

CELSA L. VDA. DE KILAYKO, ENCARNACION L. VDA. DE PANLILIO AND REMEDIOS L. VDA. DE GUINTO, PETITIONERS, VS. HON. JUDGE ERNESTO TENGCO OF THE COURT OF FIRST INSTANCE OF NEGROS OCC...

G.R. No. L-45425. March 27, 1992

Ponente: ROMERO, J.

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ROMERO, J.:

These consolidated cases seek to annul the orders[1] dated September 20, 1976, January 7, 1977 and January 31, 1977 of the then Court of First Instance of Negros Occidental, Branch IV, respectively, cancelling the notice of lis pendens filed by Celsa L. Vda. de Kilayko, et al. with the Register of Deeds of Negros Occidental, denying the motion for reconsideration of the order dated September 20, 1976 filed by Celsa L. Vda. de Kilayko, et al., and holding in abeyance the resolution of defendants' motion to dismiss.

The undisputed facts of the case are as follows:

On November 20, 1962, the late Maria Lizares y Alunan executed a "Testamento"[2] which contains among its provisions, the following:

DECIMA - Asimismo, ordeno y dispongo que mi participacion consistente en una tercera parte (1/3) de una catorce (1/14) avas partes proindivisas de la Hda. Minuluan, que he adquirido mediante permuta de mi hermano Dr. Antonio A. Lizares, se adjudique, como por el presente se adjudica, a mi sobrina Eustaquia Lizares; ENTENDIENDOSE, sin embargo, que en el caso de que mi citada sobrina. Eustaquia Lizares muera soltera o sin descendientes legitimos, mi referida participacion en la Hda. Minuluan se adjudicara a mi hermano Antonio A. Lizares que me sobrevivan.

UNDECIMA - Tambien ordeno y dispongo que el resto de todas mis propiedades, incluyendo mis participaciones, derechos e intereses (no dispuestos mas arriba) en las Haciendas "Minuluan" (Lotes Nos. 439, 403, 1273, 1274, 1278, 1279 y 1280 del Catastro de Talisay, Negros Occidental) y "Matabang" (Lotes Nos. 514, 550, 552, 553 y 1287-C del Catastro de Talisay, Negros Occidental), situadas en el Municipio de Talisay, Provincia de Negros Occidental, I.F., el resto de mis acciones en la Central Talisay-Silay Milling Co., Inc. (unas 2,860 acciones) y de la Financing Corporation of the Philippines (unas 53,636 acciones), registradas a mi nombre y no heredadas de mi difunta madre Dña. Enrica A. Vda. de Lizares, mis acciones en la Central Bacolod-Murcia Milling Co., Inc., Negros Navigation Co. y otras Companias Mineras, y todos los demas bienes no mencionados en este testamento y que me pertenezcan en la fecha de mi muerte, se adjudiquen, como por el presente adjudico, a mi sobrina Srta. Eustaquia Lizares, hija de mi difunto hermano Don Simplicio Lizares, en reconocimiento de los valiosos servicios y cuidados que mi citada sobrina me ha prestado y signe prestandome hasta ahora. Ordeno, sin embargo, a mi referida sobrina, Srta. Eustaquia Lizares, que ella se haga cargo de pagar todas las obligaciones que tengo y que gravan sobre las propiedades adjudicadas a la misma. Asimismo ordeno a mi citada sobrina que ella mande celebrar una Misa Gregoriana cada año en sufragio de mi alma, y misas ordinarias en sufragio de las almas de mi difunto Padre y de mi difunta Madre, el 6 de Marzo y 17 de Diciembre de cada año, respectivamente, y mande celebrar todos los años la fiesta de San Jose en

Talisay como lo hago hasta ahora. En el caso de, que mi citada sobrina, Srta. Eustaquia Lizares, falleciere sin dejar descendientes legitimos, ordeno y dispongo que mi participacion consistente en una sexta parte (1/6) de la Hda. Matab-ang, con su correspondiente cuota de azucar, y otros mejoras, se adjudique a mis hermanas y hermano antes mencionados y que me sobrevivan (Underscoring supplied)

On January 28, 1968, Maria Lizares y Alunan died without any issue leaving said "testamento" in the possession and custody of her niece, Eustaquia Lizares.[3] On February 6, 1968, Eustaquia filed a petition for the settlement of the testate estate of Maria Lizares y Alunan, before the Court of First Instance of Negros Occidental, Branch IV, docketed as Special Proceedings No. 8452.[4]

The required publication of the notice of hearing of the petition having been made, in due course, the probate court issued an order declaring the will probated and appointing Eustaquia as the executrix of the estate of Maria Lizares.[5]

On July 10, 1968, Eustaquia filed a project of partition[6] which was granted by the probate court in an order dated January 8, 1971. Simultaneously, said court declared the heirs, devisees, legatees and usufructuaries mentioned in the project of partition as the only heirs, devisees, legatees and usufructuaries of the estate; adjudicated to them the properties respectively assigned to each and every one of them, and ordered the Register of Deeds of Negros Occidental and Bacolod City to effect the corresponding transfer of the real properties to said heirs as well as the transfer of shares, stocks, and dividends in different corporations, companies and partnerships in the name of Maria Lizares to the heirs and legatees, and the closure of the testate proceedings of Maria Lizares.[7]

Thereafter, Eustaquia filed an urgent motion to reopen the testate proceedings in order that some properties of Maria Lizares which had been omitted in the partition be adjudicated to her.[8] The Court granted the motion and correspondingly reopened the testate proceedings. It adjudicated to Eustaquia certain shares of stocks, a revolving fund certificate, plantation credits and sugar quota allocations, and real or personal properties of Maria Lizares which were not given by her to any other person in her last will and testament.[9]

On November 28, 1972, the heirs of Maria Lizares, namely: Encarnacion L. Vda. de Panlilio, Remedios L. Vda. de Guinto, Felicidad Paredes Llopez, Rosario Paredes Mendoza and Eustaquia Lizares executed an agreement of partition and subdivision, thereby terminating their co-ownership over Lots Nos. 550, 514, 553, 1287-C of plan SWO-7446, and 552, all of the Cadastral Survey of Talisay covered by Transfer Certificates of Title Nos. T-65004, T-65005, T-65006, T-65007, and T-65008.[10]

A year later or on November 23, 1973, Eustaquia Lizares died single without any descendant.[11] In due time, Rodolfo Lizares and Amelo Lizares were appointed joint administrators of Eustaquia's intestate estate.

On the strength of the testamentary provisions contained in paragraphs 10 and 11 of the will of Maria Lizares, which were allegedly in the nature of a simple substitution, Celsa Vda. de Kilayko, Encarnacion Vda. de Panlilio, and Remedios Vda. de Guinto (hereinafter collectively referred to as Celsa L. Vda. de Kilayko, et al.) filed a motion in Special Proceedings No. 8452 to reopen once again the testate estate proceedings of Maria Lizares. They prayed among others that a substitute administrator be appointed; that the order dated January 8, 1971 be reconsidered and amended by declaring them as heirs to 1/3 of 1/14 of Hda. Minuluan and to 1/6 of Hda. Matab-ang, both of which form an aggregate area of 33 hectares; that the Register of Deeds of Negros Occidental, after such amendment, be ordered to register at the back of their respective certificates of title, the order of probate and a "declaration" that movants are the heirs of said properties, and correspondingly issue new certificates of title in their names.[12]

Two (2) sets of intestate heirs of the deceased Eustaquia Lizares namely: Socorro L. Vda. de Escario, Rodolfo

Lizares, Mario Lizares, Lucrecia Gustilo, and Aurora Lizares Wagner op-posed the aforesaid motion. They alleged that the court had no more jurisdiction to reopen the testate estate proceedings of Maria Lizares as the order of closure had long become final and that the testamentary provisions sought to be enforced are null and void.[13]

On April 6, 1974, the Court issued an order denying the motion to reopen the testate proceedings and holding that inas-much as the settlement of an estate is a proceeding in rem, the judgment therein is binding against the whole world. It observed that inspite of the fact that the movants knew that the court had jurisdiction over them, they did not take part in the pro-ceedings nor did they appeal the order of January 8, 1971. Thus, the court concluded, even if the said order was erroneous, and since the error was not jurisdictional, the same could have been corrected only by a regular appeal. The period for filing a motion for reconsideration having expired, the court opined that the movants could have sought relief from judgment under Rule 38 of the Rules of Court, but unfortunately for the movants, the period for filing such remedy had also elapsed.[14]

Celsa L. Vda. de Kilayko, et al. then filed a motion for reconsideration of said order. It was denied on June 17, 1974.[15] Hence, on October 14, 1974, the said movants filed a complaint for recovery of ownership and possession of real property against the joint administrators of the estate of Eustaquia Lizares, Rodolfo and Amelo Lizares. It was docketed as Civil Case No. 11639 with the then Court of First Instance of Negros Occidental, Branch IV.[16] On the same date, they availed of their rights under Rule 14, Section 24 of Rules of Court by filing a notice of lis pendens with the Register of Deeds of Negros Occidental.[17]

As duly appointed judicial joint administrators of the estate of the late Eustaquia Lizares, Rodolfo Lizares and Amelo Lizares (the joint administrators for brevity), filed a motion to dismiss alleging that the court had no jurisdiction over the subject matter or nature of the case; the cause of action was barred by prior judgment, and the complaint stated no cause of action.[18] This motion was opposed by the plaintiffs.

On January 23, 1975, the joint administrators filed a motion for the cancellation of the notice of lis pendens on the conten-tions that there existed exceptional circumstances which justified the cancellation of the notice of lis pendens and that no prejudice would be caused to the plaintiffs.[19] The latter opposed said motion. The defendants having filed a reply thereto, the plaintiffs filed a rejoinder reiterating their arguments in their opposition to the motion for cancellation of notice of lis pendens.[20]

On September 20, 1976, respondent judge issued an order granting the motion for cancellation of notice of lis pendens.[21] The court simultaneously held in abeyance the resolution of the motion to dismiss the complaint.

The joint administrators filed their answer to the complaint in Civil Case No. 11639.[22] Thereafter, they filed a motion for preliminary hearing on affirmative defenses.[23] Celsa L. Vda. de Kilayko, et al. vigorously opposed said motion.[24]

On November 3, 1976, Celsa L. Vda. de Kilayko, et al. filed a motion praying for the reconsideration of the order dated September 20, 1976.[25] The joint administrators having filed an opposition thereto,[26] on January 7, 1977 the lower court denied the aforesaid motion for reconsideration.[27] It held that while a notice of lis pendens would serve as notice to strangers that a particular property was under litigation, its annotation upon the certificates of title to the properties involved was not neces-sary because such properties, being in custodia legis, could not just be alienated without the approval of the court. Moreover, the court added, a notice of lis pendens would prejudice any effort of the estate to secure crop loans which were necessary for the viable cultivation and production of sugar to which the properties were planted.

Upon receipt of a copy of said order, Celsa L. Vda. de Kilayko, et al. filed in this Court a motion for extension of

time to file a petition for review on certiorari. Docketed as G.R. No. L-45425, the petition contends that the grounds of *lis pendens*, namely, that the properties are in *custodia legis* and the lending institutions would not grant crop loans to the estate, are not the legal grounds provided for under Sec. 24, Rule 14 of the Rules of Court for the cancellation of a notice of *lis pendens*.

Meanwhile, on January 31, 1977, the lower court issued an order stating that since on September 21, 1976 it had held in abeyance the resolution of the motion to dismiss, it was also proper to suspend the resolution of the affirmative defenses interposed by the defendants until after trial on the merits of the case. Accordingly, the court set the date of pre-trial for March 24, 1977.[28]

On April 13, 1977, the joint administrators filed before this Court a petition for certiorari, prohibition and/or mandamus with prayer for a writ of preliminary injunction. It was docketed as G.R. No. L-45965. Petitioners contend that the lower court had no jurisdiction over Civil Case No. 11639 as it involves the interpretation of the will of Maria Lizares, its implementation and/or the adjudication of her properties. They assert that the matter had been settled in Special Proceedings No. 8452 which had become final and unappealable long before the complaint in Civil Case No. 11639 was filed, and therefore, the cause of action in the latter case was barred by the principle of *res judicata*. They aver that the claim of Celsa, Encarnacion and Remedios, sisters of Maria Lizares, over the properties left by their niece Eustaquia and which the latter had inherited by will from Maria Lizares, was groundless because paragraphs 10 and 11 of Maria's will on which Celsa L. Vda. de Kilayko, et al. base their claim, conceived of a fideicommissary substitution of heirs. Petitioners contend that said provisions of the will are not valid because under Article 863 of the Civil Code, they constitute an invalid fideicommissary substitution of heirs.

On April 26, 1977, this Court issued a temporary restraining order enjoining the lower court from further proceeding with the trial of Civil Case No. 11639.[29] After both G.R. Nos. L-45425 and L-45965 had been given due course and submitted for decision, on January 20, 1986, the two cases were consolidated.

The petition in G.R. No. L-45965 is impressed with merit.

In testate succession, there can be no valid partition among the heirs until after the will has been probated.[30] The law enjoins the probate of a will and the public requires it, because unless a will is probated and notice thereof given to the whole world, the right of a person to dispose of his property by will may be rendered nugatory.[31] The authentication of a will decides no other question than such as touch upon the capacity of the testator and the compliance with those requirements or solemnities which the law prescribes for the validity of a will.[32]

Pertinent to the issue interposed by the petitioners in G.R. No. L-45965 is Section 1, Rule 90 of the Rules of Court which reads:

Section 1. When order for distribution of residue made. - When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

No distribution shall be allowed until the payment of the obligations above-mentioned has been made or

provided for, unless the distributees, or any of them give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs."

Applying this rule, in the cases of *De Jesus v. Daza*,^[33] and *Torres v. Encarnacion*,^[34] the Court said:

"x x x (T)he probate court, having the custody and control of the entire estate, is the most logical authority to effectuate this provision, within the estate proceeding, said proceeding being the most convenient one in which this power and function of the court can be exercised and performed without the necessity of requiring the parties to undergo the inconvenience and litigate an entirely different action."

Some decisions of the Court pertinent to the issue that the probate court has the jurisdiction to settle the claims of an heir and the consequent adjudication of the properties, are worth mentioning. In the cases of *Arroyo v. Gerona*,^[35] and *Benedicto v. Javellana*,^[36] this Court said:

"x x x any challenge to the validity of a will, any objection to the authentication thereof, and every demand or claim which any heir, legatee or party interested in a testate or intestate succession may make, must be acted upon and decided within the same special proceedings, not in a separate action, and the same judge having jurisdiction in the administration of the estate shall take cognizance of the question raised, inasmuch as when the day comes he will be called upon to make distribution and adjudication of the property to the interested parties x x x." (Underscoring supplied)

The probate court, in the exercise of its jurisdiction to distribute the estate, has the power to determine the proportion or parts to which each distributee is entitled x x x.^[37] A project of partition is merely a proposal for the distribution of the hereditary estate which the court may accept or reject. It is the court that makes that distribution of the estate and determines the persons entitled thereto.^[38]

In the instant case, the records will show that in the settlement of the testate estate of Maria Lizares, the executrix, Eustaquia Lizares submitted on January 8, 1971, a project of partition in which the parcels of land, subject matters of the complaint for reconveyance, were included as property of the estate and assigned exclusively to Eustaquia as a devisee of Maria Lizares. In accordance with said project of partition which was approved by the probate court, Encarnacion Lizares Vda. de Panlilio, Remedios Lizares Vda. de Guinto, Felicidad Paredes Llopez, Rosario Paredes Mendoza and Eustaquia Lizares executed an Agreement of Partition and Subdivision on November 28, 1972, whereby they agreed to terminate their co-ownership over Lots Nos. 550, 514, 553, 1287-C of SWO-7446 and 552 covered by Transfer Certificates of Title Nos. T-65004, T-65005, T-65006, T-65007 and T-65008. These facts taken altogether show that the Lizares sisters recognized the decree of partition sanctioned by the probate court and in fact reaped the fruits thereof.

Hence, they are now precluded from attacking the validity of the partition or any part of it in the guise of a complaint for reconveyance. A party cannot, in law and in good conscience be allowed to reap the fruits of a partition, agreement or judgment and repudiate what does not suit him.^[39] Thus, where a piece of land has been included in a partition and there is no allegation that the inclusion was effected through improper means or without petitioner's knowledge, the partition barred any further litigation on said title and operated to bring the property under the control and jurisdiction of the court for its proper disposition according to the tenor of the partition.^[40] The question of private respondents' title over the lots in question has been concluded by the partition and became a closed matter.

The admission made by Celsa L. Vda. de Kilayko, et al. in their complaint, Civil Case No. 11639, that Eustaquia had been in possession of the questioned lots since March 2, 1971 up to the time of her death indicates that the distribution pursuant to the decree of partition has already been carried out. Moreover, it cannot be denied that when Celsa L. Vda. de Kilayko, et al. moved for the reopening of the testate estate proceedings of Maria Lizares,

the judicial decree of partition and order of closure of such proceedings was already final and executory, the then reglementary period of thirty (30) days having elapsed from the time of its issuance, with no timely appeal having been filed by them. Therefore, they cannot now be permitted to question the adjudication of the properties left by will of Maria Lizares, by filing an independent action for the reconveyance of the very same properties subject of such partition.

A final decree of distribution of the estate of a deceased person vests the title to the land of the estate in the distributees. If the decree is erroneous, it should be corrected by opportune appeal, for once it becomes final, its binding effect is like any other judgment in rem, unless properly set aside for lack of jurisdiction or fraud. Where the court has validly issued a decree of distribution and the same has become final, the validity or invalidity of the project of partition becomes irrelevant.[41]

It is a fundamental concept in the origin of every jural system, a principle of public policy, that at the risk of occasional errors, judgments of courts should become final at some definite time fixed by law, interest rei publicae ut finis sit litum. "The very object of which the courts were constituted was to put an end to controversies." [42] The only instance where a party interested in a probate proceeding may have a final liquidation set aside is when he is left out by reason of circumstances beyond his control or through mistake or inadvertence not imputable to negligence. Even then, the better practice to secure relief is the opening of the same by proper motion within the reglementary period, instead of an independent action, the effect of which if successful, would be for another court or judge to throw out a decision or order already final and executed and reshuffle properties long ago distributed and disposed of.[43]

The fundamental principle upon which the doctrine of res judicata rests is that parties ought not to be permitted to litigate the same issue more than once, that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[44]

All the requisites for the existence of res judicata are present. Thus, the order approving the distribution of the estate of Maria Lizares to the heirs instituted in said will has become final and unappealable; the probate court that rendered judgment had jurisdiction over the subject matter and over the parties; the judgment or orders had been rendered on the merits; the special proceedings for the settlement of the estate of Maria Lizares was a proceeding in rem that was directed against the whole world including Celsa L. Vda. de Kilayko, et al., so that it can be said that there is a similarity of parties in Special Proceedings No. 8452 and Civil Case No. 11639, the judicial administrators of Eustaquia being privy to Celsa L. Vda. de Kilayko, et al.; there is identity of subject matter involved in both actions, namely, the properties left by Maria Lizares; there is identity of causes of action because in the first action there was a declaration of the probate court in its order dated April 6, 1974, that although the testatrix intended a fideicommissary substitution in paragraphs 10 and 11 of her will, the substitution can have no effect because the requisites for it to be valid, had not been satisfied.[45]

Granting that res judicata has not barred the institution of Civil Case No. 11639, the contention of Celsa L. Vda. de Kilayko, et al. that they are conditional substitute heirs of Eustaquia in the testate estate of Maria Lizares[46] is not meritorious. While the allegation of the joint administrators that paragraphs 10 and 11 of Maria Lizares' last will and testament conceives of a fideicommissary substitution under Article 863 of the Civil Code is also baseless as said paragraphs do not impose upon Eustaquia a clear obligation to preserve the estate in favor of Celsa L. Vda. de Kilayko, et al., neither may said paragraphs be considered as providing for a vulgar or simple substitution.

It should be remembered that when a testator merely names an heir and provides that if such heir should die a

second heir also designated shall succeed, there is no fideicommissary substitution. The substitution should then be construed as a vulgar or simple substitution under Art. 859 of the Civil Code but it shall be effective only if the first heir dies before the testator.[47] In this case, the instituted heir, Eustaquia, survived the testatrix, Maria Lizares. Hence, there can be no substitution of heirs for, upon Maria Lizares' death, the properties involved unconditionally devolved upon Eustaquia. Under the circumstances, the sisters of Maria Lizares could only inherit the estate of Eustaquia by operation of the law of intestacy.

With respect to the cancellation of the notice of lis pendens on the properties involved, there is no merit in the contention of Celsa L. Vda. de Kilayko, et al., that the lower court acted contrary to law and/or gravely abused its discretion in cancelling the notice of lis pendens. The cancellation of such a precautionary notice, being a mere incident in an action, may be ordered by the court having jurisdiction over it at any given time.[48] Under Sec. 24, Rule 14 of the Rules of Court, a notice of lis pendens may be cancelled "after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded"[49] In this case, the lower court ordered the cancellation of said notice on the principal reason that the administrators of the properties involved are subject to the supervision of the court and the said properties are under custodia legis. Therefore, such notice was not necessary to protect the rights of Celsa L. Vda. de Kilayko, et al. More so in this case where it turned out that their claim to the properties left by Eustaquia is without any legal basis.

WHEREFORE, the petition for review on certiorari in L-45425 is hereby DENIED but the petition for certiorari and prohibition and/or mandamus in L-45965 is GRANTED. The temporary restraining order of April 26, 1977 which was issued by the Court in L-45965 is made PERMANENT. Costs against the petitioners in L-45425.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, and Davide, Jr., JJ., concur.
Feliciano, J., on leave.

[1] Issued by Judge Ernesto S. Tengco.

[2] Rollo of L-45965, p. 27; Annex A, pp. 2-3.

[3] Ibid, p. 31; Annex B, p. 1.

[4] Ibid, p. 5.

[5] Ibid, p. 31; Annex B, p. 1.

[6] Ibid, p. 49.

[7] Ibid, p. 35; Annex C, pp. 1-2.

[8] Ibid, p. 37; Annex D, p. 1.

[9] Ibid, p. 37; Annex D, pp. 1-2.

[10] Ibid, p. 39; Annex E, pp. 1-7.

[11] Ibid, p. 5.

[12] Ibid, p. 46; Annex F, pp. 1-7.

[13] Ibid, p. 62; Annex H, p. 4.

- [14] Ibid, p. 59; Annex H, pp. 9-10.
- [15] Ibid, p. 84; Annex J, pp. 1-2.
- [16] Rollo, p. 8.
- [17] Rollo of L-45425, p. 11.
- [18] Rollo of L-45965, p. 101; Annex L, p. 17.
- [19] Rollo of L-45425, p. 50; Annex D, pp. 2-3.
- [20] Ibid, p. 13.
- [21] Ibid, p. 15.
- [22] Rollo of L-45965, p. 155; Annex O, pp. 1-6.
- [23] Ibid, p. 165; Annex P, pp. 1-2.
- [24] Ibid, p. 163; Annex Q, p. 1.
- [25] Rollo of L-45425, p. 8.
- [26] Ibid, p. 12.
- [27] Ibid, p. 17.
- [28] Rollo of L-45965, p. 167.
- [29] Ibid, p. 169.
- [30] Ralla v. Judge Untalan, G.R. Nos. 63253-54, 172 SCRA 858, April 27, 1989; RULES OF COURT, Rule 75, sec. 1.
- [31] Maninang v. Court of Appeals, G.R. No. 57848, 144 SCRA 478, June 19, 1982.
- [32] Ibid.
- [33] G.R. L-353, August 1, 1946, 43 O.G. 2055 (June, 1947).
- [34] 89 Phil. 678 (1951).
- [35] 54 Phil. 909 (1930)
- [36] 10 Phil. 197 (1908).
- [37] Solivio v. Court of Appeals, G.R. No. 83484, 182 SCRA 119, February 12, 1990.
- [38] Reyes v. Barretto-Datu, L-17818, 19 SCRA 85, January 25, 1967; Camia de Reyes v. Ilano, 63 Phil. 639 (1936).
- [39] Torres v. Encarnacion, 89 Phil. 678 (1951).
- [40] Ralla v. Judge Untalan, *supra*, p. 11.
- [41] Reyes v. Barretto-Datu, *supra*, p. 13.
- [42] Dy Cay v. Crossfield and O'Brien, 38 Phil. 521 (1981).

[43] Vda. de Alberto v. Court of Appeals, L-29759, 173 SCRA 436, May 18, 1989.

[44] Philippine National Bank v. Barretto, 52 Phil. 818 (1929).

[45] See: Asuncion v. Pineda, L-47924, 174 SCRA 719, July 31, 1989.

[46] Respondents' Memorandum, L-45965, p. 15; Rollo, p. 303.

[47] Tolentino, Civil Code of the Philippines, Vol. III, 1987 ed., p. 216 citing 6 Manresa 143-144.

[48] Magdalena Homeowners Association, Inc. v. Court of Appeals, G.R. No. 60323, 184 SCRA 325, April 17, 1990.

[49] RULES OF COURT, Rule 14, sec. 24; Pres. Decree No. 1529 (1978), sec. 77.

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