

TIRSO D. MONTEROSO, Petitioner, vs. COURT OF APPEALS, SOLEDAD, MONTEROSO-CAGAMPANG, REYGULA MONTEROSO-BAYAN, BRION, PERFECTO L. CAGAMPANG, SR., SOFIA PENDEJITO VDA. DE, MONTEROS...*G.R. No. 105608. April 30, 2008*

Ponente: VELASCO JR., J.

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Before us are two petitions for review under Rule 45, the first docketed as G.R. No. 105608, and the second docketed as G.R. No. 113199, both assailing the Decision[1] dated March 31, 1992 of the Court of Appeals (CA) in CA-G.R. CV No. 15805 which modified the June 9, 1987 Decision[2] of the Regional Trial Court (RTC), Branch 4 in Butuan City in Civil Case Nos. 1292 and 1332.

The Facts

It is not unusual. Acrimonious litigation between and among siblings and immediate relatives over inheritance does occur. It is unfortunate when the decedent had, while still alive, taken steps to precisely avoid a bruising squabble over inheritance.

In a sense, Don Fabian B. Monteroso, Sr., a former justice of the peace and municipal mayor of Cabadbaran, Agusan del Norte, started it all. During his lifetime, Don Fabian married twice and sired eight children, four from each union.

In 1906, Don Fabian married Soledad Doldol. Out of this marriage were born Soledad, Reygula, Benjamin, and Tirso. On April 8, 1927, Soledad Doldol Monteroso passed away.

A little over a year later, Don Fabian contracted a second marriage with Sofia Pendejito. From this union were born Florenda, Reynato, Alberto, and Fabian, Jr.

After the death of his first wife, but during the early part of his second marriage, Don Fabian filed before the Court of First Instance (CFI) of Agusan an intestate proceeding for the estate of his deceased first wife, Soledad D. Monteroso, docketed as Special Proceeding (SP) No. 309, apparently to obviate any dispute over the inheritance of his children from his first marriage. Subsequently, the CFI received--and later approved per an Orden[3] (Order) dated March 11, 1936--a Proyecto de Particion[4] (Project of Partition) dated February 21, 1935.

The partition in SP No. 309 covered Parcels F-1 to F-5, and adjudicated to Don Fabian the whole of Parcels F-1, F-2, and F-3, and one-half of Parcel F-5, while the intestate estate of Soledad D. Monteroso comprised the whole of Parcel F-4 and one-half of Parcel F-5. The intestate estate of Soledad D. Monteroso was partitioned and distributed to her four children in equal shares.

Subsequently, a Mocion[5] (Motion) was filed for the delivery to Soledad D. Monteroso's four children, her legal heirs, their respective shares in her intestate estate, as adjudicated among them under the duly CFI-approved Project of Partition.

In the meantime, the children of Don Fabian from his first marriage married accordingly: The eldest, Soledad to Atty. Perfecto Cagampang, Sr.; Reygula to Jose Bayan; Benjamin to Mauricia Nakila; and Tirso to Melecia Taña. Benjamin died on February 1, 1947 leaving behind four children with wife Nakila, namely: Ruby, Marlene, Adelita, and Henrieto. A year and a half later, or on October 26, 1948, Don Fabian also passed away.

Before and shortly after Don Fabian's demise, conveyances involving certain of parcels thus mentioned were purportedly made.

The following is an illustration of the lineal relation of the parties or the family tree of the direct descendants of Don Fabian from his two marriages:

This brings us to the objects of the squabble: the conjugal patrimonies of Don Fabian from his two successive marriages.

During the lifetime of Don Fabian, the following properties were acquired, viz:

PARCEL F-ONE

A parcel of coconut plantation on sitio Pandanon, Cabadbaran, Agusan described as follows: North by the property of Telesforo Ago and Gregorio Cupay; East by Miguel Y Climaco Cabonce, Isidro Maamo and Buenaventura Sandigan and Pandanon River, and West by Gregorio Axamin, Alex Fores and Ventura Sandigan with a superficial extension of 10 has. 62 ares and 42 centares.

PARCEL F-TWO

A parcel of coconut land situated on sitio Pandanon, Cabadbaran, Agusan, with a superficial extension of 6 hectares, 50 ares bearing Tax No. 14801 of the Municipality of Cabadbaran, Agusan, x x x.

PARCEL F-THREE

A parcel of coconut land under Tax No. 17167 situated on sitio Calibunan, Cabadbaran, Agusan with superficial extension of 8 hectares and 34 centares x x x.

PARCEL F-FOUR

A parcel of coconut land under Tax No. 14600 situated on sitio Pandanon, Cabadbaran, Agusan, with a superficial extension of 27 hectares, 96 ares and 28 centares x x x.

PARCEL F-FIVE

A parcel of residential lot under Tax No. 18477 situated within the Poblacion of the Municipality of Cabadbaran, Agusan, with a house of strong materials found on the same lot with a superficial extension of 660 square meters x x x.

PARCEL F-SIX

A parcel of residential lot under Tax No. 5374 situated within the Poblacion of the Municipality of Cabadbaran, Agusan, with a superficial extension of 3,890 square meters x x x.

PARCEL F-SEVEN

A parcel of coconut and corn land under Tax No. 1769 situated at Ambahan, Tubay, Agusan, with a superficial extension of 8 hectares x x x.

PARCEL F-EIGHT

A parcel of coconut land situated at Ambahan, Tubay, Agusan, under Tax No. 2944, with a superficial extension of 7 hectares, 59 ares and 96 centares x x x.[6]

PARCEL S-ONE

A parcel of land situated at Tagbongabong, Cabadbaran, Agusan under Tax Dec. No. 5396 with an area of 24 hectares more or less x x x.

PARCEL S-TWO

A parcel of coconut land situated at Dal-as, Bay-ang, Cabadbaran, Agusan under Tax No. 69 with an area of 24 hectares more or less x x x.

PARCEL S-THREE

A parcel of coconut land situated at Pandanon, Mabini, Cabadbaran, Agusan, under Tax No. 21639 with an area of 1.4080 hectares more or less x x x.

PARCEL S-FOUR

A parcel of land situated at Mabini, Cabadbaran, Agusan under Tax No. 3367 with an area of 1,000 sq. m. bounded x x x.[7]

The "F" designation signified that the covered properties were acquired during the first marriage, to distinguish them from those acquired during the second marriage which are designated as "S" properties.

On July 28, 1969, the children of the late Benjamin D. Monteroso, namely: Ruby Monteroso, Marlene M. Pospos, Henrieto Monteroso, and Adelita Monteroso-Berenguel, filed with the RTC a Complaint for Recovery of Property with Damages against their uncle, Tirso D. Monteroso. Docketed as Civil Case No. 1292, and later raffled to Branch 4 of the court, the complaint involved a portion of Parcel F-4, described in the Project of Partition, as follows:

- (1) One parcel of coconut land with the improvements thereon existing, Tax No. 14600 with a superficial extension of 6 hectares, 99 ares and 32 centares, bounded as follows: on the North, Regula Monteroso; on the East by the Provincial Road Butuan-Cabadbaran; on the South Tirso Monteroso and on the West Diego Calo.[8]

As the heirs of Benjamin alleged in their complaint, their uncle, Tirso, was entrusted with the above-described one-fourth portion of Parcel F-4 as part of the share from the estate of Soledad D. Monteroso allotted to their father per SP No. 309. However, their uncle refused to surrender and deliver the same when they demanded such delivery upon their reaching the majority age.

Tirso countered that the portion pertaining to Benjamin was never entrusted to him; it was in the possession of their sister, Soledad Monteroso-Cagampang, who was not entitled to any share in Parcel F-4, having previously opted to exchange her share in said property for another parcel of land, i.e., Parcel F-7, then being occupied by her.

On April 14, 1970, Tirso, in turn, filed a Complaint for Partition and Damages with Receivership docketed as Civil Case No. 1332, involving 12 parcels of land (i.e., Parcels F-1 to F-8 and Parcels S-1 to S-4, mentioned

above) against his stepmother, Pendejito, and all his full and half-siblings and/or their representatives. The complaint in Civil Case No. 1332 was subsequently amended to include Perfecto, as co-defendant, and Pendejito, as guardian ad litem for the minor children of Fabian P. Monteroso, Jr., who died in 1970 after the filing of the complaint.

In Civil Case No. 1332, Tirso, inter alia, alleged the following: (1) the aforementioned 12 parcels of land belong to the conjugal partnerships of the first and second marriages contracted by Don Fabian; (2) SP No. 309, which purportedly judicially settled the intestate estate of his mother, is null and void for the reason that the project of partition failed to comprehend the entire estate of the decedent as Parcels F-6, F-7, and F-8 were excluded, thereby depriving Tirso of his one-fourth share or legitime over the said three parcels of land; and (3) Parcels S-1 to S-4, having been acquired during the second marriage of Don Fabian, are not paraphernal properties of Sofia Pendejito Vda. de Monteroso.

Answering, the defendants in Civil Case No. 1332 contended that Don Fabian acquired Parcel F-6 during the second marriage, while Parcels F-7 and F-8 were Don Fabian's exclusive properties having been acquired through a donation from the heirs of one Benito Tinosa. They further maintained the validity of the judicial partition under SP No. 309 which operates as res judicata insofar as Parcels F-1 to F-5 are concerned. In particular, they asserted that Parcels F-1, F-2, F-3, and one-half of F-5 were adjudicated to Don Fabian as his share in the conjugal partnership of the first marriage, while Parcel F-4 and the other half of Parcel F-5 were equally divided among the four children of the first marriage; that during his lifetime, Don Fabian sold Parcels F-1, F-2, F-3, F-7, and F-8 to Soledad Monteroso-Cagampang; that Soledad Monteroso-Cagampang, Tirso D. Monteroso, and Mauricia Nakila Vda. de Benjamin Monteroso donated Parcel F-6 to Reygula Monteroso-Bayan; and that Parcels S-1 to S-4 are truly paraphernal properties of Sofia Pendejito Vda. de Monteroso as Parcel S-1 was acquired by her through a homestead patent, Parcel S-2 through adverse possession, and Parcels S-3 and S-4 by purchase.

The Initial Ruling of the RTC

Involving practically the same properties and parties, Civil Case Nos. 1292 and 1332 were consolidated and jointly heard. After a long drawn-out trial spanning almost 15 years, with six different judges successively hearing the case, the RTC, presided by Judge Miguel Rallos, rendered on July 22, 1985 a Decision,^[9] dismissing Civil Case No. 1292 on the ground of failure to state a cause of action, but finding, in Civil Case No. 1332, for Tirso.

What appears to be a victory for Tirso was, however, short-lived. Acting on four separate motions for reconsideration duly filed by the various defendants in Civil Case No. 1332, a new judge, who took over the case from Judge Rallos who inhibited himself from the case, rendered a new decision.

The Subsequent Ruling of the RTC

Dated June 9, 1987, the new Decision set aside the July 22, 1985 RTC Decision of Judge Rallos and gave due course to both Civil Case Nos. 1292 and 1332. In full, the fallo of the new decision reads:

WHEREFORE, premises considered, both complaints in Civil Cases No. 1292 and 1332 are hereby given due course and judgment is hereby rendered as follows:

- Declaring, confirming and ordering that Lot 380, Pls-736 located at Pandanon, Cabadbaran, belongs to the children of first marriage and partitioned as per subdivision survey map made by Geodetic Engineer Antonio Libarios, Exh. `7', page 72 of the records as follows:

(a.)

Lot 380-A, Share of Soledad Monteroso Cagampang with an area of 5.3376 hectares, with technical description therein;

(b.)

Lot 380-B, Share of Reygula Monteroso Bayan with an area of 5.3376 hectares, with technical description therein;

(c.)

Lot 380-C, Share of the Heirs of Benjamin D. Monteroso with an area of 5.3376 hectares with technical description therein;

(d.)

Lot 380-D, Share of Tirso D. Monteroso with an area of 5.3376 hectares and Lot 351, Pls-736 with an area of 6,099 sq. meters, with both technical description therein;

- It is hereby ordered that Tirso D. Monteroso must deliver, return, relinquish, cede, waive and/or quit claim immediately the area of 3.7815 hectares being portion of Lot 380-C, Pls-736 indicated in the subdivision survey plan by Engr. Libarios, page 72, Records, Civil Case No. 1292, Folio 2, Exh. "V", to the Heirs of Benjamin D. Monteroso who are absolute owners of Lot 380-C, Pls-736 and to pay, return and deliver immediately to the said Heirs of Benjamin D. Monteroso the net income in arrears from 1948 to 1983, the total sum of Two Hundred Sixty Thousand Eight Hundred Forty Four and 70/100 (P260,844.70) Pesos with interest of 12% per annum compounded annually from January 1, 1984 up to the present and until fully paid;

- It is hereby ordered that Reygula Monteroso Bayan must deliver, return, relinquish, cede, waive and/or quit claim immediately the area of 1.6128 hectares which is part of Lot 380-C, Pls-736, indicated in the subdivision survey plan by Engr. Libarios, page 72, Records (Civil Case No. 1292, Folio 2), Exh. `V', to the Heirs of Benjamin D. Monteroso who are the absolute owners of Lot 380-C, Pls-736 and to pay, return and deliver immediately to the said Heirs of Benjamin D. Monteroso the net income in arrears from 1948 to 1983 the total sum of One Hundred Six Thousand Nine Hundred Sixty and 40/100 (P106,960.40) Pesos with interest of 12% per annum compounded annually from January 1, 1984 up to the present and until fully paid;

- It is hereby ordered that Soledad Monteroso Cagampang must deliver, return, relinquish, cede, waive and/or quit claim immediately the area of 1.0929 hectares being portion of Lot 380-C, Pls-736, indicated in the subdivision survey plan by Engr. Libarios, page 72, Records (Civil Case No. 1292, Folio 2), Exh. `V', to her sister Reygula Monteroso Bayan who is the absolute owner of Lot 380-C, Pls-736 and to pay, return and deliver immediately to the said Reygula Monteroso Bayan the net income in arrears from 1948 to 1983, the total sum of Seventy Seven Thousand Six Hundred Twenty Five and 96/100 (P77,625.96) Pesos with interest of 12% per annum compounded annually from January 1, 1984 up to the present and until fully paid, subject to deduction of whatever cash advances, if any, was ever received by Reygula M. Bayan.

- The three alleged Absolute Sale, Exh. `C', `D' and `E' with all its submarkings are declared fictitious, simulated and no consideration. It can never be considered a donation because aside from being inofficious and impairing the legitime of other heirs, the vendee had not signed therein which could be considered acceptance and above all, these documents were prepared and acknowledged by Notary Public squarely disqualified and highly prohibited. Therefore, all are declared null and void and of no legal effect.

So, parcels F-1, F-2, F-3, F-6, F-7 and F-8 [remain] as part of the intestate estate of Don Fabian B. Monteroso, Sr.

- The Register of Deeds and the Provincial Assessor, both in the Province of Agusan del Norte are hereby ordered to cancel as the same are cancelled and nullified, all transfer of certificates and tax declarations now in the name of Soledad Monteroso de Cagampang and Atty. Perfecto L. Cagampang, Sr. which parcels of land originally were registered and declared in the name of Don Fabian B. Monteroso, Sr., and to register and declare again in the name of Heirs of Don Fabian B. Monteroso, Sr., more particularly the following:

(a.)

[TCT No. RT-203] (420) for Lot 432, Cad. 121, with an area of 10.0242 hectares under Tax Dec. No. 02-018-0224, Series of 1980, PIN-02-019-05-050 known as Parcel F-1;

(b.)

TCT No. RT-205 (424) for Lot 100, Cad. 121, with an area of 1.9083 hectares under Tax Dec. No. 02-019-0488, Series of 1980, PIN-02-019-08-002 known as F-2;

(c.)

TCT No. RT-204 (423) for Lot 103, Cad. 121, with an area of 2.8438 hectares under Tax Declaration No. 02-019-0335, Series of 1980, PIN-02-019-08-017 known as F-2;

(d.)

Parcel of coconut land located at Poblacion, Cabadbaran, known as F-3 with area of 6.3100 hectares under Tax Dec. No. 02-001-1810, Series of 1980 and PIN-02-001-30-027;

(e.)

Residential Lot, known as F-5 located at Poblacion, Cabadbaran under Tax Dec. No. 18447 then under Tax Dec. No. 1922, containing an area of 660 sq. meters bounded on the North by Washington Street; on the East by Progreso Street; on the South by Rizal Street; and on the West by Ramon Cabrera.

(f.)

Residential Lot known as F-6 located at Poblacion under Tax Dec. No. 5374, Series of 1949 and Tax Dec. No. 499, Series of 1954, consisting of 3,890 sq. meters bounded as follows:

North

-

Andres Atega

South

-

Rill

East

-

Luis Jamboy now Celestino Udarbe,

Sixto Ferrer and New Road

West

-

Atega Street;

(g.)

Coconut land known as F-7, located at Ambajan, Tubay, Agusan del Norte under Tax Dec. No. 1769, Series of 1955 and Tax Dec. No. 10-03-0273, Series of 1980 with an area of [8.000] hectares;

(h.)

Parcel of coconut land known as F-8, located at Ambajan, Tubay, Agusan del Norte with an area of 7.5996 hectares under Tax Dec. No. 2944 and Tax Dec. No. 10-03-0273, Series of 1980;

(i.)

Parcel of S-1, located at Tagbongabong, Cabadbaran under Tax Dec. No. 11506, Series of 1963 with an area of 24 hectares in the name of Sofia Vda. de Monteroso;

(j.)

Parcel of S-2, located at Dal-as, Bay-ang, Cabadbaran, under Tax Dec. No. 1888, Series of 1948, Tax Dec. No. 669, Series of 1952, and subsequently transferred in fraud of other heirs, in the name of Florenda P. Monteroso under Tax Dec. No. 11507, Series of 1964, Tax Dec. No. 3381, Series of 1972, Tax Dec. No. 5036, Series of 1974, Tax Dec. No. 02-006-0047, Series of 1980;

(k.)

Parcel of S-3, located at Pandanon, Mabini, Cabadbaran, under Tax Dec. No. 5373, Series of 1949 with an area of 1.4080 hectares and bounded as follows:

North

-

Pandanon River

South

-

Crisanto Dolleroso

East

-

Pandanon River

West

-

Pandanon River and Peregrino Aznar;

(l.)

Parcel S-4, located at Mabini, Cabadbaran, under Tax Dec. No. 3367 with an area of 1.6500 hectares and bounded as follows:

North

-

Hrs. of G. Corvera

South

-

C. Vda. de Alburo

East

-

Ellodoro Delleroso

West

-

A. Ventura

- It is hereby declared that upon the death of Don Fabian B. Monteroso, Sr. on March 26, 1948, the following are the properties belonging to his intestate estate:

(a.)

Whole parcel Lot 432, F-1;

(b.)

Whole parcels Lot 100 and 103, F-2;

(c.)

Whole parcel cocoland, Calibunan, F-3;

(d.)

One-half (1/2) parcel F-5;

(e.)

One-half (1/2) parcel F-6;

(f.)

One-half (1/2) parcel F-7;

(g.)

One-half (1/2) parcel F-8;

(h.)

One-half (1/2) parcel S-1;

(i.)

One-half (1/2) parcel S-2;

(j.)

One-half (1/2) parcel S-3;

(k.)

One-half (1/2) parcel S-4.

- It is hereby ordered that Lot 432 under TCT [No.] RT-203 (420) with an area of 10.0242 hectares under Tax Dec. No. 02-018-0224 (1980) is hereby divided into nine (9) equal shares for the eight (8) children of Don Fabian B. Monteroso and the one-ninth (1/9) share be held in usufruct by the widow Sofia Pendejito Monteroso during her lifetime.

Sofia Pendejito Monteroso being in possession and enjoying the fruits or income of F-1 is hereby ordered to pay and deliver immediately to the following heirs the corresponding amount of net income of F-1, Lot 432, from 1948 to 1983:

(a.)

To Soledad Monteroso Cagampang - P78,521.32

(b.)

To Reygula Monteroso Bayan - P78,521.32

(c.)

To Hrs. of Benjamin D. Monteroso - P78,521.32

(d.)

To Tirso D. Monteroso - P78,521.32

(e.)

To Florenda P. Monteroso - P78,521.32

(f.)

To Reynato P. Monteroso - P78,521.32

(g.)

To Alberto P. Monteroso - P78,521.32

(h.)

To Hrs. of Fabian P. Monteroso, Jr. - P78,521.32

The above-mentioned [amounts] shall be subject to deduction for whatever cash advance any heir may have received. Then the net balance of said [amounts] shall be subject to interest at the rate of twelve percent (12%) per annum compounded annually from January 1, 1984 to the present until fully paid.

- It is hereby ordered that Lot 100 under [TCT No. RT-205] (424) with an area of 1.9083 hectares under Tax Dec. No. 02-019-0488, Series of 1980 and Lot No. 103 under [TCT No. RT-204] (423) with an area of 2.8438 hectares and under Tax Dec. No. 02-019-0335, Series of 1980, [both known as Parcel F-2,] shall be divided into nine (9) equal shares for the eight (8) children of Fabian B. Monteroso, Sr. and one-ninth (1/9) share shall be held in usufruct by the widow, Sofia P. Monteroso, during her lifetime.

Soledad Monteroso Cagampang and Atty. Perfecto L. Cagampang, Sr. are ordered to deliver to [their] co-heirs their shares in these parcels of land, F-2, free from any lien and encumbrances whatsoever, and to pay each of

them the net income in arrears from 1948 to 1983, namely:

(a.)

To Reygula Monteroso Bayan - P34,976.85

(b.)

To Hrs. of Benjamin D. Monteroso - P34,976.85

(c.)

To Tirso D. Monteroso - P34,976.85

(d.)

To Florenda P. Monteroso - P34,976.85

(e.)

To Reynato P. Monteroso - P34,976.85

(f.)

To Alberto P. Monteroso - P34,976.85

(g.)

To Hrs. of Fabian P. Monteroso, Jr. - P34,976.85

(h.)

To Sofia P. Monteroso (usufruct) - P34,976.85

The above-mentioned [amounts] shall be subjected to deduction of whatever amount any heir may have received by way of cash advances.

The net amount shall be subjected to an interest at the rate of twelve percent (12%) per annum compounded annually from January 1, 1984 to the present or until fully paid.

- Soledad Monteroso Cagampang and Atty. Perfecto L. Cagampang, Sr. being in possession and enjoying the fruits and income of Parcel F-3, are hereby ordered to pay to the following heirs, the net income in arrears from 1948 to 1983:

(a.)

To Reygula Monteroso Bayan - P49,727.35

(b.)

To Hrs. of Benjamin D. Monteroso - P49,727.35

(c.)

To Tirso D. Monteroso - P49,727.35

(d.)

To Florenda P. Monteroso - P49,727.35

(e.)

To Reynato P. Monteroso - P49,727.35

(f.)

To Alberto P. Monteroso - P49,727.35

(g.)

To Hrs. of Fabian P. Monteroso, Jr. - P49,727.35

(h.)

To Sofia P. Monteroso (usufruct) - P49,727.35

The above-mentioned [amounts] shall be subject to deduction for whatever cash advance, if any, such heir may have received. Then the net [amounts] shall be subject to interest at the rate of twelve percent (12%) per annum compounded annually from January 1, 1984 to the present until fully paid.

Soledad Monteroso Cagampang and Atty. Perfecto L. Cagampang, Sr. are both ordered to deliver to the above-mentioned co-heirs their respective shares free from any lien and encumbrances whatsoever.

- Parcels F-5, F-6, F-7 and F-8 are declared real properties belonging to the first marriage. Hence one-half (1/2) of each of these four parcels shall equally be divided by the four (4) children of the first marriage and the other half must be divided into nine (9) equal shares for the eight (8) children of Fabian B. Monteroso, Sr., and one-ninth (1/9) shall be held in usufruct by the widow, Sofia Pendejito Vda. de Monteroso.

Therefore, it is hereby ordered that F-6 is divided as follows:

(a.)

To Soledad Monteroso Cagampang - - - - 702 sq. m.

(b.)

To Reygula Monteroso Bayan - - - - - 702 sq. m.

(c.)

To Hrs. of Benjamin D. Monteroso - - - - 702 sq. m.

(d.)

To Tirso D. Monteroso - - - - - 702 sq. m.

(e.)

To Florenda P. Monteroso - - - - - 216 sq. m.

(f.)

To Reynato P. Monteroso - - - - - 216 sq. m.

(g.)

To Alberto P. Monteroso - - - - - 216 sq. m.

(h.)

To Hrs. of Fabian Monteroso, Jr. - - - - - 216 sq. m.

(i.)

To Sofia P. Monteroso - - - - - 216 sq. m.

- It is hereby ordered, that Soledad Monteroso Cagampang and Atty. Perfecto L. Cagampang, Sr. must deliver to all heirs their respective shares on F-7 and F-8 including usufruct of Sofia P. Monteroso as declared in paragraph five (5) and in addition, must pay and deliver the net income in arrears from 1948 to 1983, summarized as follows:

(a.)

To Reygula Monteroso Bayan - - - - P189,665.88

(b.)

To Hrs. of Benjamin D. Monteroso - - P189,665.88

(c.)

To Tirso D. Monteroso - - - - - P189,665.88

(d.)

To Florenda P. Monteroso - - - - - P 58,358.73

(e.)

To Reynato P. Monteroso - - - - - P 58,358.73

(f.)

To Alberto P. Monteroso - - - - - P 58,358.73

(g.)

To Hrs. of Fabian Monteroso, Jr. - - - - P 58,358.73

(h.)

To Sofia P. Monteroso (usufruct) - - - - P 58,358.73

all with interest at the rate of twelve percent (12%) per annum compounded annually from January 1, 1984 to the present until fully paid. However, it is subject to deduction of whatever cash advances, if ever any heir, may have received.

- The Deed of Donation in 1948, Exh. "F", over parcel known as F-5, is declared null and void because the same was prepared and acknowledged before a Notary Public disqualified and prohibited to do so under Notarial Law (Barretto vs. Cabreza, 33 Phil. Reports 112). Hence, the transfer of tax declaration is hereby ordered cancelled and the same must be declared again in the name of the Heirs of Fabian B. Monteroso, Sr. and ordered partitioned in the proportion stated in paragraph eleven (11) hereof.

- Parcels of land known as S-1, S-2, S-3 and S-4 are declared conjugal properties of the second marriage. Hence, one-half (1/2) thereof belongs to Sofia Pendejito Monteroso and one-half (1/2) shall be equally divided into nine (9) shares for the eight (8) children of Don Fabian B. Monteroso, Sr. where the one-ninth (1/9) shall be held in usufruct by Sofia P. Monteroso during her lifetime.

- For the net income in arrears of S-1 located at Tagbongabong, Cabadbaran, from 1948 to 1983, Sofia Pendejito Monteroso is hereby ordered to pay and deliver to the following heirs the corresponding share:

(a.)

To Soledad Monteroso Cagampang - - P93,998.12

(b.)

To Reygula Monteroso Bayan - - - - P93,998.12

(c.)

To Hrs. of Benjamin D. Monteroso - - P93,998.12

(d.)

To Tirso D. Monteroso - - - - - P93,998.12

(e.)

To Florenda P. Monteroso - - - - - P93,998.12

(f.)

To Reynato P. Monteroso - - - - - P93,998.12

(g.)

To Alberto P. Monteroso - - - - - P93,998.12

(h.)

To Hrs. of Fabian P. Monteroso, Jr. - - P93,998.12

However, all these amounts shall be subject to deduction, if any cash advance was ever made or received by any heir.

The above-mentioned [amounts are] subject to an interest at the rate of twelve percent (12%) compounded annually from January 1, 1948 to the present until fully paid.

- The alleged Deed of Absolute Sale executed by Sofia P. Monteroso in favor of Florenda P. Monteroso over a coconut land located at Dal-as, Bay-ang, Cabadbaran, consisting of 24 hectares is hereby declared null and void being in fraud of other heirs. It is clearly inofficious and impairs the legitime of her brothers, sisters and nephews and nieces. Therefore, the tax declaration in the name of Florenda P. Monteroso under Tax Dec. No. 11507, Series of 1964, Tax Dec. No. 3381, Series of 1972, Tax Dec. No. 5036, Series of 1974 and Tax Dec. No. 02-006-0047, PIN-02-006-02-002 are hereby ordered cancelled and the said land shall be declared again in the name of Heirs of Fabian B. Monteroso.

Sofia Pendejito Monteroso is not required to render accounting as to the income of S-2 because the coconut trees therein were planted by her while being already a widow. One-half (1/2) of the land where the coconut trees are planted shall be her share and the other one-half (1/2) shall be divided into nine (9) shares for the eight (8) children of Fabian B. Monteroso including her 1/9 usufruct thereon.

- Sofia Pendejito Monteroso is hereby ordered to pay and deliver immediately the net income in arrears of parcel S-3 located at Pandanon to the following heirs with the corresponding amount:

(a.)

To Soledad Monteroso Cagampang - - P49,349.02

(b.)

To Reygula Monteroso Bayan - - - - P49,349.02

(c.)

To Hrs. of Benjamin D. Monteroso - - P49,349.02

(d.)

To Tirso D. Monteroso - - - - - P49,349.02

(e.)

To Florenda P. Monteroso - - - - - P49,349.02

(f.)

To Reynato P. Monteroso - - - - - P49,349.02

(g.)

To Alberto P. Monteroso - - - - - P49,349.02

(h.)

To Hrs. of Fabian P. Monteroso, Jr. - - P49,349.02

However, [the] above-mentioned [amounts] shall be subject to deductions, if any cash advance was ever made or received by any heir.

Then the net amount receivable shall be subject to an interest at the rate of twelve percent (12%) compounded annually from January 1, 1984 to the present until fully paid.

- For the net income in arrears of parcel S-4, located at Mabini, Cabadbaran, from 1948 to 1983, Sofia P. Monteroso is hereby ordered to pay and deliver to the following heirs their corresponding shares:

(a.)

To Soledad Monteroso Cagampang - - P6,477.54

(b.)

To Reygula Monteroso Bayan - - - - P6,477.54

(c.)

To Hrs. of Benjamin D. Monteroso - - P6,477.54

(d.)

To Tirso D. Monteroso - - - - - P6,477.54

(e.)

To Florenda P. Monteroso - - - - - P6,477.54

(f.)

To Reynato P. Monteroso - - - - - P6,477.54

(g.)

To Alberto P. Monteroso - - - - - P6,477.54

(h.)

To Hrs. of Fabian P. Monteroso, Jr. - - P6,477.54

However, all these amounts shall be subject to deductions, if any cash advance was ever made or received by any heir.

The above-mentioned amount is subject to an interest at the rate of twelve percent (12%) compounded annually from January 1, 1984 to the present until fully paid.

Sofia Pendejito Monteroso is ordered to deliver to the above-mentioned heirs their respective shares free from any lien and encumbrances whatsoever.

- These cases involved inheritance, hence the Bureau of Internal Revenue (BIR) of Agusan del Norte at Butuan City is hereby notified for prompt, proper and appropriate action. Likewise, the Provincial Treasurer of Agusan del Norte and the Municipal Treasurers of Cabadbaran and Tubay are hereby informed and reminded for their prompt, proper and appropriate action in the assessment and collection of real estate taxes including transfer's tax.

- That all the heirs are hereby directed, and ordered to pay all taxes due in favor of the Government of the Republic of the Philippines within thirty (30) days from the finality of judgment hereof, otherwise, upon proper application or manifestation by appropriate or concerned government agency, a portion of the intestate estate of Don Fabian B. Monteroso, Sr., shall be sold at public auction for such purpose.

- Under Civil Case No. 1292, Tirso D. Monteroso or his heirs, assigns and successors-in-interest, is hereby ordered to pay Ruby Monteroso, Marlene Monteroso-Pospos, Adelita Monteroso-Berenguel and Henrieto Monteroso the following sums of money:

(a.)

P10,000.00 for moral damages;

(b.)

P10,000.00 for exemplary damages;

(c.)

P3,000.00 for costs of suit; and

(d.)

P10,000.00 for attorney's fees.

- Under Civil Case No. 1292, Soledad Monteroso de Cagampang and Reygula Monteroso Bayan are hereby ordered jointly and severally to pay Ruby Monteroso, Marlene Monteroso-Pospos, Adelita Monteroso-Berenguel and Henrieto Monteroso the following sums of money:

(a.)

P10,000.00 for moral damages;

(b.)

P10,000.00 for exemplary damages;

(c.)

P2,000.00 for costs of suit; and

(d.)

P10,000.00 for attorney's fees.

- Under Civil Case No. 1332, Soledad Monteroso Cagampang, Atty. Perfecto L. Cagampang, Sr. and Sofia Pendejito Vda. de Monteroso or their heirs, assigns and successors-in-interest, are hereby ordered to pay jointly and severally, unto and in favor of Tirso D. Monteroso or his heirs, assigns and successors-in-interest, the following sums of money:

(a.)

P20,000.00 for moral damages;

(b.)

P20,000.00 for exemplary damages;

(c.)

P5,000.00 for costs of suit; and

(d.)

P10,000.00 for attorney's fees.

- It is hereby ordered that a judicial administrator of the intestate estate of Don Fabian B. Monteroso, Sr. shall be appointed by this Court upon written recommendation by all the parties within thirty (30) days from promulgation of this decision. Should the parties fail to submit unanimously a recommendee, the Court at its discretion may appoint an administrator, unless none of the parties appeal this decision and this judgment is complied with by all the parties and/or so executed in accordance with the provisions of the New Rules of Court.

SO ORDERED.[10]

As regards Civil Case No. 1292, the RTC found that the heirs of Benjamin have indeed been deprived of their inheritance which corresponds to one-fourth share due their father from the intestate estate of their grandmother, Soledad D. Monteroso. Thus, the court ordered the equal distribution of Parcel F-4, i.e., Lot 380, Pls-736 located in Pandanon, Cabadbaran, Agusan del Norte, among the children of the first marriage of Don Fabian, and partitioned it based on the subdivision survey map prepared by a geodetic engineer.

Turning on the alleged sale of Parcels F-1, F-2, F-3, F-7, and F-8 by Don Fabian to Soledad Monteroso-Cagampang, the RTC found the covering three deeds of absolute sale[11] to be null and void for the reason that the alleged conveyances were fictitious, simulated, and/or without sufficient consideration. Alternatively, the RTC ruled that the conveyances, even if considered as donation, would be inofficious for impairing the legitime of the other compulsory heirs, not to mention the lack of due acceptance of the donation by Soledad Monteroso-Cagampang. Adding a vitiating element to the conveyances, as the RTC noted, was the fact

that the corresponding documents were prepared by and acknowledged before Perfecto, who happened to be the husband of the alleged vendee, Soledad Monteroso-Cagampang.

The RTC also declared as null and void the donation of Parcel F-5 to Reygula Monteroso-Bayan owing to clear legal infirmities attaching to the covering deed of donation.[12] For one, the parcel in question, while purportedly donated free from any liens or encumbrance, was in fact the subject of a deed of absolute sale between Don Fabian and the Cagampang spouses. For another, one of the signatory-donors, Mauricia Nakila, Benjamin's widow, did not have the right to effect a donation because she was not a compulsory heir of her husband by representation. The RTC added that the real owners of the rights and interests of Benjamin over Parcel F-5 are her children as representative heirs.

Finally, the RTC declared the Order dated March 11, 1936 issued in SP No. 309 approving the Project of Partition to be valid, and that it constitutes *res judicata* on the affected properties, i.e., Parcel F-4 and one-half of Parcel F-5, which were equally distributed to the heirs of Soledad D. Monteroso. Pursuing this point and on the finding that Parcels F-1 to F-8 were acquired during the first marriage and Parcels S-1 to S-4 during the second, the RTC thus held that Don Fabian's intestate estate consisted of the whole of Parcels F-1, F-2, and F-3; and half of Parcels F-5 to F-8 and half of Parcels S-1 to S-4, to be distributed in accordance with the law on intestate succession. This means, the RTC concluded, that the estate shall descend to Don Fabian's compulsory heirs and their representatives, as in the case of the late Benjamin and Fabian, Jr., subject to accounting of the income or produce of the subject properties for the applicable period, less advances made or received by any heir, if any.

The Ruling of the CA

From the above June 9, 1987 Decision, Tirso, defendant in Civil Case No. 1292, appealed to the CA, so did the Cagampang spouses, defendants in Civil Case No. 1332. The other defendants in Civil Case No. 1332, namely: Sofia Pendejito Vda. de Monteroso, Florenda Monteroso, Alberto Monteroso, Heirs of Fabian Monteroso, Jr., Reynato Monteroso, and Reygula Monteroso-Bayan, also interposed their own appeal. The separate appeals were consolidated and docketed as CA-G.R. CV No. 15805.

On March 31, 1992, the CA rendered the assailed decision, affirming with modification the June 9, 1987 RTC Decision, disposing as follows:

WHEREFORE, the decision appealed from is hereby modified, as follows:

- a) In the event that a homestead patent over Parcel S-1 is issued by the Bureau of Lands pursuant to the patent application of Sofia Pendejito Vda. de Monteroso, said patent shall issue not in the name of the applicant but in favor of the eight heirs of Fabian Monteroso, Sr. who thereafter shall be declared absolute owners of the said parcel of land in the proportion stated in this decision but who nevertheless shall allow Sofia Pendejito Vda. de Monteroso to exercise during her lifetime usufructuary rights over a portion of the said parcel of land equivalent to the share therein of each of the heirs of her deceased husband;
- b) The said heirs of Fabian Monteroso, Sr. are hereby declared absolute owners of Parcel F-6 to the extent of their respective shares therein as presently individually possessed by them pursuant to an extrajudicial partition of the said parcel of land which the Court hereby declares as a valid contract among the said heirs; and
- c) With the exception of those pertaining to Parcel F-4 as stated in this decision, the parties thus found to have unjustly misappropriated the fruits of the subject parcels of land are hereby directed to render an accounting thereof consistent with our findings in the case at bar.

With the exception of the foregoing modifications, the decision under review is hereby **AFFIRMED** in all other respects.

No pronouncement as to costs.

SO ORDERED.[13]

The CA summarized into three issues the multifarious assignments of errors raised by the parties, to wit: first, whether or not the intestate estate of Soledad Doldol Monteroso was settled in SP No. 309, thus according the Project of Partition approved therein the effect of *res judicata*; second, whether or not it was appropriate to partition Parcels F-1, F-2, and F-3, and half of Parcels F-5, F-6, F-7, F-8, S-1, S-2, S-3, and S-4; and third, whether or not Tirso D. Monteroso is entitled to damages.

The CA resolved the first issue in the affirmative, SP No. 309 being a valid and binding proceedings insofar as the properties subject thereof are concerned, i.e., Parcels F-1 to F-5 of which the whole of Parcel F-4 and one-half of Parcel F-5, as Soledad D. Monteroso's intestate estate, were distributed to her heirs. This is not to mention that the authenticity and due execution of the documents filed or issued in relation therewith--referring to the Proyecto de Particion dated February 12, 1935 which is a carbon copy of the original, the Orden issued by the CFI on March 11, 1936, and the Moción dated March 18, 1936--having duly been established. Affirming the RTC, the CA rejected Tirso's claim that SP No. 309 is void for settling only a part of the estate of Soledad D. Monteroso. The CA held that partial settlement is not a ground for the nullification of the judicial partition under either the Spanish Civil Code of 1889 or the present Civil Code. The appellate court added that the proper remedy in such a situation is to ask for the partition and the subsequent distribution of the property omitted.

The CA likewise disposed of the second issue in the affirmative, dismissing the opposition of the Cagampang spouses and Reygulo Monteroso-Bayan who all claimed ownership over some of the parcels of land on the strength of the deeds of conveyance executed in their favor. The CA upheld the RTC's finding that the three deeds of absolute sale in which Don Fabian purportedly sold Parcels F-1, F-2, F-3, F-7, and F-8 to Soledad Monteroso-Cagampang were infirm. The CA noted that even the Cagampang spouses recognized these infirmities, and instead of denying their existence, they tried to justify the same and seek an exception therefrom.

On the alleged donation of Parcel F-5 by Don Fabian to Reygula Monteroso-Bayan, the CA likewise agreed with the RTC's finding on the nullity thereof. The CA pointed out that Reygula Monteroso-Bayan did not controvert the RTC's finding, except to gratuitously say that the trial court's declaration of nullity was wrong since nobody questioned the authenticity of the donation in the first place.

Apropos Parcel S-1, a disposable agricultural land of the public domain which is the subject of a homestead patent application by Don Fabian, the CA, as opposed to the RTC's disposition, held that a patent, if eventually issued, ought to be in the name of the legal heirs of Don Fabian, not of his surviving spouse, Pendejito. This conclusion, so the CA explained, is in line with the provision of Section 105 of the Public Land Act or Commonwealth Act No. 141 (CA 141), as amended.

As to Parcel S-2, the CA agreed with the RTC that it is a conjugal property acquired during the second marriage through a deed of sale^[14] executed on August 15, 1947 by Marcelo Morancel. Likewise, the CA said that Parcels S-3 and S-4 are conjugal properties as no evidence was adduced supporting the alleged purchase by Pendejito of said properties with her own funds.

Anent the RTC's order partitioning Parcel F-6, the CA agreed with the defendants in Civil Case No. 1332 that Parcel F-6 has long been partitioned equitably among all the eight children of Don Fabian. Thus, the CA further modified the RTC on this point.

On the third and last issues, the CA set aside all awards of actual damages made by the RTC premised on the income generating capacity of the subject properties, except that of Parcel F-4, as an order of accounting of the

fruits of the other subject properties unjustly appropriated by them would address the issue of damages.

It bears to stress at this juncture that, save for the grant of damages and the disposition of Parcels F-6 and S-1, the CA affirmed the questioned RTC Decision on all other points. On June 15, 1992, Tirso D. Monteroso thereafter filed before the Court his partial petition for review under Rule 45, docketed as G.R. No. 105608.

On the other hand, Pendejito, together with the other defendants in Civil Case No. 1332, first interposed a joint motion for partial reconsideration, which the CA denied per its equally assailed December 16, 1993 Resolution,[15] before elevating the case via a petition for review under Rule 45, docketed as G.R. No. 113199.

G.R. No. 105608 Denied with Finality

Per its Resolution[16] dated June 29, 1992, the Court denied Tirso D. Monteroso's petition under G.R. No. 105608 for late payment of fees and non-compliance with the requirements of the Rules of Court and Circular Nos. 1-88 and 28-91 on the submission of a certified copy of the assailed decision/order and a certification of non-forum shopping. Another Resolution[17] of August 12, 1992 followed, this time denying with finality Tirso D. Monteroso's motion for reconsideration filed on July 29, 1992. On August 31, 1992, an Entry of Judgment[18] was issued.

In net effect, the March 31, 1992 CA Decision in CA-G.R. CV No. 15805 is final and executory as to Tirso D. Monteroso, and the Court need not pass upon the issues he raised in his petition under G.R. No. 105608, albeit we shall take stock of his Comment[19] and Memorandum[20] in G.R. No. 113199.

The Issues

Petitioners in G.R. No. 113199 raise the following issues for our consideration:

- Whether the finding that the Deeds of Sale (Exhibits "C", "D" and "E") were not supported by valuable consideration and sham, fictitious and simulated is supported by the evidence.
- Whether the finding or conclusion that petitioners Spouses Atty. Perfecto and Soledad Cagampang did not dispute the finding of the trial Court that the Deeds of Sale in question are sham, fictitious and simulated is supported by evidence.
- Whether the [CA] committed reversible error in concluding that, "By invoking the benefits of prescription in their favor, the Cagampang spouses are deemed to have admitted the existence of a co-ownership."
- Whether the [CA] committed reversible error in upholding partition as the proper remedy of private respondent Tirso Monteroso to recover the properties sold by Fabian Monteroso, Sr. to Soledad D. Monteroso de Cagampang when co-ownership is not pleaded as theory in the Complaint.
- Whether the [CA] committed reversible error in holding that the cause of action of private respondent Tirso Monteroso is not barred by extinctive prescription and laches.
- Whether the [CA] committed reversible error in granting reliefs not prayed for in the Complaint in favor of parties who did not assert or claim such relief, such as partition and accounting among the parties and the nullification of the donation in favor of petitioner Reygula Bayan when x x x Tirso Monteroso and the petitioners herein who are signatories to the Deed of Donation did not question or ask for the nullification of the donation in favor of Reygula Bayan.
- Whether the [CA] committed reversible error in ordering the partition of parcels S-1, S-2, S-3 and S-4 which are admitted in the Complaint to be in the exclusive, adverse possession of petitioners Sofia vda. de Monteroso, Florenda, Alberto and Reynato and the Heirs of Fabian Monteroso, Jr. since the death of Fabian Monteroso, Sr. in 1948, appropriating the harvests unto themselves, to the exclusion of plaintiff (private

respondent Tirso Monteroso) who was deprived of his share continuously up to the present.[21]

The Court's Ruling

After a circumspect consideration of the arguments earnestly pressed by the parties and in the light of the practically parallel findings of the RTC and CA, we find the petition under G.R. No. 113199 to be devoid of merit.

It is a rule of long standing that:

[T]he jurisdiction of the Court in cases brought before it from the Court of Appeals via Rule 45 of the Rules of Court is limited to reviewing errors of law. Findings of fact of the latter are conclusive, except in the following instances: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[22]

None of the above exceptions, however, obtains in the instant case.

First and Second Issues: Simulated Sale

In connection with the first two related issues, petitioners maintain that the CA erred when it affirmed the RTC's conclusion on the fictitious or simulated nature, for lack or inadequate consideration, of the Deeds of Sale (Exhibits "C," "D," and "E"), noting that Tirso failed to present substantial evidence to support the alleged infirmity of the underlying sale. The fact that one of the lots sold under Exhibit "C" on May 10, 1939 for PhP 2,500 was used as collateral for a PhP 600 loan is not, so petitioners claim, proof that the amount of PhP 600 represents the maximum loan value of the property or that the sale in question is not supported by valuable consideration.

Moreover, petitioners belabored to explain that the trial court erred in concluding that the property conveyed under Exhibit "C" and covered by Transfer Certificate of Title (TCT) No. RT-203 (420) in the name of Soledad Monteroso-Cagampang, married to Perfecto, was fictitious on the ground that the certificate did not indicate that it was a conjugal property. Petitioners assert that the registration of a property only in the name of one of the spouses is not proof that no consideration was paid therefor. As petitioners would stress, what determines whether a given property is conjugal or separate is the law itself, not what appears in the certificate of title.

Lastly, petitioners take exception from the appellate court's posture that the Cagampang spouses did not dispute the trial court's finding that the deeds of sale (Exhibits "C," "D," and "E") were simulated and fictitious for lack of consideration. Petitioners insist that they in fact contested such conclusion of the RTC in their brief before the CA, adding they only raised the issue of prescription as an alternative defense without conceding the RTC's findings on contract infirmity.

We are not persuaded.

The antecedent facts, as borne by the records, strongly indicate the simulated character of the sale covered by the deeds of absolute sale over Parcels F-1 (Exhibit "C"), F-2 (Exhibit "D"), F-3, F-5, F-7, and F-8 (Exhibit "E"). As found below, Don Fabian never relinquished possession of the covered properties during his lifetime. The first

deed, Exhibit "E," was executed on May 1, 1939; the second, Exhibit "C," on May 10, 1939; and the third, Exhibit "D," on September 24, 1939. Soledad Monteroso-Cagampang, however, only took possession of the subject properties after Don Fabian's death in 1948 or nine years after contract execution. The gap, unexplained as it were, makes for a strong case that the parties to the sale never intended to be bound thereby.

The more telling circumstance, however, is the fact that Perfecto had judicially sought the amendment of the corresponding TCTs so that only the name of his wife, Soledad, shall be inscribed as real party-in-interest on the Memorandum of Encumbrances at the back portion of the titles. If only to stress the point, when the deeds were executed in 1939, Soledad and Perfecto Cagampang, the notarizing officer, were already married.

A property acquired during the existence of a marriage is presumed conjugal. This postulate notwithstanding, Perfecto Cagampang went out of his way to make it appear that the subject parcels of land were effectively his wife's paraphernal properties. No explanation was given for this unusual move.

Hence, we agree with the trial and appellate courts that the unexplained situations described above sufficiently show that the purported conveyances were simulated. We also accord credence to Tirso's allegation that the Cagampang spouses tricked Don Fabian into believing that his creditors were after the properties which have to be "hidden" by means of simulated conveyances to Soledad Monteroso-Cagampang. The fact that only one of the subject lots was used as collateral for a PhP 600 loan which the Cagampang spouses took out does not weaken the conclusion on the simulated character of the contracts, as logically drawn from the twin circumstances adverted to.

The Court can allow that petitioners indeed attempted to traverse, before the CA, the RTC's findings on the area of simulated sale and that they only raised the matter of acquisitive prescription as an alternative defense. However, as we shall explain shortly, the fact of petitioners having made the attempt aforesaid will not carry the day for them.

Third Issue: Recognition of Co-ownership in Acquisitive Prescription

In its assailed decision, the CA declared, "By invoking the benefits of prescription in their favor, the Cagampang spouses are deemed to have admitted the existence of a co-ownership x x x." The petitioners tag this declaration as flawed since the benefit of prescription may be availed of without necessarily recognizing co-ownership. Prescription and co-ownership, they maintain, are so diametrically opposed legal concepts, such that one who invokes prescription is never deemed to admit the existence of co-ownership.

Petitioners are mistaken; their error flows from compartmentalizing what the CA wrote. The aforesaid portion of the CA's decision should not have been taken in isolation. It should have been read in the context of the appellate court's disquisition on the matter of Tirso being a co-owner of the subject undivided properties whose rights thereto, as a compulsory heir, accrued at the moment of death of Don Fabian, vis-à-vis the defense of acquisitive prescription foisted by the Cagampang spouses. For clarity, we reproduce the pertinent portion of the assailed decision:

Nor do we find any merit in the third. From the allegation in the Complaint in Civil Case No. 1332 as well as from the arguments advanced by the parties on the issues raised therein, this Court is convinced that therein plaintiff Tirso Monteroso's principal cause of action is unmistakably one for partition which by its very nature is imprescriptible and cannot be barred by laches x x x. The only exception to the rule on the imprescriptibility of an action for partition is provided in a case where the co-ownership of the properties sought to be partitioned had been properly repudiated by a co-owner at which instance the remedy available to the aggrieved heirs lies not in action for partition but for reconveyance which is subject to the rules on extinctive prescription. By invoking the benefits of prescription in their favor, the Cagampang spouses are deemed to have admitted the

existence of a co-ownership among the heirs of Fabian Monteroso, Sr. over the properties forming the decedent's estate.[23] (Emphasis ours.)

From the foregoing disquisition, what the appellate court tried to convey is clear and simple: partition is the proper remedy available to Tirso who is a co-owner of the subject properties by virtue of his being a compulsory heir, like siblings Soledad, Reygula, and Benjamin, of Don Fabian. The right to seek partition is imprescriptible and cannot be barred by laches. Consequently, acquisitive prescription or laches does not lie in favor of the Cagampang spouses and against Tirso, the general rule being that prescription does not run against a co-owner or co-heir. The only exception to the imprescriptibility of an action for partition against a co-owner is when a co-owner repudiates the co-ownership. Thus, the appellate court ruled that by invoking extinctive prescription as a defense, the lone exception against imprescriptibility of action by a co-owner, the Cagampang spouses are deemed to have contextually recognized the co-ownership of Tirso and must have repudiated such co-ownership in order for acquisitive prescription to set in. Taking off from that premise, the appellate court then proceeded to tackle the issue of repudiation by the Cagampang spouses. Therefore, we hold that the appellate court did not err in finding that the Cagampang spouses are effectively barred from invoking prescription, given that the subject properties are conjugal properties of the decedent, Don Fabian, which cannot be subjected to acquisitive prescription, the necessary consequence of recognizing the co-ownership stake of other legal heirs.

Fourth and Fifth Issues: Partition Proper, not Barred by Laches nor by Acquisitive Prescription

Being inextricably intertwined, we tackle both issues together. Petitioners, citing Article 494 of the Civil Code[24] and Art. 1965 of the Spanish Civil Code, aver that the right to ask partition is proper only where co-ownership is recognized. They also suggest that no co-ownership obtains in this case considering that no less than Tirso avers in his complaint in Civil Case No. 1332 that from the time of Don Fabian's death in 1948, the lots in question have been in the exclusive, adverse, and public possession of the Cagampang spouses. Assayed against this perspective, petitioners submit that partition is not proper, ergo unavailing, but an action for reconveyance which is subject to the rules on extinctive prescription.

Corollary to the posture above taken, petitioners assert that there being no co-ownership over the properties sold by Don Fabian to Soledad Monteroso-Cagampang, Tirso's cause of action, under the Code of Civil Procedure (Act No. 190) in relation to Art. 1116 of the Civil Code,[25] had already prescribed, either in 1949, i.e., 10 years after the subject properties were registered in Soledad Monteroso-Cagampang's name, or in 1958, i.e., 10 years after the cause of action accrued in 1948 (death of Don Fabian), citing *Osorio v. Tan*.[26] Tirso's complaint in Civil Case No. 1332 was commenced in 1970.

Petitioners contend that the evidence adduced clearly demonstrates that Soledad Monteroso-Cagampang acquired ownership of the subject properties by virtue of the deeds of sale executed in 1939 by Don Fabian. After the sale, she registered them under her name and then took exclusive, adverse, and public possession over them. Thus, they submit that the prescriptive period applicable to the instant case under Act No. 190 had long expired, adding that the CA erred in finding that Soledad Monteroso-Cagampang repudiated the co-ownership only in 1961 when she and the other heirs ignored the demand of Tirso for partition.

As a final point, petitioners alleged that the exclusion of Tirso from the enjoyment of the fruits of the subject properties since after the death of Don Fabian in 1948 is consistent with Soledad Monteroso-Cagampang's claim of exclusive ownership and dominion.

We cannot subscribe to petitioners' theory.

The fact that Tirso and the other compulsory heirs of Don Fabian were excluded from the possession of their legitime and the enjoyment of the fruits thereof does not per se argue against the existence of a co-ownership.

While Tirso may not have expressly pleaded the theory of co-ownership, his demand from, and act of initiating Civil Case No. 1332 against, the Cagampang spouses for his share necessarily implies that he was asserting his right as co-owner or co-heir of the properties unjustly withheld by the Cagampang spouses through the instrumentality of simulated deeds of sale covering some of the hereditary properties. By asserting his right as a compulsory heir, Tirso has effectively brought into the open the reality that the Cagampang spouses were holding some of the subject properties in trust and that he is a co-owner of all of them to the extent of his legal share or legitime thereon.

Consequently, we are one with the trial and appellate courts that partition is the proper remedy for compulsory or legal heirs to get their legitime or share of the inheritance from the decedent. An action for partition is at once an action for declaration of co-ownership and for segregation and conveyance of a determinate portion of the properties involved.[27] Also, Sec. 1, Rule 69 of the Rules of Court pertinently provides:

SECTION 1. Complaint in action for partition of real estate. -- A person having the right to compel the partition of real estate may do so as provided in this Rule, 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 other persons interested in the property. (Emphasis ours.)

Being a compulsory heir of Don Fabian, Tirso has the right to compel partition of the properties comprising the intestate estate of Don Fabian as a measure to get his hereditary share. His right as an heir to a share of the inheritance covers all the properties comprising the intestate estate of Don Fabian at the moment of his death,[28] i.e., on October 26, 1948. Before partition and eventual distribution of Don Fabian's intestate estate, a regime of co-ownership among the compulsory heirs existed over the undivided estate of Don Fabian. Being a co-owner of that intestate estate, Tirso's right over a share thereof is imprescriptible.[29] As a matter of law, acquisitive prescription does not apply nor set in against compulsory heirs insofar as their pro-indiviso share or legitime is concerned, unless said heirs repudiate their share.[30] Contrary to petitioners' stance, reconveyance is not the proper remedy available to Tirso. Be it remembered in this regard that Tirso is not asserting total ownership rights over the subject properties, but only insofar as his legitime from the intestate estate of his father, Don Fabian, is concerned.

Acquisitive prescription, however, may still set in in favor of a co-owner, "where there exists a clear repudiation of the co-ownership, and the co-owners are apprised of the claim of adverse and exclusive ownership." [31] In the instant case, however, no extinctive or acquisitive prescription has set in against Tirso and other compulsory heirs in favor of the Cagampang spouses because effective repudiation had not timely been made against the former. As aptly put by the appellate court, the repudiation which must be clear and open as to amount to an express disavowal of the co-ownership relation happened not when the deeds of absolute sale were executed in 1939, as these could not have amounted to a clear notice to the other heirs, but in 1961 when the Cagampang spouses refused upon written demand by Tirso for the partition and distribution of the intestate estate of Don Fabian. Since then, Tirso was deemed apprised of the repudiation by the Cagampang spouses.

However, considering that the new Civil Code was already then in effect, Art. 1141 of said Code[32] applies; thus, Tirso has at the very least 10 years and at the most 30 years to file the appropriate action in court. The records show that Tirso's cause of action has not prescribed as he instituted an action for partition in 1970 or only nine years after the considered express repudiation. Besides, acquisitive prescription also does not lie against Tirso even if we consider that a valid express repudiation was indeed made in 1961 by the Cagampang spouses since in the presence of evident bad faith, the required extraordinary prescription period[33] of 30 years has not yet lapsed, counted from said considered repudiation. Such would still be true even if the period is counted from the time of the death of Don Fabian when the Cagampang spouses took exclusive possession of the subject

properties.

Sixth Issue: Partition Proper for Conjugal Properties of Second Marriage

On the ground of prescription under Act No. 190, petitioners assert that Tirso lost the right to seek the partition of Parcels S-1, S-2, S-3, and S-4, he having admitted, as early as 1948, the adverse, exclusive, and public possession thereof by Pendejito and her children. This type of possession, they maintain, works as a repudiation by Pendejito and her children of the co-ownership claim of Tirso. They further argue that Parcel S-1 pertains to Pendejito as her paraphernal property since the homestead application therefor was under her name.

We are not persuaded.

Tirso's acknowledgment of Pendejito and her children's possession of Parcels S-1, S-2, S-3, and S-4 cannot be viewed as the required repudiation to bar Tirso from pursuing his right to seek partition. Under the law on co-ownership, it behooves on the person desiring to exclude another from the co-ownership to do the repudiating. Verily, the records do not show that Pendejito and her children performed acts clearly indicating an intention to repudiate the co-ownership and then apprising Tirso and other co-owners or co-compulsory heirs of such intention.

To be sure, Tirso and his siblings from the first marriage have a stake on Parcels S-2, S-3, and S-4, even if these parcels of land formed part of the conjugal partnership of gains of the second marriage. There can be no serious dispute that the children of the first marriage have a hereditary right over the share of Don Fabian in the partnership assets of the first marriage.

Anent Parcel S-1, we join the CA in its holding that it belongs to the heirs of Don Fabian under Sec. 105 of CA 141, which pertinently provides:

Sec. 105. If at any time the applicant or grantee shall die before the issuance of the patent or the final grant of the land, or during the life of the lease, or while the applicant or grantee still has obligations pending towards the Government, in accordance with this Act, he shall be succeeded in his rights and obligations with respect to the land applied for or granted or issued under this Act by his heirs in law, who shall be entitled to have issued to them the patent or final concession if they show that they have complied with the requirements therefor, and who shall be subrogated in all his rights and obligations for the purposes of this Act. (Emphasis ours.)

It is undisputed that Don Fabian was the homestead patent applicant who was subrogated to the rights of the original applicants, spouses Simeon Cagaanan and Severina Naranjo, by purchasing from the latter Parcel S-1 on May 8, 1943. Don Fabian cultivated the applied area and declared it for taxation purposes. The application, however, would be rejected because death supervened. In 1963, Pendejito filed her own homestead application for Parcel S-1.

Assayed against the foregoing undisputed facts in the light of the aforequoted Sec. 105 of CA 141, the heirs of Don Fabian are entitled to Parcel S-1. Said Sec. 105 has been interpreted in *Soliman v. Icdang*[34] as having abrogated the right of the widow of a deceased homestead applicant to secure under Sec. 3 of Act No. 926, otherwise known as the Public Land Act of 1903, a patent in her own name, thus:

[W]e should bear in mind that, although Adolfo Icdang was married to plaintiff when he filed the homestead application, "an applicant may be said to have acquired a vested right over a homestead only by the presentation of the final proof and its approval by the Director of Lands". (*Ingara vs. Ramelo*, 107 Phil., 498; *Balboa vs. Farrales*, 51 Phil., 498; *Republic vs. Diamon*, 97 Phil., 838.) In the case at bar, the final proof appears to have been presented to, and approved by the Director of Lands, in 1954, or several years after the death of Adolfo Icdang and the dissolution of his conjugal partnership with plaintiff herein. Hence, the land in question could not have formed part of the assets of said partnership. It belonged to the heirs of Adolfo Icdang,

pursuant to section 105 of Commonwealth Act No. 141, reading:

x x x x

It is worthy of notice that, under the Public Land Act of 1903 (Act No. 926, section 3), "in the event of the death of an applicant prior to the issuance of a patent, his widow shall be entitled to have a patent for the land applied for issue to her upon showing that she has consummated the requirements of law for homesteading the lands", and that only in case the deceased applicant leaves no widow shall his interest in the land descend and the patent issue to his legal heirs. Incorporated substantially in section 103 of the Public Land Act of 1919 (Act No. 2874), this policy was changed by Act No. 3517, pursuant to which the deceased shall be succeeded no longer by his widow, but "by his heirs in law, who shall be entitled to have issued to them the patent--if they show that they have complied with the requirements therefor". And this is, in effect, the rule maintained in the above quoted section 105 of Commonwealth Act No. 141.[35] (Emphasis added.)

It appearing that Don Fabian was responsible for meeting the requirements of law for homesteading Parcel S-1, said property, following Soliman, cannot be categorized as the paraphernal property of Pendejito. Thus, the homestead patent thereto, if eventually issued, must be made in the name of the compulsory heirs of Don Fabian. Over it, Pendejito shall be entitled, pursuant to Art. 834 of the Spanish Civil Code of 1889, only to a usufructuary right over the property equal to the corresponding share of each of Don Fabian's compulsory heirs, i.e., his eight children.

Seventh Issue: Judgment Must not Only be Clear but Must Also be Complete

Petitioners bemoan the fact that both the trial and appellate courts granted relief and remedies not prayed for by the parties. As argued, Civil Case No. 1292, initiated by the heirs of Benjamin against Tirso, basically sought recovery of real properties; while Civil Case No. 1332, a countersuit filed by Tirso, was for partition and damages, the main thrust of which is to recover his alleged share from properties in the exclusive possession and enjoyment of other heirs since the death of Don Fabian in 1948. Thus, petitioners take issue against both decisions of the trial and appellate courts which ordered partition not only in favor of Tirso but also in favor of the other petitioners he sued. What is particularly appalling, according to them, is the order for accounting which no one requested.

Petitioners' lament, while understandable, is specious. Our judicial system requires courts to apply the law and grant remedies when appropriately called for by law and justice. In the exercise of this mandate, courts have the discretion to apply equity in the absence or insufficiency of the law. Equity has been defined as justice outside law, being ethical rather than jural and belonging to the sphere of morals than of law. It is grounded on the precepts of conscience and not on any sanction of positive law, for equity finds no room for application where there is law.[36]

In the instant case, a disposition only ordering partial partition and without accounting, as petitioners presently urge, would be most impractical and against what we articulated in *Samala v. Court of Appeals*.^[37] There, we cautioned courts against being dogmatic in rendering decisions, it being preferable if they take a complete view of the case and in the process come up with a just and equitable judgment, eschewing rules tending to frustrate rather than promote substantial justice.

Surely, the assailed path taken by the CA on the grant of relief not specifically sought is not without precedent. In *National Housing Authority v. Court of Appeals*, where the petitioner questioned the competence of the courts a quo to resolve issues not raised in the pleadings, and to order the disposition of the subject property when what was raised was the issue of right to possession, this Court in dismissing the challenge stated that "a case should be decided in its totality, resolving all interlocking issues in order to render justice to all concerned and to end the

litigation once and for all.”[38] Verily, courts should always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seed of future litigation.[39]

Eighth Issue: Deed of Donation Null and Void

Finally, as an incidental issue, petitioners asseverate that the deed of donation (Exhibit "F") executed on September 19, 1948, or after the death of Don Fabian, in favor of Reygula M. Bayan, is valid, particularly so since Tirso and the heirs of Benjamin, as represented by their mother, Nakila, do not question the validity of said deed as they in fact signed the same. That the donated property was the same property described and included in the deed of sale (Exhibit "E") in favor of Soledad Monteroso-Cagampang is not, they contend, an invalidating factor since what Don Fabian sold under Exhibit "E" did not extend beyond his conjugal share thereon.

Just like the issue of the nullity of the three deeds of absolute sale (Exhibits "C," "D," and "E") heretofore discussed, we agree with the determination of the RTC and CA as to the invalidity of the donation of Parcel F-5 to Reygula M. Bayan. We need not repeat the reasons for such determination, except the most basic. We refer to the authority of the person who executed the deed of donation. As it were, the widow of Benjamin, Nakila, signed the deed of donation. She, however, cannot give consent to the donation as she has no disposable right thereto. The legal maxim *nemo dat quod non habet*[40] applies to this instance as Nakila only has usufructuary right equal to the share of her children under Art. 834 of the Spanish Civil Code of 1889. Besides, Nakila signed the deed of donation in her name and not in the name of her children who are the heirs in representation of their father, Benjamin. Lest it be overlooked, the then minor children were not under the legal guardianship of Nakila, a situation which thus disqualifies her from signing on their behalf.

The fact that nobody objected to the donation is of little consequence, for as the CA aptly observed, "The circumstance that parties to a void contract choose to ignore its nullity can in no way enhance the invalid character of such contract. It is axiomatic that void contracts cannot be the subject of ratification, either express or implied.”[41]

WHEREFORE, the petition in G.R. No. 113199 is DENIED for lack of merit. The assailed Decision and Resolution dated March 31, 1992 and December 16, 1993, respectively, of the CA in CA-G.R. CV No. 15805 are hereby AFFIRMED IN TOTO. Costs against the petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga and Brion, JJ., concur.

[1] Rollo (G.R. No. 113199), pp. 66-172. Penned by Associate Justice Cancio C. Garcia (now a retired member of this Court) and concurred in by Associate Justices Serafin E. Camilon and Jorge S. Imperial (both retired).

[2] Records, Vol. 1, pp. 999-1092.

[3] Exhibit "A-9," exhibits folder, p. 16.

[4] Exhibit "A-8," id. at 11-15.

[5] Exhibit "A-10," id. at 17.

[6] Records, Vol. 1, pp. 2-4.

[7] Id. at 8-9.

[8] Id. at 677.

[9] Id. at 799-826.

[10] Supra note 2, at 1076-1092.

[11] Exhibits "C," "D," and "E," exhibits folder, pp. 31, 39, 56-57.

[12] Exhibit "F," id. at 63.

[13] Supra note 1, at 170-172.

[14] Exhibit "K-1," exhibits folder, p. 137.

[15] Rollo (G.R. No. 113199), p. 194.

[16] Rollo (G.R. No. 105608), p. 227.

[17] Id. at 353.

[18] Id. at 498.

[19] Rollo (G.R. No. 113199), pp. 202-267.

[20] Id. at 311-425.

[21] Id. at 455-456.

[22] Maglucot-aw v. Maglucot, G.R. No. 132518, March 28, 2000, 329 SCRA 78, 88-89; citing Sta. Maria v. Court of Appeals, G.R. No. 27549, January 28, 1998, 285 SCRA 351 and Medina v. Asistio, Jr., G.R. No. 75450, November 8, 1990, 191 SCRA 218, 223-224.

[23] Rollo (G.R. No. 113199), p. 140.

[24] Art. 494. 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.

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

[25] Art. 1116. Prescription already running before the effectivity of this Code shall be governed by laws previously in force; but if since the time this Code took effect the entire period herein required from prescription should elapse, the present Code shall be applicable, even though by the former laws a longer period might be required.

[26] 98 Phil. 55 (1955).

[27] Balo v. Court of Appeals, G.R. No. 129704, September 30, 2005, 471 SCRA 227, 239.

[28] Art. 777 of the Civil Code pertinently provides: The rights to the succession are transmitted from the moment of the death of the decedent.

[29] See Heirs of Flores Restar v. Heirs of Dolores R. Chichon, G.R. No. 161720, November 22, 2005, 475 SCRA 731.

[30] Art. 856 of the Civil Code pertinently provides: A voluntary heir who dies before the testator transmits nothing to his heirs.

A compulsory heir who dies before the testator, a person incapacitated to succeed, and one who renounces the inheritance, shall transmit no right to his own heirs except in cases expressly provided for in this Code. (Emphasis ours.)

[31] *Bargayo v. Camumot*, 40 Phil. 857, 862 (1920) and *Heirs of Segunda Maningding v. Court of Appeals*, G.R. No. 121157, July 31, 1997, 276 SCRA 601, 608.

[32] Art. 1141. Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

[33] Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

[34] No. L-15924, May 31, 1961, 2 SCRA 515.

[35] *Id.* at 519-520.

[36] *Philippine Long Distance Telephone Co. v. NLRC*, No. L-80609, August 23, 1988, 164 SCRA 671, 681.

[37] *Samala v. Court of Appeals*, G.R. No. 128628, August 23, 2001, 363 SCRA 535.

[38] *National Housing Authority v. Court of Appeals*, No. L-50877, April 28, 1983, 121 SCRA 777, 783.

[39] *Latchme Motomull v. Dela Paz*, G.R. No. 45302, July 24, 1990, 187 SCRA 743, 754; citing *Alger Electric, Inc. v. Court of Appeals*, No. L-34298, February 28, 1985, 135 SCRA 43 and *Gayos v. Gayos*, No. L-27812, September 26, 1975, 67 SCRA 146.

[40] One cannot give what one does not have.

[41] *Rollo* (G.R. No. 113199), pp. 149-150.

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