

**ZENAIDA K. CASTILLO AND EMILIO CORDOVA, JR.,
PLAINTIFFS-APPELLANTS, VS. HORACIO K. CASTILLO, BEATRIZ K.
CASTILLO, CONRADO VALERA (FORMAL PARTY), LOURDES K.
CASTILLO, PELAGIO ARA...**

G.R. No. L-18238. January 22, 1980

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a joint appeal from the decision dated January 13, 1961 as amended by an order dated February 4, 1961 of the Court of First Instance of Manila in Civil Case No. 42496 entitled "Zenaida K. Castillo, et al. versus Horacio K. Castillo, et al." The dispositive portion of the decision states thus:

"IN VIEW WHEREOF,

1. The Court orders the partition of the properties as follows:

- a). The private properties of Ysidro Castillo consisting in 38 parcels described in the project of partition shall be partitioned in the proportion of 1/9 to each of the children, i.e., 1/9 to plaintiff;
- b). The four (4) parcel of land share of the children in the conjugal properties as set forth in the project of partition shall be also partitioned in the same proportion;
- c). The seven (7) parcels of land under usufruct of Enriqueta shall also be partitioned in the same proportion but subject to said usufruct;
- d). The 1/2 share in the property described in Exh. Plaintiff 2 shall be partitioned in the proportion of 1/36 to each of the children and 1/4 unto Enriqueta Castillo; the Court grants the partition as to the other 1/2 in the proportion outlined in par. (h) below;
- e). The property described in Exh. Plaintiff 3, 7, 8 and 9 shall be partitioned in the proportion of 1/2 to Enriqueta and 1/18 to each of the 9 children;
- f). The property in Tagaytay City, Exh. Plaintiff 63, shall be partitioned among the 9 children in the proportion of 1/9 each;
- g). The partition of the properties in the names of defendants (with the exception of Enriqueta) i.e., those in Exhs. 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 65, 66, 67, 68, 69, 70, 25, 26, 62, 56, 57, 58, 22, 59, 60, 61, 52, 53, 54, and 55 is denied;
- h). The properties described in the remaining 1/2 of Exh. Plaintiff 2 and those in Exhs. 6, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 40, 72, 74, 75, 76, 78 and 78-A are ordered to be partitioned, giving unto plaintiff a 6/100ths undivided share in the same;
- i). The parties are given 30 days from notice to arrive at an amicable partition under the proportions set forth above of the properties whose partition is decreed; should they fail to do so, the Court orders commissioners of

partition to be appointed to proceed accordingly;

j). From and after the date of the filing of the complaint and until partition shall have been terminated, all the income on the properties be partitioned shall be also partitioned in the proportion already stated;

2. The stock of plaintiff in the Tiaong Rural Bank is ordered cancelled and placed in the name of Enriqueta Vda. de Castillo;

3. The counterclaims are dismissed.

4. No pronouncement as to costs except the costs of partition which shall be borne by all in proportion to the share of each.

SO ORDERED, Manila, Philippines, 12 January, 1961."

Acting on the motion for reconsideration filed by plaintiffs, the court a quo, on February 4, 1961, issued an Order, amending its decision as follows:

"x x x the Court does not agree that the situation of Dr. Horacio and his brothers and sisters is the same as that of Enriqueta for the reason that with respect to Enriqueta there is definite proof and it is admitted by her that she had been in administration of the common property even after the closing of the probate case; with respect to the other portion of ground two as well as ground three concerning the monies which Enriqueta had used in her personal investment and borrowings, the Court having adopted for this purpose the total of P153,591.69 and the plaintiff complaining that this should be reduced because the money was raised after the properties of the children had been used as collateral, the Court does not agree that the said amount should be reduced; in the mind of the Court the point is that this total sum of P153,591.69 were used by Enriqueta herself in her personal investments; this will dispose of ground three, paragraph three; and for the reason that the mention by the Court of the sale of the Moret property is only a preliminary to the acceptance by the court of the sum of P153,591.69, stated otherwise, the proceeds of the sale of the Moret property having in fact been already in the computation by the Court made a part of the investments by Enriqueta, there is no more need to modify this amount of P153,591.69 with respect to the claim that Enriqueta had bought shares of stock in the Tiaong Rural Bank in the sum of P107,410.00 if this is correct, and it is correct according to Exhibit Plaintiff 122, that really should be added to the original sum of P359,350.00 found by this court as her acquisition and investments so that the total will be P466,760.00; deducting from this the amount of P153,591.69 would leave a balance of P313,168.31; divide this by 9 which is the number of the children would give a quotient of P34,795.37 which is equivalent to 7% of P466,760.00; the result will be to grant the motion in part and to deny it in part.

IN VIEW WHEREOF, the dispositive part of the decision on page 496, specifically paragraph (h) thereof is hereby amended to read, as follows:

(h)

The properties described in the remaining 1/2 of Exh. plaintiff 2 and those in Exhs. 6, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 40, 72, 74, 75, 76, 78 and 78-A are ordered to be partitioned, giving unto plaintiff a 7/100ths undivided share in the same.

SO ORDERED."

The records disclose that Ysidro C. Castillo died on October 15, 1947 leaving as his heirs his wife Enriqueta Katigbak and their nine children - Horacio, Beatriz, Zenaida, Ysidro, Jr., Leonor, Crispin, Lourdes, Alicia and Ernesto. Intestate proceedings for the settlement of the deceased's estate (Special Proceedings No. 4211 of the Court of First Instance of Manila) were instituted and in January, 1948, Enriqueta Katigbak Vda. de Castillo was appointed administratrix. On June 21, 1948, she filed an inventory of the properties as well as the obligations left by the deceased. Two months thereafter, she was ordered to submit a project of partition. On August 23, 1948, she

filed an urgent petition asking the Court to reconsider its order on the ground that there were pending obligations of the estate amounting to P90,920.00. However, on November 11, 1948, the surviving spouse as administratrix of the intestate estate of Ysidro C. Castillo submitted a project of partition, stating that the properties which constituted the residuary hereditary estate of the deceased Ysidro C. Castillo, after complete payment of debts, funeral charges, expenses of administration, the allowance of the widow and inheritance and estate taxes are: (1) 38 parcels of land which are properties brought to the marriage by the deceased Ysidro C. Castillo and (2) 19 parcels of land which are conjugal properties of the spouses. Under said project of partition, all the 38 parcels of land brought by the deceased into the marriage and 4 parcels of the conjugal properties were adjudicated to all the nine children in equal shares, pro-indiviso; 8 parcels of the conjugal properties were adjudicated to the widow as her share in the conjugal partnership and the remaining 7 parcels given in usufruct to the widow. Despite approval of the project of partition and the closing of the intestate proceedings, the properties remained under the administration of Enriqueta K. Vda. de Castillo.

On February 4, 1960, after an extrajudicial demand for partition failed, herein plaintiff-appellant Zenaida K. Castillo, assisted by her husband, filed an action for partition with accounting and receivership against her mother Enriqueta K. Vda. de Castillo and her brothers and sisters (Civil Case No. 42496, CFI of Manila). Alleging that the project of partition omitted to include certain properties acquired by the defendants using community funds in their acquisition, she prayed that said properties be divided and partitioned accordingly. The complaint was duly answered by the defendants-appellants, with counterclaims against the plaintiffs-appellants. After hearing, the Court of First Instance of Manila rendered judgment on January 12, 1961, which was amended on February 4, 1961. From said judgment, both parties appealed to this court, raising the following assignment of errors:

PLAINTIFFS-APPELLANTS' ASSIGNMENT OF ERRORS

I.

The lower court erred in finding that plaintiff Zenaida K. Castillo was entitled to an undivided share of only 7/100ths in the properties described in the remaining 1/2 of Exhibit Plaintiff 2, and those in Exhibits 6, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 40, 72, 74, 75, 76, 78 and 78-A.

II.

The lower court erred in not finding that the income and the fruits of the common properties were used in the acquisition of those properties in the names of defendants (with the exception of Enriqueta Vda. de Castillo) and in consequently denying the partition of the same.

III.

The lower court likewise erred in not holding that the investments in the Tiaong Rural Bank of defendants (with the exception of Enriqueta Vda. de Castillo) including the investment of P20,000.00 in the name of plaintiff Zenaida Castillo, having an aggregate value of P318,950.00 were made with the fruits and income of the common properties and consequently erred in not ordering the partition of the same among the nine of them.

DEFENDANTS-APPELLANTS' ASSIGNMENT OF ERRORS

I.

The lower court erred when it held that the money used in the purchase of 1/2 of the land covered by Exhibit Plaintiff 2 belonged to the spouses Ysidro C. Castillo and Enriqueta Katigbak and, therefore, erred when it ordered that the same be partitioned as conjugal partnership property.

II.

The lower court erred when it held that the properties covered by Exhibit 2 (the remaining half), 6, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 40, 72, 74, 75, 76, 78 and 78-A were acquired with the fruits of the properties of Enriqueta K. Vda. de Castillo's children under her administration and, therefore, erred when it ordered that the said properties be partitioned.

III.

The lower court erred when it denied the counterclaim of defendants-appellants.

Both plaintiffs-appellants and defendants-appellants assail under their respective assignments of errors the decision rendered by the trial court on the following properties which the trial court itself classified as follows:

I.

Those not included in the project of partition and allegedly acquired before the death of Ysidro Castillo;

II.

Those acquired or purchased by Enriqueta Vda. de Castillo after the death of Ysidro Castillo; and

III.

Those acquired by the brothers and sisters of plaintiff-appellant Zenaida Castillo after the death of Ysidro Castillo.

The first classification of properties are those claimed to be not included in the project of partition and allegedly acquired before the death of Ysidro Castillo. And among these properties is the land described under Exhibit Plaintiff 2, situated in Cabay, Tiaong, Quezon, with an area of 262,421 sq. meters originally co-owned by Romeo Baldeo Ona. The lower court ruled that 1/2 of this property was conjugal and therefore subject to partition among the heirs. The defendants-appellants in their first assignment of error maintain that the lower court erred when it held that the money used in the purchase of one-half of the land covered by said Exhibit belonged to the spouses Ysidro C. Castillo and Enriqueta Katigbak and, therefore, it was erroneous for the court to order that it be partitioned as conjugal partnership property. Defendants-appellants contend that in ruling thus, the lower court committed error in disregarding the testimony of Enriqueta K. Vda. de Castillo which was corroborated by her eldest son, defendant-appellant Horacio K. Castillo, that although she and her husband appear as two of the buyers of said property, neither of them paid any part of the purchase price for lack of money at the time the deed of sale was executed (Exhibit Plaintiff 2)[1]; that neither did their co-buyers, the spouses Paulo Macasaet and Gabriela Macasaet pay the whole price but merely gave a down-payment; that after the death of her husband and the intestate proceedings were closed, Paulo Macasaet, upon learning that the land was involved in a litigation, sold the entire parcel of land to her; that she had to make arrangements with the Baldeos in whose favor there still remained the unpaid balance of the purchase price; that Macasaet agreed that Enriqueta K. Vda. de Castillo pay on installment basis that portion of the purchase price he had already paid; and that the said installments were paid

from the fruits of the property sold and her other properties.

We find no error in the lower court's ruling that the money used in the purchase of 1/2 of the land covered by Exhibit Plaintiff 2 belonged to the spouses Ysidro C. Castillo and Enriqueta Katigbak and ordering that such land be partitioned as conjugal partnership property. We must here underscore the specific rule in our civil law that all properties of the marriage shall be presumed conjugal unless it be proved that they belong exclusively to either of the spouses.[2] To rebut or overcome this presumption, there must be clear, convincing and satisfactory proof that the consideration of the sale was paid by only one of the spouses and from her exclusive or separate property.[3]

We agree with the plaintiffs-appellants that the version of Enriqueta K. Vda. de Castillo that the controverted property is paraphernal cannot be given serious consideration. The improbability that her name and that of her husband would not have been written as co-buyers of the land in Exhibit Plaintiff 2 unless they were the actual co-purchasers thereof can easily be discerned. It is indeed extremely difficult to believe that the vendor Romeo Baldeo Ona would have acknowledged in the deed of sale receipt in full of the purchase price of P30,000.00 from the vendees if he had not really received full payment from the latter. This version of Enriqueta becomes even more doubtful in view of the fact that the vendor, Romeo Baldeo Ona, signed and executed the said deed of sale not only in his personal capacity but also as attorney-in-fact of his brother Claro Baldeo Ona and his sister Adelaida Baldeo Ona, for such fiduciary capacity naturally and rightly would have made him more careful and cautious in entering into the transaction. It stands to reason to conclude that Romeo Baldeo Ona would not have signed or executed the document in question unless its recitals were in truth and in fact as therein stated. Although the testimony of the surviving spouse regarding the nature of the property is corroborated by defendant-appellant Horacio K. Castillo, the eldest of the surviving children, such corroboration cannot carry weight, the same being self-serving. In fine, defendants-appellants have not come up with such substantial, satisfactory and convincing proof as would be sufficient to rebut the presumption that the property in controversy is conjugal.

The document in question, Exhibit Plaintiff 2, is a public instrument valid and binding even as against third parties, the said deed of sale having been duly registered in the Register of Deeds on June 23, 1947. The Register of Deeds has duly certified that said deed of sale was duly recorded in the Registration Book under Act 3344. It needs no further argumentation to hold that the defendants-appellants' gratuitous testimony cannot prevail over the recitals in said public instrument, for it must be here reiterated that:

"A recital in a public instrument celebrated with all the legal formalities under the safeguard of a notarial certificate is evidence against the parties and a high degree of proof is necessary to overcome the legal presumption that such recital is true." (Valencia vs. Tantoco, et al., 99 Phil. 824).

The second classification of properties are those acquired or purchased by Enriqueta Vda. de Castillo after the death of Ysidro Castillo, among them the remaining one-half of the property described in Exhibit Plaintiff 2 as well as the properties shown under Exhibits 6, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 40, 72, 74, 75, 76, 78 and 78-A. The lower court ruled that these properties were acquired with the fruits of the properties of the children of the spouses Ysidro Castillo and Enriqueta K. de Castillo and, therefore, ordered that the said properties be partitioned. Defendants-appellants under the second assignment of error take the position that the lower court committed a reversible error. On the other hand, plaintiffs-appellants in their first assignment of error maintain that the lower court erred in finding that Zenaida K. Castillo was entitled to an undivided share of only 7/100ths in these properties mentioned under the second classification. Zenaida claims that she should be entitled to an undivided share of at least 9/100ths of the said properties.

We agree with the reasoning of the trial court in its disposition of the properties enumerated under the second classification, stated thus:

" x x x (A)s to these, it must be conceived for the plaintiff that as there is no question that Enriqueta was the one who administered the properties of the children not only after the death of Ysidro but even after the approval of the project of partition, harvesting their fruits and it being established in the evidence that she did not during the period after the closure of the intestate proceeding ever account to her children formally, for said harvests, to the court, this is evidence that would indicate that she had obtained moneys of her children one of them being plaintiff, and it is a question what she did with these moneys; nor can the court account her version and that of her witnesses that the lands hardly gave any creditable income being only coconut lands; what so the court is telling is that they were 180 hectares assessed at no less than P100,000.00 and it is not easy for the Court to believe that they had produced no creditable income for the ten years that she was alone in possession. (sic).

There is of course the difficulty that there is no clear proof on how much use the harvest she collected year after year; this however, in the face of the established administration by her conducted and the admitted fact that she was the one who harvested would be enough for the court to make her responsible x x x. It now appears that for all these properties, she spent at least a total of P359,350.00, the court making its additions, as follows:

Exh. 6 P 1,500.00

Exh. 10 3,600.00

Exh. 12 22,000.00

Exh. 13 38,000.00

Exh. 15 20,000.00

Exh. 16 16,800.00

Exh. 17 16,600.00

Exh. 18 47,000.00

Exh. 19 14,500.00

Exh. 20 5,500.00

Exh. 21 13,500.00

Exh. 72 14,410.00

Exh. 74 610.00

Exh. 75 4,190.00

Exh. 76 480.00

Exh. 78 100,000.00

Exh. 78-A

Exh. 40 5,400.00

1/2 of Exh. 2 15,000.00

Exh. 7 690.00

Exh. 8 9,610.00

Exh. 9 9,960.00."[4]

Defendants-appellants maintain that contrary to the ruling of the lower court, Enriqueta K. Vda. De Castillo, the surviving widow and administratrix of the properties of her children, did not use the assets of her children for her personal acquisitions. They argue that these properties in question were not acquired by her overnight but slowly, involving thrift and knowledge of financing, by mortgaging her personal properties to obtain loans from the banks and use the proceeds in building houses which were rent-producing, by selling a piece of her property located at Moret Street, Sampaloc and invested the proceeds in the construction of other houses, sari-sari store and the purchase of other parcels of land as well as investments in the Tiaong Rural Bank in the name of the children. She had also income from the fruits of her citrus, rice and coconut plantation which increased her income, enabling her to buy other parcels of land. On the other hand, the properties of her children produced no creditable income, rather she testified that their income was not sufficient to defray all their expenses for their living, education, medicine, and maintenance and improvement of the children's properties.

Defendants-appellants also claim that the court a quo erred in determining the total investments of the appellant Enriqueta K. Vda. de Castillo and the appellant Zenaida Castillo's participation in the same when it included the properties described under Exhibits 7, 8, and 9 which are admittedly conjugal partnership properties which the court had already ordered their partition as such in its decision, hence, they cannot again be appreciated as properties acquired with funds of the children to increase their share correspondingly.

The properties covered or described under Exhibits 10 and 40 which the lower court ordered to be partitioned are also claimed by defendants-appellants not to belong to the defendant-appellant Enriqueta K. Vda. de Castillo. It is claimed that Exhibit 10 is a deed entitled "Kasunduan ng Pagbibile at Magbibile Ulit" executed by Juan Maralit and Maria Salamat in favor of the appellant Enriqueta K. Vda. de Castillo but the vendors, however, exercised their right of repurchase and the lot was transferred to them. With respect to the land under Exhibit 40, the same belongs to defendant-appellant Horacio Castillo, who purchased it from his mother, Enriqueta, for good and sufficient consideration.

We cannot agree with defendants-appellants' theory that Enriqueta K. Vda. de Castillo did not use the fruits of the properties of her children for her personal acquisitions. Since the evidence has fully established that Enriqueta remained in administration and management of the common properties for quite a considerable period of time after her husband's death which, from an examination of the documents evidencing the same would reach some P800,000.00 in worth, whereas the fact was that her personal income alone was greatly disproportionate to her acquisitions because for the years 1951-1958 her income was only P43,674.34 or a net average yearly income of a little more than P5,400.00 a year, and the court a quo considered her explanation on how she was able to raise and acquire her huge acquisitions, as unacceptable, We are not persuaded nor convinced to review, revise or alter the lower court's conclusion. In fact, there is merit to plaintiffs-appellants' argument that the personal income of Enriqueta was false and misleading since the sources thereof were questionable, the 16 hectares of citrus land having been given to her only in May, 1956 per Exhibit 121-Plaintiff, the sale of her Moret property gave her only a net of P19,500.00 in cash from the sale and the P75,000.00 loan from the Philippine National Bank was taken in her capacity as attorney-in-fact of the children with properties of the children mortgaged as security therefor. Moreover, the vastness of the properties allotted to the children in the project of partition consisting of 42 parcels of land, assessed at about P100,000.00 with a combined area of more than 180 hectares, 84.36 hectares of which consist of riceland and the rest being residential lots and coconut land planted with approximately 2,050 trees cannot but be productive of substantial fruits and profits, an accounting of which Enriqueta as administratrix had not submitted to the court.

As to defendants-appellants' claim that the properties described under Exhibits 7, 8 and 9 should not be

considered or included as properties acquired with funds of the children because they are admittedly conjugal partnership properties and the court had already ordered their partition as such in its decision, We find the same to be meritorious. Indeed, said lands under Exhibits 7, 8 and 9 were already ruled by the lower court as conjugal partnership properties and subject to partition, pursuant to paragraph (e) of the dispositive portion of the decision. Hence, from the total investment of P466,760.00 should be deducted the amount of P20,260.00 representing the investments relating to Exhibits 7, 8 and 9, thereby arriving at the sum of P446,500.00.

With respect to the property under Exhibit 10, We find the ruling of the lower court to be correct and meritorious. Exhibit 10 of the plaintiff refers to a deed of sale with right of repurchase executed on April 30, 1955 by Juan Maralit and Maria Salamat in favor of Enriqueta K. Vda. de Castillo for the sum of P3,600.00 with the following conditions: (1) that vendors can exercise their right of repurchase for the same amount within two (2) years from date of execution of contract; (2) that if repurchase is not effected within the 2-year period, then vendors would be given a one-year extension; (3) that if after the one year extension vendors have not repurchased the property, then the sale would be considered an absolute sale and said property can no more be the subject of repurchase. Defendants-appellants through Exhibit Defendant 6[5] sought to show that the vendors repurchased the property from Enriqueta K. Castillo in April, 1957 but that they could not locate the document relative thereto and that said vendors have sold this same property to one Reynaldo Manguiat who was then the councilor of Tiaong, Quezon. This exhibit which is an affidavit executed by the vendors on April 1, 1960 was rejected by the court a quo and to this We acquiesce, since the affidavit (Exhibit 6) executed in 1960 is self-serving and cannot supersede or revoke the deed of sale executed on April 30, 1955.

Defendants-appellants' assignment that the court erred in the inclusion of the property under Exhibit 40 in the determination of the total investments, is without merit. Exhibit 40 covers a parcel of land in the name of defendant-appellant Horacio Castillo, and while it is admitted that said property was purchased by Enriqueta K. Vda. de Castillo from Florentino Villaverde, the same was thereafter purchased by Horacio for good and sufficient consideration and, therefore, the latter has exclusive right of ownership thereto. It is also pointed out that although a discrepancy appears in the purchase price paid by the defendant-appellant Enriqueta K. Vda. de Castillo for the land and the price appearing in Exhibit 40 as paid by Horacio to his mother, the latter explained that when her husband Ysidro Castillo died, Horacio was awarded his war damage claim which he gave to Mrs. Castillo and when Exhibit 40 was executed, he delivered P1,500.00 more, thereby giving the impression that the consideration for the parcel of land was the war damage claim amount plus P1,500.00 in cash. The recitals of Exhibit Plaintiff 40, however, clearly belie Mrs. Castillo's assertion that the consideration was other than the P1,500.00 as shown and cited as follows:

"Na ako, ENRIQUETA K. CASTILLO, pilipino, balo, may sapat na gulang, naninirahan at may padalang sulat sa 1107 Pennsylvania, Malate, Manila, alang-alang at dahilan sa halagang ISANG LIBO AT LIMANG DAANG (P1,500.00) PISO, kuatang Pilipino, na ibinayad sa akin ni Dr. HORACIO K. CASTILLO, pilipino rin, may sapat na gulang, binata, naninirahan at may padalang sulat sa Poblacion, Bayan ng Tiaong, Lalawaigan ng Quezon, ay aking ipinagbibili, inililipat at isinasalin, at sa pamamagitan ng kasunduang ito ng BILIHANG LUBOS AT TULUYAN ay akin ngang IPINAGBIBILI, INILILIPAT at ISINASALIN sa naulit na Dr. Horacio K. Castillo, sa kanyang magiging tagapagmana at kahalili, ang isang lagay ng lupang tubigan, sampo ng lahat ng mga meyoras dito. x x x."

The document evidencing the sale of the property by Enriqueta to Horacio clearly indicates that the consideration is the amount of P1,500.00, no more, no less. Said document is a notarized absolute deed of sale duly acknowledged by Enriqueta before Notary Public Restituto C. de Ramos on May 3, 1955 in Tiaong, Quezon. We must apply the rule deeply-rooted in Our jurisprudence that mere preponderance of evidence is not sufficient to overthrow a certification of a notary public to the effect that a grantor executed a certain document and

acknowledged the fact of its due execution before him. To accomplish this result, the evidence must be so clear, strong and convincing as to exclude all reasonable controversy as to the falsity of the certification. And when the evidence is conflicting, the certification will be upheld.[6]

We agree with the ruling of the court a quo that the property under Exhibit Plaintiff 40 was a property acquired first by Enriqueta with the fruits of the common properties of the children and although it was later transferred to defendant-appellant Horacio for P1,500.00 barely three months after it had been purchased by Enriqueta from the original owner Florentino Villaverde for P5,400.00, the patent disparity in the sale price to Horacio as well as the evident partiality of the disposition in favor of Horacio, the eldest child who was her alter ego in the administration of the undivided portion of her husband's estate, are strong and cogent reasons supporting the holding of the lower court that this particular property should be considered part or included in the classification of properties bought with the fruits of the children's properties and should, therefore, be partitioned in favor of all the children of the deceased Ysidro Castillo.

We shall now address Ourselves to plaintiffs-appellants' assignment of errors and the third classification of properties.

The first error assigned by plaintiffs-appellants is that the lower court erred in finding that plaintiff-appellant Zenaida K. Castillo is entitled to an undivided share of only 7/100ths in the properties described in the remaining 1/2 of Exhibit Plaintiff 2, and those in Exhibits 6, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 40, 72, 74, 75, 76, 78 and 78-A. According to her, she should be entitled to an undivided share of at least 9/100ths of the said properties.

According to the decision of the trial court, Enriqueta K. Vda. de Castillo spent at least a total of P359,350.00 in acquiring the properties described under Exhibits 6, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 72, 74, 75, 76, 78, 78-A, 40, 1/2 of Exh. 2, Exh. 7, 8, and 9 (Decision, pp. 107-108, Record on Appeal). The court then added her investment of P107,410.00 in the Tiaong Rural Bank, thus making an aggregate total of P466,760.00 as the value of properties and investments acquired by Enriqueta after the death of her husband (Order of February 4, 1961, pp. 130-131, Record on Appeal). And from the aggregate total of P466,760.00, there was deducted a sum of P153,591.69 which the lower court accepted as Enriqueta's personal investments and borrowings, on the basis of her mortgage loans as appearing in her statements of assets and liabilities (Exh. Plaintiff 123) as follows:

"LIABILITIES AND EQUITY

CURRENT LIABILITY:

Trade Account Payable

P 4,832.00

MORTGAGES PAYABLE:

Phil. Nat. Bank (Manila)

P75,000.00

Phil. Nat. Bank (Lucena)

58,200.00

Retailer's Loan (PNB, Mla)

1,541.90

Phil. Dev. Bank (RFC)

14,017.79

Total Mortgages Payable

148,759.69

TOTAL LIABILITIES

P 153,591.69"

And after deducting P153,591.69 from the total investments of P466,760.00, leaving a balance of P313,168.31, the court divided this by 9 which is the number of the children resulting in a quotient of P34,795.37 which is equivalent to 7% of P466,760.00. The court concluded that plaintiff-appellant Zenaida K. Castillo was entitled to a 7/100ths undivided share in the properties described in the remaining one-half of Exhibit Plaintiff 2 and those in Exhibits 6, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 40, 72, 74, 75, 76, 78 and 78-A.

Plaintiffs-appellants contend that the above computation of the court a quo is erroneous, claiming that the P75,000.00 loan from the Philippine National Bank should not be included in Enriqueta's personal borrowings because the collateral used in obtaining the same were three parcels of land belonging to the 9 children and that in securing said loan from these collaterals, Enriqueta Vda. de Castillo signed not in her personal capacity but as the attorney-in-fact of her children (Exhs. Plaintiff 125 and 125-A) and was in duty-bound to account for the same to the children. And following the process adopted by the trial court, the amount of the P75,000.00 loan should be deducted from P153,591.69, leaving a balance of P78,591.69 which should represent Enriqueta's personal investments and borrowings. This amount of P78,591.69 should be deducted from P466,760.00 (the aggregate total of properties and investments of Enriqueta acquired after her husband's death) and get a balance of

P388,168.31 representing the value of those properties impressed with the character of a trust to be divided among the 9 children. P388,168.31 divided by 9 will give a quotient of P43,129.80 which is slightly over 9/100ths of the aggregate total, as the share of each of the 9 children, including plaintiff-appellant Zenaida Castillo.

Disposing of this contention of plaintiffs-appellants, the court a quo in its order granting the motion for reconsideration of plaintiffs-appellants in part and denying it in part, said: "With respect to the other portion of ground two as well as ground three concerning the monies which Enriqueta had used in her personal investment and borrowings, the Court having adopted for this purpose the total of P153,591.69 and the plaintiff complaining that this should be reduced because the money was raised after the properties of the children had been used as collateral, the Court does not agree that the said amount should be reduced; in the mind of the Court the point is that this total sum of P153,591.69 were used by Enriqueta herself in her personal investments;" (pp. 129-130, Record on Appeal).

We agree with the above ruling of the lower court because, as pointed out by defendants-appellants, Enriqueta was the sole debtor of the loan, the use of the collaterals not being authorized by the court or the children, and as such should also be the sole benefactor thereof.

In disposing previously defendants-appellants' second assignment of error in relation to the properties under Exhibits 7, 8 and 9, We have ruled that from the total investment of P466,760.00 should be deducted the amount of P20,260.00 representing the investments made in the acquisition of the properties under Exhibits 7, 8 and 9, leaving a balance of P446,500.00. From this balance of P446,500.00 must be deducted the personal investments of Enriqueta in the sum of P153,591.69 as accepted by the lower court, giving a balance of P292,908.31 which should be divided by 9 (there being 9 children) making a quotient of P32,565.35, which is 7/100ths, more or less, of the aggregate total, as the share of each of the 9 children, including plaintiff-appellant Zenaida K. Castillo. As a result thereof, We reject plaintiffs-appellants' claim of 9/100ths and affirm the lower court's disposition of 7/100ths in its order of February 4, 1961.

With respect to the third classification of properties which are those acquired by the brothers and sisters of plaintiff-appellant Zenaida Castillo after the death of their father Ysidro Castillo and which plaintiff-appellant claims the court a quo erred in not finding that the income and the fruits of the common properties were used in the acquisition of those properties in the names of defendants-appellants (with the exception of Enriqueta Vda. de Castillo) and in consequently denying the partition of the same, We are in full agreement with the disposition by the trial court and its rationale stated thus:

"II-A--Now, however, the Court believes that it should eliminate from the right of plaintiff to demand partition, the properties acquired not by her mother but by her brothers and sisters, Horacio, Crispin, Ysidro, Jr., Lourdes, Nita, Alice and Ernesto, for the reason that there is no proof at all that the moneys with which they had acquired said properties now claimed as common by plaintiff after the death of their father, had been so acquired with fruits of the common properties to all of them adjudicated in the project of partition inasmuch that they had made use of the share of plaintiff in said fruits; it is true that there is in the evidence an indication that the mother, Enriqueta, had made Dr. Horacio Castillo her alter ego in her de facto administration after the death of her husband and even after the approval of the project of partition; but the evidence points to the effect just the same that Dr. Horacio was only such alter ego and no more and that his mother was the one that ultimately gathered the harvest; now since this is the evidence, it cannot be said with reason that plaintiff has proved that her share in the fruits of the common properties had been used by her brothers and sisters in their acquisition of these questioned properties; if as she claims in her counsel's memorandum, said brothers and sisters were in no financial position to buy said properties that alone while suspicious is no proof that they had used her money; the result will be to discard the right to partition the properties described in Exhs. 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 55, 66, 67, 68, 69, 70, 25, 26, 62, 56, 57, 58, 22, 59, 60, 61, 52,

53, 54, and 55." (Decision, pp. 104-105, Record on Appeal).

Ruling on the same point raised plaintiffs-appellants' motion for reconsideration, the lower court was correct in declaring that -

"x x x the fact that Dr. Horacio Castillo was an alter ego of the mother Enriqueta is no proof that he had used the money coming from the fruits of his own purposes; the natural presumption should be that the money coming from the fruits went to the principal and not to the agent; this will relieve Horacio; with respect to the brothers and sisters neither is there any proof at all that the money coming from the fruits of the properties are or were being used to enrich said brothers and sisters; mere suspicion cannot take the place of evidence; the Court does not agree that the situation of Dr. Horacio and his brothers and sisters is the same as that of Enriqueta, for the reason that with respect to Enriqueta there is definite proof and it is admitted by her that she had been in administration of the common property even after the closing of the probate case;" (Order of February 4, 1961, p. 129, Record on Appeal).

For the same reasons that We reject plaintiffs-appellants' second assignment of error, We find no merit to her third assignment of error. Her claim that the investments in the Tiaong Rural Bank of defendants excepting her mother Enriqueta, including the investment of P20,000.00 in the name of plaintiff-appellant Zenaida having an aggregate value of P318,950.00 were made with the fruits and income of the common properties, is not supported by factual evidence; at most, they are simply suspicions which, however, do not constitute proof. Circumstantial evidence showing gross disparity in their income and investments as well as their refusal to submit their respective income tax returns do not substantially support plaintiffs-appellants' contentions for it is her duty to establish her allegations with preponderance of evidence based on clear, competent and cogent proofs which she failed to discharge in the case at bar.

As regards the P20,000.00 shares of stock subscribed by defendant-appellant Enriqueta K. Vda. de Castillo for plaintiff-appellant Zenaida K. Castillo in the Tiaong Rural Bank, without the knowledge of the latter, the lower court disposed of it, saying: "There is no need to debate on the same since plaintiff is willing to have her share subscribed without her knowledge, surrendered unto Enriqueta," (Decision, p. 109, Record on Appeal) and in the dispositive portion of the decision ordered "2.- The stock of plaintiff in the Tiaong Rural Bank is ordered cancelled and placed in the name of Enriqueta Vda. de Castillo;" (Decision, p. 115, Record on Appeal).

Plaintiff-appellant in her Brief stated that she was willing to have these stocks cancelled and placed in her mother's name but this manifestation was made under the belief and presumption that all properties and investments, including this P20,000.00 stock, acquired with the fruits of the common properties, would be partitioned equally among the 9 children. This is manifest from her evidence and pleadings and such willingness on her part would not in any reasonable manner be taken as an intention on her part to waive her rights to said stock (Brief for Plaintiffs-Appellants, p. 25). In other words, she contends that her willingness to surrender the stocks was conditional and not absolute, to which We agree.

We note that in plaintiffs-appellants' Exhibit No. 122 listing the stockholders of the Tiaong Rural Bank as of September 30, 1960, there are also subscribed shares in the same amount of P20,000.00 in the name of Alicia K. Castillo, another P20,000.00 in the name of Lourdes K. Castillo, and another P20,000.00 in the name of Beatriz K. Castillo, all sisters of the plaintiff-appellant Zenaida K. Castillo. There is strong and cogent reason to conclude that Enriqueta K. Vda. de Castillo, the mother, intended her children Alicia, Lourdes, Beatriz and Zenaida to be the beneficiary of these stocks but with respect to Zenaida, Enriqueta has now adopted a volte face stance because of the complaint filed by Zenaida. Since there is no unequivocal and categorical waiver of her rights to said stocks, We rule that the same be maintained in her name, just as the shares of Alicia, Lourdes and Beatriz are recognized in their respective names.

Defendants-appellants under their third assignment of error maintain that the lower court erred when it denied the counterclaims of defendants-appellants. We are in full agreement with the ruling laid down by the lower court that absent any showing that the complaint was malicious and that in fact said court found the complaint meritorious to a reasonable extent, damages may not be claimed by defendants-appellants. The lower court ruled correctly when it said:

"III. - Those of the brothers and sisters hardly need any discussion; they refer to moral damages of defendants Beatriz, (answer, p. 32), Crispin (Answer, p. 62), Horacio, Lourdes, Leonor, Alicia, Ysidro, Jr. and Ernesto, (Answer, p. 35) but there is no showing that the complaint was malicious, in fact the court has found it meritorious to a reasonable extent; as to the counterclaims of the mother, Enriqueta, while it must be admitted that this case is peculiar in that it is one filed by a daughter against her own mother, that alone does not justify any counterclaim, specifically for the exemplary damages and moral damages sought to be collected since the complaint as has been said has been found to have some merit; as to the counterclaim for expenses for Zenaida's education, living maintenance, medical expenses, vacation to Hongkong and Japan for her health, the court does not see that they are proper items for counterclaim; it does not appear that they were loaned moneys from which Enriqueta had expected to be repaid; on the contrary to all indications they were spent if truly all of them were, as part of the obligation she believed herself bound to perform for her daughter; at least that is the law that the parent should support the child; as to the counterclaim for the stay of Zenaida in the apartment in Pennsylvania, there is no proof either other than the mother's uncorroborated testimony that Zenaida had agreed to pay for her stay; to all indications, once again, she was allowed to stay because she is her own child, apart from the finding already made by the Court that virtually, Zenaida was a co-owner and could therefore stay without paying; as to the counterclaim for damages allegedly suffered because Zenaida cancelled the authority by her previously given unto her mother to give their properties in security for her mother's overdraft, the Court accepts Zenaida's contention that it was her right and that being the case, the cancellation and its effect was *damnum absque injuria* as to the counterclaim for the share of Zenaida in the P60,000.00 allegedly paid by the mother unto the creditors of the intestate, and which seeks to impose upon Zenaida the payment of that share in the sum of P6,666.00, the Court once again will have to accept her contention that in the very project of partition presented by her in Special Proceeding No. 4211, Enriqueta manifested that there were no more debts; (Page 1, Project of Partition, Exh. Plff. 1); and her testimony that she had paid them after the closing of the intestate neither is clear and convincing:

x x x x x x x x

at any rate, while it may have been true that she did really pay the RFC after the closing of the intestate, as can be seen in Exh. Def. 4, the bank book of the RFC and her total debt therein satisfied after that was P17,452.53 so that 1/9 of it would be P1,939.17 and this should be shouldered by Zenaida, it should be remembered that the Court already had adjudicated unto Enriqueta the worth of all her borrowings in the total sum of P153,591.69, so that she no longer should be allowed once again to recover that from the children; x x x"

Indeed, the right of plaintiff-appellant Zenaida Castillo to demand partition is indisputable, such right being embodied in paragraph 1, Article 494 of the New Civil Code which provides thus:

"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."

With respect to Zenaida's brothers and sisters as co-owners, they were necessary parties and had to be joined as defendants in compliance with the procedural requirement embodied in Section 1, Rule 69 of the Revised Rules of Court which provides thus:

"A person having the right to compel the partition of real estate may do so as in this rule prescribed, setting

forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all the other persons interested in the property."

The finding of the trial court that the filing of the complaint in the case at bar was not malicious is a finding of fact which is binding and conclusive upon Us, thereby negating any award of damages against plaintiffs-appellants, following the ruling that it is not a sound policy to place a penalty on the right to litigate (*Koster, Inc. vs. Zulueta*, 99 Phil. 945; *Receiver for North Negros Sugar Co., Inc. vs. Ybañez*, L-22183, Aug. 30, 1968), and that in order that a person may be made liable to the payment of moral damages, the law requires that his act be wrongful. The adverse result of an action does not per se make the act wrongful and subject the actor to the payment of moral damages. The law could not have meant to impose a penalty on the right to litigate; such right is so precious that moral damages may not be charged on those who may exercise it erroneously." (*Barreto vs. Arevalo*, 99 Phil. 771).

WHEREFORE, the judgment appealed from is hereby AFFIRMED but with the modification that the stocks of plaintiff-appellant Zenaida K. Castillo in the amount of P20,000.00 in the Tiaong Rural Bank remain in her name. No pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, De Castro, and Melencio-Herrera, JJ., concur.

[1] - KASULATAN NG PAGBIBILI NG LUPA - ALAMIN NG SINO MANG MAKABABASA NG KASULATANG ITO:

Na akong ROMEO BALDEO ONA, lahing Filipino, ganap sa edad, binata, at nakatira sa Blg. 611 P. Paterno, Manila, Filipinas, sa aking sarili at sapagka kinatawan (attorney-in-fact) ng dalawa kong kapatid na sina Adelaida Baldeo Ona at Claro Baldeo Ona, alinsunod sa isang kasulatang nilagdaan nila noong ika 14 ng Abril, 1947, sa harap ng Notario Publico sa Manila, G. Mariano M. de Joya, Doc. No. 141, Page No. 45, Book No. II, Series of 1947, sa bisa at lakas ng kasulatang ito ay nagsasaysay ng sumusunod:

Na ako at ang aking nirerepresentahan sa kasulatang ito na dalawa kong kapatid na Adelaida Baldeo Ona at Claro Baldeo Ona, ay may pag-aaring isang lagay na lupang tubigan at niogan at isang bahay na tabla hierro ang bubong, at iba pang mejoras na nakatayo doon, sa nayon ng Cabay, Tiaong, Quezon, Filipinas, at kilala sa mga kabalantay na sumusunod:

ISANG LAGAY NA LUPANG TUBIGAN AT NIOGAN at isang bahay na tabla hierro ang bubong at iba pang mejoras na nakatayo doon, sa nayon ng Cabay, Tiaong, Quezon, Filipinas, na ang kabalantay sa Ilaya ay lupa nina Juan Torre, Antonio Diwatan, C. Enenias o Ananias, at E. de los Reyes; sa Silangan ay lupa ni Sinforoso Ona (now Serapia de Gala); sa Ibaba ay Malaking Ilog River, at sa Kanluran ay Malaking Ilog River, at may luang na DALAWANG DAAN ANIM NA PUO'T DALAWANG LIBO APAT NA DAAN AT DALAWAMPUO'T ISANG (262,421) metrong parisukat, humigit o kumulang; at may halagang P5,700.00 alinsunod sa Tax Declaration No. 27689 ng Tiaong, Quezon.

Na ang naulit na lupa sa itaas nito ay minana ko at ng dalawa kong kapatid na Adelaida Baldeo Ona at Claro Baldeo Ona, sa nag angkin naming Ama (adopting father) sa SINFOROSO ONA at ngayon ay patay na, alinsunod sa sunto civil No. 1859 ng Huku-mang Unang Dulugan ng Tayabas, at may pamagat na IN RE: ADOPTION OF THE MINORS ROMEO, ADELAIDA AND CLARO all surnamed BALDEO;

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Na alang alang sa halagang TATLOMPUNG LIBONG (P30,000.00) piso, salaping Filipino na kasalukuyang gastahin ngayon dito sa Filipinas, na ibinayad sa akin at tinanggap ko ngayon ng buong kasiyahan sa mag asawa ni G. YSIDRO C. CASTILLO at ENRIQUETA K. DE CASTILLO, nakatira sa Blg. 628 Calle Moret, Sampaloc, Manila, at mag asawa ni G. PAULO G. MACASAET at GABRIELA V. DE MACASAET, at nakatira sa bayan ng Los Baños, Laguna, Filipinas; at pawang mga lahing Filipino, ganap sa edad, ay aking IPINAGBIBILI, INILILIPAT at ISINASALIN ang naulit na lupa sa itaas nito, pati ang lahat ng mejoras na nakatayo doon, sa nasabing mag asawa ni G. Ysidro C. Castillo at Enriqueta K. de Castillo, at mag asawa ni G. Paulo G. Macasaet at Gabriela V. de Macasaet, at sa kani-lang mga tagapagmana, na walang ano mang sagabal (free from all liens and encumbrances).

Alamin din ng lahat na kung sakali at dumating na ang panahon na ang aking ipinag-biling lupa sa naulit na sa itaas nito ay babahangin ng mga bumili na mag asawa ni G. Ysidro C. Castillo at Enriqueta K. de Castillo, at mag asawa ni G. Paulo G. Macasaet at Gabriela V. de Macasaet, ay ang naulit na pagbabahagi ay gaganapin buhat sa Ilaya na pa Ibaba, at ang gawing Silangan ay siyang tungod sa mag asawa ni G. Ysidro C. Castillo at Enriqueta K. de Castillo, at ang gawing Kanluran naman ay siyang tungod sa mag asawa ni G. Paulo G. Macasaet at Gabriela V. de Macasaet.

Sinasaysay ko din na ang naulit na lupa ay hindi nakatala alinsunod sa Act No. 496 o sa No. 3344 man, ng Philippine Commission, o alinsunod man sa Spanish Mortgage Law, ngunit ang lupang iyon ay makikilala dahil sa ang lahat ng tabihang Ilaya at Silangan ay maypatutong buhay na madricacao; at sa gawaing Ibaba at Kanlu-ran ay Ilog na kung tawagin ay Malaking Ilog River.

SA KATUNAYAN NG LAHAT NG ITO, lumagda ako sa ibaba nito dito sa Manila, Filipinas, ngayong ika 3 ng Junio, 1947.

(LGD.) ROMEO BALDEO ONA

Sa aking Sarili, at sapagka-

Kinatawan ng aking mga kapatid

na ADELAIDA BALDEO ONA

at CLARO BALDEO ONA

Nag Bili

SA AKING KAPAHINTULUTAN:

(LGD.) ANDREA ONA

Ina ng Nagbili

NILAGDAAN SA HARAP NINA:

(LGD.) NORBERTO J. MARTINEZ

(LGD.) FIDEL J. SILVA

(DOCUMENT DULY ACKNOWLEDGED)

[2] Article 1407, Old Civil Code (Art. 160, N.C.C.)

[3] Maramba vs. de Lozano, et al., 20 SCRA 474; Bucoy vs. Paulino, 23 SCRA 249; Cobb-Perez vs. Lantin, 23 SCRA 637; Ponce de Leon vs. Rehabilitation Finance Corp., 36 SCRA 291.

[4] Decision, Record on Appeal, pps. 106-108.

[5] p. 232, Folder of Exhibits.

[6] Robinson vs. Villafuerte, 18 Phil. 171.

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