to the provisions of the Property Registration Decree (P.D. 1529).

The opposition to the application of private oppositors Priscila (sic) Repizo, Rebecca Gonzales Huertas, Brigida Gonzales Artiola, Caridad Gonzales Deogracias and Alfredo Gonzales, Jr., are (sic) ordered dismissed for lack of merit.

Once this decision becomes final and executory, let the corresponding decree of registration issue.

SO ORDERED."

The facts:

On March 25, 1999, applicants-appellees Cynthia D. Gonzales Espiloy, Divino Defeo Gonzales, Macaria D. Gonzales Pineda, and Rodolfo Defeo Gonzales filed a application[2] for registration of a parcel of land pursuant to Act No. 496, as amended by Presidential Decree (P.D.) No. 1529, otherwise known as Property Registration Decree. The subject land is described as follows:

"A parcel of land (as shown on plan Ap-05-000570 L.R.C. Record No.) situated in the Poblacion, Municipality of Masbate, Province of Masbate, Island of Masbate. Bounded on the SW, along line 1-2 by property of Evaristo F. Tabones (psu-202434); on the NW, along line 2-3 by property of Catalina D. Ricacho, on the SW and NW, along line 3-4-5, by property of Adelaida Z. Cordero and on the NE, along line 5-1 by Tara Street (13.00 m. wide). Beginning at a point marked "1" on plan being S. 54 deg. 07'E 624.92 m. from B.L.L.M. No. 1 Mp. of Masbate, Masbate, thence S 38 deg. 29'W, 15.34 m. to point 2, thence N 53 deg. 05'W, 12.32 m. to point 3, thence N 55 deg. 54'W, 5.39 m. to point 4, thence N 41 deg. 34'E, 13.69 m. to point 5,

thence S 59 deg. 40'E, 17.12 m. to the point of

beginning, containing an area of Two Hundred Forty Nine (249) square meters. All point referred to, are indicated on the plan and are marked on the ground by P.S. Cyl. Cone, monuments 15 x 60 cm. Bearing is true, date prepared Feb. 24, 1977 and that of approval March 4, 1977."[3]

The application alleges that: applicants-appellees are co-owners in equal shares of the above-described parcel of land, having purchased on different dates, their respective shares therein consisting of 62.25 square meters, from its previous owner, Jose R. Gonzales; said parcel of land has assessed value of P7,244.00 and is occupied by applicant-appellee Cynthia D. Gonzales Espiloy, Gloria D. Gonzales and Zaldy Conrado, who have their respective houses thereon; Gloria D Gonzales and Zaldy Conrado's possession of the portions of the land was with the permission of applicants-appellees or their predecessors; they have been in open continuous, peaceful, exclusive and notorious possession and occupation thereof under a claim of ownership through their predecessors-in-interest since time immemorial prior to June 12, 1945; and the land has not been encumbered nor claimed by any other persons.

Initial hearing of the application was set on December 7, 1999 and subsequently reset to March 27, 2000 during which Alfredo Gonzales, Jr., oppositors-appellants Brigida Gonzales and Rebecca Gonzales signified their intention to file a formal opposition.

In his Opposition[4], Alfredo Gonzales, Jr. alleged that he is one of the three children of Alfredo Gonzales, Sr., a brother of the applicants-appellees. During the lifetime of his father, he did not sell his share in the inheritance to any of the applicants-appellees. Thus, he alleged that he and his co-heirs, in representation of their late father, should be joined as party applicant.

Likewise, on April 19, 2000 oppositors-appellants Priscilla Repizo (Priscilla), Brigida Gonzales Artiola (Brigida), Rebecca Gonzales Huertas (Rebecca) and Caridad Gonzales Degracia (Caridad) filed their own Opposition[5] to the application, alleging that; oppositor-appellant Priscilla is entitled to one-half (1/2) of the entire parcel of land, while the rest of the oppositors-appellants should inherit one-third (1/3) of the remaining half; oppositor-appellant Priscilla is the second wife of Fortunato Gonzales and the rest of the oppositors-appellants are their children; Spouses Fortunato Gonzales and Priscilla Repizo acquired the subject land during their marriage, however, after the death of Fortunato Gonzales, his children by his first marriage extrajudicially settled his estate, including the subject land, without segregating and delivering the shares of the oppositors-appellants, and adjudicated it to Jose Gonzales, the father of applicants-appellees.

In their reply to the opposition of Alfredo Gonzales, Jr., applicants-appellees stated that; their father, Jose Gonzales, made previous conveyances to his children, including Alfredo Gonzales, Sr., father of oppositor Alfredo Gonzales, Jr. who got the lot located in Magdalena, Baleno, Masbate, Masbate and, during his lifetime, Jose Gonzales had the right to convey his properties, including the subject land.

In an "Answer to Opposition of Private Oppositors Priscilla Repizo, Et Al."[6], applicants-appellees denied the allegations of oppositors-appellants in their opposition, claiming that the money used by Fortunato Gonzales in buying the subject land came from the income of his conjugal properties with his deceased wife Albina Supleto. They alleged further that: Fortunato Gonzales was a widower when he acquired the subject land and granting that it was acquired during his cohabitation with Priscilla Repizo, who was his common-law wife, the latter had no means of livelihood and was wholly dependent on Fortunato Gonzales for support; the subject land formed part of the conjugal properties of Fortunato Gonzales and his deceased wife Albina Supleto; and oppositors-appellants Priscilla Brigida, Rebecca and Caridad, were not included in the settlement of the estate of Fortunato Gonzales because they were already given a parcel of land in Barangay Titong, Masbate, Masbate.

Applicants-appellees' sole witness was Cynthia Gonzales Espiloy whose testimony may be summarized as follows:

She is one of the children of Jose Gonzales, the previous owner of the subject land situated in Tara Street, Barangay Pating, Masbate, Masbate. Jose Gonzales acquired the subject land by virtue of an Extra Judicial Settlement of Conjugal Partnership of Real Property[7] dated December 29, 1979 of the decedents, Spouses Fortunato Gonzales and Albinia Supleto. Fortunato Gonzales, then a widower, in turn, bought it from Spouses Mauro Valdemorro and Aurora Maristela, as per Deed of Absolute Sale of Real Property[8] dated March 27, 1954. He had the land declared in his name of taxation purposes and paid the realty taxes thereon. Spouses Mauro Valdemorro and Aurora Maristela, the sellers, bought the subject land from Jose Zurbito, to whom Tax Declaration Nos. 3341[9] and 5193[10] were issued.

While the tax declaration of the land was still in the name of Fortunato Gonzales, Jose Gonzales was the one paying the realty taxes from 1956 to 1974.

In four (4) Deeds of Absolute Sale dated June 5, 1994[11], June 24, 1994[12], July 11, 1994[13] and August 11, 1994[14], Jose Gonzales sold to applicants-appellees portions of the subject land. Each of them declared their respective shares for taxation purposes and paid the realty taxes thereon. She (Cynthia), together with Gloria D. Gonzales, the wife of her brother Alfredo Gonzales, Sr., and Zaldy Conrado, her cousin, are the ones staying in the land. Gloria D. Gonzales and Zaldy Conrado were allowed by her father, during his lifetime, to occupy portion of the subject land, but they are not claiming ownership of the property. Before his death on March 14, 1996, Alfredo Gonzales, Sr. and his wife Gloria D. Gonzales were already staying in the subject land, and even after his death, his wife continued living there, Jose Gonzales¹ possession of the subject land was continuous, exclusive, peaceful and in the concept of an owner. From the time applicants-appellees bought the subject land in 1994 up to March 27, 2000, no one claimed adverse ownership nor filed a case against them in court.

Applicant-appellee Cynthia Gonzales Espiloy knows oppositors-appellants Priscilla, Rebecca, Brigida and Caridad who are aware of the fact that the subject land was conveyed by Jose Gonzales to her and her siblings. She informed them about the filing of this application when it was about to be heard, but they did not react. She also knows that the subject land is alienable and disposable as shown by the Certification[15] dated November 6, 1998 issued by the Community Environment and Natural Resources Office (CENRO), Mobo, Masbate.

For their part, oppositors-appellants presented Priscilla and Rebecca as witnesses. The substance of the testimony of Priscilla is as follows:

She is the surviving wife of Fortunato Gonzales whom she married on June 23, 1957. Before their wedding, however, they were living together as husband and wife since 1949 and their union was blessed with four children, but one of them died. The remaining three children are: Brigida who was born in 1952, Rebecca who was born in 1954 and Caridad who was born in 1956. She is familiar with the subject land because she and her husband were the ones who bought it from Spouses Valdemorro on March 27, 1954. They stayed there from 1954 until Fortunato died in 1957. After his death, Pepe Gonzales, Fortunato Gonzales¹ son by his first marriage, took possession of the subject land. It was Pepe who took possession of it because his siblings were already dead. She came to know about the existence of an extrajudicial settlement[16] and the filing of the application by applicants-appellees only recently. She is aware of the execution by Jose Gonzales of four deeds of sale in favor of his children because he asked for the documents pertaining to the subject land she gave them to him so that he would not get angry. She is opposing the application because she has children who ought to be given their share in the subject land.

The testimony of Rebecca may be summed up as follows:

She is a daughter of Spouses Fortunato Gonzales and Priscilla Repizo and the sister of oppositors-appellants Brigida and Caridad. She is familiar with the subject land having stayed there with her half-sister Purificacion Gonzales during her elementary and high school days. She is opposing this application because she is an heir of

Fortunato Gonzales and the subject land was acquired in 1953, during the union of her mother and his father Fortunato Gonzales. When her Kuya Peping was still alive, she asked for their share of land. He told her to build her house on the land, but she failed to do so.

Oppositor Alfredo Gonzales, Jr. presented as witness Gloria Desuyo Gonzales who testified as follows:

She is the widow of the late Alfredo Gonzales, Sr. who died on December 19, 1994 and the mother of oppositors Alfredo Gonzales, Jr., Joma Gonzales and Gloria Gonzales. Her husband was one of the children of the late Jose Gonzales who died on March 14, 1996. She lives in a house built on the subject land. In the months of June, July and August, 1994 when her husband was still alive, her father-in-law, Jose Gonzales, was in Manila for medical treatment. While in Manila, his father-in-law sent her a handwritten open letter which was handed to her by her sister-in-law, Mrs. Espiloy. In said letter, her father-in-law, Jose Gonzales, stated that her husband would have share in the subject land. She does not know that the subject land was sold to applicants-appellees until this case was filed. She is also not aware of the lot in Magdalena, Masbate that applicant-appellee Cynthia Espiloy alleged to have been given to her husband and neither did her husband tell her about it. Her husband, being a son and heir of Jose Gonzales, is entitled to a share in the subject land.

On rebuttal applicant-appellee Cynthia Espiloy testified that: the estate of the late Spouses Fortunato Gonzales and Albinia Supleto was already extrajudicially settled among their heirs in 1979; oppositors-appellants did not object to the settlement of said estate because they were already given their shares i.e., oppositors-appellant Priscilla and her children had a coconut land in Barangay Titong, Masbate, Masbate covered by Tax Declaration No. 3559.[17] The deed of extrajudicial settlement of estate was published in "Sorsogon Newsweek" for three consecutive weeks[18] and from the time of its publication in 1980 oppositors-appellants never questioned the same nor filed a case in court relative thereto; with respect to oppositor Alfredo Gonzales, Jr., he was given his share of the estate consisting of a residential lot located in Magdalena, Masbate, and the same is also covered by a Deed of Absolute Sale[19] dated May 20, 1994 executed by Jose Gonzales.

After hearing, the lower court rendered the assailed decision granting applicants-appellees' application and dismissing the opposition.

Hence, this appeal, assigning the following errors.

I.

THE TRIAL COURT ERRED IN GRANTING THE APPLICATION FOR LAND REGISTRATION INSTEAD OF DENYING THE SAME ON THE FACE OF THE FACT THAT OPPOSITORS ARE ENTITLED TO A SHARE OF THE LAND APPLIED FOR TITLE;

II.

THE TRIAL COURT ERRED IN HOLDING THAT THE CLAIMS OF OPPOSITORS-APPELLANTS ARE BARRED BY LACHES.

The appeal is meritorious.

Oppositors-appellants argue that; under Article 144 of the Civil Code, Priscilla is entitled to one-half of the properties she and her husband Fortunato Gonzales acquired during their cohabitation; since the law uses the phrase "either or both", even if it is the man alone who worked, whatever they acquired during cohabitation shall

be owned equally by the partners; the law does not state that the partner who did not contribute to the acquisition of the property has no share, otherwise there is no co-ownership to speak of; prior to the filing of their application, applicants-appellees recognized oppositors-appellants as co-owners, thus prescription would not run, as the former expressly or impliedly recognized the co-ownership.

Applicants-appellees counter that; the subject land is owned by the conjugal partnership of gains of the first marriage between Fortunato Gonzales and Albinia Supleto, having been acquired out the fruits of the conjugal properties of the first union, thus one-half of the land is owned exclusively by the children by the first marriage and the other half by all children of Fortunato Gonzales; since oppositors-appellants were already given their share of the inheritance consisting of a several hectare coconut land in B. Titong, Masbate, they were no longer included in the settlement of the estate of Fortunato Gonzales and Albinia Supleto; having been given their share of Fortunato Gonzales' estate, oppositors-appellants never questioned the settlement of the state entered into by the children by the first marriage; Article 144 of the Civil Code does not apply since the subject land was not acquired through the work or industry of either or both common-law Spouses Fortunato Gonzales and Priscilla Repizo, but was bought using the fruits of the conjugal property of the first marriage; granting that oppositors-appellants were entitled to a share the subject land, their claim is now barred by prescription, having failed to enforce their right for more than forty two (42) years after the death of Fortunato Gonzales; the actual, continuous, open, peaceful, exclusive, uninterrupted and notorious possession and occupation of Jose Gonzales under bona fide claim of ownership declaration of the land for taxation purposes in his name and payment of realty taxes thereon are notices to the whole world, to the exclusion of other heirs; it is unbelievable that oppositors-appellants did not know about the settlement of the estate of Fortunato Gonzales and Albinia Supleto considering that they are residents of the same place; applicants-appellees took possession of the subject land after the execution of the extrajudicial settlement, and the settlement was published in a newspaper.

The basic issues here are: a) whether or not the subject land is owned in common by oppositors-appellants and applicants-appellees, as heirs of the late Fortunato Gonzales; and b) in the affirmative, whether or not oppositors-appellants' claim is barred by prescription or laphes.

It has been clearly established that Fortunato Gonzales, the predecessor-in-interest of the parties, was previously married to Albinia Supleto who died in December 1921. The couple had six children[20], namely: Andres, Preciliano, Juan, Jose, Purificacion and Isabelo, all surnamed Gonzales. In 1949, Fortunato Gonzales, then a widower, cohabited with oppositor-appellant Priscilla without the benefit of marriage, until they got married on June 23, 1957 or a day before Fortunato died. Out of said common-law relationship, oppositors-appellants Brigida, Rebecca and Caridad were born. During their cohabitation, or on March 27, 1954, Fortunato Gonzales acquired the subject land as per Deed of Absolute Sale of Real Property[21] dated March 27, 1954 executed in his favor by the sellers, Mauro Valdemorro and Aurora Maristela. The deed shows that Fortunato Gonzales was a widower at the time of the sale. In May 1979, Fortunato Gonzales' children by his first marriage extrajudicially settled his and Albinia Supleto's estate, including the subject land, which was adjudicated to Jose Gonzales, the father of applicants-appellees. On various dates in 1994, Jose Gonzales sold the subject land to applicants-appellees, who each acquired 62.25 square meters.

Invoking the provision of Article 144 of the Civil Code, oppositors-appellants opposed the application, claiming that the subject land is not co-owned exclusively by applicants-appellees, but by Spouses Fortunato Gonzales and Priscilla Repizo, having been acquired through the efforts of said spouses during their cohabitation. Applicants-appellees contend that the subject land was acquired by Fortunato Gonzales using the fruits of the conjugal property with his deceased wife Albinia Supleto.

The lower court found that the subject land is owned exclusively by Fortunato Gonzales, thus -

"A perusal of the records and appreciation of the evidence submitted, Fortunato had brought to the cohabitation several tracts of land (Exh. "EE"). Aside from, being an owner of several parcels of land Fortunato was also a pensioner. In other words, before and during the cohabitation Fortunato had a lucrative earning from his coconut land and from the pension he received. On the other hand, Priscilla was a plain housewife without any source of income (tsn-liao, page 9, March 13, 2001). From these facts, it is not difficult to conclude that the litigated property was acquired by Fortunato exclusively from his own money. Applying Art. 144 of the New Civil Code, in relation to Art. 485 thereof, the property under litigation is a separate property of Fortunato hence, Priscilla has no right to any share thereof. Furthermore, assuming that Priscilla is entitled to the one-half (1/2) portion of the property as a co-owner enjoying equal share with Fortunato, her right to recover her share in said property is already barred by laches. This issue will be discussed in more details later."

This Court is not persuaded.

The rule that factual findings of the lower court bind this Court is not absolute but admits of exceptions such as when the conclusion is a finding grounded on speculation, surmise, and conjecture and when the findings of the lower court is premised on the absence of evidence and is contradicted by the evidence on record.[22] This case represents an instance where the findings of the lower court overlooked certain facts of substance and value that if considered would affect the result of the [23]

While the lower court found that Fortunato Gonzales acquired the subject land using his own money, applicants-appellees' sole witness never testified on the source of money used in the acquisition of the subject land. On the other hand, oppositor-appellant Priscilla, testified thusly -

Q

So the money used in the purchase of the parcels (sic) of land which is now the subject of the application was solely owned by Fortunato Gonzales?

A

From the land that we purchased and from our savings.

Q

Are you conveying to the Hon. Court that besides this property there are other parcels of land acquired during the time when you were living as common-law husband and wife?

A

Yes sir.[24]

Indeed, oppositor Priscilla Repizo might not have a lucrative source of income during her cohabitation with Fortunato Gonzales. In fact, she admitted that she had neither occupation nor source of income at that time. But this does not discount the possibility that she had money or savings that came from other sources, as she in fact testified that part of the money used in buying the property came from their savings. Although she mentioned that she had no occupation, It appears that she was a farmer when she lived with Fortunato Gonzales. Apparently, she did not consider farming as an occupation, thus -

Q

What was your occupation from the time you have started living with Fortunato Gonzales up to his death?

A

None sir. We were farming. [25]

Contrary to the finding of the lower court, the money used in, buying the subject land came from the couple's savings and the fruits of another parcel of land situated in B. Titong, Masbate, Masbate that Fortunato Gonzales and Priscilla Repizo bought during their cohabitation. Therefore, the lower court's conclusion that said parcel of land was bought using Fortunato's own money is not supported by evidence.

At the time of their cohabitation, neither Fortunato Gonzales nor Priscilla Repizo was incapacitated to contract marriage, the former being a widower and the latter still single, thus Article 144 of the Civil Code applies. Prevailing jurisprudence holds that for Article 144 to apply, the couple must not be incapacitated to contract marriage.[26] Thus, the land acquired by Spouses Fortunato Gonzales and Priscilla Repizo which is now the subject of the application for registration is governed by the rules on co-ownership. Article 144 of the Civil Code states:

Art. 144. When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership.

This provision governs that property relations between parties who live together as husband and wife without the benefit of marriage, or their marriage is void from the beginning. In a co-ownership, it is not necessary that the property be acquired through their joint labor, efforts and industry. Any property acquired during the union is prima facie presumed to have been obtained through their joint efforts. Hence, the portions belonging to the co-owners shall be presumed equal, unless the contrary is proven. [27]

Oppositor-appellant Priscilla, therefore, is entitled to one-half (1/2) of the subject land as her share in the co-ownership which is presumed to be equal to that of Fortunato Gonzales, there being no evidence to the contrary. Pursuant to the rules on intestate succession, all the children of Fortunato Gonzales by the first and second marriages, including oppositor-appellant Priscilla Repizo herself, are entitled to the remaining half of the land in pro indiviso equal shares.

Applicants-appellees also point out that the settlement of the estate was published in a newspaper which operated as notice to the whole world, thus, oppositors-appellants were deemed to have been notified of the said settlement. The argument fails to persuade. With respect to the validity of the Deed of Extra-judicial Settlement of Conjugal Partnership Real Ortoerties[28] (sic) executed by the children of Fortunato Gonzales by the first marriage which excluded oppositors-appellants, insofar as the subject land is concerned, what is applicable is Section 1, Rule 74 of the Rules of Court, which states:

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof. (Underscoring supplied)

Under the said provision, without the participation of all persons involved in the proceedings, the extrajudicial settlement is not binding on said persons. Thus, insofar as the subject land is concerned, the extrajudicial settlement of the children of Fortunato Gonzales by the first marriage is not binding on oppositors-appellants, it appearing that they did not participate therein and had no notice thereof.

The lower court also erred in ruling that oppositors-appellants' claim is now barred by laches. Applicants-appellees' contention that oppositors-appellants' claim had prescribed due to their inaction for forty-two (42) long years is untenable.

Applicant-appellee Cynthia Espiloy testified on rebuttal that oppositors-appellants were aware of the execution of the extrajudicial settlement by the children by the first marriage of Fortunato Gonzales in 1979, but they did not take action because they already had their share of the estate. Oppositor-appellant Priscilla, on the other hand, declared that she came to know about it only recently when she was informed by her children. This Court finds the testimony of oppositor-appellant Priscilla more credible, it appearing that neither Jose Gonzales nor applicants-appellees bothered to inform them of the said settlement of estate. Besides, upon being notified of the initial hearing of the application, oppositors-appellants expressed their opposition thereto and subsequently filed their formal opposition with the court.

Even assuming *arguendo* that oppositors-appellants knew about the settlement of the estate, the fact that they did not take action for decades does not preclude them from asserting their right to the property owned in common because applicants-appellees did not acquire the same, in the first place. It is a fundamental principle that a co-owner cannot acquire by prescription the share of the other co-owners, absent any clear repudiation of the co-ownership.[29] In *Santos v. Santos*,[30] citing the earlier case of *Adille v. Court of Appeals*,[31] this Supreme Court found occasion to rule that:

Prescription, as a mode of terminating, a relation of co-ownership, must have been preceded by repudiation (of the co-ownership). The act of repudiation, in turn, is subject to certain conditions; (1) a co-owner repudiates the co-ownership; (2) such an act of repudiation is clearly made to known to the other co-owners; (3) the evidence thereon is clear and conclusive; and (4) he has been in possession through open, continuous, exclusive, and notorious possession of the property for the period required by law. (Underscoring supplied)

For title to prescribe in favor of a co-owner there must be clear showing that he has repudiated the claims of the other co-owners and the latter were categorically advised of the exclusive claim he is making on the property in question. The rule requires a clear repudiation of the co-ownership duly communicated to the other co-owners.[32] It is only when such unequivocal notice has been given that the period of prescription will begin to run against the other co-owners and ultimately divest them of their own title if they do not seasonably defend it.[33]

As earlier discussed, the subject land is owned in common by the parties and, while the same was extrajudicially settled by the children of Fortunato Gonzales by the first marriage to the exclusive of oppositors-appellants, there is no express repudiation of the co-ownership. Even if said settlement of estate were considered repudiated, the parties thereto, including applicants-appellees, did not communicate the same to oppositors-appellants. Thus, oppositors-appellants are not deemed to have lost their rightful share in the subject land. Consequently, the deeds of sale executed by Jose Gonzales in favor of applicants-appellees are void insofar as the objects thereof that exceeded his name in the estate of Fortunato Gonzales, are concerned.

In sum, the lower court erred in granting the confirmation and registration of the subject land and in dismissing the opposition of oppositors-appellants.

WHEREFORE, the appeal GRANTED and the assailed decision of the Regional Trial Court, Branch 45, Masbate City in LRA Case No. N-480 is REVERSED AND SET ASIDE and a new one entered: a) directing the segregation of oppositor-appellant Priscilla Repizo's one half (1/2) share in the subject land; and b) directing the partition of the remaining half among the heirs of Fortunato Gonzales in accordance with the rules on intestate succession.

SO ORDERED.

Librea-Leagogo and Elbinias, JJ., concur.

Appeal granted and the judgment reversed and set aside.

[*] NOTE: This case was submitted for decision and ordered re-raffled to another Justice for study and report on April 28, 2003. Pursuant to this Court's Zero Backlog, Project, this case was raffled to this ponente and received on April 27, 2010.

[1] Rollo, pp. 22-39; Record, pp. 365-382.

[2] Record, pp. 1-5.

[3] Attached to the petition and marked as Exhibit "I";

[4] Record, pp. 48.

[5] Record, pp. 53-65.

[6] Record, pp. 63-66.

[7] Exhibit "EE"

[8] Exhibit "HH"

[9] Exhibit "MM"

[10] Exhibit "MM-1"

[11] Exhibit "L"

[12] Exhibit "M"

[13] Exhibit "K"

[14] Exhibit "N"

[15] Exhibit "PP"

[16] Exhibit "EE"

[17] Exhibit "O"-rebuttal

[18] March 16, 23 and 30, 1980.

[19] Exhibit "UU"

[20] As per Extrajudicial Settlement of Conjugal Partnership of Real Properties, Exhibit "EE"

[21] Exhibit "HH"

[22] Smith Kline & French Laboratories, Ltd. V. CA, 342 Phil. 187 citing among others Vda De Alcantara v. CA, 252 SCRA 457 (1996); Republic v. IAC, 196 SCRA335 (1991); Fernan v. CA, et al., 181 SCRA 546 (1990); People v. Traya, 147 SCRA 181 (1987); Tolentmo v. de Jesus, 56 SCRA 67 (1974).

[23] People v. Royeras, 130 SCRA 259.

- [24] Testimony of Priscilia Repizo on cross-examination, TSN, March 13, 2001, p. 9
- [25] TSN, March 13, 2001, p. 12
- [26] Tumlos v. Spouses Fernandez, 386 Phil. 936-950, April 12, 2000; Valdes v. RTC, Br. 102, Quezon City, 328 Phil. 1289, 1296, July 11, 1996, Juaniza v. Jose, 89 SCRA 306, 308, March 10, 1979.
- [27] Valdes v. RTC Br. 102, Quezon City, 328 Phil. 1289, 1297 (1996).
- [28] Exhibit "EE"
- [29] Robles v. Court of Appeals, 384 Phil 635 649 (2000).
- [30] 396 Phil. 928, 947 (2000)
- [31] G.R. No. L-44546, 29 January 1988, 157 SCRA 455, 461.
- [32] Mariano v. De Vega, supra note 23, p. 346
- [33] Pangan v. Court of Appeals, G. R. No. L-39299, 18 October 1988, 166 SCRA 375.

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