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8. Partition

1. Two Stages of the Action

1.1 First Stage – Determination of the propriety of partition

This involves a determination of whether the subject property is owned in common and whether all the co-owners are made parties in the case. The order may also require an accounting of rents and profits recovered by the defendant. This order of partition is appealable.⁴⁵⁴ If not appealed, then the parties may partition the common property in the way they want. If they cannot agree, then the case goes into the second stage. However, the order of accounting may in the meantime be executed.⁴⁵⁵

1.2 Second Stage – The actual partitioning of the subject property

This is also a complete proceeding and the order or decision is appealable.

2. Prescription of Action

Action for partition is unprescriptible for as long as the co-owners expressly or impliedly recognize the co-ownership.⁴⁵⁶ However, if a co-owner repudiates the co-ownership and makes known such repudiation to the other co-owners, then partition is no longer a proper remedy of the aggrieved co-owner. S/he should file an accion reivindicatoria which is prescriptible.⁴⁵⁷

3. Some Decisions

3.1 When there was a prior partition, the fact that the share of each co-heir has not been technically described and the title over the whole lot remains uncanceled does not negate such partition. There can be no partition again because there is no more common property.⁴⁵⁸

3.2 Oral partition of land when the same is fully consummated is valid and binding upon the parties thereto.⁴⁵⁹

454 Miranda v. Court of Appeals, No. L-33007, June 18, 1976, 71 SCRA 295.

455 De Mesa v. Court of Appeals, G. R. No. 109387, April 25, 1994, 231 SCRA 773.

456 Civil Code, Art. 494.

457 Roque v. Intermediate Appellate Court, No. L-75886, August 30, 1988, 165 SCRA 118.

458 Noceda v. Court of Appeals, G. R. No. 119730, September 2, 1999, 313 SCRA 504.

459 Crucillo v. Intermediate Appellate Court, G. R. No. 65416, October 26, 1999, 317 SCRA 351.

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