

**SPOUSES BENIGNO QUE AND ERLINDA QUE, AND ADELA URIAN,
PETITIONERS, VS. COURT OF APPEALS, HON. FLORENCIO A. RUIZ,
JR., PRESIDING JUDGE, RTC BR. 24, CABUGAO, ILOCOS SUR, AND
ISABE...**

G.R. NO. 150739. August 18, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the Court of Appeals' Decision[2] dated 26 June 2001 and its Resolution dated 8 November 2001. The 26 June 2001 Decision dismissed petitioners' petition while the 8 November 2001 Resolution denied their motion for reconsideration.

The Facts

Since 1960, respondent Isabel Arrieta-Costales ("respondent") has been occupying as owner a parcel of land in Sta. Monica, Magsingal, Ilocos Sur measuring 7,033 square meters. Designated as Lot No. 6023, the property was originally owned by one Lorenzo Cariño ("Lorenzo") who died in 1960. In 1997, respondent declared the property in her name for taxation purposes.

Petitioner Adela Urian ("Urian") is Lorenzo's grandniece, being the adopted daughter of Lorenzo's nephew Gonzalo Cariño ("Gonzalo"), son of Lorenzo's brother Mariano Cariño.

In February 2000, respondent filed a complaint against Urian and petitioners Benigno Que and Erlinda Que ("spouses Que")[3] in the Regional Trial Court, Cabugao, Ilocos Sur, Branch 24 ("trial court") for "Annulment of Quitclaim[,] Ownership, Possession and Damages" ("Civil Case No. 503-KC"). Respondent claimed that she is Lorenzo's granddaughter and as such, she inherited Lot No. 6023 from him. Respondent sought the annulment of a Deed of Quitclaim[4] dated 17 June 1999 and a handwritten Acknowledgment[5] dated 2 July 1999, both signed by one Isabel Arrieta ("Arrieta"). Under the Deed of Quitclaim, Arrieta "renounce[d] all [her] rights, interests, participation, title and possession" over Lot No. 6023 to the spouses Que while in the Acknowledgment, Arrieta confirmed receiving P30,000 from Urian. Respondent alleged that she did not sign these documents. Respondent also prayed that the trial court declare her owner of Lot No. 6023 and order petitioners to pay damages.

When respondent filed her Complaint, the spouses Que had taken possession of Lot No. 6023. The spouses Que also declared the land in their name for tax purposes.

After petitioners received the complaint with the summonses on 21 March 2000, they hired the services of one Atty. Ronnie Ranot ("Atty. Ranot"). However, Atty. Ranot failed to file petitioners' Answer. On 4 May 2000, respondent moved to declare petitioners in default. During the hearing of respondent's motion on 18 May 2000, only Urian appeared and manifested that Atty. Ranot was still preparing the Answer. The trial court found Urian's

manifestation unmeritorious and issued an Order in open court declaring petitioners in default. In its Order of 15 June 2000, the trial court granted respondent's motion to present her evidence ex parte and scheduled the presentation of evidence on 20 June 2000. Respondent presented her evidence accordingly, and the case was submitted for judgment.

The Trial Court's Ruling

On 6 September 2000, the trial court rendered judgment in respondent's favor, the dispositive portion of which provides:

WHEREFORE, decision is hereby rendered in favor of the plaintiff and against the defendants, as follows:

- Adjudging the plaintiff as the true and absolute owner of Lot 6023, located at Brgy. Sta. Monica, Magsingal, Ilocos Sur and entitled to the exclusive possession thereof;
- Declaring the Deed of Quitclaim and the Acknowledgment Letter/Receipt of no legal force and effect whatsoever and ordering the de[f]endant [s]pouses Benigno and Erlinda Que to vacate the land and restore the peaceful possession thereof to the plaintiff;
- Ordering the Municipal Assessor of Magsingal, Ilocos Sur to recall/[cancel] the Tax Declaration in the name of [s]pouses Benigno and Erlinda Que and to restore the tax declaration in the name of plaintiff Isabel Costales; and
- Ordering the defendants, jointly and severally to pay plaintiff, P10,000.00 as and for [a]ttorney's fees, P50,000.00 as moral damages, P5,000.00 as exemplary damages and the costs of this suit.[6]

Urian received a copy of the trial court's Decision on 15 September 2000. The records do not show when the spouses Que received theirs. On 10 October 2000, petitioners, through a new counsel, Atty. Benjamin Bateria ("Atty. Bateria"), sought reconsideration or new trial. Petitioners blamed their previous counsel for the non-filing of their Answer. Petitioners attached to their motion a Deed of Adjudication With Sale in which Urian, as alleged sole heir of Gonzalo, adjudicated to herself Lot No. 6023 and sold it to the spouses Que. Petitioners claimed that in his last will and testament, Lorenzo devised Lot No. 6023 to Gonzalo.

The trial court denied petitioners' motion in its Order of 17 November 2000. The trial court held that as to Urian, its Decision had become final because although she received a copy of its Decision on 15 September 2000, the motion for reconsideration or new trial was filed only on 10 October 2000. As to the spouses Que, the trial court held that the motion was pro forma since no affidavit of merit accompanied the motion. Nor did the trial court find merit in the Deed of Adjudication With Sale. The trial court noted that during the conciliation proceedings at the Office of the Municipal Mayor of Magsingal, Ilocos Sur, the spouses Que relied solely on the Acknowledgment and Deed of Quitclaim as basis for their claim of ownership of Lot No. 6023.[7]

On 18 December 2000, petitioners, represented this time by one Atty. Oliver Cachapero ("Atty. Cachapero"), filed with the trial court a petition for relief from judgment under Rule 38 of the 1997 Rules of Civil Procedure ("Rules"). Petitioners claimed that their failure to file an Answer and to seek reconsideration or new trial on time was due to the excusable negligence of their previous counsels. Petitioners also invoked "mistake and fraud" as they were allegedly under the impression that Atty. Ranot had prepared and filed "the necessary pleading or that the necessary pleading to vacate the judgment and secure new trial was prepared xxx and filed xxx." This time, petitioners submitted a joint affidavit of merit where they again invoked the Deed of Adjudication With Sale.

In its Order of 27 December 2000, the trial court denied the petition for relief from judgment. The trial court held that the negligence of their counsels bound petitioners. On the Deed of Adjudication With Sale, the trial court reiterated its finding in the Order of 17 November 2000 (denying petitioners' motion for reconsideration or new

trial) that it has no merit.[8]

Petitioners filed a petition for certiorari in the Court of Appeals to set aside the trial court's 27 December 2000 Order. Petitioners contended that: (1) the trial court should have required respondent to file an Answer to their petition instead of dismissing it outright; (2) their previous counsels' negligence denied them due process hence they should not be bound by it; and (3) the Deed of Quitclaim is not incompatible with the Deed of Adjudication With Sale as the former merely "strengthens" the spouses Que's ownership of Lot No. 6023.[9]The Court of Appeals' Ruling

In its Decision of 26 June 2001, the Court of Appeals denied due course to and dismissed petitioners' petition. The Court of Appeals held that the trial court did not err in outrightly dismissing the petition for relief from judgment for insufficiency in form and substance under Section 4, Rule 38. The appellate court further held that petitioners filed their petition for relief from judgment beyond the 60-day period under Section 3, Rule 38. The Court of Appeals also noted that the Rules allow a petition for relief from judgment only when there is no other available remedy and not when litigants, like petitioners, lose a remedy by negligence.

On petitioners' claim that their counsels' negligence should not bind them, the Court of Appeals held:

The Petitioners heaped vituperation on their counsel for the latter's ineptitude and betrayal of Petitioners['] trust and confidence for not filing the appropriate pleading to relieve the Petitioners of their having been declared in default. But then, the Petitioners were not themselves blameless. They were duty-bound to make periodic inquiries from their counsel of[n] the status of their case and as to whether the appropriate pleading had already been filed and the resolution of the Respondent Court, if any, on their pleadings xxx. If the Petitioners failed to do so and, as it turned out, their counsel failed to prepare and file the appropriate pleading, then the Petitioners cannot complain. They are bound by their ineptitude as well as their counsel's. xxx

It bears stressing that the Respondent Court came out with its Decision only on September 6, 2000 or after the lapse of more than three (3) months after it issued its Order [of 18 May 2000] declaring the Petitioners in default. In fine, the Petitioners had more than ample time to file the appropriate pleadings before the appropriate Court.[10]

Hence, this petition.[11] Petitioners contend that -

(I)

Respondent Court of Appeals committed grave abuse of discretion in the appreciation of facts and failed to appreciate that [the] Petition for Relief from judgment arose from a default order taken against petitioners due to [the] negligence of petitioners['] counsel; [and]

(II)

Respondent Court of Appeals fail[ed] to notice certain relevant facts that will justify a different conclusion that petitioners should not lose their case and [their] property through technicality.[12]

In reversal of their earlier stance in the Court of Appeals, petitioners no longer question the procedure the trial court followed in denying their petition for relief from judgment. Instead, they now claim that since that petition was an "offshoot" of the trial court's Order declaring them in default for their counsel's negligence, petitioners seek excuse from such negligence to avoid being deprived of property without due process of law. Petitioners also raise new matters regarding the merits of the trial court's Decision of 6 September 2000.[13]

The Issue

The issue is whether the Court of Appeals erred in dismissing petitioners' petition.

The Court's Ruling

The petition has no merit.

Petitioners are not Entitled to Relief from Judgment

The Court of Appeals did not err in ruling that petitioners are not entitled to relief from judgment because their petition was insufficient in form and substance, filed late, and improperly availed of.

Petitioners Failed to Prove Fraud,
Mistake, or Excusable Negligence

Under Section 1, Rule 38[14] ("Section 1"), the court may grant relief from judgment only "[w]hen a judgment or final order is entered, or any other proceeding is taken against a party in any court through fraud, accident, mistake, or excusable negligence xxx." In their petition for relief from judgment in the trial court, petitioners contended that judgment was entered against them through "mistake or fraud" because they were allegedly under the impression that Atty. Ranot had prepared and filed "the necessary pleading." This is not the fraud or mistake contemplated under Section 1. As used in that provision, "mistake" refers to mistake of fact, not of law, which relates to the case.[15] "Fraud," on the other hand, must be extrinsic or collateral, that is, the kind which prevented the aggrieved party from having a trial or presenting his case to the court.[16] Clearly, petitioners' mistaken assumption that Atty. Ranot had attended to his professional duties is neither mistake nor fraud.

On the other hand, what petitioners appear to be claiming in this petition is that this Court should reverse the Court of Appeals and remand the case to the trial court for new trial on the ground that their previous counsels' negligence constitutes "excusable negligence" under Section 1.

This claim is similarly without merit.

Under Section 1, the "negligence" must be excusable and generally imputable to the party because if it is imputable to the counsel, it is binding on the client.[17] To follow a contrary rule and allow a party to disown his counsel's conduct would render proceedings indefinite, tentative, and subject to reopening by the mere subterfuge of replacing counsel.[18] What the aggrieved litigant should do is seek administrative sanctions against the erring counsel and not ask for the reversal of the court's ruling.[19]

Petitioners nevertheless seek exemption from the above rule because their counsels' negligence allegedly deprived them of their day in court and, if the ruling of the Court of Appeals stands, they will suffer deprivation of property without due process of law.

Admittedly, this Court has relaxed the rule on the binding effect of counsel's negligence and allowed a litigant another chance to present his case "(1) where [the] reckless or gross negligence of counsel deprives the client of due process of law; (2) when [the rule's] application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require." [20]

None of these exceptions obtains here.

For a claim of counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown.[21] Here, what petitioners' first, second, and third counsels did was fail to file the Answer, file a belated and defective motion for reconsideration or new trial, and belatedly and erroneously file a petition for relief from judgment, respectively. While these acts and omissions can plausibly qualify as simple negligence, they do not amount to gross negligence to justify the annulment of the proceedings below.

In *Legarda v. Court of Appeals*,^[22] where the Court initially held that the counsel's failure to file pleadings at the trial court and later on appeal amounted to gross negligence, the Court, on respondent's motion, granted reconsideration and applied the general rule binding the litigant to her counsel's negligence. The Court noted that the proceedings which led to the filing of the petition in that case "were not attended by any irregularity." The same observation squarely applies here. Neither can petitioners rely on *Boyer-Roxas v. Court of Appeals*^[23] because there, as here, the Court held that the petitioners' counsel was not grossly negligent.

Nor were petitioners denied procedural due process. In essence, procedural due process is simply the opportunity to be heard.^[24] Petitioners were afforded such opportunity. Thus, petitioners were served a copy of the complaint and the summonses and given 15 days to file their Answer. While there is no showing from the records when petitioners received their copy of the 18 May 2000 Order declaring them in default, there is no dispute that Urian was present at the hearing when the trial court issued that Order in open court. Petitioners were also served a copy of the trial court's Decision of 6 September 2000 from which they had 15 days to appeal, seek reconsideration, or new trial. Indeed, petitioners filed a motion for reconsideration or new trial albeit belatedly and without complying with proper formalities. Plainly, there was no denial of due process to petitioners.

But even assuming that the lapses of petitioners' counsels amount to gross negligence denying petitioners their day in court, petitioners' contention that if we sustain the Court of Appeals they will be deprived of property is baseless.

The spouses Que anchor their claim of ownership to Lot No. 6023 on the Deed of Adjudication With Sale Urian executed in their favor and on the Deed of Quitclaim.^[25] Urian's claim of ownership over Lot No. 6023 is in turn based on Lorenzo's alleged testamentary disposition devising Lot No. 6023 to her adoptive parent, Gonzalo. As proof of such testamentary disposition, petitioners submitted an affidavit,^[26] dated 20 October 1940, of Lorenzo's sister Eusebia Cariño ("Eusebia").

The Court finds Eusebia's affidavit insufficient to support petitioners' claims.

Under the Spanish Civil Code, the law governing Lorenzo's alleged will, all wills must be executed in writing^[27] except when the testator takes part in any military operation or when any warlike operation is imminent^[28] or when the testator^[29] is in danger of shipwreck.^[30] In such cases, the testator can execute the will orally in the presence of at least two witnesses.^[31] Failure to comply with these formalities renders the will void.^[32] Furthermore, the Code of Civil Procedure requires that wills must be submitted to the proper court for probate otherwise the same shall not pass either real or personal property.^[33]

Here, petitioners neither presented a copy of Lorenzo's will nor proved its oral execution under the circumstances provided in the Spanish Civil Code. Petitioners similarly make no claim that Lorenzo's will was allowed in probate. Thus, not only is there no proof that Lorenzo executed a will, there is also no basis to hold that such will, if indeed executed, passed Lot No. 6023 to Gonzalo. Significantly, Eusebia did not state in her affidavit that Lorenzo executed a will. What Eusebia stated was that Lorenzo "instructed" (inbilin) that Lot No. 6023 should be inherited by Gonzalo. This, if any, merely indicates Lorenzo's intent to devise that piece of realty to Gonzalo but does not prove his execution of a will instituting Gonzalo as heir to Lot No. 6023.

On the Deed of Quitclaim, the Court finds no reason to disturb the trial court's finding that respondent's signature in that document was forged.

In contrast, respondent has been in continuous possession of Lot No. 6023 in the concept of an owner after Lorenzo died in 1960 until the spouses Que removed her from that property shortly before respondent filed her complaint in February 2000. While it does not appear that respondent had registered the land in her name, her

uninterrupted possession of Lot No. 6023 for nearly 40 years (beyond the 30-year extraordinary acquisitive prescription^[34]), coupled with the performance of acts of ownership, such as payment of real estate taxes, suffices to prove her ownership by prescription.^[35]

The Petition for Relief from Judgment
was Filed Out of Time

Aside from petitioners' failure to prove any of the grounds for granting relief from judgment, they also sought relief belatedly. We quote with approval the Court of Appeals' ruling:

[T]he "Petition for Relief" filed by the Petitioners with the Respondent Court was filed beyond the reglementary period provided for in Section 3, Rule 38 of the Rules of Court, quoted, *infra*:

"SEC. 3. Time for filing petition; contents and verification. - A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. xxx

As stated in the Order of the Respondent Court, xxx the Petitioner Adela Urian received a copy of the Decision of the Respondent [Court], on September 15, 2000. Indeed, on the face of the Petition, the Petitioners admitted that the Petitioner Adela Urian received a copy of the Decision of the Respondent Court on said date. However, the said Petitioner filed her "Petition for Relief" with the Respondent Court only on December 18, 2000. By then, the sixty (60)-day period provided for under the said Rule had already elapsed. Case law has it that the periods provided for by the Rules are fixed, inextendible and never interrupted and if the Petition is filed beyond the period provided for by the Rules, the Petition cannot be entertained and must be dismissed[.]

xxx

While it may be true that the Petitioner Adela Urian filed, on October 12, 2000 a "Motion for Reconsideration and New Trial", however, the same did not suspend the running of the period under Rule 38 of the Rules of Court because it was filed beyond the period therefor[.] xxx

Insofar as the Petitioners Benigno Que, et al., are concerned, they merely alleged, in their Petition, that they received a copy of the Decision of the Respondent at a much later date than September 15, 2000 without, however, specifying the date when they, in fact, received the Decision of the Respondent Court[.]

xxx

We are not impervious [to] the claim of the Petitioners Benigno Que, in their "Joint Affidavit of Merit" that they filed their "Petition for Relief from Judgment" seasonably. But such an allegation is merely a conclusion and not a sufficient showing that their Petition was filed within the period provided for in Rule 38 of the Rules.^[36] (Emphasis in the original)

Relief from Judgment not Proper

Lastly, as an equitable remedy, a petition for relief from judgment is available only as a last recourse, when the petitioner has no other remedy.^[37] This is not true here because petitioners had at their disposal other remedies which they in fact availed of, albeit belatedly or defectively, such as when they filed their motion for reconsideration or new trial in the trial court. As the Court of Appeals held:

[A] "Petition for Relief from Judgment" is not a general utility tool in the procedural workshop. The relief

granted under Rule 38 of the Rules of Court is of equitable character and is allowed only when there is no other available or adequate remedy. It is not regarded with favor. The judgment rendered will not be disturbed where the complainant has or by exercising proper diligence would have had an adequate remedy at law. If the complainant lost a remedy at law from an adverse judgment by his xxx negligence, such inequitable conduct precludes him from relief under Rule 38 of the Rules of Court.[38] xxx

On the New Matters Petitioners Raise

On petitioners' allegations concerning the merits of the trial court's Decision of 6 September 2000, petitioners are barred from doing in this appeal what they failed to do in the trial court, that is, present their case. In any event, none of petitioners' contentions has merit.[39]

WHEREFORE, we DENY the petition. We AFFIRM the Decision dated 26 June 2001 and the Resolution dated 8 November 2001 of the Court of Appeals.

SO ORDERED.

Davide, Jr., CJ., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Although the petition is captioned "Petition for Certiorari," it was filed under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Romeo J. Callejo, Sr. (now Associate Justice of this Court), with Associate Justices Renato C. Dacudao and Perlita J. Tria-Tirona, concurring.

[3] Urian and the spouses Que are referred to as "petitioners."

[4] CA Rollo, p. 35.

[5] Ibid., p. 34. The trial court referred to this document as "Acknowledgment Letter/Receipt" (Rollo, p. 84).

[6] Rollo, p. 84.

[7] Ibid., pp. 102-105.

[8] Ibid., pp. 106-110.

[9] CA Rollo, pp. 2-21.

[10] Rollo, pp. 33-34.

[11] Filed by petitioners' newest counsel, Atty. Rodrigo E. Mallari of Mallari & Mallari Law Office.

[12] Rollo, p. 14.

[13] Rollo, pp. 16-19. Petitioners contend that: (1) there is no proof on record showing that the person who signed the Acknowledgment and the Deed of Quitclaim, Arrieta, and respondent are one and the same person; (2) respondent failed to corroborate her son's testimony that her signatures in the Deed of Quitclaim and Acknowledgment were forged; (3) respondent failed to present any proof of her filiation with Lorenzo; (4) the Deed of Quitclaim was not marked and presented in evidence; (5) respondent presented only a tax payment receipt and not the tax declaration to prove her ownership over Lot No. 6023; and (6) the trial court erred in annulling the spouses Que's tax declaration over Lot No. 6023 as it was not presented in evidence.

[14] Petition for relief from judgment, order, or other proceedings.- When a judgment or final order is entered, or

any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

[15] See *Agan v. Heirs of Sps. Andres Nueva and Diosdada Nueva*, G.R. No. 155018, 11 December 2003, 418 SCRA 421.

[16] *Garcia v. Court of Appeals*, G.R. No. 96141, 2 October 1991, 202 SCRA 228.

[17] See *Insular Life Savings and Trust Company v. Runes, Jr.*, G.R. No. 152530, 12 August 2004, 436 SCRA 317.

[18] *Aguila v. Court of First Instance of Batangas, Branch I*, G.R. No. L-48335, 15 April 1988, 160 SCRA 352.

[19] See *Villa Rhecar Bus v. De la Cruz*, G.R. No. L-78936, 7 January 1988, 157 SCRA 13.

[20] *Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank*, 442 Phil. 55 (2002).

[21] See *People's Homesite & Housing Corp. v. Tiongco*, 120 Phil. 1264 (1964). Reported as *PHHC v. Tiongco and Escasa*.

[22] G.R. No. 94457, 18 March 1991, 195 SCRA 418 (Decision); 345 Phil. 890 (1997) (Resolution).

[23] G.R. No. 100866, 14 July 1992, 211 SCRA 470.

[24] *Villaruel, Jr. v. Fernando*, G.R. No. 136726, 24 September 2003, 412 SCRA 54.

[25] Petitioners first invoked the Deed of Adjudication With Sale in their motion for reconsideration or new trial in the trial court. In the conciliation proceedings which preceded the filing of Civil Case No. 503-KC, petitioners relied solely on the Deed of Quitclaim dated 17 June 1999 and the Acknowledgment dated 2 July 1999.

[26] Eusebia's affidavit, written in the Ilocano dialect, reads (CA Rollo, p. 59):

Siac ni Eusebia Carino, balasang, a cabsat ni Lorenzo Carino, baro quet pada nga agnaed quen tubo iti ili a Magsingal, Iloco[s] Sur, Filipinas [unintelligible] agpada nga addaan ti umisu a tawen.

Agsipud ta saan unay nga adu ti sanicua day toy Dios ti alluadna a cabsat a Lorenzo Carino, quet saannan a quinalicagumanen nga indalan ti husgado [unintelligible] corte ngem cas casapulan ti linteg ti panagsapatac a toy agdama nga laoagco quet isu ti quinapudno:

- Inbilin di cabsatco a Lorenzo Carino a ti sangca disso a dagana iti lugar managan Tarudtud Lote No. 6023 nga addaan ti calaoana a 7033 nga daguiti aglaolaona quet cucua met laeng daguiti Carino's quen daguiti Arrieta's quen Segui's Quet ti nasao a daga quet maipataguicoa quenni caanacanmi a Gonzalo Carino nga anac da cabsatco a Mariano Carino quen ipagmi a Nieves Farinas Carino a saan quetdi a maibilbilang ti cacabsatna.
xxxx

Quet nasacon daytoy palaoag, isu ti pudpudno nga saoc, quet isu ti nadalos quen nalatac apanagpanunutco quet isu a nadispunerco daytoy nasasao a cocuana. [I]tedco dayto a saan quet a maigapu panangbutbuteng oenno ayayo no di quet magtaud ti sibubuquel a naquemco.

Quet ti quinapudnona tapno mapapati daytoy palaoagco adtoy a firmaac tapno addanto laeng agservi iti isuamin a casapulanna ita ditoy Magsingal, Ilocos Sur, Filipinas, 20 ti mabilang ti Octubre 1940. (Emphasis supplied)

[27] Articles 688, 694-695, 706, 716 and 722, SPANISH CIVIL CODE. This requirement is now provided in Article 804 of the Civil Code, thus: "Every will must be in writing and executed in a language or dialect known to

the testator."

[28] Article 720, SPANISH CIVIL CODE.

[29] Who must be a crew or passenger of a man-of-war or merchantman.

[30] Article 731 in relation to Article 720, *ibid.*

[31] Articles 720 and 731, *ibid.*

[32] Article 687, *ibid.*

[33] Section 625 states: "No will shall pass either the real or personal estate, unless it is proved and allowed in the Court of First Instance, or by appeal to the Supreme Court; and the allowance by the court of a will of real and personal estate shall be conclusive as to its due execution." The presentation of the will under this provision is mandatory (*Guevara v. Guevara*, 74 Phil. 479 [1943]). Section 625 is substantially reiterated in Section 1, Rule 75 of the Rules of Court.

[34] Article 1137, CIVIL CODE provides: "Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith."

[35] See *Republic v. Court of Appeals*, 216 Phil. 500 (1984), reported as *Rep. of the Phil. v. CA (Second Div.)*, et al.; *Samson v. CA*, 225 Phil. 153 (1986).

[36] *Rollo*, pp. 30-32.

[37] *Tuason v. CA*, 326 Phil. 169 (1996); *Ibabao v. Intermediate Appellate Court*, G.R. No. L-74848, 20 May 1987, 150 SCRA 76.

[38] *Rollo*, p. 32.

[39] (1) Respondent, Isabel Arrieta-Costales, and the signatory of the Acknowledgment dated 2 July 1999 and the Deed of Quitclaim dated 17 June 1999, Isabel Arrieta, are one and the same person, the latter name being respondent's maiden name; (2) respondent appointed her son as her attorney-in-fact to testify on her behalf because of advanced age; (3) respondent's failure to present evidence to prove her filiation with Lorenzo does not affect her title over Lot No. 6023 which she acquired through acquisitive prescription; (4) although the Deed of Quitclaim dated 17 June 1999 was not presented in evidence, respondent attached a copy in her Complaint. Also, petitioners never denied the existence of such document, having invoked it as basis for the spouses Que's claim of ownership over Lot No. 6023 in the conciliation proceedings which preceded the filing of Civil Case No. 503-KC; (5) respondent's presentation of the tax payment receipt instead of the tax declaration does not negate her title over Lot No. 6023 as either of these documents suffices to corroborate her claim of ownership; and (6) the spouses Que do not deny having declared Lot No. 6023 in their name for tax purposes, thus the trial court did not err in ordering the cancellation of such tax declaration.

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