

**REMEDIOS SALVADOR AND MA. GRACIA G. SALVADOR,
PETITIONERS, VS. COURT OF APPEALS, ALBERTO AND ELPIA YABO,
FRANCISCA YABO, ET AL., RESPONDENTS.**

G.R. No. 109910. April 05, 1995

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Assailed in this petition is the legal determination made by the Court of Appeals on the issues of which portion of Lot No. 6080 and Lot No. 6180 formed part of the conjugal assets of the spouses Pastor Makibalo and Maria Yabo, and of whether or not the rights of Pastor's co-heirs in the estate of Maria Yabo were extinguished through prescription or laches.

Alipio Yabo was the owner of Lot No. 6080 and Lot No. 6180 situated in Barrio Bulua, Cagayan de Oro City, containing an area of 1,267 and 3,816 square meters, respectively. Title thereto devolved upon his nine children, namely, Victoriano, Procopio, Lope, Jose, Pelagia, Baseliza, Francisca, Maria, and Gaudencia, upon his death sometime before or during the second world war.

On 28 April 1976, Pastor Makibalo, who is the husband of Maria Yabo, one of Alipio's children, filed with the then Court of First Instance of Misamis Oriental a complaint, docketed as Civil Case No. 5000, against the spouses Alberto and Elpia Yabo for "Quieting of Title, Annulment of Documents, and Damages." In the complaint, he alleged that he owned a total of eight shares of the subject lots, having purchased the shares of seven of Alipio's children and inherited the share of his wife, Maria, and that except for the portion corresponding to Gaudencia's share which he did not buy, he occupied, cultivated, and possessed continuously, .openly, peacefully, and exclusively the two parcels of land. He then prayed that he be declared the absolute owner of 8/9 of the lots in question.[1]

On 8 October 1976, the grandchildren and great-grandchildren of the late Alipio Yabo[2] lodged with the same court a complaint for partition and quieting of title with damages,[3] docketed as Civil Case No. 5174, against Pastor Makibalo, Enecia Cristal, and the spouses Eulogio and Remedios Salvador. They alleged that Lot No. 6080 and Lot No. 6180 are the common property of the heirs of Alipio Yabo, namely, the plaintiffs, defendant Enecia Cristal, Maria Yabo, and Jose Yabo, whose share had been sold to Alberto Yabo; that after Alipio's death, the spouses Pastor and Maria Makibalo, Enecia Cristal, and Jose Yabo became the de facto administrators of the said properties; and that much to their surprise, they discovered that the Salvador spouses, who were strangers to the family, have been harvesting coconuts from the lots, which act cast a cloud on the plaintiffs' title over the lots.

The plaintiffs then prayed that (a) they, as well as defendant Pastor Makibalo, in representation of his wife, and Enecia Cristal, in representation of Gaudencia, be declared as the owners of the lots; (b) the Salvador spouses be declared as having no rights thereto except as possible assignees of their co-defendants, Pastor Makibalo and Enecia Cristal; (c) the lots be partitioned according to law among the aforementioned co-owners; and (d) the defendants be made to pay for the value of the fruits they harvested from the lots and for moral and exemplary

damages, attorney's fees, expenses of the litigation, and costs of the suit.

The two cases were consolidated and jointly heard by Branch 5 of the Court of First Instance of Cagayan de Oro City.

By evidence, Pastor, Makibalo sought to prove the following allegations:

He was married to Maria Yabo who died on 17 March 1962[4]. In August 1949, Jose and Victoriano, both surnamed Yabo, sold their respective shares in the disputed lots to one Pedro Ebarat, and in 1952 the latter sold both shares to Pastor Makibalo.[5] Ebarat formalized this conveyance by executing an Affidavit of Waiver and Quitclaim dated 30 May 1969 in favor of Pastor.[6]

On 16 January 1951, the heirs of the late Lope Yabo sold Lope's shares in the litigated properties to one Dominador Canomon,[7] who, in turn, sold the same to Pastor.[8] Canomon afterwards executed an Affidavit of Waiver and Quitclaim in favor of the latter.[9]

Pastor Makibalo likewise purchased the shares of Baseliza in the two lots in 1942, of Procopio in 1957, of Francisca in 1958, and of Pelagia in 1967. The only share he did not buy was that of Gaudencia. After every purchase, he took possession of the portions bought and harvested the products thereof.[10]

In 1966, Pastor sold back to Alberto a portion of Lot No. 6180 which was formerly the share of Alberto's father, Procopio.[11]

In December 1968, Pastor mortgaged the two lots to the spouses Eulogio and Remedios Salvador.[12] On 26 September 1978, he executed a document denominated as a "Confirmation and Quitclaim" whereby he waived all his rights, interests, and participation in the lots in favor of the Salvador spouses.[13]

On the other hand, by their evidence,[14] the spouses Alberto and Elpia Yabo tried to prove that they had repurchased from Pastor Makibalo the share of Procopio, which was previously sold to Pastor, and had bought the shares of Jose and Maria.[15]

Filoteo Yabo denied having sold the share, of his father, Lope Yabo, in the contested lots and disowned his signature and those of his mother, brothers, and sisters appearing at the back of Exhibit "C." [16]

Ignacio Yabo testified that his father, Victoriano Yabo, did not know how to write and sign his name. He further declared that he had no knowledge that his father affixed his thumbmark in the document marked as Exhibit "A" purporting to alienate his father's share in the disputed lots.[17]

On 15 January 1983, the trial court rendered its decision[18] holding as follows:

Assuming that the thumbmark on the typewritten name "Jose Yabo" in Exh. 3 was that of Jose Yabo, Alberto Yabo and Elpia R. Yabo purchased the share of Jose Yabo in bad faith because they knew before and up to the execution of Exh. 3 on October 24, 1972 that Jose Yabo was no longer the owner of that area because from the documents she borrowed from Mrs. Salvador they came to know that Jose Yabo had sold his shares to Pedro Ebarat, and they have seen that Pastor Makibalo has been in possession of those shares together with the seven others exclusively as owner, he having mortgaged them to Mrs. Salvador.

As Jose Yabo was no longer the owner of the one ninth (1/9) shares which he sold to Alberto Yabo and Elpia Yabo under Exh. 3, the sale is null and void, and Alberto and Elpia acquired nothing because Jose Yabo had no more title, right or interest to dispose of.

...

Pastor Makibalo had been in possession of Jose Yabo's share since 1949 after purchasing it from Ebarat, and has been in possession thereof up to September 26, 1978 when he sold it to the spouses Eulogio Salvador and Remedios Salvador, who are now in possession of the same.

Exh. A, evidencing the sale of Victoriano Yabo's share to Pedro Ebarat was identified by the latter who testified that he sold it to Pastor Makibalo in 1951. Exh. A is an ancient document -- 1949 when the document came to existence up to now is more than 30 years, and the document had been in the possession of Pastor Makibalo, then Remedios Salvador who had interest in its preservation.

As regards the shares of Lope Yabo, the same had been sold by his surviving spouse Juana Legaspi, and his children Filoteo, Andresa, Jovita, Bonifacio, and Rundino for P105.00 on January 16, 1951 to Dominador Conomon (Exh. C and C-1), who in turn sold it to Pastor Makibalo in 1952, executing a formal Deed of Waiver and Quitclaim on May 30, 1969 (Exh. D).

Exh. C is an ancient document, being more than 30 years old and has been in the possession of Pastor Makibalo and then the spouses Eulogio and Remedios Salvador -- who had an interest in its preservation. The claim of Filoteo Yabo that the signatures appearing in Exh. C are not his and those of his brothers and sisters are of no avail, for if they were not the ones who affixed those signatures and so they did not sell the shares of their father Lope Yabo, why did they not then take possession of said shares -- they remained silent from 1951 to September 16, 1976 a period of 25 years. They are now [e] stopped by laches.

And as regards the shares of Baseliza, Francisca and Pelagia, there is no evidence presented to effectively rebut the testimony of Pastor Makibalo that he acquired the shares of Baseliza Yabo in 1942 by changing it with a buffalo; that he bought the shares of Francisca Yabo in 1958 and that he bought the shares of Pelagia Yabo in 1967; Pastor Makibalo had been in possession of these shares from the time he acquired them, continuously, adversely, openly, and peacefully, as owner up to the time he sold his rights and interest therein to the spouses Eulogio and Remedios Salvador. The heirs of Baseliza, Francisca and Pelagia have not taken any step to protect their rights over those shares for over 40 years in the case of Baseliza's share, for about 20 years in the case of Francisca's share, and for more than 10 years in the case of Pelagia's share. Laches, likewise has rendered their right stale.

On March 10, 1966 Pastor Makibalo sold back to Albrto Yabo the share of Procopio Yabo in Lot 6180 (Exch. 1 and 2), but there is nothing to show that Pastor Makibalo also sold back Procopio's share in Lot 6080.

So then, by purchase, Pastor Makibalo and Maria Yabo acquired the shares of Baseliza, Victoriano, Jose, Lope, Procopio and Francisca, or six (6) shares from Lots 6080 and 6180. These belonged to the conjugal partnership of Pastor Makibalo and maria Yabo. Maria Yabo had also a share from Lots 6080 and 6180, and Pastor Makibalo acquired the shares of Pelagia Yabo in both Lots 6080 and 6180. All in all, Pastor Makibalo acquired eight shares in both Lot 6080 and 6180.

While Maria Yabo died on March 17, 1962, and so one-fourth (1/4) of the shares of Baseliza, Victoriano, Jose, Lope, and Francisca, or one-fourth of five-ninth (5/9) of both lots and one-fourth (1/4) Of Lot 6080 should go to the children of the brothers and sisters of Maria Yabo by virtue of provisions of Article 1001 of the New Civil Code, the latter have lost their rights thereto by laches for their inaction for a very long period and their rights have become stale. On the other hand, Pastor Makibalo who had been in possession of the whole of the eight shares in both Lots 6080 and 6180, enjoying the fruits thereof exclusively, uninterruptedly, publicly, peacefully, and continuously from the death of Maria Yabo up to the filing of the complaint in Civil Case No. 5174 on October 8, 1976, or a period of 14 years, had acquired title to the whole of the eight shares in Lot 6080 and seven shares in Lot 6180 (the share of Procopio in Lot 6180 had been sold back to Alberto Yabo).

IN VIEW OF ALL FOREGOING, judgment is hereby rendered finding Pastor Makibalo, now Eulogio Salvador and Remedios Salvador the owner of eight (8) shares, equivalent to eight-ninth (8/9) of Lot No. 6080 and of seven shares, equivalent to seven-ninth (7/9) of Lot 6180, and therefore, ordering the partition of Lot 6080 so that the one-ninth (1/9) allotted to Gaudencia Yabo will go to her heirs or their assigns, and the remaining eight-ninth (8/9) will go to the spouses Eulogio Salvador and Remedios Salvador, as successor of Pastor Makibalo, and the partition of Lot 6180 so that the seven-ninth (7/9) portion which formerly belonged to Baseliza, Victoriano, Jose, Lope, Maria, Francisca, and Pelagia will go to the spouses Eulogio and Remedios Salvador, the one-ninth (1/9) which formerly belonged to Procopio, will go to Alberto Yabo, and the remaining one-ninth (1/9) which formerly belonged to Gaudencia, will go to Gaudencia's heirs or their assigns.

Doc. No. 720, recorded on page 28 of Notarial Register No. VII, and acknowledged before Notary Public Isidro S. Baculio (Exh. E) [purportedly executed by' Maria Yabo and Pastor Makibalo] is hereby declared null and void, and so the Office of the City Fiscal is directed to cause an investigation of this matter to find out the person or persons responsible for the falsification of the said document, and if the evidence warrants, to file the corresponding criminal action in court. The Office of the City Assessor of Cagayan de Oro City is, likewise, directed to cause the cancellation of Tax Declarations Nos. 33553, marked as Exh. H-3, 33557, marked as Exh. H-2, both in the name of Alberto Yabo, for having been issued on the basis of a falsified document. Let copies of this decision be furnished the Offices of the City Fiscal and City Assessor, both of Cagayan de Oro City.

No pronouncement as to damages, attorney's fees and costs.

SO ORDERED.[19]

The defendants in Civil Case No. 5000 and the plaintiffs in Civil Case No. 5174 appealed from the decision to the Court of Appeals on 19 August 1983.[20]

In its decision of 3 February 1993,[21] the Court of Appeals held that (a) Maria Yabo did not sell her share to Alberto and Elpia Yabo; (b) prescription and laches have not run against the private respondents with respect to the 1/9 share of Maria Yabo in the estate of her father and to her conjugal share in the portions acquired from her brothers and sisters; and (c) Procopio never sold his share in Lot No. 6080 to Pastor Makibalo. More specifically it stated:

Exh. E is the document found by the lower court to be a falsification. This finding appellants do not dispute and have not raised an error.

...

While acknowledging' that upon the death of Maria Yabo on March 17, 1962, one-half (1/2) of the share of Maria Yabo in Lots 6080 and 6180 and one-half (1/2) of Maria Yabo's conjugal share in the portions bought from Basilisa, Victoriano, Jose, Lope, Pelagia and Francisca should go to the children of the brothers and sisters of Maria in accordance with Article 1001 of the Civil Code, the lower court rule that said children have lost their rights by laches "for their inaction for a very long period and their rights have become stale" (Decision, p. 16; Record, Vol. 2, p. 158).

Appellants in their second assignment of error aver that this is an error.

We agree that the lower court erred.

While between March 17, 1962 when Maria Yabo died and October 8, 1976, when Civil Case No. 5174 for partition was filed, was a period of more than fourteen (14) years, that alone to our mind would not suffice to establish laches or prescription. Upon the death of Maria Yabo, appellee Pastor Makibalo and appellants, and the

other children of the brothers and sisters of Maria, by operation of law become co-owners of the one-ninth (1/9) share of Maria as heir of her father Alipio and the conjugal share of Maria in the portions acquired from Basilisa, Victoriano, Jose, Lope, Pelagia and Francisca. Time alone is not a decisive factor. Appellee Pastor Makibalo, it must be remembered, is the husband of Maria and, therefore, an uncle in-law of appellants. In our culture, a demand by an heir or heirs for partition immediately upon the death of a relative is more often taken not as a legitimate assertion of a right but of something else, like greed. It must also be noted that the spouses, the appellee Pastor Makibalo and his deceased wife Maria, were childless and, therefore, appellants and the other children of the brothers and sisters of Maria must have felt that at any rate the property would go to them in the course of time. This probably explains why appellants started asserting their right over the property only after appellee Pastor Makibalo sold the same to the spouses Eulogio and Remedios Salvador. Besides, Lots 6080 and 6180 have a combined area only of 5,083 square meters and before the development of Northern Mindanao, and even in 1962 when Maria Yabo died, were not that valuable. This is shown by the fact that each heir sold his or her share only for P110.00.

As we have said not time alone. In the early case of *Cortes v. Oliva*, 33 Phil. 480, it was held that "(o)rdinarily, possession by one joint owner will not be presumed to be adverse to the others, but will, as a rule, be held to be for the benefit of all. Much stronger evidence is required to show an adverse holding by one of several joint owners than by a stranger; and in such cases, to sustain a plea of prescription, it must always clearly appear that one who was originally a joint owner has repudiated the claims of his co-owners, and that his co-owners were apprised, or should have been apprised of his claim of adverse and exclusive ownership before the alleged prescription began to run (at page 484). This ruling on prescription should apply with equal force to laches.

The third assignment of error challenges the finding of the lower court that "there is nothing to show that Pastor Makibalo also sold back Procopio's share in Lot 6080" (Decision, p. 16; Records, Vol. 2, p. 158).

Exhibits 1 and 2 cover only Procopio's share in Lot 6180. In other words, Exhibits 1 and 2 conveyed back to Alberto Yabo only his father, Procopio's share in Lot 6180.

There is indeed no evidence that Pastor Makibalo also sold back to Alberto, his father Procopio's share in Lot 6080.

But from the evidence it appears that Procopio Yabo never sold his share in Lot 6080 to Pastor Makibalo. So there was no need to convey back Procopio's share in Lot 6080.

This fact is evident from the Affidavit of Confirmation of Sale (Exh. M) dated April 22, 1970, executed by Alberto Yabo, which is the very document relied upon by the lower court (Decision, p. 11; Record, Vol. 2, p. 153) in finding that "Alberto Yabo admitted that the share of his father Procopio Yabo was previously bought by Pastor Makibalo." A look at Exh. M, particularly par. 3 thereof, reveals that Alberto Yabo merely acknowledged or confirmed the sale of his father's share to Pastor Makibalo in Lot 6180. In effect, it at the same time proves that Lot 6080 was never sold by Procopio to appellee Pastor Makibalo; otherwise, it would have been included in the said Affidavit of Confirmation of Sale. The Deed of Absolute Sale (Exh. 2) subsequently executed by Pastor Makibalo in favor of Alberto Yabo on April 23, 1970, further proves this point, since the latter merely bought back what was previously sold, his father's-share in Lot 6180.[22]

The respondent court then concluded and held as follows:

In summary, appellee Pastor Makibalo and his assigns, the spouses Eulogio and Remedios Salvador, are entitled only to one-half (1/2) of the one-ninth (1/9) share of Maria and three-fourths (3/4) of the six-ninth (6/9) shares acquired from Basilisa, Victoriano, Jose, Lope, Pelagia and Francisca. Accordingly, the partition should be done

as follows:

- (1) 1/9 of Lots 6080 and 6180 should be given to the heirs of Gaudencia Yabo or their successors and assigns;
- (2) 1/9 of Lot 6180 should go to Alberto Yabo and his wife Elpia Yabo;
- (3) 1/9 of Lot 6080 should be given to the heirs of Procopio Yabo and their successors and assigns, including Alberto Yabo;
- (4) The 1/9 share of Maria Yabo in Lots 6080 and 6180 should be partitioned: One-half (1/2) for the surviving spouse Pastor Makibalo (now the spouses Eulogio Salvador and Remedios Salvador) and the other half for the children of the brothers and sisters of Maria Yabo in equal shares.
- (5) The remaining 6/9, one-half (1/2) of which is conjugal between Maria Yabo and appellee Pastor Makibalo should be partitioned three-fourths (3/4) for Pastor Makibalo (now the spouses Eulogio Salvador and Remedios Salvador) and one-fourth (1/4) for the children of the brothers and sisters of Maria Yabo in equal shares.
- (6) Jose Yabo if he is still alive should participate in the partition as heir of Maria; otherwise he shall be represented by his children.

WHEREFORE, premises considered, subject to the modification in the partition, as indicated above, the decision appealed from is AFFIRMED, without pronouncement as to costs. The lower court is directed if necessary to fully effect the partition, to conduct further hearings and determine whether Jose Yabo is still alive and who are the children of the brothers and sisters of Maria Yabo.[23]

Unable to obtain a reconsideration of the said decision, Remedios Salvador, together with her daughter, Ma. Gracia Salvador, as one of the successors-in-interest of Eulogio M. Salvador who died during the pendency of the appeal,[24] elevated the case to this Court contending that the respondent court erred in ruling that: (1) the shares of Pelagia Yabo should be included in the partition; (2) prescription and laches have not run against the private respondents in relation to the 1/9 share of Maria Yabo in the estate of her father and to her 1/2 conjugal share in those acquired by purchase; (3) Procopio Yabo never sold to Pastor Makibalo his share in Lot No. 6080; and (4) Jose Yabo should be allowed to participate as heir of Maria even as he had openly rejected this option by refusing to participate in both civil cases.[25]

Article 160 of the Civil Code provides that all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife. Since the shares of Jose, Victoriano, Lope, Baseliza, Procopio, and Francisca in Lot No. 6180 and Lot No. 6080 had been purchased by Pastor during his marriage with Maria, and there is no proof that these were acquired with his exclusive money, the same are deemed conjugal properties. Not forming part of the conjugal partnership are: (1) the 1/9 share inherited by Maria which remained as her exclusive property pursuant to Article 148(2) of the Civil Code; (2) the 1/9 share of Gaudencia which was not sold to Pastor; and (3) the 1/9 share of Pelagia which was acquired by Pastor in 1967 or five years after the death of his wife and which was therefore his exclusive property.

There is, thus, merit in the petitioners' first assigned error. The Court of Appeals should have excluded from the conjugal partnership the share of Pelagia which Pastor had acquired after his wife's death.

Upon Maria's death in 1962, the conjugal partnership of gains was dissolved.[26] Half of the conjugal properties, together with Maria's 1/9 hereditary share in the disputed lots, constituted Maria's estate and should thus go to her surviving heirs.[27] Under Article 1001 of the Civil Code, her heirs are her spouse, Pastor Makibalo, who shall be entitled to one-half (1/2) of her estate, her brother, Jose, and the children of her other brothers and sisters, who shall inherit the other half. There having been no actual partition of the estate yet, the said heirs became

co-owners thereof by operation of law.[28]

We now determine whether prescription and laches can be applied against the co-heirs of Pastor Makibalo.

It has been said that Article 494 of the Civil Code which provides that each co-owner may demand at any time the partition of the common property implies that an action to demand partition is imprescriptible or cannot be barred by laches.[29] The imprescriptibility of the action cannot, however, be invoked when one of the co-owners has possessed the property as exclusive owner and for a period sufficient to acquire it by prescription.[30]

What needs to be addressed first is whether or not Pastor Makibalo has acquired by prescription the shares of his other coheirs or co-owners. Prescription as a mode of acquiring ownership requires a continuous, open, peaceful, public, and adverse possession for a period of time fixed by law.

This Court has held that the possession of a co-owner is like that of a trustee and shall not be regarded as adverse to the other co-owners but in fact, as beneficial to all of them.[31] Acts which may be considered adverse to strangers may not be considered adverse insofar as co-owners are concerned. A mere silent possession by a co-owner, his receipt of rents, fruits or profits from the property, the erection of buildings and fences and the planting of trees thereon, and the payment of land taxes, cannot serve as proof of exclusive ownership, if it is not borne out by clear and convincing evidence that he exercised acts of possession which unequivocally constituted an ouster or deprivation of the rights of the other co-owners.[32]

Thus, in order that a co-owner's possession may be deemed adverse to the cestui que trust or the other co-owners, the following elements must concur: (1) that he has performed unequivocal acts of repudiation amounting to an ouster of the cestui que trust or the other co-owners; (2) that such positive acts of repudiation have been made known to the cestui que trust or the other co-owners; and (3) that the evidence thereon must be clear and convincing.[33]

In *Pangan vs. Court of Appeals*,[34] this Court had occasion to lay down specific acts which are considered as acts of repudiation:

Filing by a trustee of an action in court against the trustor to quiet title to property, or for recovery of ownership thereof, held in possession by the former, may constitute an act of repudiation of the trust reposed on him by the latter.

The issuance of the certificate of title would constitute an open and clear repudiation of any trust, and the lapse of more than 20 years, open and adverse possession as owner would certainly suffice to vest title by prescription.

An action for the reconveyance of land based on implied or constructive trust prescribes within 10 years. And it is from the date of the issuance of such title that the effective assertion of adverse title for purposes of the statute of limitation is counted.

The prescriptive period may only be counted from the time petitioners repudiated the trust relation in 1955 upon the filing of the complaint for recovery of possession against private respondents so that the counterclaim of the private respondents contained in their amended answer wherein they asserted absolute ownership of the disputed realty by reason of the continuous and adverse possession of the same is well within the 10-year prescriptive period.

There is clear repudiation of a trust when one who is an apparent administrator of property causes the cancellation of the title thereto in the name of the apparent beneficiaries and gets a new certificate of title in his own name.

It is only when the defendants, alleged co-owners of the property in question, executed a deed of partition and on the strength thereof obtained the cancellation of the title in the name of their predecessor and the issuance of a

new one wherein they appear as the new owners of a definite area each, thereby in effect denying or repudiating the ownership of one of the plaintiffs over his alleged share in the entire lot, that the statute of limitations started to run for the purposes of the action instituted by the latter seeking a declaration of the existence of the co-ownership and of their rights thereunder.

The records do not show that Pastor Makibalo adjudicated to himself the whole estate of his wife by means of an affidavit filed with the Office of the Register of Deeds as allowed under Section 1, Rule 74 of the Rules of Court, or that he caused the issuance of a certificate of title in his name or the cancellation of the tax declaration in Alipio's name and the issuance of a new one in his own name. The only act which may be deemed as a repudiation by Pastor of the co-ownership over the lots is his filing on 28 April 1976 of an action to quiet title (Civil Case No. 5000). The period of prescription started to run only from this repudiation. However, this was tolled when his co-heirs, the private respondents herein, instituted on 8 October 1976 an action for partition (Civil Case No. 5174) of the lots. Hence, the adverse possession by Pastor being for only about six months would not vest in him exclusive ownership of his wife's estate, and absent acquisitive prescription of ownership, laches and prescription of the action for partition will not lie in favor of Pastor.[35]

The issue presented by the petitioners in their third assigned error involves a question of fact. This Court is not ordinarily a trier of facts, its jurisdiction being limited to errors of law. Thus, the findings of facts of the Court of Appeals are as a rule deemed conclusive. However, when the findings of facts of the appellate court vary with those of the trial court, this Court has to review the evidence in order to arrive at the correct findings.[36]

In the instant case, a conflict in the findings of facts of the lower courts exists. The trial court found that Pastor was the owner of Procopio's share in Lot No. 6080, as there was nothing to show that he sold it back to Alberto Yabo. The respondent court, on the other hand, held that Procopio Yabo never sold his share in Lot No. 6080 to Pastor, thus, there was no need to convey it back to Procopio's son, Alberto.

At this juncture, it is worthy to quote pertinent portions of the testimony of Pastor Makibalo:

COURT: (To the witness.)

Q

Where is Alberto Yabo living?

A

It is there in their house at Bulua.

ATTY. JARAULA: (Continuing.)

Q

In whose land?

A

Alipio Yabo's land.

Q

What relation has that land to the two (2) parcels of land under litigation?

A

I bought already.

Q

So, will you please tell the Honorable Court, why Alberto Yabo is staying on that land when you said you have, bought that land already.

A

So, I sold back a portion to them because they requested me.

COURT: (To the witness.)

Q

When was that when you said that Alberto Yabo requested a portion?

A

In 1967.

COURT:

Q

Did you give that portion which they requested?

A

Their share being inherited from their father Procopio was the portion they requested.

COURT

Q

Yes. Did you grant that?

A

Yes.

Q

That is the area you sold to Alberto Yabo, pursuant to his request?

A

Because that was the land they inherited from their father that was what they requested.

Q

All right. So that, the area now being occupied by Alberto Yabo?

A

Yes. That land in the Centro.

Q

This is now identified as Lot No. 6180?

A

Yes, Your Honor.

ATTY. JARAULA: (Continuing.)

Q

Where did you sign a document ceding that portion requested by Alberto Yabo?

A

We did not make any receipt in favor of Alberto Yabo because they got only the receipt of that of his father.

COURT (To the witness.)

Q

You mean to say, that the receipt which Procopio signed when he sold his share for [sic] the document which Alberto got?

A

Yes.

COURT

All right.

ATTY. JARAULA (Continuing.)

Q

Now, for how much did you buy the shares of each of the brothers and sisters of your wife?

A

One Hundred Ten (P110.00) Pesos.

Q

When you sold back to Alberto Yabo, the portion corresponding to the share of his father Procopio in the Poblacion, how much did he pay you?

A

The same.

Q

By the same, you are referring by the same amount of One Hundred Ten (P110.00) Pesos?

A

Yes, Sir. The same amount.[37]

The petitioners contend that the sales or conveyances made by Alipio's heirs' were for their consolidated shares in the two lots. If this was so, and the receipt which Procopio signed when he sold his consolidated share to Pastor was turned over to Alberto, the inevitable conclusion is that Alberto redeemed his father's share in both lots, not only in Lot No. 6180. This conclusion is further buttressed by the above-quoted testimony of Pastor that he bought the shares (consolidated) of each of Alipio's heirs for P110.00 and that when he sold back to Alberto the former share of Procopio, Alberto paid him the same amount of P110.00.

However, since the share of Procopio in the two litigated parcels of land was purchased by Pastor during his marriage with Maria, the same became conjugal property, and half of it formed part of Maria's estate upon her death in 1962. Accordingly, Pastor's resale in favor of Alberto could only be valid with respect to Pastor's one-half (1/2) conjugal share and one-fourth (1/4) hereditary share as heir of Maria.[38] The remaining one-fourth (1/4) should go to Pastor's co-heirs, the private respondents herein.

Now on the fourth assigned error.

Section 1, Rule 69 of the Rules of Court requires that all persons interested in the land sought to be partitioned must be joined as defendants in the complaints. All co-owners and persons having an interest in the property are considered indispensable parties and an action for partition will not lie without the joinder of said persons.[39] It has been held that the absence of an indispensable party in a case renders ineffective all the proceedings subsequent to the filing of the complaint including the judgment.[40]

It must be recalled that in Civil Case No. 5174 the private respondents sought the partition of the two lots based on the co-ownership which arose from the right of succession to Alipio's estate. Since Jose Yabo confirmed, through his thumbmark in the verification of the complaint, that he had already parted with his share in Alipio's estate, he in effect admitted that he had ceased to be a co-owner of the two lots which comprised his father's estate. Thus, his non-joinder as a party-plaintiff in the complaint would appear to be proper. He does not, as well, appear to be an indispensable party in Civil Case No. 5000.

As it turned out, however, the evidence and the issues which cropped up rendered imperative the determination of the conjugal assets of Pastor Makibalo and Maria Yabo and the partition of the latter's estate among her heirs. Her

estate consists of one-half (1/2) of the conjugal properties, which should then be divided pursuant to Article 1001 of the Civil Code since the marriage produced no child; thus one-half (1/2) to Pastor, and the other half to her brother, Jose, and to her nephews and nieces.

Insofar as the partition of Maria Yabo's estate is concerned, Jose is an indispensable party. Strictly, the rule on indispensable parties may bar a partition of Maria's estate. Considering, however, that such estate or its partition are but incidents in Civil Case No. 5000 and Civil Case No. 5174, and the parties have not offered any objection to the propriety of the determination and partition of her estate, then in the light of Section 11 of Rule 3[41] and Sections 1 and 5, Rule 10[42] of the Rules of Court, and following the rulings of this Court in the 1910 case of *Alonso vs. Villamor*[43] and the 1947 case of *Cuyugan vs. Dizon*,[44] an amendment of the complaint in Civil Case No. 5174 to implead Jose Yabo as party plaintiff would be in order.

In *Alonso*, it was held that under Section 110 of the Code of Civil Procedure -- whose first paragraph is substantially the same as the aforesaid Section 1 of Rule 10 -- and Section 503 thereof, this Court "has full power, apart from that power and authority which is inherent, to amend the process, pleadings, proceedings, and decision in this case, by substituting, as party plaintiff, the real party in interest." Our ruling in *Cuyugan* states:

We, however, do not believe that the case should be dismissed for plaintiff's failure to join her husband. (Sec. 11, Rule 2, Rules of Court). Nor should the case be remanded to the court below and a new trial ordered on this account. The complaint may and should be amended here, to cure the defect of party-plaintiffs, after final decision is rendered. Section 11, Rule 2, and Section 2, Rule 17, explicitly authorize such procedure. As this Court had occasion to say in *Quison vs. Salud*, (12 Phil., 109, 116), "a second action would be but a repetition of the first and would involve both parties, plaintiffs and defendant, in much additional expense and would cause much delay, in that way defeating the purpose of the section, which is expressly stated to be 'that the actual merits of the controversy may speedily be determined without regard to technicalities and in the most expeditious and inexpensive manner.' " (See also *Diaz vs. De la Rama*, 73 Phil., 104)

To avoid further delay in the disposition of this case, we declare Civil Case No. 5174 as thus duly amended. Consequently, Jose Yabo may participate in the partition of the estate of Maria Yabo. The fourth assigned error must then be rejected.

In view of the foregoing disquisitions, the appealed judgment should be modified as follows: (a) the former 1/9 share of Pelagia Yabo in Lots No. 6180 and 6080 which she sold to Pastor should be treated as the latter's exclusive property which should now pertain to the petitioners, his successors-in-interest; and (b) the former 1/9 share of Procopio Yabo in both lots should be divided as follows: 3/4 (respondent Pastor's 1/2 conjugal share and 1/4 representing his share therein as Maria's heir) for the spouses Alberto and Elpia Yabo, and 1/4 (representing the share therein of Maria's collateral relatives as Maria's heirs) for the private respondents, including Alberto and Jose Yabo. The partition of the two lots in controversy should therefore be made in this wise:

(1)

1/9 share of Gaudencia Yabo should be allotted to her heirs or successors-in-interest;

(2)

1/9 share formerly belonging to Pelagia Yabo -- to the petitioners as successors-in-interest of Pastor Makibalo;

(3)

1/9 hereditary share of Maria Yabo to be divided as follows:

(a)

1/2 for the petitioners (as successors-in-interest of Pastor Makibalo), and

(b)

1/2 for the private respondents, including Jose Yabo or his heirs;

(4)

1/9 share formerly belonging to Procopio Yabo to be divided thus:

(a)

3/4 for Spouses Alberto and Elpia Yabo, and

(b)

1/4 for the other private respondents, including Jose Yabo or his heirs;

(5)

5/9 shares which became the conjugal properties of Pastor Makibalo and Maria Yabo to be divided thus:

(a)

3/4 for the petitioners (as successors-in-interest of Pastor Makibalo), and

(b)

1/4 for the private respondents, including Jose Yabo or his heirs.

In sum, Lots Nos. 6180 and 6080 should be partitioned as follows:

1/9 or 4/36 — to Gaudencia Yabo's heirs or successors-in-interest;

3/4 of 1/9 or 3/36 — to the spouses Alberto and Elpia Yabo;

8/36 — to the private respondents, including Jose Yabo or his heirs;

21/36 — to the petitioners as successors-in-interest of Pastor Makibalo.

WHEREFORE, the challenged decision of the Court of Appeals of 8 February 1993 in CA-G.R. CV No. 12839 is AFFIRMED, subject to the modifications indicated above. Upon the finality of this decision, let this case be forthwith remanded to the court a quo for further proceedings on the partition of Lots Nos. 6180 and 6080 in conformity with this decision.

No pronouncement as to costs.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Quiason and Kapunan, JJ., concur.

[1] Original Records (OR) (Civil Case No. 5000), 1-5.

[2] Namely: Francisca, Damasa, Ignacio, Serapio, ALberto, Maria, Brigida, Enecita, Epitacia, Benito, Filoteo, Andresa, Jovita, Bonifacia, Rondino, all surnamed Yabo, Rustum Apag, Nastracion, Gerardo, Leoncito, all surnamed Abratigen, and Juanita and Felicisimo Apdian

[3] OR (Civil Case No. 5174), 1-4.

[4] Exhibit "F"; TSN, 18 January 1978, 284, 301,

[5] Exhibit "A"; TSN, 10 September 1976, 15-18, 30-37; TSN, 17 January 1978, 286-287.

[6] 'Exhibit "B."

[7] Exhibit "C"; TSN, 21 October 1976, 121-124.

[8] TSN, 21 October 1976, 124-125; TSN, 17 January 1978, 288, 291.

[9] Exhibit "D."

[10] TSN, 17 January 1978, 286, 288-290, 296-298.

[11] Exhibit "1"; Id., 304.

[12] TSN, 18 October 1977, 251-252; TSN, 6 March 1978, 10.

[13] Exhibit "N."

[14] Exhibits "1," "2," and "3."

[15] TSN, 15 November 1979, 66-71.

[16] TSN, 12 September 1978, 49-51.

[17] Id., 84-85.

[18] OR (Civil Case No. 5000), 551 et seq.; OR (Civil Case No. 5174), 143 et seq.; Annex "E" of Petition; Rollo, 32-48. Per Judge Eulalio G. Rosete

[19] OR (Civil Case No. 5000), 563-566; OR (Civil Case No. 5174), 155-159; Rolio, 44-48.

[20] OR (Civil Case No. 5000), 567.

[21] Annex "B" of Petition; RoUo, 15-26. Per Associate Justice Eduardo G. Montenegro, concurred in by Associate Justices Arturo B. Buena and Regina G. Ordonez-Benitez.

[22] Rollo, 22-25.

[23] Rollo, 25-26.

[24] Annex "A" of Petition; Id., 14.

[25] Petition, 6-8; Id., 8-10.

[26] Article 175(1), The Civil Code of the Philippines.

[27] Article 185, Id.

[28] Article 1078, Id.

[29] Del Banco vs. Intermediate, Appellate Court, 156 SCRA 55 C1987], citing Budlong vs. Pundoc, 79 SCRA 24 [1977].

[30] De Castro vs. Echarri, 20 Phil. 23 [1911]; Bicarme vs. Court of Appeals," 186 SCRA 294 [1990].

[31] Pangan vs. Court of Appeals, 166 SCRA 375 [1988].

[32] Bicarme vs. Court of Appeals, supra note 30.

[33] Delina vs. Court of Appeals, 201 SCRA 641 [1991].

[34] Supra note 30, at 382-383 (citations omitted).

[35] Bicarme vs. Court of Appeals, supra note 29.

[36] Roman Catholic Bishop of Malolos, Inc. vs. Intermediate Appellate Court, 191 SCRA 411 [1990]; Gaw vs. Intermediate Appellate Court, 220 SCRA 405 [1993]; Geronimo vs. Court of Appeals, 224 SCRA 494 C19933.

[37] TSN, 18 January 1978, 303-306.

[38] Paulmitan vs. Court of Appeals, 215 SCRA 866 [1992].

[39] VICENTE J. FRANCISCO, The Revised Rules of Court in the Philippines, 1973 ed., vol. 1, 267, citing Ruguian vs. Ruguian, 9 Phil. 527 [1904] and Garcia de Lara vs. Gonzales de Lara, 2 Phil. 294 [1903]; MANUEL V. HORAN, Comments on the Rules of Court, 1980 ed., vol. 3, 293, citing Garcia de Lara vs. Gonzales de Lara, supra; Araullo vs. Araullo, 3 Phil. 567 [1904]; Ruguian vs. Ruguian, supra; Gulib vs. Bucquio, 16 Phil. 444 [1910]; Reyes vs. Cordero, 46 Phil 658 [1920].

[40] Galarosa vs. Valencia, 227 SCRA 728 [1993].

[41] It provides:

SEC. 11. Misjoinder and non-joinder of parties. — Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on notion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

[42] They provide:

SEC. 1. Amendments in general. — Pleadings may be amended by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner.

SEC. 5. Amendment to conform to or authorize presentation of evidence. — When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but

failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

[43] 16 Phil. 315, 320 [1910].

[44] 79 Phil. 80, 91 [1947]

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