

HEIRS OF CESARIO VELASQUEZ, NAMELY: ANASTACIA VELASQUEZ, SOFIA VELASQUEZ, ELISEO VELASQUEZ, JOSE VELASQUEZ, CORAZON VELASQUEZ, LEONORA VELASQUEZ, AND NIEVES VELASQUEZ, PETITIONE...*G.R. No. 126996. February 15, 2000*

Ponente: GONZAGA-REYES, J.

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Before us is a Petition for Review on Certiorari filed by petitioners assailing the December 29, 1995 decision[1] of the Court of Appeals in CA-G.R. CV No. 39729 affirming the decision of the Regional Trial Court of Pangasinan, Branch 40, Dagupan City[2] in Civil Case No. D-9288 and the resolution dated November 6, 1996 denying their motion for reconsideration.[3]

Spouses Leoncia de Guzman and Cornelio Aquino died intestate sometime in 1945 and 1947, respectively and were childless. Leoncia de Guzman was survived by her sisters Anatolia de Guzman (mother of the plaintiffs) and Tranquilina de Guzman (grandmother of the defendants). During the existence of their marriage, spouses Aquino were able to acquire the following real properties:

- a) A parcel of land (residential) situated in Guiguilonen, Mangaldan, Pangasinan. Bounded on the S. by Simeon Meneses; on the E. by Dionisio Muyargas; on the N. by road to San Jacinto; and on the W. by Juan Magalong; containing an area of 995 sq. m. more or less and assessed for the current year;
- b) A parcel of land (sugar cane) and coconut land situated in Poblacion, Mangaldan, Pangasinan. Bounded on the N. by Jose Lopez and Cipriano Serafica; on the E. by road to Mapandan; on the S. by Vicente Doyola and Dalmacio Gonzales; and on the W. by Eleuterio Serafica; containing an area of 27,849 sq. m., more or less;
- c) A parcel of land situated in Malabago, Mangaldan, Pangasinan. Bounded on the N. by Fausto Tandingan; on the E. by Segundo Toralba, Fausto Tandingan and Jacinta Biasaga; on the S. by Roberto Mamapon; and on the W. by heirs of Estanislao Biasaga and Elena delos Reyes; containing an area of 2,077 sq. m. more or less;
- d) A parcel of land (sugarcane), situated in Embarcadero, Mangaldan, Pangasinan. Bounded on the N. by Basilio Duya and Bernardo Cano; on the E. by Simeon Manaois; on the S. by a road; and on the W. by Loreto de Guzman; containing an area of 2,857 sq. m., more or less; It is covered by Tax Decl. No. 231;
- e) A parcel of residential land situated in Bari, Mangaldan, Pangasinan. Bounded on the N. by Andres Aquino; on the E. by Arcadio Barromeo; on the S. by National Road; on the W. by Andres Aquino; containing an area of 595 sq. m., more or less and covered by Tax Decl. No. 453;
- f) A parcel of unirrigated riceland situated in Malabago, Mangaldan, Pangasinan. Bounded on the N. by Segundo Tandingan and Jacinto Biasaga; on the E. by Segundo Toralba, Fausto Tandingan and Jacinto Biasaga; on the S. by Roberto Mamapon; and on the W. by heirs of Estanislao Biasaga and Elena delos Reyes; containing an area of 2,077 sq. m., more or less, and covered Tax Decl. No. 1156.

Sometime in 1989, the heirs of Anatalia de Guzman represented by Santiago, Andres, Felicidad and Apolonio,[4] all surnamed Meneses filed a complaint for annulment, partition and damages against the heirs of Cesario Velasquez (son of Tranquilina de Guzman) for the latter's refusal to partition the above-mentioned conjugal properties of the Spouses Aquino. The complaint alleged that Leoncia de Guzman, before her death, had a talk with the plaintiffs' mother, Anatalia de Guzman, with plaintiff Santiago Meneses and Tranquilina de Guzman and his son Cesario Velasquez in attendance; that in the conference Leoncia told Anatalia de Guzman, Tranquilina de Guzman and Cesario Velasquez that the documents of donation and partition which she and her husband earlier executed were not signed by them as it was not their intention to give away all the properties to Cesario Velasquez because Anatalia de Guzman who is one of her sisters had several children to support; Cesario Velasquez together with his mother allegedly promised to divide the properties equally and to give the plaintiffs one-half (1/2) thereof; that they are entitled to 1/2 of each of all the properties in question being the children of Anatalia de Guzman, full blood sister of Leoncia de Guzman. Plaintiffs further claim that after the death of Leoncia, defendants forcibly took possession of all the properties and despite plaintiffs' repeated demands for partition, defendants refused. Plaintiffs pray for the nullity of any documents covering the properties in question since they do not bear the genuine signatures of the Aquino spouses, to order the partition of the properties between plaintiffs and defendants in equal shares and to order the defendants to render an accounting of the produce of the land in question from the time defendants forcibly took possession until partition shall have been effected.[5]

Defendants filed their Amended Answer with counterclaim alleging among others that during the lifetime of spouses Cornelio Aquino and Leoncia de Guzman, they had already disposed of their properties in favor of petitioners' predecessors-in-interest, Cesario Velasquez and Camila de Guzman, and petitioners Anastacia and Jose Velasquez in the following manner:

(1) The third and sixth parcels were conveyed to defendants' late parents Cesario Velasquez and Camila de Guzman, by virtue of a Escritura de Donation Propter Nuptias dated February 15, 1919;

(2) The second parcel was conveyed to defendants' late parents Cesario Velasquez and Camila de Guzman by virtue of a deed of conveyance dated July 14, 1939, for which Transfer Certificate of Title No. 15129 was issued by the Registry of Deeds of Pangasinan in the names of Cesario Velasquez and Camila de Guzman;

(3) The first parcel was likewise conveyed to defendants Jose Velasquez and Anastacia Velasquez by virtue of a deed of conveyance (Donation Inter vivos) dated April 10, 1939;

(4) As to the fourth and fifth parcels, the same were owned and possessed by third parties.

Defendants denied that a conference took place between Leoncia de Guzman and plaintiff Santiago Meneses and his mother Anatalia with Tranquilina (defendants' grandmother) and Cesario Velasquez (defendants' father), nor did the latter promise to divide the properties equally with the plaintiffs or to execute a deed of partition; that they did not forcibly take possession of the subject properties since their possession thereof has been peaceful, open, continuous and adverse in character to the exclusion of all others. By way of affirmative defenses, defendants claim that the instant case is already barred by res judicata since there had been three previous cases involving the same parties, subject matter and cause of action which were all dismissed, the last of which was dismissed for failure to prosecute; that plaintiffs' action to annul the documents covering the disposition of the properties is also barred by the statute of limitations; that the action for partition presupposes the existence of a property held in common as agreed upon or admitted by the parties but the co-ownership ceases when one of the parties alleges exclusive ownership, thus the action becomes one for a title and recovery of ownership and the action prescribes in four years.[6]

On May 18, 1990, a pre-trial order was issued by the trial court which defined the issues to be resolved as

follows:[7]

"x x x

1. Whether or not the properties in question form part of the estate of Anatalia de Guzman and Sps. Cornelio Aquino and Leoncia de Guzman;
2. Whether or not plaintiff's action is already barred by the statutes of limitation and res judicata; and
3. Whether or not the properties in question can be the subject of an action for partition."

After trial, the decision was rendered on April 8, 1992 which ruled as follows:[8]

"From the evidence, the Court finds that the plaintiffs are brothers and sisters who are the children of Estanislao Meneses and Anatalia de Guzman and the defendants are the children of plaintiffs' cousin Cesario Velasquez and Camila de Guzman. The defendants' mother Tranquilina de Guzman and plaintiffs' mother Anatalia de Guzman and Leoncia de Guzman are full blooded sisters. The subject six (6) parcels of land were conjugal properties of Leoncia de Guzman and her husband Cornelio Aquino were in their possession until their death in 1945 and 1947, respectively. After the death of plaintiffs' mother Anatalia de Guzman on September 14, 1978, plaintiff Santiago Meneses came across an affidavit of Cesario Velasquez notarized by Atty. Elpidio Barrozo stating that he is an adopted son of said spouses Cornelio Aquino and Leoncia de Guzman (Exhibit "A") which, is however, not supported by evidence (a court order). The said affidavit mentioned, among other things, a house and a parcel of land covered by Tax Declaration No. 699 located at Guiguilonen, Mangaldan, Pangasinan, (Exhibit "B"). The sugar cane and coconut land situated at Poblacion, Mangaldan, Pangasinan, containing an area of 27,849 square meters covered by Tax Declaration No. 978 (Exhibit "C") which was in the possession of spouses Cornelio Aquino and Leoncia de Guzman until their death. Sometime in 1944 Leoncia de Guzman called a conference among the plaintiffs and spouses Cesario Velasquez and Camila de Guzman and told them that all their conjugal properties shall be divided equally between Anatalia de Guzman and Tranquilina de Guzman and that she did not sign documents regarding the conveyance of their properties; and that the property (parcel B) in Malabago, Mangaldan, Pangasinan, which yielding an annual produce worth P15,000.00 was divided between Anatalia de Guzman and Tranquilina de Guzman.

Spouses Cornelio Aquino and Leoncia de Guzman who were childless had Anatalia de Guzman and Tranquilina de Guzman as their legal heirs. The latter succeeded the former over the subject six (6) parcels of land in equal shares - 1/2 belongs to Anatalia de Guzman and the other half, to Tranquilina de Guzman."

This, notwithstanding the claim of defendants that the first parcel was donated to Jose Velasquez and Anastacia Velasquez by way of "Donation Intervivos."

The second parcel, sold to Cesario Velasquez and Camila de Guzman;

The third and 6[th] parcels, donated to Cesario Velasquez and Camila de Guzman; and

The 4[th] and 5[th] parcels, sold to third parties.

The claim of Cesario Velasquez that he was adopted by the Spouses Cornelio Aquino and Leoncia de Guzman is not supported by evidence.

The Court finds plaintiff Santiago Meneses credible; and his testimony, credible by itself. Santiago Meneses who is 80 years old testified spontaneously in a clear, straight forward and convincing manner.

The version of the defendants to the effect that spouses Cornelio de Guzman and Leoncia de Guzman left no properties cannot be given serious consideration. It is incredible and unbelievable.

How did the spouses Cornelio Aquino and Leoncia de Guzman support and maintain themselves if they disposed of their valuable properties, the six (6) parcels of land in question, during their lifetime? Did they really leave no properties? These questions remained unanswered.

The defendants failed to prove their allegations that the Spouses Cornelio Aquino and Leoncia de Guzman disposed of their properties during their lifetime.

Defendant Eliseo Velasquez is a lawyer and his co-defendant brothers are retired government officials.

On the other hand, the plaintiffs are simple, innocent country folks who have not obtained substantial level of education.

The Court believes and so holds that the defendants manipulated the transfer unto themselves all the properties of Spouses Cornelio Aquino and Leoncia de Guzman; thus, depriving the plaintiffs their shares in the inheritance, to their prejudice and damage.

Insofar as the issue of whether or not partition prescribes, the court believes and so rules that it does not.

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"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs:

(1) Declaring Anatalia de Guzman and Tranquilina de Guzman as the legal heirs of Spouses Cornelio Aquino and Leoncia de Guzman; and that the former succeeded the latter over the six (6) parcels of land in question in equal shares - 1/2 belongs to Anatalia de Guzman or to her heirs; and 1/2, to Tranquilina de Guzman or to her heirs;

(2) Declaring the Donation Intervivos in favor of Jose Velasquez and Anastacia Velasquez over the first parcel of land; the Deed of Sale to Cesario Velasquez and Camila de Guzman over the second parcel; the Deed of Donation to Cesario Velasquez and Camila de Guzman over the 3rd and 6th parcels; the Deed of Sale to third parties over the 4th and 5th parcels as null and void insofar as 1/2 of the six (6) parcels are concerned which legitimately belong to the plaintiffs;

(3) Ordering the defendants to reconvey to the plaintiffs 1/2 each of the six (6) properties in question and if this is not possible, to reconvey the whole of the sugar cane and coconut land situated at Poblacion, Mangaldan, Pangasinan, containing an area of 27,849 square meters, covered by Tax Declaration No. 978 (Exhibit "C") - parcel B, par. 2 of the complaint; and

(4) Ordering the defendants jointly and severally to pay to plaintiffs P50,000.00, as damages, P5,000.00, as attorney's fees and P3,000.00, as litigation expenses."

Dissatisfied, defendants appealed the decision to the respondent Court of Appeals which affirmed the same in a decision dated December 29, 1995.

The Court of Appeals rejected the defense of res judicata which was never pleaded nor raised earlier, and for that reason was deemed waived. The appellate court also dismissed the claim of prescription as an action for partition is imprescriptible. As regards the previous transfers executed in favor of the defendants, the court affirmed the trial court's finding that the transfers were repudiated before the death of Leoncia.[9]

A motion for reconsideration was filed by petitioners but the same was denied by the respondent court in a resolution dated November 6, 1996.

Attributing reversible errors to the appellate court, petitioners elevated the case to this Court on the following main issues:[10]

- WHETHER OR NOT THE INSTANT CASE IS BARRED BY RES JUDICATA AND BY THE STATUTE OF LIMITATIONS.
- WHETHER OR NOT THE PROPERTIES MENTIONED IN THE COMPLAINT FORM PART OF THE ESTATE OF THE SPOUSES CORNELIO AQUINO AND LEONCIA DE GUZMAN.
- WHETHER OR NOT THE PETITIONERS HAVE ACQUIRED ABSOLUTE AND EXCLUSIVE OWNERSHIP OF THE PROPERTIES IN QUESTION.
- WHETHER OR NOT PRIVATE RESPONDENT HEIRS OF ANATALIA DE GUZMAN ARE LEGAL HEIRS OF SPOUSES CORNELIO AQUINO AND LEONCIA DE GUZMAN.
- WHETHER OR NOT PARTITION IS THE PROPER ACTION IN THE INSTANT CASE.

In their Comment, private respondents allege that the issue of res judicata has been sufficiently discussed and considered and the trial court opted to inquire into their legitimate grievance and came up with a judicious determination of the case on the merits; that the present case involves respondents who are simple, ignorant folks who have not obtained substantial level of education and are unaware of the legal intricacies and technicalities in pursuing their valid claim. They further contend that this action is not yet barred by the statute of limitation since an action for partition is imprescriptible and that the court correctly ruled that the instant action for partition is proper.

We find merit in the petition.

Petitioners contend that public respondent erred when it held that the issue of res judicata was never raised either in the Answer or at the Pre-trial such that it was not under consideration. We agree with the petitioner. The records show that the defense of res judicata was raised in the petitioners' Amended Answer filed before the trial court more particularly under paragraph 18, to wit:

"18. b. The case at bar is already barred by RES JUDICATA, there having been three (3) previous cases involving either the predecessors-in-interest of the parties herein or of the present parties themselves, the same subject matter, and the same cause of action, which were all dismissed, the last dismissal having been ordered by this very same Honorable Court in Civil Case No. D-8811 on October 21, 1988 for failure to prosecute which dismissal has the effect of an adjudication on the merits and therefore with prejudice as this Honorable Court did not provide otherwise (Sec. 3, Rule 17) and the Plaintiffs in said case, who are the same plaintiffs in the present case did not appeal from said order of dismissal."

Said Amended Answer was admitted by the trial court in its Order dated March 2, 1990[11] and was one of the issues stipulated for resolution in its Pre-trial Order dated May 18, 1990. Thus, it was clear error for respondent court to conclude that res judicata was never raised in the lower court.

The next question is whether res judicata is present in the instant case. We rule in the affirmative. Petitioners in their Memorandum established that there were three (3) earlier cases filed by private respondents against petitioners involving the same subject matter and issues as in the instant case which were all dismissed, to wit:

"The first Complaint filed by Anatalia de Guzman, mother of private respondent Santiago Meneses, against Tranquilina de Guzman and his son Cesario Velasquez, docketed as Civil Case No. 11378 of the then Court of First Instance of Pangasinan. Said action was dismissed on August 18, 1950.

Thirty four (34) years after, or on October 9, 1984, private respondent Santiago Meneses filed a second Complaint similar to the Complaint of his mother (Civil Case No. 11378) which was docketed as Civil Case No. D-7584, entitled "Heirs of Anatalia de Guzman, represented by Santiago Meneses vs. Cesario Velasquez, defendant. In the order of the Regional Trial Court, Branch 41, Dagupan City, dated May 28, 1986, this

Complaint was dismissed for failure to prosecute without prejudice (Exh. "16").

Private respondent Santiago Meneses refiled the Complaint allegedly joined this time by his siblings on October 23, 1987; which was docketed as Civil Case No. P-8811 and entitled "Heirs of Anatalia de Guzman, namely: Santiago Meneses, Apolonio Meneses, Andres Meneses, Luis Meneses, Felicidad Meneses, Plaintiffs, versus Heirs of Cesario Velasquez, namely: Anastacia Velasquez, Sofia Velasquez, Eliseo Velasquez, Jose Velasquez, Leonora Velasquez, Nieves Velasquez, Defendants." (Exh. "17"). On October 21, 1988, the Court a quo dismissed this Complaint as follows: "For failure to prosecute, the case is hereby dismissed without costs." (Exh. "18")."

Petitioners' allegations were never rebutted by private respondents in their Comment as the only defense raised therein was that the application of the principle of *res judicata* should not sacrifice justice to technicality and it is within the power of the court to suspend its own rules or to except a particular case from its operations whenever the purpose of justice requires it. We have examined the third complaint filed by private respondents on October 23, 1987 and compared it with the instant case, and we found that the allegations contained in both complaints are the same, and that there is identity of parties, subject matter and cause of action. Thus the requisites of *res judicata* are present, namely (a) the former judgment or order must be final; (b) it must be a judgment or order on the merits; (c) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (d) there must be between the first and the second actions, identity of parties, of subject matter and of cause of action. Since the dismissal of the third case did not contain any condition at all, it has the effect of an adjudication on the merits as it is understood to be with prejudice.[12] On this ground alone, the trial court should have already dismissed this case. However, considering that this case had already reached this Court by way of a petition for review on certiorari, it would be more in keeping with substantial justice if the controversy between the parties were to be resolved on the merits rather than on a procedural technicality in the light of the express mandate of the rules that they be "liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding." [13]

Petitioners next contend that private respondent Santiago Meneses failed to prove the nullity of the Deeds of Conveyance executed by the Aquino spouses in favor of petitioners Jose and Anastacia Velasquez and their predecessors-in-interest Cesario Velasquez and Camila de Guzman since he failed to adduce any evidence to support his claim other than his bare allegations of its nullity. Petitioners claim that they were able to show by documentary evidence that the Aquino spouses during their lifetime disposed of the four parcels of land subject of the complaint, to wit: (a) Escritura de donation propter nuptias dated February 15, 1919 in favor of then future spouses Cesario Velasquez and Camila de Guzman (petitioners' parents) conveying to them a portion of the second parcel and the entirety of the third and sixth parcels in the complaint; (b) Deed of donation inter vivos dated April 10, 1939 conveying the first parcel in favor of petitioners Anastacia Velasquez and Jose Velasquez; (c) Escritura de Compraventa dated August 25, 1924 conveying another portion of the second parcel in favor of Cesario Velasquez and Camila de Guzman with a P500 consideration; (d) Deed of Conveyance dated July 14, 1939 in favor of Cesario Velasquez and Camila de Guzman conveying to them the remaining portion of the second parcel for a consideration of P600 and confirming in the same Deed the Escritura de donation propter nuptias and Escritura de compraventa abovementioned. Petitioners claim that the record is bereft of any evidence showing the infirmities in these formidable array of documentary evidence but the courts below declared their nullity on the basis of the "telltale" story of Santiago Meneses. They contend that in giving credence to the testimony of Santiago Meneses that all the deeds of conveyances executed by the Aquino spouses in favor of the petitioners were a nullity, Santiago would want to make it appear that the spouses Aquino, in giving dowry thru escritura de donation propter nuptias and donation inter vivos, were only fooling the innocent youngsters and then future spouses Cesario Velasquez and Camila de Guzman, and the innocent minors donees Jose and Anatascia

Velasquez respectively.

Petitioners' submission is impressed with merit.

After an examination of the records, we find that there is no preponderance of evidence adduced during the trial to support the findings and conclusions of the courts below, which error justifies a review of said evidence. As a rule, factual findings of the lower courts are final and binding upon this Court. This Court is not expected nor required to examine or contrast the oral and documentary evidence submitted by the parties.[14] However, although this Court is not a trier of facts, it has the authority to review and reverse the factual findings of the lower courts if it finds that these do not conform to the evidence on record,[15] in the instant case, we are not bound to adhere to the general rule since both courts clearly failed to consider facts and circumstances which should have drawn a different conclusion.[16]

In actions for partition, the court cannot properly issue an order to divide the property unless it first makes a determination as to the existence of co-ownership. The court must initially settle the issue of ownership, the first stage in an action for partition.[17] Needless to state, an action for partition will not lie if the claimant has no rightful interest over the subject property. In fact, Section 1 of Rule 69 requires the party filing the action to state in his complaint the "nature and the extent of his title" to the real estate. Until and unless the issue of ownership is definitely resolved, it would be premature to effect a partition of the properties.[18]

We are unable to sustain the findings of the respondent Court that it has been adequately shown that the alleged transfers of properties to the petitioners' predecessor-in-interest made by the Aquino spouses were repudiated before Leoncia's death; thus private respondents are still entitled to share in the subject properties. There is no preponderance of evidence to support the findings and conclusions of both courts. The trial court declared the nullity of the donation inter vivos in favor of petitioners Jose and Anastacia Velasquez over the first parcel of land described in the complaint, the deed of sale to Cesario Velasquez and Camila de Guzman over the second parcel and the deed of donation propter nuptias over the third and sixth parcels and the sale to third parties of fourth and fifth parcels insofar as the 1/2 of these parcels of land are concerned which "legitimately belong to plaintiff." It would appear that the trial court relied solely on the basis of Santiago Meneses' testimony "that in 1944 when his aunt Leoncia de Guzman was still alive, she called a conference among them, the plaintiffs and their mother Anatalia, Cesario Velasquez and his mother Tranquilina, telling them that all their properties which are conjugal in nature shall be divided equally between Anatalia and Tranquilina and not to believe the documents purportedly signed by her because she did not sign them".[19] Private respondent Santiago Meneses' testimony is to the effect that Leoncia never signed any deed of conveyance of the subject properties in favor of the petitioners. However, Santiago Meneses' testimony was never corroborated by any other evidence despite his testimony that the alleged conference was also made in the presence of third parties. Moreover, if the alleged conference really took place in 1944, a year before Leoncia's death, Leoncia could have executed another set of documents revoking or repudiating whatever dispositions she had earlier made to show her alleged intention of giving her properties in equal shares to her sisters Anatalia and Tranquilina de Guzman but there was none. The trial court found the testimony of Santiago Meneses who is eighty years old to be credible, and this was affirmed by the respondent court which stated that the matter of ascribing credibility belongs to the trial court. However, the fact that a person has reached the "twilight of his life" is not always a guaranty that he would tell the truth. It is also quite common that advanced age makes a person mentally dull and completely hazy about things which has appeared to him, and at times it weakens his resistance to outside influence.[20]

On the other hand, petitioners were able to adduce the uncontroverted and ancient documentary evidence showing that during the lifetime of the Aquino spouses they had already disposed of four of the six parcels of land subject of the complaint starting in the year 1919, and the latest was in 1939 as follows: (a) Escritura de donation propter

nuptias dated February 15, 1919 in favor of the future spouses Cesario Velasquez and Camila de Guzman (petitioners' parents) conveying to them a portion of the second parcel in the complaint and the entirety of the third and sixth parcels;[21] (b) Deed of donation inter vivos dated April 10, 1939 conveying the first parcel in favor of petitioners Anastacia Velasquez and Jose Velasquez;[22] (c) Escritura de Compraventa dated August 25, 1924 conveying another portion of the second parcel in favor of Cesario Velasquez and Camila de Guzman with a P500 consideration;[23] (d) Deed of Conveyance dated July 14, 1939 in favor of Cesario Velasquez and Camila de Guzman conveying to them the remaining portion of the second parcel for a consideration of P600 and confirming in the same Deed the Escritura de donation propter nuptias and Escritura de compraventa abovementioned.[24] It was reversible error for the court to overlook the probative value of these notarized documents.

A donation as a mode of acquiring ownership results in an effective transfer of title over the property from the donor to the donee[25] and the donation is perfected from the moment the donor knows of the acceptance by the donee.[26] And once a donation is accepted, the donee becomes the absolute owner of the property donated.[27] The donation of the first parcel made by the Aquino spouses to petitioners Jose and Anastacia Velasquez who were then nineteen (19) and ten (10) years old respectively was accepted through their father Cesario Velasquez, and the acceptance was incorporated in the body of the same deed of donation and made part of it, and was signed by the donor and the acceptor. Legally speaking there was delivery and acceptance of the deed, and the donation existed perfectly and irrevocably. The donation inter vivos may be revoked only for the reasons provided in Articles 760, 764 and 765 of the Civil Code.[28] The donation propter nuptias in favor of Cesario Velasquez and Camila de Guzman over the third and sixth parcels including a portion of the second parcel became the properties of the spouses Velasquez since 1919. The deed of donation propter nuptias can be revoked by the non-performance of the marriage and the other causes mentioned in article 86 of the Family Code.[29] The alleged reason for the repudiation of the deed, i.e, that the Aquino spouses did not intend to give away all their properties since Anatalia (Leoncia's sister) had several children to support is not one of the grounds for revocation of donation either inter vivos or propter nuptias, although the donation might be inofficious.

The Escritura compraventa over another portion of the second parcel and the Deed of conveyance dated July 14, 1939 in favor of Cesario and Camila Velasquez over the remaining portion of the second parcel is also valid. In fact in the deed of sale dated July 14, 1939, the Aquino spouses ratified and confirmed the rights and interests of Cesario Velasquez and Camila de Guzman including the previous deeds of conveyance executed by the Aquino spouses over the second parcel in the complaint and such deed of sale became the basis for the issuance of TCT No. 15129 in the names of Cesario Velasquez and Camila de Guzman on July 25, 1939. The best proof of the ownership of the land is the certificate of title[30] and it requires more than a bare allegation to defeat the face value of TCT No. 15129 which enjoys a legal presumption of regularity of issuance.[31] Notably, during the lifetime of Cesario Velasquez, he entered into contracts of mortgage and lease over the property as annotated at the back of the certificate of title which clearly established that he exercised full ownership and control over the property. It is quite surprising that it was only after more than fifty years that private respondents asserted co-ownership claim over the subject property.

The Aquino spouses had disposed the four parcels of land during their lifetime and the documents were duly notarized so that these documents enjoy the presumption of validity.[32] Such presumption has not been overcome by private respondent Santiago Meneses with clear and convincing evidence. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence.[33] Petitioners were able to establish that these four parcels of land were validly conveyed to them by the Aquino spouses hence they no longer formed part of the conjugal properties of the spouses at the time of their deaths. As regards the fourth and fifth parcels, petitioners alleged that these were also conveyed to third persons and they do not claim any right

thereto.

In view of the foregoing, we conclude that this action of partition cannot be maintained. The properties sought to be partitioned by private respondents have already been delivered to petitioners and therefore no longer part of the hereditary estate which could be partitioned. After finding that no co-ownership exists between private respondents and petitioners, we find no reason to discuss the other arguments raised by the petitioners in support of their petition.

WHEREFORE, the petition is GRANTED. The questioned decision and resolution of respondent Court of Appeals as well as the decision of the Regional Trial Court of Dagupan City are SET ASIDE. The complaint in the trial court against petitioner is ORDERED DISMISSED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima, JJ., concur.

[1] Justice Emeterio C. Cui, ponente, concurred in by Justices Ricardo P. Galvez and Antonio P. Solano.

[2] Penned by Judge Deodoro J. Sison.

[3] Rollo, p 197.

[4] Felicidad Meneses Frianela and Apolonio G. Meneses executed a joint affidavit dated June 24, 1991 stating that the filing of the complaint was the idea of their brother Santiago; that they refused and did not authorize Santiago to include them as plaintiffs on the ground that they recognize the ownership of the late Cesario Velasquez and petitioners Jose and Anastacia Velasquez of the lands in question; that Cesario Velasquez had been in actual physical possession of the lands in question and enjoying the fruits exclusively since he acquired them; that Jose and Anastacia have been in actual possession of the land donated to them and in fact Jose had established his family house thereon for thirty (30) years now. Exhibit "13".

[5] Records, pp. 1- 4.

[6] Records, pp. 82-94.

[7] Records, p. 115.

[8] Rollo, p. 87-90.

[9] Rollo, pp. 188-194.

[10] Rollo, p. 233.

[11] Records, p. 99.

[12] Section 3 Rule 17 of the old Rules of Court

Sec. 3. Failure to prosecute. - If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court.

[13] Olivares vs. Gonzales, 159 SCRA 33.

[14] Imperial vs. CA, 259 SCRA 65, 71.

[15] Cang vs. CA, 296 SCRA 128; citing PNB vs. CA, 187 SCRA 735; Ongsiako vs. IAC, 152 SCRA 627

[16] P.M. Pastera Brokerage vs. CA, 266 SCRA 365.

[17] De Mesa v. CA, 231 SCRA 773.

[18] Fabrica vs. CA, 146 SCRA 250.

[19] TSN, November 8, 1990, pp. 16-18.

[20] Regalado, Remedial Law Compendium, Vol. II, p 553 citing People vs. Juarez (CA), 57 OG 2518.

[21] Exhibit "3".

[22] Exhibit "1".

[23] Exhibit "5".

[24] Exhibit "6".

[25] Article 712, Civil Code

Art. 712. Ownership is acquired by occupation and by intellectual creation. Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition.

They may also be acquired by means of prescription.

[26] Article 734, Civil Code.

[27] Tanpingco vs. IAC, 207 SCRA 652; Quijada vs. CA, 299 SCRA 695.

[28] Art. 760. Every donation inter vivos, made by a person having no children or descendants, legitimate or legitimated by subsequent marriage, or illegitimate, may be revoked or reduced as provided in the next article, by the happening of any of these events:

(1) If the donor, after the donation, should have legitimate or legitimated or illegitimate children, even though they be posthumous;

(2) If the child of the donor, whom the latter believed to be dead when he made the donation, should turn out to be living;

(3) If the donor should subsequently adopt a minor child.

Art. 764 . The donation shall be revoked at the instance of the donor, when the donee fails to comply with any of the conditions which the former imposed upon the latter.

In this case, the property donated shall be returned to the donor, the alienations made by the donee and the mortgages imposed thereon by him being void, with the limitations established, with regard to third persons, by the Mortgage Law and the Land Registration Laws.

This action shall prescribe after four years from the non compliance with the condition, may be transmitted to the heirs of the donor, and may be exercised against the donee's heirs.

Art. 765. The donation may also be revoked at the instance of the donor, by reason of ingratitude in the following cases:

- (1) If the donee should commit some offense against the person, the honor or the property of the donor, or his wife or children under his parental authority;
- (2) If the donee imputes to the donor any criminal offense, or any act involving moral turpitude, even though he should prove it, unless the crime or the act has been committed against the donee himself, his wife or children under his authority;
- (3) If he unduly refuses him support when the donee is legally or morally bound to give support to the donor.

[29] Art. 86. A donation by reason of marriage may be revoked by the donor in the following cases:

- (1) If the marriage is not celebrated or judicially declared void ab initio except donations made in the marriage settlements, which shall be governed by Article 81;
- (2) When the marriage takes place without the consent of the parents or guardian, as required by law;
- (3) When the marriage is annulled, and the donee acted in bad faith;
- (4) Upon legal separation, the donee being the guilty spouse;
- (5) If it is with a resolutive condition and the condition is complied with;
- (6) When the donee has committed an act of ingratitude as specified by the provisions of the Civil Code on donations in general.

[30] Halili vs. CIR 257 SCRA 174.

[31] Chan vs. CA (Special 7[th] Division), 298 SCRA 713.

[32] Favor vs. CA, 194 SCRA 308.

[33] Section 1 Rule 133, Revised Rules of Court.

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