

CARMENCITA B. PINEDA, ANGELITA B. VELASCO, MILAGROS B. ATIENZA, MELVIN M. BAQUIRAN, BRODERICK M. BAQUIRAN, HENRY M. BAQUIRAN, JOSEPH M. BAQUIRAN, DICK BAQUIRAN AND DESIREE BAQUI...

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

Addressed here is an Appeal[1] filed under Rule 41 of the Rules of Court from the Decision[2] dated September 8, 2011 of the Regional Trial Court, Branch 14 of Laoag City (“trial court” for brevity) in Civil Case No. 13971-14 for “Reconveyance, Partition with Damages.”[3]

The antecedent facts are those as stated in the trial court's assailed Decision[4] dated September 8, 2011, as follows:

“Filed before this Court is an Amended Complaint praying that the defendant (defendant-appellant here) be directed to reconvey to the plaintiffs (plaintiffs-appellees here) their rightful share to 9/10 of Lot No. 9823-A and the improvements thereon covered by TCT No. T-12231. It also prays that the plaintiffs and the defendant be declared co-owners of the subject property and that the same be partitioned among them. Finally, it prays that the defendant be ordered to account for his actual use of plaintiffs' share of the property and to pay moral damages and attorney's fees.

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It is undisputed that the plaintiffs and the defendant are siblings. It is also undisputed that the subject property has been registered in the name of defendant alone since 1976 under TCT No. T-12231. It is disputed, however, that the plaintiffs are co-owners of the subject property.

As noted earlier, the plaintiffs presented the testimonies of Dick Baquiran and Carmencita Pineda and offered several documentary exhibits. From the testimonial and documentary evidence of the plaintiffs, it appears that the subject property was earlier registered in the name of plaintiff Carmencita Pineda, the eldest of the siblings, under TCT No. T-12169. In a letter dated July 17, 1976, their father asked Carmencita, who was then residing in the United States, to execute a special power of attorney authorizing defendant George in Laoag to use the subject property to mortgage the subject property and obtain a bank loan, which would be used to acquire an adjacent lot and to expand their business.

Unknown to Carmencita, however, George caused the execution of a Deed of Absolute Sale dated January 23, 1976, in which Carmencita purportedly sold to him the subject property. The Deed was supposedly executed in Laoag City, but Carmencita maintained that she was then in the US and not in the Philippines. As proof, she cited the aforementioned letter of her father that was addressed to her in the US.

Subsequently, George Baquiran executed an Affidavit dated January 31, 1984, in which he (1) admitted that the deed of sale executed in his favor by his sister Carmencita was merely for the purpose of obtaining a loan from the DBP in Laoag and (2) acknowledged the correlative and imprescriptible rights of his siblings to the subject property.

George Baquiran eventually executed a Memorandum of Agreement and two Deeds of Quitclaim, in which he expressly admitted that the subject property was co-owned by him and his siblings.

In the Memorandum of Agreement executed on July 10, 2000 signed by the plaintiffs and the defendant, they agreed that the subject property was co-owned equally by them.

In a Deed of Quitclaim dated November 7, 2005, George Baquiran expressly ceded and transferred to his siblings 9/10 of the subject property. He made the same undertaking in another Deed of Quitclaim dated December 15, 2006.

As George Baquiran subsequently excluded them from the subject property despite those documents, the plaintiffs filed the present suit.

On the other hand, the defendant George Baquiran maintained that he had purchased the subject property, as evidenced by the Deed of Absolute Sale dated January 23, 1976. Allegedly, the Deed of Sale was prepared by his parents, brothers and sisters, as shown by the signature therein of their mother Eulalia Baquiran. Since then, he had been in possession and had been paying the realty taxes thereon.

He also claimed that he had no knowledge of the Affidavit he allegedly executed acknowledging the rights of his siblings to the subject property. Likewise, he maintained that he never appeared before the notary public that purportedly acknowledged the said document. He insisted that he had no knowledge of the two Deeds of Quitclaim as well as the Memorandum of Agreement. He insisted that he never signed them.”[5] (Emphasis supplied)

On September 8, 2011, the trial court rendered the Decision[6] appealed from, which declared plaintiffs-appellees Carmencita B. Pineda, Angelita B. Velasco, Milagros B. Atienza, Melvin M. Baquiran, Broderick M. Baquiran, Henry M. Baquiran, Joseph M. Baquiran, Dick Baquiran and Desiree Baquiran-Stein (“plaintiffs-appellees” for brevity) and defendant-appellant George Baquiran (“defendant-appellant” for brevity) as co-owners of Lot No. 9823-A (“subject property” for brevity). The dispositive portion of the Decision stated:

“WHEREFORE, judgment is hereby rendered in favor of the plaintiffs as follows:

1. The plaintiffs are declared the OWNERS of 9/10 pro indiviso share to the subject property (including the improvements thereof) registered in the name of the defendant;
2. The defendant is ordered to RECONVEY to the plaintiffs the said 9/10 portion;
3. The prayer for the partition of the subject parcel of land and the improvement thereof is GRANTED, such that the subject property shall be divided into ten equal portions with one-tenth going to the defendant and each of the plaintiffs;
4. Pursuant to Section 2 of Rule 69, the parties are given a period of sixty (60) days from notice hereof within which to agree to make the partition among themselves by proper instruments of conveyance submitted for the confirmation of the Court, and that upon their failure to arrive at such an agreement, the Court pursuant to Section 3 of Rule 69 shall appoint competent and disinterested persons as commissioners to make the partition;
5. The defendant is hereby ordered TO PAY the plaintiffs moral damages of P200,000.00 and attorney’s fees of P50,000.00.

Costs against the defendant.

SO ORDERED.”[7]

As a result, defendant-appellant filed the Appeal[8] at bench, praying that:

“WHEREFORE, premises duly considered, it is respectfully prayed that this Honorable Court render judgment

reversing the appealed decision of the Lower Court and ruling in favor of Defendant-Appellant dismissing the complaint for lack of merit.

Other reliefs just and equitable are likewise prayed for.”[9]

The Appeal raised the following assignment of errors:

“I. THE LOWER COURT GRAVELY ERRED IN DECLARING THE PLAINTIFFS-APPELLEES AND DEFENDANT-APPELLANT CO-OWNERS OF THE SUBJECT PROPERTY, HENCE ENTITLED TO 9/10 PRO INDIVISO SHARE THEREIN.

II. THE LOWER COURT GRAVELY ERRED IN DECLARING THE DEED OF ABSOLUTE SALE AS SIMULATED AND THEREFORE VOID AND OF NO LEGAL EFFECT.

III. THE LOWER COURT GRAVELY ERRED IN AWARDING TO PLAINTIFFS-APPELLANTS MORAL DAMAGES AND ATTORNEY’S FEES.”[10]

To begin with, contrary to defendant-appellant's arguments in his assignment of error II, defendant-appellant could not properly claim sole ownership of the subject property based on the Deed of Absolute Sale[11] dated January 23, 1976, which was allegedly executed by plaintiff-appellee Carmencita B. Pineda, as the representative of the other plaintiffs-appellees, in favor of defendant-appellant.

On this matter, defendant-appellant had argued that:

“The Lower Court declared the Deed of Absolute Sale dated January 23, 1976 xxx as absolutely simulated and therefore void. It ruled that the Deed is absolutely simulated because the parties did not intend it to produce legal effects or alters (sic) their juridical situation. With all due respect, the Lower Court's finding is incorrect.

First, the presumption is that an instrument sets out the true agreement of the parties thereto and that it was executed for valuable consideration. It is also presumed that private transactions have been fair and regular, and the ordinary course of business have been followed. It must be noted that Pineda, et. al. failed to present evidence showing that the Deed of Absolute Sale did not reflect the true agreement of the parties. In fact, they never assailed the validity of the Deed of Absolute Sale on the premise that it is simulated or fictitious. Rather they alleged that the signature of Carmencita Pineda therein was forged. However, the Lower Court found no basis to conclude that Carmencita's signature in the Deed of Absolute Sale was forged.

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Second, the Deed of Absolute Sale was notarized before Notary Public Norberto A. Manuel. Being a public document, it enjoys the presumption of regularity. It is a prima facie evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome this presumption, there must be clear and convincing evidence. Absent such evidence, as in this case, the presumption must be upheld. Moreover, the Supreme Court ruled that a notarized instrument is admissible in evidence without further proof of its due execution, is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity.

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Third, the Lower Court omitted to explain why the Deed of Absolute Sale is absolutely simulated. It anchored its ruling on an Affidavit allegedly executed by Baquiran which in part stated that '[t]he aforesaid Deed of Absolute Sale was executed in my favor only for the purpose of obtaining a loan with DBP, Laoag Branch and this affidavit is executed to acknowledge the correlative and imprescriptible rights of my brothers and sisters named above [to] share as specified in the above-described property xxx'. On the other hand, the Deed of Absolute Sale stated that 'xxx Carmencita Baquiran for and in consideration of the sum of TEN THOUSAND (P10,000.00) PESOS, to me paid in hand to my full satisfaction George Baquiran xxx sell, transfer, cede and

assign the following parcel of land xxx.' It must be noted, however, that the Deed of Absolute was already consummated and completed even before the aforesaid Affidavit was executed. Nowhere in the Deed of Absolute Sale was there a mention that the Sale was executed for 'purposes of obtaining a loan.' Rather, the Deed was executed in order to 'sell, transfer, cede and assign' to George Baquiran for and in consideration of TEN THOUSAND PESOS the subject property. On the strength of the Deed alone, the same document is valid, binding and enforceable.”[12] (Emphasis supplied; underscoring made in the original)

Negating defendant-appellant's arguments however, is that the Deed of Absolute Sale[13] dated January 23, 1976 was a simulated contract. This is because the Deed of Absolute Sale[14] was executed not for the purpose of transferring plaintiffs-appellees' rights over the subject property to defendant-appellant, but was executed in order for defendant-appellant to obtain a loan from the Development Bank of the Philippines. That such was the intention of plaintiffs-appellees and of defendant-appellant was shown by defendant-appellant's Affidavit[15] dated January 31, 1984, which stated that, among others:

“3. The aforesaid Deed of Absolute Sale was executed in my favor only for the purpose of obtaining a loan with DBP, Laoag Branch xxx”[16] (Emphasis supplied)

All of these matters were as similarly found by the trial court, as follows:

“Be that as it may, not much significance can be accorded to the plaintiffs' failure to prove the alleged forgery of the Deed of Absolute Sale. Whether Carmencita's signature was forged or not, there is no dispute that the Deed of Absolute Sale was simulated and therefore void. A contract is absolutely simulated if the parties did not intend it to produce legal effects or to alter their juridical situation. That is so in this case, as manifest from the Affidavit of George Baquiran xxx. As an absolutely simulated contract, the Deed of Absolute Sale was void and did not confer any rights to the defendant, who held the title to the subject property in trust for his siblings.”[17] (Emphasis supplied)

A contract, such as the Deed of Absolute Sale[18] here, is absolutely simulated and is therefore void, if the parties did not intend it to produce legal effects or to alter their juridical situation. This was as was pronounced by the Supreme Court in *Heirs of Dr. Mario Intac and Angelina Intac v. Court of Appeals, et al.*, G.R. No. 173211, October 11, 2012, to wit:

“In absolute simulation, there is a colorable contract but it has no substance as the parties have no intention to be bound by it. 'The main characteristic of an absolute simulation is that the apparent contract is not really desired or intended to produce effect or in any way alter the juridical situation of the parties.' 'As a result, an absolutely simulated or fictitious contract is void, and the parties may recover from each other what they may have given under the contract.'” (Emphasis supplied)

Moreover, contrary to defendant-appellant's allegations in his assignment of error I, the lower court properly ruled that plaintiffs-appellees and defendant-appellant were co-owners of the subject property.

Defendant-appellant had argued that:

“It is clear that no co-ownership exists in the instant case. The subject property solely and rightfully belongs to George Baquiran whose name appears as the registered owner in the certificate of title.

The Trial Court gravely erred when it did not give weight and credence to the certificate of title issued in favor of Baquiran. As early as *Legarda, et al. v. Saleeby*, the certificate of title has been recognized by the Supreme Court as evidence of ownership over the property described therein. xxx

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A certificate of title issued is an absolute and indefeasible evidence of ownership of the property in favor of the person whose name appears therein.

As can be gleaned from the Records, the subject property is covered by TCT No. T-12231 which is registered in the name of 'George Baquiran,' as owner thereof in fee simple, xxx'. The term 'owner' serves to underline the nature of Baquiran's right and claim over the property.

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The Trial Court also committed an error when it did not give weight and credence to the Tax Declaration of Real Property issued under the name of Baquiran. The Tax Declaration of Real Property indicated Baquiran as the owner of the subject property. Although tax declarations or realty tax payments are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not his (sic) actual or at least constructive possession. It was Baquiran who paid the real property tax over the lot in question as evidenced by Tax Declaration No. 02-038-00324 dated December 27, 2006.”[19] (Emphasis supplied)

Defeating defendant-appellant's allegations however, is that, as the records revealed, the subject property was only held by defendant-appellant as trustee, in trust for plaintiffs-appellees as trustor. This is because even if the title over the subject property was registered under the name of defendant-appellant, defendant-appellant had acknowledged that plaintiffs-appellees were co-owners of the subject property. Such acknowledgment was shown by the following documents submitted by plaintiffs-appellees: defendant-appellant's Affidavit[20] dated January 31, 1984, where he acknowledged the “correlative and imprescriptible rights”[21] of his brothers and sisters, plaintiffs-appellees here, over the subject property; defendant-appellant's Deeds of Quitclaim dated November 7, 2005[22] and December 15, 2006,[23] where he “CEDE[D], TRANSFER[RED], WAIVE[D] and QUITCLAIM, the NINE-TENTH (9/10) PORTION”[24] of the subject property to plaintiffs-appellees, and; the Memorandum of Agreement[25] dated July 10, 2000 executed between defendant-appellant and plaintiffs-appellees where it was stated that the subject property was “co-owned equally by the parties.”[26]

All of these matters were as also found by the trial court, to wit:

“In this case, the transfer certificate of title for the subject property shows that defendant George Baquiran is the registered owner. Under the proven circumstances, however, the certificate of title does not vest exclusive title to the defendant. The pieces of plaintiffs' documentary evidence show that the property was registered in defendant's name merely in trust for his siblings and fellow co-owners. This is clear from George Baquiran's Affidavit and two Deeds of Quitclaim and the parties' Memorandum of Agreement.

Defendant's Affidavit subscribed and sworn to before Notary Public Gil Baclig on November 22, 1984 (sic) pertinently states as follows:

'1. I am the VENDEE of a certain parcel of land xxx as per Deed of Absolute Sale ratified before Notary Public Norberto A. Manuel as doc. no. 1176, page no. 56, Book No. III, Series of 1976, the VENDOR being my sister Carmencita Baquiran.

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3. xxx [T]his affidavit is executed to acknowledge the correlative and imprescriptible rights of my brothers and sisters named above to share as specified in the above-described property, including all improvements that are now existing thereon;

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The third paragraph of George Baquiran's Affidavit is particularly significant. First, it shows that the execution of the Deed of Absolute Sale by his sister Carmencita in his favor was merely simulated, it was done not for the purpose of transferring title to George, but for obtaining a loan from the DBP. Indeed, their respective residences at that time meant that it was more convenient for George in Laoag rather than for Carmencita in

the United States to attend to the myriad requirements of applying for a loan from a bank located in Laoag. Second, the equally important, George acknowledged therein the imprescriptible right of his siblings to the subject property. Consequently, George Baquiran expressed in the fourth paragraph his willingness to execute the proper documents for the distribution of the subject property to his siblings in equal parts.

The said Affidavit was confirmed by George Baquiran and his siblings in a Memorandum of Agreement signed and acknowledged by them on July 10, 2000 before Notary Public Lope Velasco. Pertinent portions of the MOA read as follows:

'1. Although the property is registered under the name of GEORGE M. BAQUIRAN, the same is co-owned equally by the parties who are the children and successors-in-interest of the late MAXIMO and EULALIA M. BAQUIRAN, as attested to by GEORGE M. BAQUIRAN in an affidavit executed on 31 January 1984 and ratified before Notary Public Gil B. Bacilig as Doc. No. 2466, appearing on page No. 35 of Book No. VII, Series of 1984, a copy of which is made part hereof as Annex 'B.' (Underscoring made in the original)

The MOA signed by George Baquiran himself is clear that though the subject property was registered in his own name, it was 'co-owned equally' by him and his siblings.

In a subsequent Deed of Quitclaim dated November 7, 2005 and acknowledged before Notary Public Melchor Guillen in Laoag City, George Baquiran averred that 'for and in consideration of the LOVE and AFFECTION that I have unto my siblings, xxx, do hereby CEDE, TRANSFER, WAIVE and QUITCLAIM, the NINE-TENTH (9/10) PORTION of the afore-described parcel of land in favor of the said QUITCLAI MEES, their heirs, assignees, and successors-in-interest, free from all liens and encumbrances of any kind and nature.' The same undertaking was made by George Baquiran in another Deed of Quitclaim dated December 15, 2006 and acknowledged before Notary Public Marcelino M. Quitoras Jr.

All of these documents prove the existence of an express trust in favor of herein plaintiffs.”[27] (Emphasis supplied)

Besides, the documents submitted by plaintiffs-appellees were valid bases for proving the existence of an express trust over the subject property. This is because those documents were public documents, which have in their favor the presumption of regularity. Such presumption in turn, defendant-appellant failed to rebut by clear and convincing evidence,[28] however. This was as also found by the trial court in its assailed Decision, to wit:

“It is a well-settled rule that forgery is not presumed and the party alleging it has the burden of establishing it by clear, positive and convincing evidence. xxx

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This Court has examined the questioned signatures of the defendant in the Affidavit, the MOA and the Deeds of Quitclaim and compared them with his undisputed signatures in his Answers to the original Complaint as well as to the amended Complaint, but has found no clear basis to believe the perpetration of forgery. The Court finds it difficult to conclude that the signatures allegedly made by the defendant in the questioned documents executed in 1984, 2000, 2005 and 2006 were different from those he unquestionably made in 2007 and 2008 in his Answers to the original and amended Complaints. Indeed, the wide gap in the dates of execution of the said documents in 1984, 2000, 2005, 2006, 2007 and 2008 can 'possibly account for the variance of the signatures to be expected and inevitable due to the passage of time.' Under the foregoing the Court finds no sufficient reason to sustain George Baquiran's unsubstantiated allegations of forgery.

In any event, it must be emphasized that the Affidavit, the MOA and the two Deeds of Quitclaim were all notarized. It is a settled rule that one who denies the due execution of a deed where one's signature appears has the burden of proving that, contrary to the recital in the jurat, one never appeared before the notary public and acknowledged the deed to be a voluntary act. It is equally settled that documents acknowledged before notaries

public are entitled to the presumption of regularity, which may be overcome only by evidence that is 'clear, convincing and more than merely preponderant.'

Defendant George Baquiran failed to present such evidence. To repeat, he relied merely on his bare allegation that he never appeared before the concerned notaries public Gil Baclig, Lope Velasco, Melchor Guillen and Marcelino Quitoras[,] Jr. That bare allegation cannot constitute 'clear, convincing and more than merely preponderant' evidence. Hence, the Court must affirm the validity of the Affidavit, the MOA and the Deeds of Quitclaim.”[29] (Emphasis supplied)

That a trustee, such as defendant-appellant here, could not repudiate the existence of an express trust over a property held by him in trust by relying on the Certificate of Title obtained by him, as was the situation here, is pursuant to the following pronouncement of the Supreme Court in *Spouses Gomez v. Duyan, et al.*, G.R. No. 144148, March 18, 2005:

“Petitioners cannot rely on the registration of the disputed property and the corresponding issuance of a certificate of title in their name as vesting ownership on them simply because an express trust over the property was created in favor of respondents. It has been held that a trustee who obtains a Torrens title over the property held in trust by him for another cannot repudiate the trust by relying on the registration.” (Emphasis supplied)

Given that plaintiffs-appellees were co-owners of the subject property, then, they had the right to recover such property from defendant-appellant, pursuant to the ruling of the Supreme Court in *Spouses Gomez v. Duyan, et al.*, G.R. No. 144148, March 18, 2005, as follows:

“Reconveyance is precisely the proper action for respondents to take against petitioners since the former are claiming that they are the rightful owners of the property in question, not petitioners. By filing an action for reconveyance, a party seeks to show that the person who secured the registration of the questioned property is not the real owner thereof.” (Emphasis supplied)

As co-owners, plaintiffs-appellees also had the right to demand partition of the subject property. That this is the consequence is pursuant to Article 494 of the Civil Code of the Philippines, which states:

“Art. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned. xxx”

Given all these, defendant-appellant's refusal to recognize the rightful shares of plaintiffs-appellees over the subject property indicated bad faith on his part. As a result, contrary to defendant-appellant's allegations in his assignment of error III, plaintiffs-appellees were entitled to Moral Damages and Attorney's Fees. Plaintiffs-appellees' entitlement for Moral Damages and Attorney's Fees was as also found by the trial court, to wit:

“The plaintiffs also prayed for the award of moral damages and attorney's fees. These prayers must be sustained.

To support their prayer for moral damages under Article 2220 of the Civil Code, it is not enough for the plaintiffs to show that the defendant failed to comply with his contractual obligation, they must also show that he acted fraudulently or in bad faith. In this case, it was shown that the defendant refused to recognize the rightful shares of his fellow co-owners to the subject property. To act in such manner against another person is bad enough, to do so against one's own siblings as in this case is much worse. Indeed, the defendant did so in spite of his 1984 Affidavit, the 2000 MOA and the 2005 and 2006 Deeds of Quitclaim acknowledging that his siblings had their respective shares to the subject property. Clearly, his subsequent failure to abide by his previous and repeated acknowledgments of the rights of his own siblings can only be the product of fraudulent intent and bad faith. Because of defendant's willingness to act fraudulently and in bad faith against members of his own family, the Court finds it just to hold him liable for moral damages in the sum of P200,000.00.

The Court also grants the prayer for attorney's fees. As a rule, attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. Corollarily, the award of attorney's fees is the exception and not the rule. Such award is justified in this case, however. To repeat, it is manifest from the evidence presented that the plaintiffs had to institute the present suit because of the defendant's refusal to recognize his earlier acknowledgements (sic) of their rights to the subject property. Clearly, considerations of equity dictate that the defendant be directed to pay attorney's fees in the sum of P50,000.00.”[30] (Emphasis supplied)

Indeed, the findings of the trial court are entitled to great weight and respect on appeal, and are in fact accorded finality when supported by sufficient evidence on the record,[31] as in this case.

After careful consideration of all the facts, arguments, and issues appearing on the records as well as of the pertinent laws and jurisprudence, and, in accordance with what is best determined to be proper under the circumstances, the following disposition is therefore made on these matters.

BECAUSE OF ALL THESE, the Appeal is DENIED.

SO ORDERED.

Dicdican (Chairperson) and Paredes, JJ., concur.

[1] Rollo, pp. 19-40

[2] Rollo, pp. 42-56.

[3] Records, pp. 1-4.

[4] Rollo, pp. 42-56.

[5] Rollo, pp. 42-44.

[6] Rollo, pp. 42-56.

[7] Rollo, pp. 55-56.

[8] Rollo, pp. 19-40.

[9] Rollo, p. 40.

[10] Rollo, p. 22.

[11] Records, p. 93.

[12] Rollo, pp. 30-32.

[13] Records, p. 93.

[14] Records, p. 93.

[15] Records, p. 175.

[16] Records, p. 175.

[17] Rollo, p. 51.

[18] Records, p. 93.

- [19] Rollo, pp. 27-29.
- [20] Records, p. 175.
- [21] Records, p. 175.
- [22] Records, pp. 178-179.
- [23] Records, pp. 95-96.
- [24] Records, p. 178; p. 95.
- [25] Records, pp. 181-183.
- [26] Records, p. 182.
- [27] Rollo, pp. 45-47.
- [28] Calma v. Santos, et al., G.R. No. 161027, June 22, 2009.
- [29] Rollo, pp. 48-50.
- [30] Rollo, pp. 53-54.
- [31] Spouses Patricio and Myrna Bernales vs. Heirs of Julian Sambaan, et al., G.R. No. 163271, January 15, 2010.

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