

**GAVINA MAGLUCOT-AW, CATALINA ORCULLO, RICHARD ESTANO,
NIDA MAGLUCOT, MELANIA MAGLUCOT-CATUBIG, EMILIANO
CATUBIG, LADISLAO SALMA, PETITIONERS, VS. LEOPOLDO
MAGLUCOT, SEVERO MAGLU...**

G.R. No. 132518. March 28, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This petition for review on certiorari assails the Decision, dated 11 November 1997, of the Court of Appeals in CA-G.R. CV No. 48816 which reversed and set aside the Decision, dated 13 December 1994, of the Regional Trial Court, Branch 30 of Dumaguete City, Negros Oriental in an action for recovery of possession and damages.

The core issue in this case is whether a partition of Lot No. 1639 had been effected in 1952. Petitioners contend that there was already a partition of said lot; hence, they are entitled to exclusive possession and ownership of Lot No. 1639-D, which originally formed part of Lot No. 1639 until its partition. Private respondents, upon the other hand, claim that there was no partition; hence, they are co-owners of Lot No. 1639-D. Notably, this case presents a unique situation where there is an order for partition but there is no showing that the sketch/subdivision plan was submitted to the then Court of First Instance for its approval or that a decree or order was registered in the Register of Deeds.

The antecedent facts of the case are as follows:

Petitioners filed with the RTC a complaint for recovery of possession and damages alleging, inter alia, that they are the owners of Lot No. 1639-D. Said lot was originally part of Lot No. 1639 which was covered by Original Certificate Title No. 6775 issued in the names of Hermogenes Olis, Bartolome Maglucot, Pascual Olis, Roberto Maglucot, Anselmo Lara and Tomas Maglucot on 16 August 1927.[1] On 19 April 1952, Tomas Maglucot, one of the registered owners and respondents' predecessor-in-interest, filed a petition to subdivide Lot No. 1639.[2] Consequently, on 13 May 1952, then CFI of Negros Oriental issued an order[3] directing the parties to subdivide said lot into six portions as follows:

- a) Hermogenes Olis - lot 1639-A
- b) Pascual Olis - lot 1639-B
- c) Bartolome Maglucot - lot 1639-C
- d) Roberto (Alberto) - lot 1639-D
- e) Anselmo Lara - lot 1639-E
- f) Tomas Maglucot - lot 1639-F.[4]

Sometime in 1963, Guillermo Maglucot rented a portion of Lot No. 1639-D (subject lot). Subsequently, Leopoldo

and Severo, both surnamed Maglucot, rented portions of subject lot in 1964 and 1969, respectively, and each paying rentals therefor. Said respondents built houses on their corresponding leased lots. They paid the rental amount of P100.00 per annum to Mrs. Ruperta Salma, who represented the heirs of Roberto Maglucot, petitioners' predecessor-in-interest. In December 1992, however, said respondents stopped paying rentals claiming ownership over the subject lot. Petitioners thus filed the complaint a quo.

After trial, the lower court rendered judgment in favor of petitioners. The RTC found the existence of tax declarations in the names of Hermogenes Olis and Pascual Olis (purported owners of Lot Nos. 1639-A and 1639-B, respectively)[5] as indubitable proof that there was a subdivision of Lot No. 1639. It likewise found that Tomas Maglucot, respondents' predecessor-in-interest, took active part in the partition as it was he, in fact, who commenced the action for partition.[6] The court a quo cited Article 1431 of the Civil Code which states that "[t]hrough estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." Applying said provision of law, it held that while there was no court order showing that Lot No. 1639 was partitioned, its absence could not be used by Tomas Maglucot, or respondents as his successors-in-interest, to deny the existence of an approved partition against the other co-owners who claim that there was one.[7] Said court, likewise, ruled that the tax declarations[8] over the houses of respondents, expressly stating that the same are constructed on the lots of Roberto Maglucot, constitute a conclusive admission by them of the ownership of the subject lot by the latter.[9]

The dispositive portion of the lower court's decision reads as follows: *Missdaa*

WHEREFORE, on the basis of the foregoing discussion, judgment is hereby rendered in favor of the plaintiffs against the defendants ordering the latter:

- To demolish their houses inside lot 1639-D, vacate the premises thereof and deliver the possession of the same to Plaintiffs;
- To jointly and solidarily pay plaintiffs the sum of P15,000.00 for attorney's fees;
- To each pay plaintiffs the sum of P100.00 every year from 1993 for actual damages representing the amount of unpaid rentals up to the time they actually vacate the premises in question; *Sclaw*
- To pay the costs.[10]

On appeal, the CA reversed the decision of the RTC. The appellate court ruled that the sketch plan and tax declarations relied upon by petitioners are not conclusive evidence of partition.[11] The CA likewise found that the prescribed procedure under Rule 69 of the Rules of Court was not followed. It thus declared that there was no partition of Lot No. 1639.

Petitioners filed this petition for review on certiorari alleging that the CA committed the following reversible errors:

I

IN VIOLATING THE LAW ON ACQUISITIVE PRESCRIPTION PLAINTIFFS HAVING POSSESSED LOT 1639-D SINCE 1946;

II

IN VIOLATING THE LAW ON ESTOPPEL; THE FACT OF PAYMENT OF RENTALS AND OFFER TO BUY BY THE DEFENDANTS IS ADMISSION THAT THE AREA IN LOT 1639-D, HAD LONG BEEN ADJUDICATED TO PLAINTIFFS;

III

IN DECLARING THAT THERE WAS NO PRIOR PARTITION, CONTRARY TO THE FINDINGS OF THE TRIAL COURT, AND AGAINST THE EVIDENCE ON RECORD, OF WHICH IF PROPERLY CONSIDERED WOULD CHANGE THE OUTCOME OF THE CASE;

IV

IN DECLARING THAT THERE IS NO LAW OR JURISPRUDENCE APPLICABLE UNDER THE PREMISES; THIS WOULD ONLY SHOW THAT THE RECORD OF THE CASE WAS NOT PROPERLY SCRUTINIZED, AND THE LAW WAS NOT PROPERLY STUDIED; ESPECIALLY IN THE CASE AT BENCH THAT THE ORAL AND MUTUAL PARTITION HAPPENED DURING THE REGIME OF THE OLD RULES OF PROCEDURE;[12]

Petitioners maintain that Lot No. 1639 was mutually partitioned and physically subdivided among the co-owners and that majority of them participated in the actual execution of the subdivision. Further, the co-owners accepted their designated shares in 1946 as averred by Tomas Maglucot in his petition for partition.[13] Petitioners opine that in 1952, Tomas Maglucot himself initiated a court proceeding for a formal subdivision of Lot No. 1639. In said petition, he averred that only Hermogenes Olis and the heirs of Pascual Olis were not agreeable to the partition.[14] Petitioners further contend that respondents admitted in their tax declarations covering their respective houses that they are "constructed on the land of Roberto Maglucot." [15] Simply put, petitioners vigorously assert that respondents are estopped from claiming to be co-owners of the subject lot in view of the mutual agreement in 1946, judicial confirmation in 1952, and respondents' acquiescence because they themselves exclusively exercised ownership over Lot No. 1639-A beginning 1952 up to the present.[16]

For their part, respondents posit three points in support of their position. First, they emphasize that petitioners failed to show that the interested parties were apprised or notified of the tentative subdivision contained in the sketch and that the CFI subsequently confirmed the same.[17] Second, they point to the fact that petitioners were unable to show any court approval of any partition.[18] Third, they maintain that Lot No. 1639 remain undivided since to date, OCT No. 6275 is still an existing and perfectly valid title, containing no annotation of any encumbrance or partition whatsoever.[19]

After a careful consideration of the pleadings filed by the parties and the evidence on record, we find that the petition is meritorious. As stated earlier, the core issue in this case is whether there was a valid partition in 1952.

Preliminarily, this Court recognizes that "the jurisdiction of this Court in cases brought before it from the Court of Appeals via Rule 45 of the Rules of Court is limited to reviewing errors of law. Findings of fact of the latter are conclusive, except in the following instances: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record." [20] This case falls under exceptions (7), (8) and (10) in that the findings of facts of the CA are in conflict with that of the RTC, are mere conclusions without citation of specific evidence on which they are based and are premised on absence of evidence but are contradicted by the evidence on record. For these reasons, we shall consider the evidence on record to determine whether indeed there was partition.

In this jurisdiction, an action for partition is comprised of two phases: first, an order for partition which determines whether a co-ownership in fact exists, and whether partition is proper; and, second, a decision confirming the sketch or subdivision submitted by the parties or the commissioners appointed by the court, as the case may be.[21] The first phase of a partition and/or accounting suit is taken up with the determination of whether or not a co-ownership in fact exists, (i.e., not otherwise legally proscribed) and may be made by voluntary agreement of all the parties interested in the property. This phase may end with a declaration that plaintiff is not entitled to have a partition either because a co-ownership does not exist, or partition is legally prohibited. It may end, upon the other hand, with an adjudgment that a co-ownership does in truth exist, partition is proper in the premises and an accounting of rents and profits received by the defendant from the real estate in question is in order. In the latter case, the parties may, if they are able to agree, make partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon. In either case - i.e., either the action is dismissed or partition and/or accounting is decreed - the order is a final one, and may be appealed by any party aggrieved thereby. The second phase commences when it appears that "the parties are unable to agree upon the partition" directed by the court. In that event, partition shall be done for the parties by the court with the assistance of not more than three (3) commissioners. This second stage may well also deal with the rendition of the accounting itself and its approval by the court after the parties have been accorded opportunity to be heard thereon, and an award for the recovery by the party or parties thereto entitled of their just share in the rents and profits of the real estate in question. Such an order is, to be sure, final and appealable.[22]

The present rule on the question of finality and appealability of a decision or order decreeing partition is that it is final and appealable.[23] The order of partition is a final determination of the co-ownership over Lot No. 1639 by the parties and the propriety of the partition thereof. Hence, if the present rule were applied, the order not having been appealed or questioned by any of the parties to the case, it has become final and executory and cannot now be disturbed.

The true test to ascertain whether or not an order or a judgment is interlocutory or final is: Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final. The key test to what is interlocutory is when there is something more to be done on the merits of the case.[24] An order for partition is final and not interlocutory and, hence, appealable because it decides the rights of the parties upon the issue submitted.[25]

However, this Court notes that the order of partition was issued when the ruling in *Fuentebella vs. Carrascoso*,[26] which held that the order of partition is interlocutory, was controlling. In addition, the reports of the commissioners not having been confirmed by the trial court are not binding.[27] In this case, both the order of partition and the unconfirmed sketch plan are, thus, interlocutory. Nevertheless, where parties do not object to the interlocutory decree, but show by their conduct that they have assented thereto, they cannot thereafter question the decree,[28] especially, where, by reason of their conduct, considerable expense has been incurred in the execution of the commission.[29] Respondents in this case have occupied their respective lots in accordance with the sketch/subdivision plan. They cannot after acquiescing to the order for more than forty (40) years be allowed to question the binding effect thereof.

This case is to be distinguished from the order in the action for partition in *Arcenas vs. Cinco*. [30] In that case, the order was clearly interlocutory since it required the parties "to submit the corresponding deed of partition to the Court for its approval." Here, the order appointed two commissioners and directed them merely to approve the sketch plan already existing and tentatively followed by the parties.

Under the present rule, the proceedings of the commissioners without being confirmed by the court are not binding upon the parties.[31] However, this rule does not apply in case where the parties themselves actualized

the supposedly unconfirmed sketch/subdivision plan. The purpose of court approval is to give effect to the sketch/subdivision plan. In this case, the parties themselves or through their predecessors-in-interest implemented the sketch plan made pursuant to a court order for partition by actually occupying specific portions of Lot No. 1639 in 1952 and continue to do so until the present until this case was filed, clearly, the purpose of the court approval has been met. This statement is not to be taken to mean that confirmation of the commissioners may be dispensed with but only that the parties herein are estopped from raising this question by their own acts of ratification of the supposedly non-binding sketch/subdivision plan.

The records of the case show that sometime in 1946 there was a prior oral agreement to tentatively partition Lot No. 1639.[32] By virtue of this agreement, the original co-owners occupied specific portions of Lot No. 1639.[33] It was only in 1952 when the petition to subdivide Lot No. 1639 was filed because two of the co-owners, namely Hermogenes Olis and heirs of Pascual Olis, refused to have said lot subdivided and have separate certificates of title. Significantly, after the 1952 proceedings, the parties in this case by themselves and/or through their predecessors-in-interest occupied specific portions of Lot No. 1639 in accordance with the sketch plan. Such possession remained so until this case arose, or about forty (40) years later.

From its order in 1952, it can be gleaned that the CFI took notice of the tentative subdivision plan by oral partition of the parties therein. Further, it appears that said court was aware that the parties therein actually took possession of the portions in accordance with the sketch/subdivision plan. With this factual backdrop, said court ordered the partition and appointed two (2) commissioners to approve the tentative sketch/subdivision plan. It would not be unreasonable to presume that the parties therein, having occupied specific portions of Lot No. 1639 in accordance with the sketch/subdivision plan, were aware that it was that same sketch/subdivision plan which would be considered by the commissioners for approval. There is no showing that respondents by themselves or through their predecessors-in-interest raised any objections. On the contrary, the records show that the parties continued their possession of the specific portions of Lot No. 1639 pursuant to the sketch/subdivision plan.

It has been previously held that a co-owner, who, though not a party to a partition accepts the partition allotted to him, and holds and conveys the same in severalty, will not be subsequently permitted to avoid partition.[34] It follows that a party to a partition is also barred from avoiding partition when he has received and held a portion of the subdivided land especially in this case where respondents have enjoyed ownership rights over their share for a long time.

Parties to a partition proceeding, who elected to take under partition, and who took possession of the portion allotted to them, are estopped to question title to portion allotted to another party.[35] A person cannot claim both under and against the same instrument.[36] In other words, they accepted the lands awarded them by its provisions, and they cannot accept the decree in part, and repudiate it in part. They must accept all or none.[37] Parties who had received the property assigned to them are precluded from subsequently attacking its validity of any part of it.[38] Here, respondents, by themselves and/or through their predecessors-in-interest, already occupied of the lots in accordance with the sketch plan. This occupation continued until this action was filed. They cannot now be heard to question the possession and ownership of the other co-owners who took exclusive possession of Lot 1639-D also in accordance with the sketch plan.

In technical estoppel, the party to be estopped must knowingly have acted so as to mislead his adversary, and the adversary must have placed reliance on the action and acted as he would otherwise not have done. Some authorities, however, hold that what is tantamount to estoppel may arise without this reliance on the part of the adversary, and this is called, ratification or election by acceptance of benefits, which arises when a party, knowing that he is not bound by a defective proceeding, and is free to repudiate it if he will, upon knowledge, and while under no disability, chooses to adopt such defective proceeding as his own.[39] Ratification means that one under

no disability voluntarily adopts and gives sanction to some unauthorized act or defective proceeding, which without his sanction would not be binding on him. It is this voluntary choice, knowingly made, which amounts to a ratification of what was theretofore unauthorized, and becomes the authorized act of the party so making the ratification.[40]

The records show that respondents were paying rent for the use of a portion of Lot No. 1639-D. Had they been of the belief that they were co-owners of the entire Lot No. 1639 they would not have paid rent. Respondents attempted to counter this point by presenting an uncorroborated testimony of their sole witness to the effect that the amount so paid to Roberto Maglucot and, subsequently, to Ruperta Salma were for the payment of real property taxes. We are not persuaded. It is quite improbable that the parties would be unaware of the difference in their treatment of their transactions for so long a time. Moreover, no evidence was ever presented to show that a tax declaration for the entire Lot No. 1639 has ever been made. Replete in the records are tax declarations for specific portions of Lot 1639. It is inconceivable that respondents would not be aware of this. With due diligence on their part, they could have easily verified this fact. This they did not do for a period spanning more than four decades.

The payment of rentals by respondents reveal that they are mere lessees. As such, the possession of respondents over Lot No. 1639-D is that of a holder and not in the concept of an owner. One who possesses as a mere holder acknowledges in another a superior right which he believes to be ownership, whether his belief be right or wrong.[41] Since the possession of respondents were found to be that of lessors of petitioners, it goes without saying that the latter were in possession of Lot No. 1639-D in the concept of an owner from 1952 up to the time the present action was commenced.

Partition may be inferred from circumstances sufficiently strong to support the presumption.[42] Thus, after a long possession in severalty, a deed of partition may be presumed.[43] It has been held that recitals in deeds, possession and occupation of land, improvements made thereon for a long series of years, and acquiescence for 60 years, furnish sufficient evidence that there was an actual partition of land either by deed or by proceedings in the probate court, which had been lost and were not recorded.[44] And where a tract of land held in common has been subdivided into lots, and one of the lots has long been known and called by the name of one of the tenants in common, and there is no evidence of any subsequent claim of a tenancy in common, it may fairly be inferred that there has been a partition and that such lot was set off to him whose name it bears.[45]

Respondents insist that the absence of any annotation in the certificate of title showing any partition of Lot No. 1639 and that OCT No. 6725 has not been canceled clearly indicate that no partition took place. The logic of this argument is that unless partition is shown in the title of the subject property, there can be no valid partition or that the annotation in the title is the sole evidence of partition.

Again, we are not persuaded. The purpose of registration is to notify and protect the interests of strangers to a given transaction, who may be ignorant thereof, but the non-registration of the deed evidencing such transaction does not relieve the parties thereto of their obligations thereunder.[46] As originally conceived, registration is merely a species of notice. The act of registering a document is never necessary in order to give it legal effect as between the parties.[47] Requirements for the recording of the instruments are designed to prevent frauds and to permit and require the public to act with the presumption that recorded instruments exist and are genuine.[48]

It must be noted that there was a prior oral partition in 1946. Although the oral agreement was merely tentative, the facts subsequent thereto all point to the confirmation of said oral partition. By virtue of that agreement, the parties took possession of specific portions of the subject lot. The action for partition was instituted because some of the co-owners refused to have separate titles issued in lieu of the original title. In 1952, an order for partition

was issued by the cadastral court. There is no evidence that there has been any change in the possession of the parties. The only significant fact subsequent to the issuance of the order of partition in 1952 is that respondents rented portions of Lot No. 1639-D. It would be safe to conclude, therefore, that the oral partition as well as the order of partition in 1952 were the bases for the finding of actual partition among the parties. The legal consequences of the order of partition in 1952 having been discussed separately, we now deal with oral partition in 1946. Given that the oral partition was initially tentative, the actual possession of specific portions of Lot No. 1639 in accordance with the oral partition and the continuation of such possession for a very long period indicate the permanency and ratification of such oral partition. The validity of an oral partition is already well-settled. In *Espina vs. Abaya*,^[49] we declared that an oral partition is valid. In *Hernandez vs. Andal*,^[50] reiterated in *Tan vs. Lim*,^[51] this Court has ruled, thus:

On general principle, independent and in spite of the statute of frauds, courts of equity have enforce oral partition when it has been completely or partly performed.

Regardless of whether a parol partition or agreement to partition is valid and enforceable at law, equity will proper cases where the parol partition has actually been consummated by the taking of possession in severalty and the exercise of ownership by the parties of the respective portions set off to each, recognize and enforce such parol partition and the rights of the parties thereunder. Thus, it has been held or stated in a number of cases involving an oral partition under which the parties went into possession, exercised acts of ownership, or otherwise partly performed the partition agreement, that equity will confirm such partition and in a proper case decree title in accordance with the possession in severalty.

In numerous cases it has been held or stated that parol partition may be sustained on the ground of estoppel of the parties to assert the rights of a tenant in common as to parts of land divided by parol partition as to which possession in severalty was taken and acts of individual ownership were exercised. And a court of equity will recognize the agreement and decree it to be valid and effectual for the purpose of concluding the right of the parties as between each other to hold their respective parts in severalty.

A parol partition may also be sustained on the ground that the parties thereto have acquiesced in and ratified the partition by taking possession in severalty, exercising acts of ownership with respect thereto, or otherwise recognizing the existence of the partition.

A number of cases have specifically applied the doctrine of part performance, or have stated that a part performance is necessary, to take a parol partition out of the operation of the statute of frauds. It has been held that where there was a partition in fact between tenants in common, and a part performance, a court of equity would have regard to enforce such partition agreed to by the parties.

Two more points have constrained this Court to rule against respondents. First, respondents Wilfreda Maglucot-Alejo and Constancio Alejo offered to buy the share of Roberto Maglucot. Second, the tax declarations contain statements that the houses of respondents were built on the land owned by Roberto Maglucot.

On the first point, petitioners presented Aida Maglucot who testified that after respondents were informed that petitioners were going to use Lot No. 1639-D belonging to Roberto Maglucot, respondents Wilfreda Maglucot-Alejo and Constancio Alejo went to the house of said witness and offered to buy the share of Roberto Maglucot.^[52] Aida Maglucot further testified that they refused the offer because they also intend to use the lot for a residential purpose.^[53] This testimony of Aida Maglucot is un rebutted by respondents, and the CA did not touch upon this finding of fact. Hence, the offer to buy has been established by the un rebutted evidence of the petitioners. Why would they give such offer if they claim to be at least a co-owner of the said lot? In effect, respondents impliedly admit the title of the petitioners and that they are not co-owners, much less the sole owners, of Lot No. 1639-D.

On the second point, the existence of Tax Declaration No. 04-557 in the names of Constancio Alejo and Godofreda Maglucot,[54] Tax Declaration No. 04-87-13 in the names of Leopoldo Maglucot and Regina Barot,[55] Tax Declaration No. 04-593 in the names of Severo Maglucot and Samni Posida[56] showing that the houses of the above-mentioned persons are constructed on the land of Roberto Maglucot[57] constitute incontrovertible evidence of admission by the same persons of the ownership of the land by Roberto Maglucot. Tax Declarations are public documents. Unless their veracity is directly attacked, the contents therein are presumed to be true and accurate.[58] The lone testimony of Severo Maglucot that Roberto Maglucot was only made to appear as owner of the land in their respective declarations because he was the administrator of Lot No. 1639 is uncorroborated and not supported by any other evidence.

No injustice is dealt upon respondents because they are entitled to occupy a portion of Lot No. 1639, particularly Lot No. 1639-A, in their capacity as heirs of Tomas Maglucot, one of the original co-owners of Lot No. 1639 in accordance with the sketch plan of said lot showing the partition into six portions.[59]

Finally, this Court takes notice of the language utilized by counsel for petitioners in their petition for review on certiorari. Thrice in the petition, counsel for petitioners made reference to the researcher of the CA. First, he alluded to the lack of scrutiny of the records and lack of study of the law "by the researcher." [60] Second, he cited the researcher of the CA as having "sweepingly stated without reference to the record" [61] that "[w]e have scanned the records on hand and found no evidence of any partition." Finally, counsel for petitioners assailed the CA decision, stating that "this will only show that there was no proper study of the case by the researcher." [62]

Any court when it renders a decision does so as an arm of the justice system and as an institution apart from the persons that comprise it. Decisions are rendered by the courts and not the persons or personnel that may participate therein by virtue of their office. It is highly improper and unethical for counsel for petitioners to berate the researcher in his appeal. Counsel for petitioner should be reminded of the elementary rules of the legal profession regarding respect for the courts by the use of proper language in its pleadings and admonished for his improper references to the researcher of the CA in his petition. A lawyer shall abstain from scandalous, offensive, or menacing language or behavior before the courts.[63]

WHEREFORE, the petition is GRANTED The decision of the Court of Appeals is SET ASIDE and the decision of the Regional Trial Court is hereby REINSTATED. A h Y

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santaigo, JJ., concur.

[1] Exhibit "J," Records, p. 89.

[2] Exhibits "A-4," "A-4-a" to "A-4-c" and "B," Records, pp. 48-50.

[3] Exhibit "A," *id.* at 45-47.

[4] Rollo, p. 24.

[5] Exhibits "K" and "L," Records, pp. 90-91.

[6] RTC Decision, 13 December 1994, p. 10; Rollo, p. 42.

[7] *Ibid.*

[8] Exhibits "G" to "I," Records, pp. 87-88.

- [9] See note 5 at 9, Rollo, p. 41.
- [10] Id., at 12-13; Rollo, pp. 44-45.
- [11] CA Decision, pp. 6-7, Rollo, pp. 28-29.
- [12] Petition, p. 4; Rollo, p. 8.
- [13] Memorandum for Petitioners, p. 6; Rollo, p. 61.
- [14] Ibid..
- [15] Id. at 10; Rollo, p. 65.
- [16] Id. at 12; Rollo, p. 67.
- [17] Memorandum for Respondents, p. 2; Rollo, p. 79.
- [18] Ibid.
- [19] Id. at 3,6; Rollo, pp. 81, 83.
- [20] Sta. Maria vs. Court of Appeals, 285 SCRA 351 (1998); Medina vs. Asistio, 191 SCRA 218, 223-224 (1990).
- [21] See Sections 2 and 6, Rule 69, Rules of Court. See also Herrera, Comments on the 1997 Rules of Civil Procedure as Amended, 768-770 (1997).
- [22] Municipality of Biñan vs. Garcia, 180 SCRA 576 (1989).
- [23] See Miranda vs. Court of Appeals, 71 SCRA 295 (1976) reiterated in Valdez vs. Bagaso, 82 SCRA 22 (1978); Lagunzad vs. Gonzales, 92 SCRA 476 (1979); Garbo vs. Court of Appeals, 129 SCRA 616 (1984); Fabrica vs. Court of Appeals, 146 SCRA 250 (1986).
- [24] Miranda vs. Court of Appeals, supra.
- [25] Id., at 9; See also Valdez vs. Bagaso, supra.; Fabrica, et al. vs. Court of Appeals, supra.
- [26] G.R. No. 48102, May 27, 1942.
- [27] RULE OF COURT, Rule 69, Sec. 2, par. 1 and Sec. 6.
- [28] Godwin v. Banks, 43 A. 863, 89 Md. 679.
- [29] Corbett vs. Fleming, 119 N.Y.S. 543, 134 App. Div. 544.

[30] 74 SCRA 118 (1976).

[31] Notably, the provision applied by the Cadastral Court in its Order of Partition in 1952 was section 22 of the Cadastral Act. (The Cadastral Court was actually referring to section 19 of the law.) A perusal of this provision would show that the appointed commissioners are empowered to make partition such part and proportion of the lands as the court shall order. Significantly, in contrast to the procedure under the Rules of Court, there is no requirement of confirmation of the report of the commissioners by the Cadastral Court. It is not, however, necessary to make any declaration on this matter since whatever rule may have been applicable, the defendants are now estopped from raising this question.

[32] Exhibit B for petitioners, Rollo, p. 51.

[33] Exhibit A-4; Rollo p. 49.

[34] Hampshire County Trust Co. of North Hampton, Mass., et al. v. Stevenson et al., 150 N.E. 726 citing Freeman, Cotenancy and Partition p. 710, Section 535.

[35] Jeffries vs. Hignite et al., 206 Ky. 50, 266 S.W. 901.

[36] Christen et al. vs. Christen et al., 184 Ky. 822, 213 S.W. 189.

[37] Clarke et al. vs. Charles et al., 55 Neb 202, May 19, 1898.

[38] Torres vs. Encarnacion, 89 Phil. 678 (1951).

[39] Hampshire County Trust Co. of North Hampton, Mass., et al. v. Stevenson et al., 150 N.E. 726.

[40] Ibid.

[41] A.M. Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, 245 (Vol. II, 1995).

[42] Hunt vs. Rabitoay, 125 Mich. 137, 84 NW 59.

[43] Hepburn & Dundas vs. Auld, 9 US 262, 3 L Ed. 96.

[44] Hunt vs. Rabitoay, 125 Mich. 137, 84 NW 59.

[45] Jackson ex dem. Williams vs. Millr (NY) 6 Wend. 228.

[46] Casica vs. Villanueva, G.R. No. L-9590, April 30, 1957.

[47] Pena, Registration of Land Titles and Deeds, 9 (1994 Revised Ed., 1997 Reprint).

[48] See 26 C.J. 313.

[49] 196 SCRA 313 (1991).

[50] 78 Phil. 196, 203 (1974).

[51] 296 SCRA 455 (1998).

[52] T.S.N. p. 5, August 18, 1994.

[53] Ibid.

[54] Exhibit "G" , Records, p. 87.

[55] Exhibit "H", Id., at 88.

[56] Exhibit "I", Id. at 89.

[57] Exhibits "G-1," "H-1" and "I-1", Id. at 87-88.

[58] Rules of Court, Rule 131, Sec. 3 (m), (q), (y) and (ff).

[59] Exhibits "B" and "B-1", Rollo, p. 5.

[60] Rollo, p. 9.

[61] Id., at 10.

[62] Id.. at 16.

[63] Rule 11.03, Code of Professional Responsibility.

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