

MAURICIA ALEJANDRINO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, HON. BENIGNO G. GAVIOLA, RTC-9, CEBU CITY, AND LICERIO P. NIQUE, RESPONDENTS.

G.R. No. 114151. September 17, 1998

Ponente: ROMERO, J.

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ROMERO, J.:

Questioned in this petition for review on certiorari is the Decision[1] of the Court of Appeals which ruled that the trial court, in an action for quieting of title, did not act in excess of jurisdiction when it issued an order for the segregation of property, after the finality of its decision.

The facts show that the late spouses Jacinto Alejandrino and Enrica Labunos left their six children named Marcelino, Gregorio, Ciriaco, Mauricia, Laurencia and Abundio a 219-square-meter lot in Mambaling, Cebu City identified as Lot No. 2798 and covered by Transfer Certificate of Title No. 19658. Upon the demise of the Alejandrino spouses, the property should have been divided among their children with each child having a share of 36.50 square meters. However, the estate of the Alejandrino spouses was not settled in accordance with the procedure outlined in the Rules of Court.

Petitioner Mauricia (one of the children) allegedly purchased 12.17 square meters of Gregorio's share, 36.50 square meters of Ciriaco's share and 12.17 square meters of Abundio's share thereby giving her a total area of 97.43 square meters, including her own share of 36.50 square meters. It turned out, however, that a third party named Licerio Nique, the private respondent in this case, also purchased portions of the property, to wit: 36.50 square meters from Laurencia, 36.50 square meters from Gregorio "through Laurencia," 12.17 square meters from Abundio also "through Laurencia" and 36.50 square meters from Marcelino or a total area of 121.67 square meters of the Alejandrino property.[2]

However, Laurencia (the alleged seller of most of the 121.67 square meters of the property) later questioned the sale in an action for quieting of title and damages against private respondent Nique. It was docketed as Civil Case No. CEB-7038 in the Regional Trial Court of Cebu City, Branch 9, presided by Judge Benigno G. Gaviola. In due course, the lower court rendered a decision on November 27, 1990 disposing of the case as follows:

"WHEREFORE, the Court hereby renders judgment in favor of defendant and against plaintiff, dismissing the complaint filed by plaintiff against defendant, and on the Counterclaim and prayer of defendant in its Answer, the Court hereby declares defendant as the owner in fee simple of the share of plaintiff Laurencia Alejandrino and the shares of Marcelino, Gregorio and Abundio, all surnamed Alejandrino, of the parcel of land known as Lot No. 2798 and covered by Transfer Certificate of Title No. 19658 which 4 shares totals an area of 146 square meters more or less; and the Court further Orders plaintiff to:

1. Vacate the premises subject of the complaint and surrender the property to defendant to the extent of the 4 shares aforementioned;
2. Pay the defendant the amount of P15,000.00 as litigation and necessary expenses; the sum of P10,000.00 as

reimbursement for attorney's fees; the sum of P10,000.00 as moral damages and P10,000.00 as exemplary damages;

3. Plus costs.

SO ORDERED."[3]

Laurencia appealed the decision to the Court of Appeals under CA-G.R. CV No. 33433 but later withdrew the same.[4] On April 13, 1992, the Court of Appeals considered the appeal withdrawn in accordance with Rule 50 of the Rules of Court.[5]

Meanwhile, herein petitioner Mauricia Alejandrino filed on May 5, 1992 before the Regional Trial Court of Cebu City, Branch VII, a complaint for redemption and recovery of properties with damages against private respondent Nique that was docketed as Civil Case No. CEB-11673. Adelino B. Sitoy, Laurencia's counsel in Civil Case No. CEB-7038, filed Civil Case No. CEB-11673 for petitioner Mauricia.

The amended complaint in the latter case dated May 17, 1992 alleged that private respondent Nique never notified petitioner Mauricia of the purchase of 121.67 square meters of the undivided Lot No. 2798 nor did he give petitioner Mauricia the preemptive right to buy the area as a co-owner of the same lot. As such co-owner, petitioner Mauricia manifested her willingness to deposit with the court the amount of P29,777.78, the acquisition cost of the portion purchased by private respondent Nique. Petitioner Mauricia also alleged that she demanded from private respondent the area of around 24.34 square meters that the latter had "unduly, baselessly and maliciously claimed as his own but which, as part of Lot No. 2798, actually belongs to her." The amended complaint prayed that petitioner Mauricia be allowed to redeem the area of 121.67 square meters under the redemption price of P29,777.78 and that private respondent Nique be ordered to execute the necessary documents for the redemption and the eventual transfer of certificate of title to her. The amended complaint further prayed for the return to petitioner Mauricia of the 24.34-square-meter portion of the lot and for damages amounting to P115,000 and attorney's fees of P30,000.

On August 2, 1993, the lower court granted the motion to admit the amended complaint and forthwith ordered the defendant therein to file an amended answer.

In Civil Case No. CEB-7038 in the meantime, private respondent filed a motion for the segregation of the 146-square-meter portion of the property that had been declared by the trial court as his own by virtue of purchase. On May 6, 1993, the trial court issued an order the pertinent portions of which read as follows:

"O R D E R

For resolution is a 'Motion to Order Segregation of 146 Square Meters In Lot No. 2798' dated January 15, 1993 filed by defendant and the 'Opposition' thereto dated February 2, 1992 by plaintiff. Movant-defendant also filed a rejoinder dated February 15, 1993 to the Opposition.

After going over the allegations in the motion, the opposition thereto and the rejoinder as well as the records of the case, particularly the decision rendered by this Court and the Order dated October 28, 1992, denying the motion for reconsideration filed by plaintiffs and allowing the issuance of a writ of execution, the Court is inclined to Grant the instant motion.

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In addition thereto, the Court makes the following observation:

1. Plaintiff (oppositor) has a total share of 146 square meters. This is admitted by her in her complaint (par. 4 thereof). In the decision rendered by this Court, this share now belongs to defendant movant by way of sale. The decision of this Court has long become final.

2. The total area of the land is 219 sq. meters (par. 2 of complaint), thus, the share of Mauricia Alejandrino is only 73 square meters.

3. As early as June 10, 1983, Mauricia Alejandrino and Laurencia Alejandrino had entered into an 'Extrajudicial Settlement of Estate' whereby they agreed to divide the land subject of this case with Laurencia Alejandrino owning 146 square meters in the frontage and Mauricia Alejandrino owning 75 square meters in the back portion (Exh. '16', Extrajudicial Settlement of Estate, par. 1) (underscoring supplied), and that the parties assure each other and their successor in interest that a right of way of two meters is granted to each party by the other permanently (Exh. '16', par. 2). This partition is signed by the parties and their witnesses. Although not notarized, it is certainly valid as between the parties, Maurecia (sic) Alejandrino, being an immediate party, may not renege on this.

4. Since the share of defendant Licerio P. Nique is specifically known to be 146 square meters, and that its location shall be on the 'frontage' of the property while the 73 square meters of Maurecia (sic) Alejandrino shall be at the back portion, then, the Court cannot see its way clear, why the 146 sq. meters share of defendant may not be segregated.

5. The contention by oppositor that the 'segregation of defendant's share of 146 sq. meters from Lot No. 2798 was not decreed in the judgment' is a rather narrow way of looking at the judgment. Paragraph 1 of the dispositive portion of the judgment by this Court, Orders plaintiff to 'vacate the premises subject of the complaint and surrender the property to defendant to the extent of the 4 shares aforementioned.' The 4 shares of Laurencia Alejandrino of 146 sq. meters can be segregated because Laurencia and Maurecia had already executed an extrajudicial partition indicating where their respective shares shall be located (Exh. '16'). To deny the segregation is to make the decision of this Court just about valueless is not altogether useless. The matter of allowing the segregation should be read into the decision.

The bottomline is still that plaintiff Laurencia, despite the fact that the decision of this Court had long become final; and despite the fact that she even withdraw (sic) her appeal, she still is enjoying the fruits of the property to the exclusion of the rightful owner.

WHEREFORE, the Court hereby Grants the motion. The defendant Licerio Nique may proceed to segregate his 146 (sic) sq. meters from Lot NO. 2798 covered by TCT No. 19658, by having the same surveyed by a competent Geodetic Engineer, at the expense of movant-defendant.

SO ORDERED."[6]

Petitioner Mauricia questioned this order of the lower court in a petition for certiorari and prohibition with prayer for the issuance of a writ of preliminary injunction filed before the Court of Appeals. In due course, the Court of Appeals dismissed the petition in a Decision promulgated on August 25, 1993.

The Court of Appeals stated that, in issuing the questioned order of May 6, 1993, the respondent court was merely performing its job of seeing to it that "execution of a final judgment must conform to that decreed in the dispositive part of the decision." It ratiocinated thus:

"x x x. In ordering the segregation of the 146 square meters, respondent Judge correctly referred to the text of the decision to ascertain which portion of the land covered by TCT No. 19658 was actually sold by Laurencia Alejandrino (sister of herein petitioner Mauricia) to private respondent Nique. The respondent Judge did not err in relying upon Exhibit '16', the Deed of Extrajudicial Settlement, dated June 10, 1983, mentioned in page 3 of the Decision. Pertinent portion of Exhibit '16' reads:

'NOW, THEREFORE, the above-named parties-heirs hereby stipulates (sic), declare and agree as follows:

'1. That the parties have agreed to divide the parcel of land with Laurencia Alejandrino owning 146 square meters in the frontage and Mauricia Alejandrino 73 square meters in the back portions;

`2. That the parties mutually and reciprocally assure each other and their successor of interest (sic) that a right of way of two meters is granted to each party to the other permanently.' (underscoring supplied, Annex `1', Comment, p. 65, Rollo)

duly signed by herein petitioner and witnessed by private respondent Nique. It readily reveals that when Laurencia subsequently sold her shares to herein private respondent, per the Deed of Absolute Sale dated October 29, 1986 (Exhs. `B' and `10'), the parties must have referred to the 146 square meters in the frontage described in said document, Exhibit `16'. Laurencia had no authority to sell more, or, less, than that agreed upon in the extrajudicial settlement between her and herein petitioner Mauricia. Insofar as the latter is concerned, she is estopped from claiming that said extrajudicial settlement was a fatally defective instrument because it was not notarized nor published. What is important is that private respondent personally knew about Laurencia and Mauricia's agreement because he was a witness to said agreement and he relied upon it when he purchased the 146 square meters from Laurencia.

It cannot be validly claimed by petitioner that she was deprived of her property without due process of law considering that private respondent is merely segregating the portion of the land actually sold to him by Laurencia Alejandrino and it does not affect the 73 square meters that properly pertain to petitioner.

Moreover, the Supreme Court has ruled that where there is ambiguity caused by an omission or mistake in the dispositive portion of a decision the court may clarify such ambiguity by an amendment even after the judgment had become final, and for this purpose it may resort to the pleadings filed by the parties, the court's finding of facts and conclusions of law as expressed in the body of the decision (Republic Surety and Insurance Co., Inc., et al., versus Intermediate Appellate Court, et al., 152 SCRA 309). The assailed order, in effect, clarifies the exact location of the 146 square meters pursuant to Exhibit `16'. Respondent court did not act in excess of its jurisdiction. Hence, writs of certiorari and prohibition do not lie in this case."[7]

Petitioner Mauricia filed a motion for the reconsideration of the Court of Appeals' decision. However, on February 15, 1994, the Court of Appeals denied the same for lack of merit "there being no new ground or compelling reason that justifies a reconsideration" of its Decision.[8]

In the instant petition for review on certiorari, petitioner assails the decision of the Court of Appeals, contending that the lower court acted beyond its jurisdiction in ordering the segregation of the property bought by private respondent as the same was not decreed in its judgment, which had long become final and executory. Petitioner argues that partition of the property cannot be effected because private respondent is also a defendant in Civil Case No. CEB-11673. She asserts that Exhibit 16, the extrajudicial settlement of estate referred to in the questioned order of the lower court, was not discussed in the decision of the lower court and even if it were, she could not be bound thereby considering that she was not a party litigant in Civil Case No. CEB-7038. She questions the validity of the deed of extrajudicial settlement because it was not notarized or published.

In his comment on the petition, private respondent alleges that although petitioner was not a party litigant in Civil Case No. CEB-7038, she is estopped from questioning the decision in that case and filing the instant petition because she had "knowledge of the existence of said case" where *res judicata* had set in. He adds that the instant petition was filed in violation of Circular No. 28-91 on forum shopping "in that the Petitioner in the instant petition whose counsel is also the counsel of plaintiff-appellant Laurencia Alejandrino in CA-G.R. CV No. x x x, had filed a civil action - Civil Case No. CEB-11673 x x x for "REDEMPTION & RECOVERY OF PROPERTIES WITH DAMAGES", which is presently pending before Branch 7 of the Regional Trial Court of Cebu City." He asserts that the lower court did not exceed its jurisdiction and/or commit grave abuse of discretion in granting his motion for segregation of the 146 square meters of the land involved that rightfully belonged to him in accordance with the decision of the lower court. He charges counsel for petitioner with exhibiting "unethical conduct and practice" in appearing as counsel for petitioner in Civil Case No. CEB-11673 after he had appeared for

complainant Laurencia in CA-G.R. CV No. 33433 or Civil Case No. CEB-7038.

Under the circumstances of this case, the ultimate issue that needs determination is whether or not as an heir of the Alejandrino property, Laurencia may validly sell specific portions thereof to a third party.

Article 1078 of the Civil Code provides that where there are two or more heirs, the whole estate of the decedent is, before partition, owned in common by such heirs, subject to the payment of the debts of the deceased. Under a co-ownership, the ownership of an undivided thing or right belongs to different persons.[9] Each co-owner of property which is held pro indiviso exercises his rights over the whole property and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co-owners. The underlying rationale is that until a division is made, the respective share of each cannot be determined and every co-owner exercises, together with his co-participants, joint ownership over the pro indiviso property, in addition to his use and enjoyment of the same.[10]

Although the right of an heir over the property of the decedent is inchoate as long as the estate has not been fully settled and partitioned,[11] the law allows a co-owner to exercise rights of ownership over such inchoate right. Thus, the Civil Code provides:

"ART. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership."

With respect to properties shared in common by virtue of inheritance, alienation of a pro indiviso portion thereof is specifically governed by Article 1088 that provides:

"ART. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor."

In the instant case, Laurencia was within her hereditary rights in selling her pro indiviso share in Lot No. 2798. However, because the property had not yet been partitioned in accordance with the Rules of Court, no particular portion of the property could be identified as yet and delineated as the object of the sale. Thus, interpreting Article 493 of the Civil Code providing that an alienation of a co-owned property "shall be limited to the portion which may be allotted to (the seller) in the division upon the termination of the co-ownership," the Court said:

"x x x (p)ursuant to this law, a co-owner has the right to alienate his pro-indiviso share in the co-owned property even without the consent of the other co-owners. Nevertheless, as a mere part owner, he cannot alienate the shares of the other co-owners. The prohibition is premised on the elementary rule that 'no one can give what he does not have' (Nemo dat quod non habet). Thus, we held in *Bailon-Casilao vs. Court of Appeals* (G.R. No. 78178, April 15, 1988, 160 SCRA 738, 745), viz:

`x x x since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void. However, only the rights of the co-owner-seller are transferred, thereby making the buyer a co-owner of the property.

`The proper action in cases like this is not for the nullification of the sale or for the recovery of possession of the thing owned in common from the third person who substituted the co-owner or co-owners who alienated their shares, but the DIVISION of the common property of the co-owners who possessed and administered it.'"[12]

The legality of Laurencia's alienation of portions of the estate of the Alejandrino spouses was settled in Civil Case No. CEB-7038. The decision in that case had become final and executory with Laurencia's withdrawal of her appeal. When private respondent filed a motion for the segregation of the portions of the property that were adjudged in his favor, private respondent was in effect calling for the partition of the property. However, under the law, partition of the estate of a decedent may only be effected by (1) the heirs themselves extrajudicially, (2) by the court in an ordinary action for partition, or in the course of administration proceedings, (3) by the testator himself, and (4) by the third person designated by the testator.[13]

The trial court may not, therefore, order partition of an estate in an action for quieting of title. As there is no pending administration proceedings, the property of the Alejandrino spouses can only be partitioned by the heirs themselves in an extrajudicial settlement of estate. However, evidence on the extrajudicial settlement of estate was offered before the trial court and it became the basis for the order for segregation of the property sold to private respondent. Petitioner Mauricia does not deny the fact of the execution of the deed of extrajudicial settlement of the estate. She only questions its validity on account of the absence of notarization of the document and the non-publication thereof.

On extrajudicial settlement of estate, Section 1 of Rule 74 of the Rules of Court provides:

"If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action for partition. x x x.

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof."

Notarization of the deed of extrajudicial settlement has the effect of making it a public document[14] that can bind third parties. However, this formal requirement appears to be superseded by the substantive provision of the Civil Code that states:

"ART. 1082. Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, an exchange, a compromise, or any other transaction."

By this provision, it appears that when a co-owner sells his inchoate right in the co-ownership, he expresses his intention to "put an end to indivision among (his) co-heirs." Partition among co-owners may thus be evidenced by the overt act of a co-owner of renouncing his right over the property regardless of the form it takes. In effect, Laurencia expressed her intention to terminate the co-ownership by selling her share to private respondent.

Moreover, the execution of the deed of extrajudicial settlement of the estate reflected the intention of both Laurencia and petitioner Mauricia to physically divide the property. Both of them had acquired the shares of their brothers and therefore it was only the two of them that needed to settle the estate. The fact that the document was not notarized is no hindrance to its effectivity as regards the two of them. The partition of inherited property need not be embodied in a public document. In this regard, Tolentino subscribes to that opinion when he states as follows:

"x x x. We believe, however, that the public instrument is not essential to the validity of the partition. This is not one of those contracts in which form is of the essence. The public instrument is necessary only for the registration of the contract, but not for its validity. The validity of an oral contract among the heirs, terminating

the co-ownership, has been recognized by the Supreme Court in a decision x x x (where) that tribunal said: 'An agreement among the heirs that a certain lot should be sold and its proceeds paid to one of them is a valid oral contract, and the same has the force of law between the parties from and after the original assent thereto, and no one of them may withdraw or oppose its execution without the consent of all.'

In a still later case, the Supreme Court held that 'partition among heirs or renunciation of an inheritance by some of them is not exactly a conveyance for the reason that it does not involve transfer of property from one to the other, but rather a confirmation or ratification of title or right to property by the heir renouncing in favor of another heir accepting and receiving the inheritance.' Hence, the court concluded, 'it is competent for the heirs of an estate to enter into an oral agreement for distribution of the estate among themselves.'"[15]

The deed of extrajudicial settlement executed by Mauricia and Laurencia evidence their intention to partition the property. It delineates what portion of the property belongs to each other. That it was not notarized is immaterial in view of Mauricia's admission that she did execute the deed of extrajudicial settlement. Neither is the fact that the trial court only mentioned the existence of such document in its decision in Civil Case No. CEB-7028. That document was formally offered in evidence and the court is deemed to have duly considered[16] it in deciding the case. The court has in its favor the presumption of regularity of the performance of its task that has not been rebutted by petitioner Mauricia. Neither may the fact that the other heirs of the Alejandrino spouses, named Marcelino, Gregorio, Ciriaco and Abundio did not participate in the extrajudicial settlement of estate affect its validity. In her amended complaint in Civil Case No. CEB-11673, petitioner Mauricia herself admitted having acquired by purchase the rights over the shares of her brothers.

On the part of Laurencia, the court found that she had transmitted her rights over portions she had acquired from her brothers to private respondent Nique. The sale was made after the execution of the deed of extrajudicial settlement of the estate that private respondent himself witnessed. The extrajudicial settlement of estate having constituted a partition of the property, Laurencia validly transferred ownership over the specific front portion of the property with an area of 146 square meters.

The trial court, therefore, did not abuse its discretion in issuing the order for the segregation of the property. In so doing, it was merely reiterating the partition of the property by petitioner Mauricia and her sister Laurencia that was embodied in the deed of extrajudicial settlement of estate. The order may likewise be deemed as a clarification of its decision that had become final and executory. Such clarification was needed lest proper execution of the decision be rendered futile.

The Court finds no merit in the issue of forum shopping raised by private respondent. Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other.[17] Because the judgment in Civil Case No. CEB-7028 is already final and executory, the existence of *res judicata* is determinative of whether or not petitioner is guilty of forum shopping. For the principle of *res judicata* to apply, the following must be present: (1) a decision on the merits; (2) by a court of competent jurisdiction; (3) the decision is final; and (4) the two actions involve identical parties, subject matter and causes of action.[18] The fourth element is not present in this case. The parties are not identical because petitioner was not impleaded in Civil Case No. CEB-7028. While the subject matter may be the same property of the Alejandrino spouses, the causes of action are different. Civil Case No. CEB-7028 is an action for quieting of title and damages while Civil Case No. CEB-11673 is for redemption and recovery of properties.

It appears moreover, that private respondent's argument on forum shopping is anchored on the fact that counsel for both plaintiffs in those two cases is one and the same, thereby implying that the same counsel merely wanted to prevail in the second case after having failed to do so in the first. The records show, however, that Laurencia executed an affidavit[19] consenting to the appearance of her counsel in any case that petitioner Mauricia might

file against private respondent. She affirmed in that affidavit that she could be included even as a defendant in any case that petitioner Mauricia would file because she "fully agree(d)" with whatever cause of action Mauricia would have against private respondent. Such a statement can hardly constitute a proper basis for a finding of forum shopping, much less evidence of misconduct on the part of counsel. As noted earlier, the two cases have different causes of action and the two plaintiffs who would have conflicting claims under the facts of the case actually presented a united stand against private respondent. If there is any charge that could be leveled against counsel, it is his lack of thoroughness in pursuing the action for quieting of title. As counsel for plaintiff therein, he could have impleaded petitioner Mauricia knowing fully well her interest in the property involved in order to avoid multiplicity of suits. However, such an omission is not a sufficient ground for administrative sanction.

WHEREFORE, the instant petition for review on certiorari is hereby DENIED for lack of merit. Costs against petitioner.

SO ORDERED.

Narvasa, C.J. (Chairman), Kapunan, and Purisima, JJ., concur.

[1] Penned by Associate Justice Ma. Alicia Austria-Martinez and concurred in by Associate Justices Santiago M. Kapunan and Alfredo L. Benipayo.

[2] Rollo, pp. 54-55.

[3] Ibid., p. 25.

[4] Ibid., p. 50.

[5] Ibid., p. 51.

[6] Ibid., pp. 11-12, 25-27.

[7] CA Decision, pp. 5-7.

[8] Rollo, p. 32.

[9] Art. 484, Civil Code.

[10] Aguilar v. Court of Appeals, G.R. No. 76351, October 29, 1993, 227 SCRA 472, 480.

[11] The Estate of Ruiz v. Court of Appeals, 322 Phil. 590, 603 (1996).

[12] Mercado v. Court of Appeals, 310 Phil. 684, 690 (1995).

[13] TOLENTINO, CIVIL CODE OF THE PHILIPPINES, Vol III, 1992 ed., p. 594.

[14] A public document is "any instrument authorized by a notary public or a competent public official, with the solemnity required by law" (MORENO, PHILIPPINE LAW DICTIONARY, 3rd ed., p. 763 citing Cacnio v. Baens, 5 Phil. 742 (1906).

[15] TOLENTINO, supra, at p. 595 citing Belen v. Belen, 49 O.G. 997 (J.B.L. Reyes, J.) and Barcelona v. Barcelona, 53 O.G. 373 (Montemayor, J.).

[16] Sec. 35, Rule 132, Rules of Court.

[17] First Philippine International Bank v. Court of Appeals, 322 Phil. 280, 306 (1996) cited in Fortich v. Corona,

G.R. No. 131457, April 24, 1998.

[18] *Bernardo v. NLRC*, 325 Phil. 371, 384-385 (1996).

[19] *Rollo*, p. 62.

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