

**ADELAIDA S. MANECLANG, IN HER CAPACITY AS ADMINIS-TRATOR  
OF THE INTESTATE ESTATE OF THE LATE MARGA-RITA SURI  
SANTOS, PLAINTIFF-APPELLEE, VS. JUAN T. BAUN AND AMPARO S.  
BAUN, ET ...**

*G.R. No. L-27876. April 22, 1992*

Ponente: DAVIDE, JR., J.

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**DAVIDE, JR., J.:**

The issue presented in this case is the validity of a sale of a parcel of land by the administrator of an intestate estate made pursuant to a petition for authority to sell and an order granting it which were filed and entered, respectively, without notice to the heirs of the decedent.

The records disclose that on 12 June 1947, Margarita Suri Santos died intestate. She was survived by her husband Severo Maneclang and nine (9) children. On 30 July 1947, a petition for the settlement of her estate was filed by Hector S. Maneclang, one of her legitimate children, with the Court of First Instance at Dagupan City, Pangasinan; the case was docketed as Special Proc. No. 3028. At the time of the filing of the petition, the ages of her children were as follows:

Hector Maneclang -- 21 years old

Cesar Maneclang -- 19

Oscar Maneclang -- 17

Amanda Maneclang -- 16

Adelaida Maneclang -- 13

Linda Maneclang -- 7

Priscila Maneclang -- 6

Natividad Maneclang -- 3

Teresita Manacling -- 2

No guardian ad litem was appointed by the court for the minor children.

Margarita left several parcels of land, among which is Lot No. 203 of the Cadastral Survey of Dagupan City containing an area of 7,401 square meters, more or less, and covered by Transfer Certificate of Title No. 1393.

On 2 September 1949, Pedro M. Feliciano, the administrator of the intestate estate of Margarita, filed a petition in SP Proc. No. 3028 asking the court to give him "the authority to dispose of so much of the estate that is necessary to meet the debts enumerated" in the petition. While notice thereof was given to the surviving spouse, Severo Maneclang, through his counsel, Atty. Teofilo Guadiz, no such notice was sent to the heirs of Margarita.

On 9 September 1949, despite the absence of notice to the heirs, the intestate court issued an Order "authorizing the administrator to mortgage or sell so much of the properties of the estate for the purposes (sic) of paying off the obligations" referred to in the petition.

Pursuant to this Order, Oscar Maneclang, the new administrator of the intestate estate, executed on 4 October 1952 a deed of sale<sup>[1]</sup> in favor of the City of Dagupan, represented by its mayor, Angel B. Fernandez, of a portion consisting of 4,515 square meters of the aforementioned Lot. No. 203 for and in consideration of P11,687.50. This sale was approved by the intestate court on 15 March 1954.

The City of Dagupan immediately took possession of the land and constructed thereon a public market, known as the Perez Boulevard Public Market, at a cost of P100,000.00 more or less. It has been in continuous and uninterrupted possession of the property since the construction of the market.<sup>[2]</sup>

Some other parcels of land belonging to the intestate estate were sold by the administrator pursuant to the same authority granted by the 9 September 1949 Order.<sup>[3]</sup>

On 28 September 1965, the new judicial administratrix of the intestate estate, Adelaida S. Maneclang, daughter of the late Margarita Suri Santos, filed with the Court of First Instance of Pangasinan an action for the annulment of the sales made by the previous administrator pursuant to the Order of 9 September 1949, cancellation of titles, recovery of possession and damages against the vendees Juan T. Baun and Amparo Baun, Marcelo Operaña and Aurora Pagurayan, Crispino Tandoc and Brigida Tandoc, Jose Infante and Mercedes Uy Santos, Roberto Cabugao, Basilisa Callanta and Fe Callanta, Ricardo Bravo and Francisca Estrada, the City of Dagupan, and Constantino Daroya and Marciana Caramat<sup>[4]</sup> The complaint was docketed as Civil Case No. D-1785. The cause of action against the City of Dagupan centers around the deed of sale executed in its favor on 4 October 1952 by former judicial administrator Oscar S. Maneclang. In its Answer filed on 5 November 1965,<sup>[5]</sup> the City of Dagupan interposed the following affirmative defenses: (a) the sale in its favor is valid, legal and above board; (b) plaintiff has no cause of action against it, or that the same, if any, had prescribed since the complaint was filed thirteen (13) years after the execution of the sale; (c) plaintiff is barred by estoppel and by laches; (d) it is a buyer in good faith, and (e) it has introduced necessary and useful improvements and constructed a supermarket worth P200,000.00; hence, assuming arguendo that the sale was illegal, it has the right to retain the land and the improvements until it is reimbursed for the said improvements.

On 30 March 1966, plaintiff and the City of Dagupan entered into a Stipulation of Facts wherein they agreed on the facts earlier adverted to. They, however, agreed: (a) to adduce evidence concerning the reasonable rental of the property in question and other facts not embodied therein but which are material and vital to the final determination of the case, and (b) to request the court to take judicial notice of SP Proc. No. 3028.

The evidence adduced by plaintiff discloses that Oscar Maneclang was induced by its then incumbent Mayor, Atty. Angel B. Fernandez, to sell the property to the City of Dagupan and that the said City has been leasing the premises out to numerous tenants at the rate of P0.83 per square meter per month, or a total monthly rental of P3,747.45, since 4 October 1952.<sup>[6]</sup>

On 9 November 1966, the trial court rendered a partial decision in Civil Case No. D-1785 against the City of Dagupan, the dispositive portion of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court hereby renders judgment:

(a) Annuling (sic) the Deed of Sale executed by the Administrator on October 4, 1952 (Exh. F) being null and void ab initio;

(b) Ordering the cancellation of the Certificate of Title issued in favor of the defendant City of Dagupan by virtue

of said Deed of Sale, and directing the Register of Deeds of said City to issue a new Certificate of Title in favor of the plaintiff as Administratrix covering the property in question;

(c) Ordering the defendant City of Dagupan to restore the possession to the plaintiff in her capacity as Judicial Administratrix of the Intestate Estate of Margarita Suri Santos of the parcel of land in question, together with all the improvements thereon existing;

(d) Ordering the defendant City of Dagupan to pay the plaintiff the sum of P584,602.20 as accumulated rentals or reasonable value of the use of the property in question from October 4, 1952 up to the filing of the complaint in 1965, plus interest thereon at the rate of 6% per annum from the later date;

(e) Ordering the defendant City of Dagupan to pay a monthly rental or reasonable value of its occupation of the premises in the amount of P3,747.45 from October 9, 1965 up to the date the possession of the premises is delivered (sic) the plaintiff by said defendant, and

(f) Ordering the plaintiff to reimburse the defendant City of Dagupan the sums of P100,000.00 and P11,687.50 both amounts to be deducted from the amount due the plaintiff from said defendant.

Defendant shall also pay the costs.

SO ORDERED."[7]

In arriving at the said disposition, the trial court held that:

(a) Under Rule 90 of the Rules of Court,[8] which is similar to the provisions of Section 722 of the Code of Civil Procedure, it is essential and mandatory that the interested parties be given notices of the application for authority to sell the estate or any portion thereof which is pending settlement in a probate court. As held in the early case of *Estate of Gamboa vs. Floranza*,[9] an order issued by a probate court for the sale of real property belonging to the estate of a deceased person would be void if no notice for the hearing of the petition for such sale is given as required by said Section 722. Under this section, when such a petition is made, the court shall designate a time and place for the hearing and shall require notice of the petition and of the time and place of such hearing to be given in a newspaper of general circulation; moreover, the court may require the giving of such further notice as it deems proper.

In the instant case, no notice of the application was given to the heirs; hence, both the order granting authority to sell and the deed of sale executed in favor of the City of Dagupan pursuant thereto, are null and void.

(b) Estoppel does not lie against plaintiff as no estoppel can be predicated on an illegal act and estoppel is founded on ignorance. In the instant case, the nullity is by reason of the nonobservance of the requirements of law regarding notice; this legal defect or deficiency deprived the probate court of its jurisdiction to dispose of the property of the estate. Besides, the City of Dagupan was represented in the transaction by lawyers who are presumed to know the law. This being the case, they should not be allowed to plead estoppel; finally, estoppel cannot give validity to an act which is prohibited by law or is against public policy. [10]

(c) Laches and prescription do not apply. The deed of sale being void ab initio, it is in contemplation of law inexistent and therefore the right of the plaintiff to bring the action for the declaration of inexistence of such contract does not prescribe.[11]

(d) The City of Dagupan is not a purchaser in good faith and for value as the former judicial administrator, Oscar Maneclang, testified that he was induced by then incumbent Mayor of the City Atty. Angel B. Fernandez, and by then City Councilor Atty. Teofilo Guadiz, Sr. to sell the property; moreover, the City Fiscal signed as witness to the deed of sale. These lawyers are presumed to know the law.

Not satisfied with the decision, the City of Dagupan appealed to this Court[12] alleging that said decision is

contrary to law, the facts and the evidence on record, and that the amount involved exceeds P500,000.00.

In its Brief, the City of Dagupan submits the following assigned errors:

"FIRST ERROR

THE LOWER COURT ERRED IN HOLDING THAT THE SALE EXECUTED BY THE JUDICIAL ADMINISTRATOR TO THE CITY OF DAGUPAN IS NULL AND VOID AB INITIO.

SECOND ERROR

THE LOWER COURT ERRED IN HOLDING THAT PLAINTIFF IS NOT IN ESTOPPEL FROM ASSAILING THE LEGALITY OF THE SALE.

THIRD ERROR

THE LOWER COURT ERRED IN HOLDING THAT THE INSTANT ACTION IS NOT BARRED BY LACHES AND PRESCRIPTION.

FOURTH ERROR

THE LOWER COURT ERRED IN DECLARING THAT DEFENDANT CITY OF DAGUPAN IS NOT A PURCHASER IN GOOD FAITH AND FOR VALUE.

FIFTH ERROR

THE LOWER COURT ERRED IN ORDERING DEFENDANT CITY OF DAGUPAN TO PAY THE PLAINTIFF THE SUM OF P584,602.20 AS ACCUMULATED RENTALS OR REASONABLE VALUE OF (sic) THE USE OF THE PROPERTY IN QUESTION FROM OCTOBER 4, 1952 UP TO THE FILING OF THE COMPLAINT IN 1965, PLUS INTEREST THEREON AT THE RATE OF 6% PER ANNUM FROM THE LATER DATE.

SIXTH ERROR

THE LOWER COURT ERRED IN ORDERING THE DEFENDANT CITY OF DAGUPAN TO PAY A MONTHLY RENTAL OR, REASONABLE VALUE OF (sic) ITS OCCUPATION OF THE PREMISES IN THE AMOUNT OF P3,747.45 FROM OCTOBER 9, 1965 UP TO THE DATE THE POSSESSION OF THE PREMISES IS DELIVERED TO THE PLAINTIFF BY SAID DEFENDANT."

We shall consider these assigned errors sequentially.

1. In support of the first, appellant maintains that notice of the application for authority to sell was given to Severo Maneclang, surviving spouse of Margarita. As the designated legal representative of the minor children in accordance with Article 320 of the Civil Code, notice to him is deemed sufficient notice to the latter; moreover, after Oscar Maneclang signed the deed of sale<sup>[13]</sup> in his capacity as judicial administrator, he "sent copies of his annual report and the deed of sale to Severo Maneclang, and his brothers Hector Maneclang and Oscar Maneclang and sister Amanda Maneclang, all of legal ages (sic), while the other minor heirs received theirs through his lawyer."<sup>[14]</sup> Besides, per *Flores vs. Ang Bansing*,<sup>[15]</sup> the sale of property by the judicial administrator cannot be set aside on the sole ground of lack of notice.

These contentions are without merit.

Article 320 of the Civil Code does not apply. While the petition for authority to sell was filed on 2 September 1949, the Civil Code took effect only on 30 August 1950.<sup>[16]</sup> Thus, the governing law at the time of the filing of the petition was Article 159 of the Civil Code of Spain which provides as follows:

"The father, or in his default, the mother, shall be the legal administrator of the property of the children who are subject to parental authority."

However, the provisions of the Code of Civil Procedure on guardianship impliedly repealed those of the Civil code relating to that portion of the patria potestad (parental authority) which gave to the parents the administration and usufruct of their minor children's property; said parents were however entitled, under normal conditions, to the custody and care of the persons of their minor children.[17]

Article 320 of the present Civil Code, taken from the aforesaid Article 159, incorporates the amendment that if the property under administration is worth more than two thousand pesos (P2,000.00), the father or the mother shall give a bond subject to the approval of the Court of First Instance. This provision then restores the old rule[18] which made the father or mother, as such, the administrator of the child's property. Be that as it may, it does not follow that for purposes of complying with the requirement of notice under Rule 89 of the Rules of Court, notice to the father is notice to the children. Sections 2, 4 and 7 of said Rule state explicitly that the notice, which must be in writing, must be given to the heirs, devisees, and legatees and that the court shall fix a time and place for hearing such petition and cause notice to be given to the interested parties.

There can be no dispute that if the heirs were duly represented by counsel or by a guardian ad litem in the case of the minors, the notice may be given to such counsel or guardian ad litem. In this case, however, only the surviving spouse, Severo Maneclang, was notified through his counsel. Two of the heirs, Hector Maneclang and Oscar Maneclang, who were then of legal age, were not represented by counsel. The remaining seven (7) children were still minors with no guardian ad litem having been appointed to represent them. Obviously then, the requirement of notice was not satisfied. The requisite set forth in the aforesaid sections of Rule 89 are mandatory and essential. Without them, the authority to sell, the sale itself and the order approving it would be null and void ab initio.[19] The reason behind this requirement is that the heirs, as the presumptive owners[20] since they succeed to all the rights and obligations of the deceased from the moment of the latter's death,[21] are the persons directly affected by the sale or mortgage and therefore cannot be deprived of the property except in the manner provided by law.

Consequently, for want of notice to the children, the Order of 9 September 1949 granting the application, the sale in question of 4 October 1952 and the Order of 15 March 1954 approving the sale are all void ab initio as against said children. Severo Maneclang, however, stands on different ground altogether. Having been duly notified of the application, he was bound by the said order, sale and approval of the latter. However, the only interest which Severo Maneclang would have over the property is his right of usufruct which is equal to that corresponding by way of legitime pertaining to each of the surviving children pursuant to Article 834 of the Civil Code of Spain, the governing law at that time since Margarita Suri Santos died before the effectivity of the Civil Code of the Philippines.

2. Estoppel is unavailable as an argument against the administratrix of the estate and against the children.

As to the former, this Court, in *Boñaga vs. Soler*, supra, reiterated the rule "that a decedent's representative is not estopped to question the validity of his own void deed purporting to convey land;[22] and if this be true of the administrator as to his own acts, a fortiori, his successor can not be estopped to question the acts of his predecessor are not conformable to law." [23] Not being the party who petitioned the court for authority to sell and who executed the sale, she cannot be held liable for any act or omission which could give rise to estoppel. Under Article 1431 of the Civil Code, through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. In estoppel by pais, as related to the party sought to be estopped, it is necessary that there be a concurrence of the following requisites: (a) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to

assert; (b) intent, or at least expectation that this conduct shall be acted upon, or at least influenced by the other party; and (c) knowledge, actual or constructive of the actual facts.[24] In estoppel by conduct, on the other hand, (a) there must have been a representation or concealment of material facts; (b) the representation must have been with knowledge of the facts; (c) the party to whom it was made must have been ignorant of the truth of the matter; and (d) it must have been made with the intention that the other party would act upon it.[25]

As to the latter, considering that, except as to Oscar Maneclang who executed the deed of sale in his capacity as judicial administrator, the rest of the heirs did not participate in such sale, and considering further that the action was filed solely by the administratrix without the children being impleaded as parties plaintiffs or intervenors, there is neither rhyme nor reason to hold these heirs in estoppel. For having executed the deed of sale, Oscar Maneclang is deemed to have assented to both the motion for and the actual order granting the authority to sell. Estoppel operates solely against him.

3. As to prescription, this Court ruled in the Boñaga case that “[a]ctions to declare the inexistence of contracts do not prescribe (Art. 1410, N.C.C.), a principle applied even before the effectivity of the new Civil Code (Eugenio, et al. vs. Perdido, et al., supra., citing Tipton vs. Velasco, 6 Phil. 67, and Sabas vs. Germa, 66 Phil. 471).”

4. Laches is different from prescription. As this Court held in Nielson & Co., Inc. vs. Lepanto Consolidated Mining Co.,[26] the defense of laches applies independently of prescription. While prescription is concerned with the fact of delay, laches is concerned with the effect of delay. Prescription is a matter of time; laches is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; laches is not. Laches applies in equity, whereas prescription applies at law. Prescription is based on fixed time, laches is not.

The essential elements of laches are the following: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred.[27]

In the instant case, from the time the deed of sale in favor of the City of Dagupan was executed on 4 October 1952, up to the time of the filing of the complaint for annulment on 28 September 1965, twelve (12) years, ten (10) months and twenty-four (24) days had elapsed.

The respective ages of the children of Margarita Suri Santos on these two dates were, more or less, as follows:

Upon execution of      At the filing  
the deed of sale of the complaint  
Hector Maneclang 26 39  
Cesar Maneclang 24 37  
Oscar Maneclang 22 35  
Amanda Maneclang 21 34  
Adelaida Maneclang 18 31  
Linda Maneclang 12 25

Priscila Maneclang 11 24

Natividad Maneclang 8 21

Teresita Maneclang 7 20

It is an undisputed fact that the City of Dagupan immediately took possession of the property and constructed thereon a public market; such possession was open, uninterrupted and continuous. Obviously, Hector, Cesar, Oscar and Amanda were already of legal age when the deed of sale was executed. As it was Oscar who executed the deed of sale, he cannot be expected to renounce his own act. With respect to Hector, Cesar and Amanda, they should have taken immediate steps to protect their rights. Their failure to do so for thirteen (13) years amounted to such inaction and delay as to constitute laches. This conclusion, however, cannot apply to the rest of the children -- Adelaida, Linda, Priscila, Natividad and Teresita -- who were then minors and not represented by any legal representative. They could not have filed an action to protect their interests; hence, neither delay nor negligence could be attributed to them as a basis for laches. Accordingly, the estate is entitled to recover 5/9 of the questioned property.

5. In ruling out good faith, the trial court took into account the testimony of Oscar Maneclang to the effect that it was Mayor Fernandez of Dagupan City and Councilor Teofilo Guadiz, Sr., both lawyers, who induced him to sell the property and that the execution of the sale was witnessed by the City Fiscal.

We are unable to agree.

While the order granting the motion for authority to sell was actually issued on 9 September 1949, the same was secured during the incumbency of the then judicial administrator Pedro Feliciano. Even if it is to be assumed that Mayor Fernandez and Councilor Guadiz induced Oscar Maneclang to sell the property, the fact remains that there was already the order authorizing the sale. Having been issued by a judge who was lawfully appointed to his position, he was disputably presumed to have acted in the lawful exercise of jurisdiction and that his official duty was regularly performed.[28] It was not incumbent upon them to go beyond the order to find out if indeed there was a valid motion for authority to sell. Otherwise, no order of any court can be relied upon by the parties. Under Article 526 of the Civil Code, a possessor in good faith is one who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it; furthermore, mistake upon a doubtful or difficult question of law may be the basis of good faith. It implies freedom from knowledge and circumstances which ought to put a person on inquiry.[29] We find no circumstance in this case to have alerted the vendee, the City of Dagupan, to a possible flaw or defect in the authority of the judicial administrator to sell the property. Since good faith is always presumed, and upon him who alleges bad faith on the part of the possessor rests the burden of proof,[30] it was incumbent upon the administrator to establish such proof, which We find to be wanting. However, Article 528 of the Civil Code provides that: "Possession acquired in good faith does not lose this character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully." The filing of a case alleging bad faith on the part of a vendee gives cause for cessation of good faith.

In *Tacas vs. Tobon*,[31] this Court held that if there are no other facts from which the interruption of good faith may be determined, and an action is filed to recover possession, good faith ceases from the date of receipt of the summons to appear at the trial and if such date does not appear in the record, that of the filing of the answer would control.[32]

The date of service of summons to the City of Dagupan in Civil Case No. D-1785 is not clear from the record. Its Answer, however, was filed on 5 November 1965. Accordingly, its possession in good faith must be considered to have lasted up to that date. As a possessor in good faith, it was entitled to all the fruits of the property and was

under no obligation to pay any rental to the intestate estate of Margarita for the use thereof. Under Article 544 of the Civil Code, a possessor in good faith is entitled to the fruits received before the possession is legally interrupted. Thus, the trial court committed an error when it ordered the City of Dagupan to pay accumulated rentals in the amount of P584,602.20 from 4 October 1952 up to the filing of the complaint.

6. However, upon the filing of the Answer, the City of Dagupan already became a possessor in bad faith. This brings Us to the issue of reasonable rentals, which the trial court fixed at P3,747.45 a month. The basis therefor is the monthly earnings of the city from the lessees of the market stalls inside the Perez Boulevard Supermarket. The lessees were paying rental at the rate of P0.83 per square meter. Appellant maintains that this is both unfair and unjust. The property in question is located near the Chinese cemetery and at the time of the questioned sale, it had no access to the national road, was located "in the hinterland" and, as admitted by the former judicial administrator, Oscar Maneclang, the persons who built houses thereon prior to the sale paid only P6.00 to P8.00 as monthly rentals and the total income from them amounted only to P40.00 a month. Appellant contends that it is this income which should be made the basis for determining the reasonable rental for the use of the property.

There is merit in this contention since indeed, if the rental value of the property had increased, it would be because of the construction by the City of Dagupan of the public market and not as a consequence of any act imputable to the intestate estate. It cannot, however, be denied that considering that the property is located within the city, its value would never decrease; neither can it be asserted that its price remained constant. On the contrary, the land appreciated in value at least annually, if not monthly. It is the opinion of this Court that the reasonable compensation for the use of the property should be fixed at P1,000.00 a month. Taking into account the fact that Severo Maneclang, insofar as his usufructuary right is concerned, but only until his death, is precluded from assailing the sale, having been properly notified of the motion for authority to sell and considering further that the heirs, Hector, Cesar, Oscar and Amanda, all surnamed Maneclang, are, as discussed above, barred by laches, only those portions of the monthly rentals which correspond to the presumptive shares of Adelaida, Linda, Priscila, Natividad and Teresita, all surnamed Maneclang, to the extent untouched by the usufructuary right of Severo Maneclang, should be paid by the City of Dagupan. There is no showing as to when Severo Maneclang died; this date of death is necessary to be able to determine the cessation of his usufructuary right and the commencement of the full enjoyment of the fruits of the property by the unaffected heirs. Under the circumstances, and for facility of computation, We hereby fix the presumptive shares in the rentals of the aforementioned unaffected heirs at P500.00 a month, or at P100.00 each, effective 5 November 1965 until the City of Dagupan shall have effectively delivered to the intestate estate 5/9 of the property in question. The latter, however, shall reimburse the City of Dagupan of that portion of the real estate taxes it had paid on the land corresponding to 5/9 of the lot commencing from taxable year 1965 until said 5/9 part is effectively delivered to the intestate estate.

Pursuant to Article 546 of the Civil Code, the City of Dagupan may retain possession of the property until it shall have been fully reimbursed the value of the building in the amount of P100,000.00 and 5/9 of the purchase price amounting to P6,493.05.

WHEREFORE, judgment is hereby rendered AFFIRMING the decision in all respects, except to the extent as above modified. As modified, (a) the sale in favor of the City of Dagupan, executed on 4 October 1952 (Exhibit "F"), is hereby declared null and void; however, by reason of estoppel and laches as abovestated, only 5/9 of the subject property representing the presumptive shares of Adelaida, Linda, Priscila, Natividad and Teresita, all surnamed Maneclang, may be recovered; (b) subject, however, to its right to retain the property until it shall have been refunded the amounts of P100,000.00 and P6,493.05, the City of Dagupan is hereby ordered to reconvey to the intestate estate of Margarita Suri Santos 5/9 of the property in question, for which purpose said parties shall

cause the appropriate partition thereof, expenses for which shall be borne by them proportionately; and (c) the City of Dagupan is further ordered to pay reasonable compensation for the use of 5/9 of the property in question at the rate of P500.00 a month from 5 November 1965 until it shall have effectively delivered the possession of the property to the intestate estate of Margarita Suri Santos. Upon the other hand, said intestate estate is hereby ordered to refund to the City of Dagupan that portion of the real estate taxes the latter had paid for the lot corresponding to 5/9 thereof effective taxable year 1965 and until the latter shall have been delivered to said intestate estate.

**SO ORDERED.**

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Romero, JJ., concur.

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[1] Exhibit "F".

[2] Stipulation of Facts submitted by the parties in Civil Case No. D-1787, Record on Appeal 17-21.

[3] Id., 24.

[4] Record on Appeal, 2-11.

[5] Id., 13-17.

[6] Decision of the trial court, Record on Appeal, 32-33.

[7] Record on Appeal, 33-35.

[8] Now Rule 89.

[9] 12 Phil. 193 [1908]; see also *Boñaga vs. Soler*, 2 SCRA 755 [1961].

[10] Citing *Eugenio vs. Perdido*, L-7083, 19 May 1955.

[11] Citing Article 1410, Civil Code; *Tipton vs. Velasco*, 6 Phil. 67 [1906]; *Asturias vs. Court of Appeals*, 9 SCRA 131 [1963].

[12] Record on Appeal, 35-36.

[13] Op. cit., Exhibit "F".

[14] Brief for Appellant, 7-8.

[15] C.A.-G.R. No. 22746-R, 16 July 1959.

[16] *Lara vs. Del Rosario*, 94 Phil. 778 [1954].

[17] *Ibañez de Aldecoa vs. Hongkong and Shanghai Bank*, 30 Phil. 228 [1915].

[18] PARAS, E.L. *Civil Code of the Philippines Annotated*, vol. I, eleventh ed. 1984, 742.

[19] *Boñaga vs. Soler*, supra., citing *Arcilla vs. David*, 77 Phil. 718 [1946] and *Gabriel vs. Encarnacion*, L-6736, 4 May 1954. See also *The Estate of Luis Gamboa Carpizo vs. Floranza*, 12 Phil. 191 [1908], applying and interpreting a similar provision of the Code of Civil Procedure.

[20] *Ortaliz vs. The Registrar of Deeds of the Province of Occidental Negros*, 55 Phil. 33 [1930].

[21] *Buenaventura and Del Rosario vs. Ramos*, 43 Phil. 704 [1922].

[22] Citing *Chase vs. Cartwright*, 22 Am. St. Rep. 207, and cases cited; *Meeks vs. Olpherts*, 25 L. Ed. (U.S.) 735; 21 Am. Jur. 756, s. 667.

[23] Citing *Cf. Walker vs. Portland Savings Bank*, LRA 1915 E, p. 840; 21 Am. Jur. p. 820, s. 785.

[24] *Kalalo vs. Luz*, 34 SCRA 337 [1970].

[25] *De Castro vs. Ginete*, 27 SCRA 623 [1969].

[26] 18 SCRA 1040 [1966], citing 30 C.J.S. 522; *Pomeroy's Equity Jurisprudence*, vol. 2, 5th ed. 177.

[27] *Go Chi Gun vs. Go Cho*, 96 Phil. 622 [1955]; *Abraham vs. Recto-Kasten*, 4 SCRA 298 [1962]; *Vergara vs. Vergara*, 5 SCRA 53 [1962]; *Yusingco vs. Ong Hing Lian*, 42 SCRA 589 [1971].

[28] Section 3 (n) and (m), Rule 131, Rules of Court.

[29] TOLENTINO, A., *Civil Code of the Philippines*, vol. II, 1983 ed., 217.

[30] Article 527, Civil Code.

[31] 53 Phil. 356 [1929].

[32] TOLENTINO, *op. cit.*, 226.

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