

EUGENIO TORNILLA, PETITIONER-APPELLEE, VS. TEODORICA FUENTESPINA, MANUEL, ANA, RICARDO, DOMICIANO, JR., AND ORLANDO, ALL SURNAMED TORNILLA, OPPOSITORS-APPELLANTS.*G.R. No. L-24230. January 17, 1968*

Ponente: BENGZON, J.P., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d5208d3039eb/>**BENGZON, J.P., J.:**

A parcel of registered land, Lot No. 88, Bacolod Cadastre, was under co-ownership among the four children of the deceased Esteban Tornilla, who inherited it from him. Said children, named Domiciano, Caridad, Fernando and Eugenia, on April 6, 1934 transferred the title of the land to their names. Transfer Certificate of Title No. RT-1978 (17312) was issued in their favor as co-owners, pro indiviso, in equal shares of one-fourth each.

On July 15, 1964, Caridad transferred her share to her co-owner Eugenia. The deed of quitclaim that Caridad executed was annotated on the back of the title certificate. Domiciano and Fernando died. Fernando's heirs who succeeded him to his one-fourth share in Lot No. 88, transferred their one-fourth share to Domiciano's heirs. Said lot, therefore, became owned in common by Eugenia, with a share of one-half, and the heirs of Domiciano, with a share of one-half.

A subdivision plan was made and approved by the Director of Lands, proposing to divide the lots into Lots 88-A and 88-B, with subplot 88-A allocated to Eugenia and subplot 88-B to Domiciano's heirs. Subsequently, a petition was filed on October 23, 1964 with the registration court (Court of First Instance of Negros Occidental) for partial cancellation of the present title certificate and the issuance of a new title certificate over subplot 88-A in the name of Eugenia. Said petition, filed by Eugenia carried the signed conformity of Fernando's heirs (who had agreed to waive their one-fourth share in favor of Domiciano's heirs).

The petition was opposed, on November 6, 1964, by Domiciano's heirs, who alleged that the subdivision plan was made without their knowledge or consent and is unfair to them because subplot 88-B includes a portion of land (320 sq. meters) purportedly conveyed by decedent Esteban Tornilla to Mariano Yulo on February 4, 1918, as allegedly evidenced by an unregistered deed of sale which they discovered after Esteban's death. It was further alleged by oppositors that in view of their serious objection, the case is controversial and thus a new title certificate cannot be had thru the summary proceedings under Section 112 of Act 496, such as the petition in question.

On November 7, 1964, the registration court issued an order requiring oppositors to file the necessary complaint - to show that there really was a controversial issue - within ten (10) days, or else it would proceed with the hearing of the petition.

The ten-day period lapsed without any complaint filed by oppositors as ordered by the court. It thereupon, on motion of petitioner, proceeded with the reception of petitioner's evidence. And thereafter on December 2, 1964, it granted the petition, approving the subdivision and ordering the Register of Deeds of Negros Occidental to partially cancel Transfer Certificate of Title No. RT-1978 (17312) covering Lot 88 and to issue a new title

certificate for subplot 88-A in petitioner's name. From this, oppositors appealed directly to this Court, upon a point of law.

Does the objection raised by appellants render a petition under Section 112 of Act 496, improper?

Section 112 of Act 496 allows cancellation of certificate of title upon petition by a registered owner (or co-owner) when, among other specific grounds, registered interests have terminated and new ones have arisen or upon any other reasonable ground. This section may be availed of by co-owners to subdivide and partition registered land under co-ownership^[1] and secure issuance of separate certificates for the segregated portion.

For such a petition to prosper, however, the law requires that there must be "unanimity" among the parties. If not, the case would be controversial and should be litigated in an ordinary action where the incident at issue, properly pertains.^[2] And "unanimity" among the parties has been clarified to mean lack of serious objection on the part of a party in interest.^[3]

Now, appellants' claim of lack of knowledge of the subdivision plan is not supported by any evidence. Their unsupported claim will not prevail over the presumption of regularity and performance of official duty (Sec. 5[1], Rule 131, Rules of Court). The subdivision plan having been approved by the Director of Lands, notice to all parties concerned is presumed in the absence of contrary evidence.

Appellants contend that even assuming they had knowledge of the subdivision, the same is unfair to them because, as stated, the portion assigned to them, subplot 88-B, includes a part purportedly sold by the decedent to, a third person in 1918. Appellants' objection, based on said alleged unregistered sale, is not serious in nature. Assuming it is true, still none of the registered co-owners, including appellants, could be adversely affected. The portion purportedly sold was part of duly registered land. The sale has never been registered up to now. The supposed buyer has raised no claim to the portion of land supposedly sold. The decedent's four children started claiming the land as their own way back in 1934 when they obtained title certificate thereto (pro indiviso) in their names. Any right of the supposed buyer would appear to have definitely prescribed or lapsed thru inaction. Since said alleged buyer does not appear to be in a position to still legally bother oppositors, and have in fact not bothered the co-owners thru all these years, said interest on the supposed buyer's part cannot provide a serious objection to resisting the subdivision of the lot and issuance of separate title certificates over the sublots, under Section 112 of Act 496.

And, moreover, the court a quo gave appellants sufficient opportunity to show that they have tendered a serious objection by allowing them to file the necessary complaint (action for partition or to remove cloud on title), but they failed to avail thereof. This renders very clear the fact that their objection is not serious, for they themselves were not inclined to act thereon.

WHEREFORE, the appealed order granting the petition for partial cancellation of title certificate and issuance of new one, is hereby affirmed. Costs against appellants.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] See *Gov't. v. Serafica*, 61 Phil. 93.

[2] *Tanganan v. Republic*, 94 Phil. 171; *Puguid v. Reyes*, L-21311, Aug. 10, 1967.

[3] Enriquez v. Atienza, 100 Phil. 1072; Zabaljuarregui v. Luzon Surety, L-16251, Aug. 31, 1963.

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