

HEIRS OF CESAR MARASIGAN NAMELY: LUZ REGINA, CESAR JR., BENITO, SANTIAGO, RENATO, JOSE, GERALDO, ORLANDO, PETER, PAUL, MAURICIO, ROMMEL, MICHAEL, GABRIEL, AND MARIA LUZ, ALL SUR...

G.R. No. 156078. March 14, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review under Rule 45 of the Revised Rules of Court, with petitioners praying for the reversal of the Decision[1] of the Court of Appeals dated 31 July 2002 and its Resolution[2] dated 13 November 2002 denying the Petition for Certiorari and Prohibition, with prayer for the issuance of a writ of preliminary injunction and restraining order, in CA- G.R. SP No. 67529. Petitioners are asking this Court to (a) give due course to their petition; and (b) reverse and set aside, and thus, declare null and void the Decision of the Court of Appeals in CA-G.R. SP No. 67529. However, petitioners are asking for the following reliefs in their Memorandum: (a) the dismissal of the complaint for partition of the estate of the late Alicia Marasigan, docketed as Special Civil Action No. P-77-97, filed before the Regional Trial Court (RTC) of Pili, Camarines Sur; (b) annulment or rescission of the public auction sale of petitioners' 1/7[th] undivided share in the estate of Alicia Marasigan, and direct Apolonio Marasigan to restore the same to petitioners; or (c) in the alternative, allowance of the physical partition of the entire 496 hectares of Hacienda Sta. Rita.

Central to the instant Petition is the estate of Alicia Marasigan (Alicia).

Alicia was survived by her siblings: Cesar, Apolonio, Lilia, and Benito; Marissa, a sister-in-law; and the children of her brothers who predeceased her: Francisco, Horacio, and Octavio. She died intestate and without issue on 21 January 1995.

On 17 December 1997, a Complaint for Judicial Partition of the Estate of Alicia Marasigan was filed before the RTC by several of her heirs and private respondents herein, namely, Apolonio, Lilia, Octavio, Jr., Horacio, Benito, Jr., and Marissa, against Cesar, docketed as Special Civil Action No. P-77-97.

According to private respondents, Alicia owned in common with her siblings 13 parcels of land called Hacienda Sta. Rita in Pili and Minalabac, Camarines Sur, with an aggregate area of 4,960,963 square meters or 496 hectares, and more particularly described as follows:

ORIGINAL CERTIFICATE OF TITLE NO. 626

"A parcel of land denominated as Lot 516-B of the Subdivision Survey Plan Csd-05-001020, situated at Sagurong, Pili, Camarines Sur, bounded on the NE., by PNR; on the SE., by Bgy. Road; on the SW., by Lot 2870; and on the NW., by Lot 512, containing an area of EIGHT THOUSAND SEVEN HUNDRED TWELVE (8,712) SQUARE METERS, more or less, declared under A.R.P. No. 014 166 and assessed at P12, 860.00."

ORIGINAL CERTIFICATE OF TITLE NO. 627

"A parcel of land denominated as Lot 4237, Cad-291, Pili Cadastre, Plan Cen-05-000006, situated at Saguron, Pili, Camarines Sur, bounded on the N., by Irr. ditch beyond Lot 445; on the E., by Lots 517 and 518; on the S., by Creek, Lot 468, 467; and on the W., by Lot 2948 and Mun. of Minalabac, containing an area of EIGHT HUNDRED SIXTY ONE THOUSAND ONE HUNDRED SIXTY THREE (861,163) SQUARE METERS, more or less, declared under A.R.P. No. 016 268 and assessed at P539,020.00."

ORIGINAL CERTIFICATE OF TITLE NO. 628

"A parcel of land denominated as Lot 2870 Cad. 291, Pili Cadastre Plan Swo-05000607, situated at Sagurong, Pili, Camarines Sur, bounded on the N., by Binasagan River; on the E., by Lots 512 and 516; on the S., by Barangay Road; and on the W., by Lot 469, containing an area of THIRTEEN THOUSAND FOUR HUNDRED SIXTY TWO (13,462) SQUARE METERS, mote or less, declared under A.R.P. No. 014 130 and assessed at P15,180.00."

ORIGINAL CERTIFICATE OF TITLE NO. 629

"A parcel of land denominated as Lot 517-B of the Subdivision Survey Plan Csd-05-001020, situated at Sagurong, Pili, Camarines Sur, bounded on the NE., by PNR; on the SE., by Lot 519; on the SW., by Lots 2025 and 2942; and on the NW., by Brgy. Road, containing an area of THIRTEEN THOUSAND SEVEN HUNDRED SIXTY FIVE (13,765) SQUARE METERS, more or less, declared under A.R.P. No. 014 167 and assessed at P20,310.00."

ORIGINAL CERTIFICATE OF TITLE NO. 652

"A parcel of land denominated as Lot 4207-B of the subdivision survey Plan Csd-05-011349-D, situated at Sagurong (San Jose), Pili, Camarines Sur, bounded on the NE., by Lot 4207-C, Lot 6157; on the SE., by Irr. ditch, Lot 2942; and on the NW., by Lot 4298 (3051-B), containing an area of FIFTY FOUR (54) SQUARE METERS, mote or less, declared under A.R.P. No. 014 384 and assessed at P40.00."

ORIGINAL CERTIFICATE OF TITLE NO. 653

"A parcel of land denominated as Lot 4207-A of the subdivision survey Plan Csd-05-011349-D, situated at Sagurong (San Jose), Pili, Camarines Sur, bounded on the NE., by Lot 4205 (IOT 443-A Csd-05-001019); on the SE., and SW., by Irr. ditch (Lot 2942); on the W., by Lot 4207-C Lot 6157; and on the NW., by Lot 4208 (Lot 3051-B, Csd-05-001019), containing an area of TWENTY SEVEN THOUSAND THREE HUNDRED THIRTY SEVEN (27,33) SQUARE METERS, more or less, declared under A.R.P. No. 014 383 and assessed at P20,150.00."

A.R.P. NO. 014 385

"A parcel of land denominated as Lot 4207-C Lot 6157 of the subdivision survey Plan Csd-05-001019, situated at Sagurong (San Jose), Pili, Camarines Sur, bounded on the NE., by Lot 4207-A Lot 6155; on the SE., by Lot 4207-A Lot 6155; on the SW., by Lot 4207-B Lot 6156 and Irr. ditch; and on the NW., by Lot 4208 (3051-B), containing an area of THREE HUNDRED SIXTY ONE (361) SQUARE METERS, more or less, declared under A.R.P. No. 014 385 and assessed at P270.00."

ORIGINAL CERTIFICATE OF TITLE NO. 654

"A parcel of land denominated as Lot 443-A of the subdivision survey Plan Csd-05-001019, situated at Sagurong (San Jose), Pili, Camarines Sur, bounded on the NE., by Lots 474, 4019, 4018, 4027, creek; on the SE., by Hrs. of Benito Marasigan; and on the NW., by Lot 443-B, Ireneo Llorin; containing an area of TWO HUNDRED FORTY FOUR THOUSAND EIGHT HUNDRED FIFTY EIGHT (244,858) SQUARE METERS, more or less, declared under A.R.P. No. 014 382 and assessed at P195,400.00."

ORIGINAL CERTIFICATE OF TITLE NO. 655

"A parcel of land denominated as Lot 2942-A of the subdivision survey Plan Csd-05-010854-D, situated at Sagurong (San Jose/San Agustin), Pili, Camarines Sur, bounded on the N., by Creek; on the NE., by Lot 3049; on the SE., by Creek; and on the W., by Lots 3184, 3183, 2942-13, 3183, 3060 and 3177; containing an area of FOUR HUNDRED SIXTY SIX THOUSAND SIX HUNDRED TWENTY TWO (466,622) SQUARE METERS, more or less, declared under A.R.P. No. 014 386 and assessed at P287,160.00."

ORIGINAL CERTIFICATE OF TITLE NO. 656

"A parcel of land denominated as Lot 2 Plan Cen-05-000007, situated at San Jose, Pili, Camarines Sur, bounded on the N., by Lots 509 and 508, Binasagan River; on the E., by Lots 523, 521 and 520; on the S., by Lot 522; and on the W., by Phil. Nat'l. Railways; containing an area of ONE HUNDRED FIVE THOUSAND TWO HUNDRED TWELVE (105,212) SQUARE METERS, more or less, declared under A.R.P. No. 016 939 and assessed at P524,220.00."

ORIGINAL CERTIFICATE OF TITLE NO. 657

"A parcel of land denominated as Lot 1, Plan Cen-05-000007, situated at San Jose, Pili, Camarines Sur, bounded on the N., by Lots 525, 526, 527; on the E., by Lots 528-A, 529, 530, 531, 532 and Nat'l. Road; on the S., by Lots 533 and 522 pt.; and on the W., by Lots 521, 523; containing an area of FIFTY SIX THOUSAND SIX HUNDRED FIFTY TWO (56,652) SQUARE METERS, more or less, declared under A.R.P. No. 016 993 and assessed at P292,090.00"

TRANSFER CERTIFICATE OF TITLE NO. 16841

"A parcel of land denominated as Lots 1 and 2, Plan II-10759, situated at Manapao, Minalabac, Camarines Sur, bounded on the N., by Lots 3061, 3059, 4119, 3178, 3185, 3186, 3187, 3188, Borabodan Creek, 4350, 4401; and on the W., by Lots 4380, 3030, 3057. 3286, 3053, 3056; containing an area of TWO MILLION NINE HUNDRED TWENTY TWO THOUSAND FIFTY NINE (2,922,059) SQUARE METERS, more or less, declared under A.R.P. No. 014 0372 and assessed at P888,200.00."

TRANSFER CERTIFICATE OF TITLE NO. 16842

"A parcel of land denominated as Lot 443-A of Plan Psu-62335, situated at Manapao, Minalaban, Camarines Sur (San Jose, Pili, Cam. Sur); bounded on the NE., by Shannon Richmond and Eugenio Dato; on the E., by Eugenio Dato; on the S., by Eugenio Dato and Creek; and on the SW and NW., by Shannon Richmond; containing an area of TWO HUNDRED FORTY THOUSAND SEVEN HUNDRED SIX (240,706) SQUARE METERS, more or less, declared under A.R.P. No. 014 245 and assessed at P146,830.00."[3]

Alicia left behind her 2/21 shares in the afore-described 13 parcels of land.

In answer to the private respondents' Complaint, Cesar enumerated Alicia's several other properties and assets which he also wanted included in the action for partition, to wit:

- 1/8 share in the parcel of land covered by TCT No. 10947 located at Poblacion, San Juan, Batangas, containing an area of 4,827 square meters, more or less;
- 1/8 share in the parcel of land with improvements thereon (cockpit arena) located in Poblacion, San Juan, Batangas covered by TCT No. 0-3255;
- A parcel of commercial land under property Index No. 024-21-001-25-005 situated in Poblacion, San Juan Batangas containing an area of 540 square meters, more or less;
- A parcel of land situated in Yabo, Sipocot, Camarines Sur containing an area of 2,000 hectares and covered by Tax Declaration No. 7546;

- A parcel of land located at Brgy. Yabo, Sipocot, Camarines Sur with an area of 21,000 square meters, more or less, covered by Tax Declaration No. 6622;
- A parcel of land located at Brgy. Yabo, Sipocot, Camarines Sur with an area of 2,6750 hectares under Tax Declaration No. 5352;
- A parcel of land located at Barrio Yabo, Sipocot, Camarines Sur with an area of 2,3750 hectares and covered by Tax Declaration No. 3653, and
- Shares of Stock in Bolbok Rural Bank, Inc., a family owned rural bank consisting of 3,230 shares at P100.00 per share.[4]

Cesar's request for inclusion was contested by private respondents on the ground that the properties he enumerated had already been previously partitioned and distributed to the appropriate parties.[5]

On 4 February 2000, the RTC decided in favor of private respondents and issued an Order of Partition of the Estate of Alicia Marasigan, decreeing that:

As regards to [sic] the real properties located in Hacienda Sta. Rita in the municipalities of Pili and Minilabac, Camarines Sur as described in par. 3 of the complaint, the actual area representing the 2/21 pro-indiviso share having been determined consisting of 422,422.65 sq. meters, more or less (Exhibit 0-2) therefore, the share of each heir of the late Alicia Marasigan is 1/7 or equivalent to 67,496.09 square meters each (Exh. 0-3).

Wherefore, in view of the foregoing, decision is hereby rendered.

- Ordering the partition of the estate of Alicia Marasigan in Hacienda Sta. Rita located in the municipalities of Pili and Minalabac, Camarines Sur consisting of 422,422.65 sq. meters among her surviving brothers and sisters namely: APOLONIO, LILIA, BENITO and CESAR, all surnamed MARASIGAN who will inherit per capita and her nephews and nieces who are the children of deceased brothers - the children of Francisco Marasigan and children of Horacio Marasigan who will inherit per stirpes and Octavio Marasigan, Jr., who will inherit by right of representation of his deceased father, Octavio Marasigan, Sr.
- Declaring the partition of the San Juan, Batangas properties made by the heirs of Alicia Marasigan as contained in the minutes of the Board Meeting of the Rural Bank of Bolbok valid and binding among them.
- Ordering the partition of the real properties located in San Juan, Batangas as shown and reflected in Exhibits 1 to 10 inclusive presented by defendant, in the same sharing and proportion as provided in paragraph one above-cited in this dispositive portion.
- No pronouncement as to costs.[6]

As the parties could not agree on how they shall physically partition among themselves Alicia's estate, private respondents filed a Motion to Appoint Commissioners[7] following the procedure outlined in Sections 4, 5, 6 and 7 of Rule 69 of the Rules of Court, citing, among other bases for their motion:

That unfortunately, the parties could not agree to make the partition among themselves which should have been submitted for the confirmation of the Honorable Court more so because no physical division could be had on the 2/21 pro-indiviso shares of the decedent [Alicia] due to different locations, contours and conditions;

The RTC granted the Motion and appointed Myrna V. Badiong, Assistant Provincial Assessor of Camarines Sur, as Chairman of the Board of Commissioners.[8] Private respondents nominated Sandie B. Dacara as the second commissioner. Cesar failed to nominate a third commissioner despite due notice. Upon lapse of the period given, only two commissioners were appointed.

On 26 October 2000, the two Commissioners conducted an ocular inspection of Hacienda Sta. Rita, together with

the Local Assessment Operations Officer IV of the Provincial Assessor's Office, the Barangay Agrarian Reform Committee (BARC) Chairman, and the Marasigans' caretaker. However, Cesar contended that he did not receive any notice from the Commissioners to attend the ocular inspection and he was, thus, not present on said occasion.

The Commissioners' Report[9] was released on 17 November 2000 stating the following findings and recommendations:

The undersigned Commissioners admit the 472,472.65 (47.2472.65) square meters representing the 2/21 pro-indiviso share of the deceased Alicia Marasigan and the 1/7 share of each of the heirs of Alicia N. Marasigan equivalent to 67,496.09 square meters or 6.7496.09 hectares determined by Geodetic Engineer Roberto R. Revilla in his Compliance with the Order of the Honorable Court dated November 18, 1998.

Considering that the physical division of the 2/21 pro-indiviso share of the decedent, Alicia Marasigan cannot be done because of the different locations and conditions of the properties, undersigned Commissioners hereby recommend that the heirs may assign their 1/7 share to one of the parties willing to buy the same (Sec. 5, Rule 69 of the Rules of Court) provided he pays to the heir[s] willing to assign his/her 1/7 share such amounts the Commissioners have recommended and duly approved by the Honorable Court.

In consideration of such findings and after a careful and thorough deliberations by the undersigned on the subject matter, considering the subject properties' classification and actual predominant use, desirability and demand and together with the benefits that may be derived therefrom by the landowners, we have decided to recommend as it is hereby recommended that the price of the 1/7 share of each of the heir[s] is P700,000.00 per hectare, thus:

$P700,000.00 \times 6.7496.09 \text{ hectares} = P4,724,726.30$ or in words:

FOUR MILLION SEVEN HUNDRED TWENTY FOUR THOUSAND SEVEN HUNDRED TWENTY SIX AND 30/100 PESOS FOR THE 1/7 SHARE (6.7496.09 HECTARES) OF EACH OF THE HEIRS.[10]

Cesar opposed the foregoing findings and prayed for the disapproval of the Commissioners' Report. In his Comment/Opposition to the Commissioners' Report, he maintained that:

He does not expect that he would be forced, to buy his co-owner's share or to sell his share instead. Had he known that it would be the recourse he would have appealed the judgment [with petitioners referring to the RTC Order of Partition]. But the findings of facts in the Decision as well [as] dispositive do not show that any valid grounds for exception to partition is even present in the instant case.[11]

Cesar alleged that the estate is not indivisible just because of the different locations and conditions of the parcels of land constituting the same. Section 5, Rule 69 of the Rules of Court can only be availed of if the partition or division of the real properties involved would be prejudicial to the interest of any of the parties. He asserted that despite the segregation of his share, the remaining parcels of land would still be serviceable for the planting of rice, corn, and sugarcane, thus evidencing that no prejudice would be caused to the interests of his co-heirs.

Countering Cesar's arguments, private respondents contended that physical division is impossible because Alicia's estate is equivalent to 2/21 shares in Hacienda Sta. Rita, which is composed of 13 parcels under different titles and tax declarations, situated in different barangays and municipalities, and covers an area of 496 hectares.

After a serious consideration of the matters raised by the parties, the RTC issued an Order dated 22 June 2001 approving in toto the recommendations embodied in the Commissioners' Report, particularly, the recommendation that the property be assigned to one of the heirs at P700,000.00 per hectare or a total amount of P4,724,726.00,[12] after finding the same to be in accordance with the Rules of Court and the New Civil Code. Pertinent portions of the Order are reproduced below:

WHEREFORE, in view of all the foregoing, the Commissioners Report dated November 17, 2000 is hereby approved in toto, more specifically its recommendation to assign the property to any one of the heirs interested at the price of P700,000.00 per hectare or in the total amount of P4,724,726.00 per share.

Regarding the properties of deceased Alicia Marasigan located at San Juan, Batangas, the herein Commissioners, Mrs. Myrna V. Badiong and Engr. Sandie B. Dacara are hereby directed to proceed with utmost dispatch to San Juan, Batangas and inspect said properties (Exhibits 1 to 10 inclusive) and thereafter to submit a Supplemental Report as to its partition or other disposition with notice to all parties and their counsels all at the expense of the estate, within a period of thirty (30) days from receipt hereof.

Dissatisfied, Cesar filed a Motion for Reconsideration,[13] which was denied by the RTC for lack of merit.[14]

In the meantime, Cesar died on 25 October 2001. He was substituted by his heirs and herein petitioners, namely, Luz Regina, Cesar, Jr., Benito, Santiago, Renato, Jose, Geraldo, Orlando, Peter, Paul, Mauricio, Rommel, Michael, Gabriel, and Maria Luz, all surnamed Marasigan.

Upon the denial by the RTC of Cesar's Motion for Reconsideration, petitioners elevated their case to the Court of Appeals via a Petition for Certiorari and Prohibition under Rule 65 of the Rules of Court, docketed as Special Civil Action No. 67529.[15] They claimed that the RTC judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction in approving the Commissioners' Report although the facts would clearly indicate the following:

- (a) The procedure taken by the Commissioners violated the procedure for partition provided in Section 4, Rule 69 of the 1997 Rules of Procedure because there was no notice sent to them for the viewing and examination of the properties of the estate; neither were they heard as to their preference in the portion of the estate, thus depriving them of due process;
- (b) The ground used by the Commissioners resulting in their recommendation to assign the property is not one of those grounds provided under the Rules
- (c) Article 492 of the New Civil Code is inapplicable
- (d) Assignment of the real properties to one of the parties will not end the co-ownership.

Moreover, petitioners accused the RTC of committing grave abuse of discretion in solely relying on the testimony of Apolonio to the effect that physical division is impractical because, while other portions of the land are suitable for agriculture, the others are not, citing the different contours of the land and unavailability of water supply in some parts.

The Court of Appeals dismissed petitioners' Petition for Certiorari and Prohibition in a Decision[16] promulgated on 31 July 2002, and ruled that the RTC acted within its authority in issuing the Order of 22 June 2001. The Court of Appeals found that petitioners failed to discharge the burden of proving that the proceedings before the Board of Commissioners were unfair and prejudicial. It likewise found that the petitioners were not denied due process considering that they were afforded the opportunity to be heard during the hearing for approval of the Commissioners' Report on 18 January 2001. According to the appellate court, whether or not the physical division of the estate will cause prejudice to the interests of the parties is an issue addressed to the discretion of the Commissioners. It further held that it would be absurd to believe that the prejudice referred to in Section 5, Rule 69 of the Rules of Court does not embrace physical impossibility and impracticality. It concurred in the finding of the RTC that:

It is not difficult to believe that a physical partition/division of the 2/21 pro-indiviso shares of the decedent Alicia Marasigan contained in and spread throughout thirteen (13) parcels of the Hacienda Sta. Rita with a total

area of 946 (sic) hectares would be quite impossible if totally impractical. The said parcels are of different measurements in terms of areas and shapes located in different barrages of the Municipalities of Pili and Minalabac, Camarines Sur.[17]

The Court of Appeals also noted that whether or not the RTC correctly applied Section 5, Rule 69 of the Rules of Court and Article 492 of the New Civil Code, would involve an error of judgment, which cannot be reviewed on certiorari. Finally, the Court of Appeals found unmeritorious petitioners' argument that the assignment of the estate to one of the parties does not end the co-ownership, considering that it questions the 4 February 2000[18] Decision of the RTC which had already become final and executory.

Petitioners filed a Motion for Reconsideration[19] of the foregoing Decision but the same was denied by the Court of Appeals in a Resolution dated 13 November 2002. Still aggrieved, petitioners filed on 31 December 2002 this Petition for Review under Rule 45 of the Revised Rules of Court, docketed as G.R. No. 156078.

Pending resolution of the instant Petition by this Court, the RTC granted private respondents' Urgent Motion for Execution on 26 December 2002. The RTC ordered the sale of petitioners' 1/7 pro-indiviso share in Alicia's estate upon the urgent motion of private respondents dated 27 September 2002 for the partial execution of the judgment of the Court approving the Commissioners' report pending certiorari.[20]

Petitioners' share in Alicia's estate was sold in a public auction on 26 February 2003.[21] Based on the Commissioners' Report on the Auction Sale, there were two bidders, Apolonio Marasigan and Amado Lazaro. Apolonio, with a bid of P701,000.00 per hectare, won over Amado Lazaro, whose bid was P700,000.00 per hectare. Petitioners' 1/7 share as Cesar's heirs in Alicia's estate was sold in the public auction for P3,777,689.00.

This amount is lower than the P4,724,726.30 price of the 1/7 share in Alicia's estate as earlier determined by the Commissioners due allegedly to the acquisition by the Department of Agrarian Reform (DAR) of a portion of Hacienda Sta. Rita located in Minilabac, Camarines Sur which was placed under Republic Act No. 6657, or the Comprehensive Agrarian Reform Law, with 100.00 hectares thereof compulsorily acquired.

On 24 March 2003, petitioners filed with the RTC a Motion to Declare Failure of Bidding and to Annul Public Auction Sale.

On 5 May 2003, however, the RTC released an Omnibus Order[22] ruling, among other things, that the objection of petitioners as to the difference of the value of their 1/7 share as determined by the Commissioners vis-à-vis the winning bid was no longer an issue since Apolonio Marasigan indicated his willingness to pay for the deficiency.

Following the public auction and sale of their 1/7 share in the property,[23] petitioners filed a Notice of Appeal[24] with the RTC on 26 May 2003 indicating that they were appealing the 5 May 2003 Omnibus Order of the RTC[25] to the Court of Appeals. Thereafter, on 9 June 2003, petitioners filed a Record on Appeal[26] pursuant to Section 3, Rule 41 of the Rules of Court, praying that it be approved and transmitted to the Court of Appeals.[27]

On 2 July 2003, the RTC issued an Order denying due course to petitioners' Notice of Appeal on the ground that the proper remedy is not appeal, but certiorari. Petitioners then filed on 27 August 2003 another Petition before the Court of Appeals for Certiorari and Mandamus,[28] docketed as CA-G.R. SP No. 78912, praying that the RTC be directed to approve their Notice of Appeal and Record on Appeal, and to forward the same to the appellate court.

In a Resolution[29] dated 10 October 2003, the Court of Appeals dismissed CA-G.R. SP No. 78912 outright on the ground that the verification and certificate of non-forum shopping of the petition was signed by only Cesar Marasigan, Jr., without any accompanying document to prove his authority to sign on behalf of the other

petitioners. Petitioners filed a Motion for Reconsideration but it was denied by the Court of Appeals in a Resolution[30] dated 12 July 2004.[31]

Cesar G. Marasigan, Jr., in a Petition for Certiorari filed with this Court on 4 September 2004 and docketed as G.R. No. 164970, prayed for the reversal and setting aside of the Court of Appeals Resolution dated 10 October 2003 dismissing CA-G.R. SP No. 78912, and Resolution dated 12 July 2004 denying the Motion for Reconsideration thereof. This Court, however, issued a Resolution on 13 October 2004 denying the petition for failure of the petitioner to show that the Court of Appeals committed a reversible error. The same has become final and executory.

Going back to the Petition at bar, petitioners raise before this Court the following assignment of errors:

- THE COURT A QUO HAS DECIDED A QUESTION OF SUBSTANCE NOT THEREFORE DETERMINED BY THE SUPREME COURT IN FINDING THAT THERE IS NO NEED FOR DUE NOTICE TO THE PARTIES TO ATTEND THE VIEWING AND EXAMINATION OF THE REAL ESTATE SUBJECT OF PARTITION WHEN THE COMMISSIONERS HAVE DECIDED NOT TO PARTITION THE PROPERTY AND SUCH NOTICE UNDER SECTION 4 OF RULE 69 IS INDISPENSABLE ONLY WHEN THEIR DECISION IS TO PARTITION.
- THE DECISION OF THE COURT OF APPEALS IS NOT IN ACCORDANCE WITH LAW PARTICULARLY WITH ARTICLES 494 AND 495 OF THE NEW CIVIL CODE AND SECTIONS 5 RULE 69 OF THE RULES.
- THAT THE FINDINGS OF THE COURT OF APPEALS OF PHYSICAL IMPOSSIBILITY AND IMPRACTICALITY IF EMBRACED IN 'PREJUDICE' REFERRED IN SECTION 5, RULE 69 OF THE RULES SHALL MAKE SAID RULE VIOLATIVE OF THE CONSTITUTIONAL LIMITATIONS ON THE RULE MAKING POWER OF THE SUPREME COURT THAT ITS RULES SHALL NOT INCREASE, DECREASE OR MODIFY SUBSTANTIVE RIGHTS.[32]

In their Memorandum, however, petitioners submitted for resolution the following issues.

- RESPONDENTS HAVE NO CAUSE OF ACTION FOR PARTITION BECAUSE THE SUBJECT MATTER OF THE CASE CONSISTS OF UNDIVIDED SHARES WHICH CANNOT BE PARTITIONED.
- THE REGIONAL TRIAL COURT HAS NO JURISDICTION TO PARTITION UNDIVIDED OR UNIDENTIFIED LAND AND HAS NOT ACQUIRED JURISDICTION OVER 496 HECTARES OF UNDIVIDED LAND WHICH SHOULD BE THE PROPER SUBJECT OF PARTITION.
- THE JUDGMENT OF PARTITION AND ALL SUBSEQUENT PROCEEDINGS ARE NULL AND VOID AB INITIO, INCLUDING THE PUBLIC AUCTION SALE OF PETITIONERS' SHARES WHICH HAD NOT RENDERED THIS PETITION MOOT.
- EVEN ASSUMING ARGUENDO THAT LACK OF CAUSE OF ACTION AND LACK OF JURISDICTION, AS DISCUSSED, CAN BE IGNORED, THE PROCEEDINGS BELOW ARE TAINTED WITH SERIOUS IRREGULARITIES THAT CALL FOR THE EXERCISE OF THE SUPERVISORY POWERS OF THIS HONORABLE COURT.
- CERTIORARI AS A SPECIAL CIVIL ACTION UNDER RULE 65 AND APPEAL BY CERTIORARI UNDER RULE 45, BOTH OF THE 1997 RULES OF CIVIL PROCEDURE, WERE EMPLOYED AS PROPER REMEDIES IN THIS CASE.[33]

This Court significantly notes that the first three issues,[34] alleging lack of jurisdiction and cause of action, are raised by petitioners for the first time in their Memorandum. No amount of interpretation or argumentation can place them within the scope of the assignment of errors they raised in their Petition.

The parties were duly informed by the Court in its Resolution dated 17 September 2003 that no new issues may be raised by a party in his/its Memorandum and the issues raised in his/its pleadings but not included in the Memorandum shall be deemed waived or abandoned. The raising of additional issues in a memorandum before the Supreme Court is irregular, because said memorandum is supposed to be in support merely of the position taken by the party concerned in his petition, and the raising of new issues amounts to the filing of a petition beyond the reglementary period.[35] The purpose of this rule is to provide all parties to a case a fair opportunity to be heard. No new points of law, theories, issues or arguments may be raised by a party in the Memorandum for the reason that to permit these would be offensive to the basic rules of fair play, justice and due process.[36]

Petitioners failed to heed the Court's prohibition on the raising of new issues in the Memorandum.

Moreover, Section 1 of Rule 9 of the Rules of Court provides that:

SECTION 1. Defenses and objections not pleaded. - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has not jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

First, it bears to point out that Cesar, petitioners' predecessor, did not file any motion to dismiss, and his answer before the RTC did not bear the defenses/objections of lack of jurisdiction or cause of action on these grounds; consequently, these must be considered waived. The exception that the court may still dismiss a case for lack of jurisdiction over the subject matter, although the same is not pleaded, but is apparent in the pleadings or evidence on record, does not find application to the present Petition. Second, petitioners' arguments[37] on the lack of jurisdiction of the RTC over the case more appropriately pertain to venue, rather than jurisdiction over the subject matter, and are, moreover, not apparent from the pleadings and evidence on record. Third, the property subject of partition is only the 47.2 hectare pro-indiviso area representing the estate of Alicia. It does not include the entire 496 hectares of land comprising Hacienda Sta. Rita.

Even petitioners' argument that non-payment of appropriate docket fees by private respondents deprived the RTC of jurisdiction to partition the entire Hacienda Sta. Rita[38] deserves scant consideration. In *National Steel Corporation v. Court of Appeals*,[39] the Court ruled:

x x x while the lack of jurisdiction of a court may be raised at any stage of an action, nevertheless, the party raising such question may be estopped if he has actively taken part in the very proceedings which he questions and he only objects to the court's jurisdiction because the judgment or the order subsequently rendered is adverse to him.

Irrefragably, petitioners raised the issues of jurisdiction for lack of payment of appropriate docket fees and lack of cause of action belatedly in their Memorandum before this Court. Cesar and petitioners were noticeably mum about these in the proceedings before. In fact, Cesar actively participated in the proceedings conducted before the RTC by seeking affirmative reliefs therefrom, such as the inclusion of more properties in the partition. Hence, petitioners are already estopped from assailing the jurisdiction of the RTC on this ground.

It is conceded that this Court adheres to the policy that "where the court itself clearly has no jurisdiction over the subject matter or the nature of the action, the invocation of this defense may be done at any time." [40] While it is the general rule that neither waiver nor estoppel shall apply to confer jurisdiction upon a court, the Court may rule otherwise under meritorious and exceptional circumstances. One such exception is *Tijam v. Sibonghanoy*, [41] which finds application in this case. This Court held in *Tijam* that "after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of

the court."

This Court further notes that while petitioners filed their last pleading in this case, their Memorandum, on 26 December 2003, they failed to mention therein that the Court of Appeals had already dismissed CA-G.R. SP No. 78912.[42] To recall, CA-G.R. No. 78912 is a Petition for Certiorari and Mandamus involving the RTC Order dated 2 July 2003, which denied petitioners' Notice of Appeal. Petitioners intended to appeal the RTC Omnibus Order dated 5 May 2003 sustaining the public auction and sale of petitioners' share in Alicia's estate. Petitioners' failure to provide this Court with information on the developments in CA-G.R. SP No. 78912 is not only in violation of the rules on non-forum shopping, but is also grossly misleading, because they are raising in their Memorandum in the present case the same issues concerning the public auction and sale of their share in Alicia's estate. The purpose of the rule against forum shopping is to promote and facilitate the orderly administration of justice.

Forum shopping "occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict." In our jurisdiction, it has taken the form of filing multiple petitions or complaints involving the same issues before two or more tribunals or agencies in the hope that one or the other court would make a favorable disposition. There is also forum shopping when, because of an adverse decision in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another. The rationale against forum shopping is that a party should not be allowed to pursue simultaneous remedies in two different fora. Filing multiple petitions or complaints constitutes abuse of court processes, which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts. Thus, the rule proscribing forum shopping seeks to promote candor and transparency among lawyers and their clients in the pursuit of their cases before the courts to promote the orderly administration of justice, prevent undue inconvenience upon the other party, and save the precious time of the courts. It also aims to prevent the embarrassing situation of two or more courts or agencies rendering conflicting resolutions or decisions upon the same issue.[43]

Petitioners have indeed managed to muddle the issues in the instant case by raising issues for the first time in their Memorandum, as well as including issues that were already pending before another tribunal and have eventually been decided with finality, for which reason petitioners are herein admonished by this Court.

The Court, nonetheless, manages to strip the issues in this Petition down to the singular issue of whether or not the Court of Appeals erred in affirming in toto the RTC Order adopting the Commissioners' recommendation on the manner of partition of the estate of Alicia Marasigan.

After an exhaustive study of the merits of the case and the pleadings submitted by the parties, this Court is convinced that the Court of Appeals did not err in affirming the Order of the RTC which approved the Commissioners' recommendations as to the manner of implementing the Order of Partition of Alicia's estate. There is no reason to reverse the Court of Appeal's dismissal of petitioners' Petition for Certiorari and Prohibition and ruling that the RTC acted well-within its jurisdiction in issuing the assailed Order. Nowhere is it shown that the RTC committed such patent, gross and prejudicial errors of law or fact, or a capricious disregard of settled law and jurisprudence, as to amount to a grave abuse of discretion or lack of jurisdiction on its part, in adopting and confirming the recommendations submitted by the Commissioners, and which would have warranted the issuance of a writ of certiorari.

This petition originated from an original action for partition. It is governed by Rule 69 of the Rules of Court, and can be availed of under the following circumstances:

Section 1. Complaint in action for partition of real estate. A person having the right to compel the partition of real estate may do so as provided in this Rule, setting forth in his complaint the nature and extent of his title

and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property.

In this jurisdiction, an action for partition is comprised of two phases: first, the trial court, after determining that a co-ownership in fact exists and that partition is proper, issues an order for partition; and, second, the trial court promulgates a decision confirming the sketch and subdivision of the properties submitted by the parties (if the parties reach an agreement) or by the appointed commissioners (if the parties fail to agree), as the case may be.[44]

The delineations of these two phases have already been thoroughly discussed by this Court in several cases where it explained:

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.[45]

Trouble arose in the instant petition in the second phase.

Petitioners postulate that the Court of Appeals erred in holding that notice to the heirs regarding the examination and viewing of the estate is no longer necessary given the circumstances. They aver that, in effect, the Court of Appeals was saying that such notice is only necessary when the Commissioners actually distribute the properties, but is not mandatory when the Commissioners recommend the assignment of the properties to any of the heirs. Petitioners contend that this is prejudicial to their right to due process since they are deprived of the opportunity to be heard on the valuation of their share in the estate.

Petitioners' opposition is anchored on Section 4 of Rule 69 of the Rules of Court, which reads:

Section 4. Oath and duties of commissioners. Before making such partition, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. In making the partition, the commissioners shall view and examine the real estate, after due notice to the parties to attend at such view and examination, and shall hear the parties as to their preference in the portion of the property to be set apart to them and the comparative value thereof, and shall set apart the same to the parties in lots or parcels as will be most advantageous and equitable, having due regard to the improvements, situation and quality of the different parts thereof.

Petitioners insist that the above provision is explicit and does not allow any qualification, contending that it does not require that the lack of notice must first be proven to have caused prejudice to the interest of a party before the latter may object to the Commissioners' viewing and examination of the real properties on the basis thereof. They

maintain that they were prejudiced by the mere lack of notice.

We, on the other hand, find that the scales of justice have remained equal throughout the proceedings before the RTC and the Commissioners. This Court, in the performance of its constitutionally mandated duty to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government, is duty-bound to ensure that due process is afforded to all the parties to a case.

As the Court of Appeals declared, due process is not a mantra, the mere invocation of which shall warrant a reversal of a decision. Well-settled is the rule that the essence of due process is the opportunity to be heard. In *Legarda v. Court of Appeals*,^[46] the Court held that as long as parties to a case were given the opportunity to defend their interest in due course, they cannot be said to have been denied due process of the law. Neither do the records show any indicia that the preference of petitioners for the physical subdivision of the property was not taken into consideration by the Commissioners.

Petitioners' persistent assertion that their rights were prejudiced by the lack of notice is not enough. Black's Law Dictionary defines the word prejudice as damage or detriment to one's legal rights or claims. Prejudice means injury or damage.^[47] No competent proof was adduced by petitioners to prove their allegation. Mere allegations cannot be the basis of a finding of prejudice. He who alleges a fact has the burden of proving it and a mere allegation is not evidence.^[48]

It should not be forgotten that the purpose of the rules of procedure is to secure for the parties a just, speedy and inexpensive determination of every action or proceeding. ^[49] The ultimate purpose of the rules of procedure is to attain, not defeat, substantial justice.^[50]

Records reveal that the parties were given sufficient opportunity to raise their concerns. From the time the action for partition was filed by private respondents, all the parties, including the late Cesar, petitioners' predecessor, were given a fair opportunity to be heard. Since the parties were unable to agree on how the properties shall be divided, Commissioners were appointed by the Court pursuant to Section 3 of Rule 69 of the Rules of Court.

Section 3. Commissioners to make partition when parties fail to agree. - If the parties are unable to agree upon the partition, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to make the partition, commanding them to set off to the plaintiff and to each party in interest such part and proportion of the property as the court shall direct.

While the lack of notice to Cesar of the viewing and examination by the Commissioners of the real properties comprising Alicia's estate is a procedural infirmity, it did not violate any of his substantive rights nor did it deprive him of due process. It is a matter of record, and petitioners cannot deny, that Cesar was able to file his Comment/Opposition to the Commissioners' Report. And after the RTC adopted and confirmed the Commissioners' recommendations in its Order dated 22 June 2001, Cesar was able to file a Motion for Reconsideration of the said Order. He had sufficient opportunity to present before the RTC whatever objections or oppositions he may have had to the Commissioners' Report, including the valuation of his share in Alicia's estate.

Petitioners also allege that the ruling of the Court of Appeals -- that physical impossibility and impracticality are embraced by the word "prejudice," referred to in Section 5 of Rule 69 of the Rules of Court -- violates the constitutional limitation on the rule-making power of the Supreme Court, according to which, the Rules of Court shall not increase, decrease or modify substantive rights.

According to petitioners, Section 5 of Rule 69 of the Rules of Court, which provides:

Section 5. Assignment or sale of real estate by commissioners. - When it is made to appear to the

commissioners that the real estate, or a portion thereof, cannot be divided without prejudice to the interests of the parties, the court may order it assigned to one of the parties willing to take the same, provided he pays to the other parties such amounts as the commissioners deem equitable, unless one of the interested parties asks that the property be sold instead of being so assigned, in which case the court shall order the commissioners to sell the real estate at public sale under such conditions and within such time as the court may determine.

should be read in conjunction with Articles 494 and 495 of the New Civil which provide for the following substantive rights:

Article 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

Neither shall there be any partition when it is prohibited by law.

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

Article 495. Notwithstanding the provisions of the preceding article, the co-owners cannot demand a physical division of the thing owned in common, when to do so would render unserviceable for the use for which it is intended. But the co-ownership may be terminated in accordance with Article 498.

Article 498 of the New Civil Code, referred to by Article 495 of the same Code, states:

Article 498. Whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds distributed.

Evidently, the afore-quoted Civil Code provisions and the Rules of Court must be interpreted so as to give effect to the very purpose thereof, which is to put to an end to co-ownership in a manner most beneficial and fair to all the co-owners.

As to whether a particular property may be divided without prejudice to the interests of the parties is a question of fact. To answer it, the court must take into consideration the type, condition, location, and use of the subject property. In appropriate cases such as the one at bar, the court may delegate the determination of the same to the Commissioners.

The Commissioners found, after a viewing and examination of Alicia's estate, that the same cannot be divided without causing prejudice to the interests of the parties. This finding is further supported by the testimony of Apolonio Marasigan that the estate cannot be divided into smaller portions, since only certain portions of the land are suitable to agriculture, while others are not, due to the contours of the land and unavailability of water supply.

The impracticality of physically dividing Alicia's estate becomes more apparent, considering that Hacienda Sta. Rita is composed of parcels and snippets of land located in two different municipalities, Pili and Minalabac, Camarines Sur. The actual area representing Alicia's 2/21 pro-indiviso shares in Hacienda Sta. Rita is 422,422.65 square meters, more or less. Each of Alicia's heirs is entitled to 1/7 share in her estate equivalent to 67,496.09 square meters or roughly seven hectares.[51] Cesar and his heirs are entitled only to his 1/7 share in the yet unidentified, unsegregated 2/21 pro-indiviso shares of Alicia in each of the 13 parcels of land that comprises Hacienda Sta. Rita. Dividing the parcels of land even further, each portion allotted to Alicia's heirs, with a significantly reduced land area and widely scattered in two municipalities, would irrefragably diminish the value

and use of each portion, as compared to keeping the entire estate intact.

The correctness of the finding of the RTC and the Commissioners that dividing Alicia's estate would be prejudicial to the parties cannot be passed upon by the Court of Appeals in a petition for certiorari. Factual questions are not within the province of a petition for certiorari. There is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. As to whether the court *a quo* decided the question wrongly is immaterial in a petition for certiorari. It is a legal presumption that findings of fact of a trial court carry great weight and are entitled to respect on appeal, absent any strong and cogent reason to the contrary, since it is in a better position to decide the question of credibility of witnesses.[52]

The writ of certiorari issues for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of certiorari cannot be legally used for any other purpose.[53] At most, the petition pertains to an error of judgment, and not of jurisdiction, for clearly under Section 5 of Rule 69, the question of whether a party's interest shall be prejudiced by the division of the real property is left to the determination and discretion of the Commissioners.

Hence, it is totally unnecessary for this Court to address the issue raised by petitioners concerning the alleged unconstitutionality of Section 5, Rule 69 of the Rules of Court for having been issued beyond the constitutional limitation on the rule-making power of this Court. Basic is the principle that a constitutional issue may only be passed upon if essential to the decision of a case or controversy.[54] A purported constitutional issue raised by petitioners may only be resolved if essential to the decision of a case and controversy. Even if all the requisites for judicial review are present, this Court will not entertain a constitutional question unless it is the very *lis mota*[55] of the case or if the case can be disposed of on some other grounds, such as the application of a statute or general law. The present problem of partition by co-heirs/co-owners can be resolved without elevating their case to one of constitutionality.

In the absence of evidence to the contrary, this Court can only presume that the proceedings in Special Civil Action No. P-77-97 before the RTC, including the recommendation made by the Commissioners, were fairly and regularly conducted, meaning that both the RTC and the appointed Commissioners had carefully reviewed, studied, and weighed the claims of all the parties.

Petitioners' argument that the assignment of the property will not terminate the co-ownership is specious, considering that partition, in general, is the separation, division, and ASSIGNMENT of a thing held in common by those to whom it may belong.[56]

Inasmuch as the parties continued to manifest their desire to terminate their co-ownership, but the co-heirs/co-owners could not agree on which properties would be allotted to each of them, this Court finds that the Court of Appeals was correct in ruling that the RTC did not act with grave abuse of discretion amounting to lack or excess of jurisdiction when it approved the Commissioners' recommendation that the co-heirs/co-owners assign their shares to one of them in exchange for proper compensation.

This Court has consistently held that one of the purposes for which courts are organized is to put an end to controversy in the determination of the respective rights of the contending parties. With the full knowledge that courts are not infallible, the litigants submit their respective claims for judgment, and they have a right at some time or another to have final judgment on which they can rely over a final disposition of the issue or issues submitted, and to know that there is an end to the litigation;[57] otherwise, there would be no end to legal processes.[58]

Finally, petitioners raise before this Court the issue that the public auction sale of their shares is null and void; at

the same time they allege deficiency in the bid price for their 1/7 share in Alicia's estate vis-à-vis the valuation of the same by the Commissioners. [59] This Court is already barred from ruling on the validity of the public auction sale. This Court's ruling dated 13 October 2004 in G.R. No. 164970 denying their petition for certiorari lays to rest petitioners' questioning of the Court of Appeals' Resolution dismissing their appeal therein of the issue of the validity of the public sale of their share in Alicia's estate. Such decision or order can no longer be disturbed or reopened no matter how erroneous it may have been.[60]

Indeed, while it is understandable for petitioners to protect their rights to their portions of the estate, the correlative rights of the other co-owners/co-heirs must also be taken into consideration to balance the scales of justice. And, by finding the course of action, within the boundaries of law and jurisprudence, that is most beneficial and equitable for all of the parties, the courts' duty has been satisfactorily fulfilled.

Thus, contrary to petitioners' averments, this Court finds that the Court of Appeals did not err in ruling that the RTC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in adopting and confirming the recommendations of the Commissioners.

WHEREFORE, premises considered, the Petition for Review on Certiorari is hereby DENIED for lack of merit, and the assailed Decision dated 31 July 2002 of the Court of Appeals in docket no. CA-G.R. SP No. 67529 is hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Court of Appeals Associate Justice Conchita Carpio Morales (now Supreme Court Justice) with Associate Justices Martin S. Villarama, Jr. and Mariano C. del Castillo, concurring. Rollo, pp. 26-32.

[2] Penned by Associate Justice Martin S. Villarama, Jr. (Acting Chairperson for the Division) with Associate Justices Mariano C. del Castillo and Danilo B. Pine, concurring. Id. at 43-44.

[3] Records, pp. 3-5.

[4] Id. at 261-262.

[5] Also, the RTC ordered the cancellation of the adverse claim of Cesar Marasigan annotated in the certificates of title covered in the complaint.

[6] Rollo, p. 161.

[7] Motion dated 25 April 2000, CA rollo, p. 24.

[8] Order dated 4 May 2000; id. at 25.

[9] Id. at 26-30.

[10] Id. at 29-30.

[11] 3 February 2001 Comment/Opposition filed by petitioners, then defendants, versus the Commissioner's Report. Id. at 32-36.

[12] Id. at 59.

[13] Id. at 60-67.

[14] 10 October 2001; id. at 94-95.

[15] Rollo, pp. 45-55.

[16] Id. at 26-32.

[17] Id. at 30.

[18] This was the Decision cited in the Court of Appeals Decision, although it may be referring to the 22 June 2003 Decision.

[19] Rollo, pp. 33-36.

[20] Id. at 103-105.

[21] Commissioners' Report dated 3 March 2003; id. at 173.

[22] Id. at 186-188.

[23] Copies of the same were attached as Annexes A and B of petitioners' Reply to the Comment; 28 July 2003; id. at 119-123.

[24] Id. at 124-125.

[25] Issued by Judge Nilo Malanyaon of the RTC Branch 31, Pili, Camarines Sur on 5 May 2003; id. at 186-188.

[26] Id. at 126-153.

[27] The RTC, however, issued a Certificate of Finality of the Sale on 17 June 2003.

[28] Rollo of CA-G.R. SP No. 78912, pp. 2-8.

[29] Penned by Associate Justice Elvi John S. Asuncion with Associate Justices Godardo A. Jacinto and Lucas P. Bersamin, concurring.

[30] Id.

[31] Petitioners' Memorandum in the instant case was filed on 26 December 2003.

[32] Rollo, pp. 16-22.

[33] Id. at 236-237.

[34] This Court, however, has taken note that the public bidding and sale occurred after the petitioners filed the instant petition.

[35] *Manila Railroad Company v. Perez*, 121 Phil. 1289, 1294 (1965).

[36] *Republic of the Philippines v. Kalaw*, G.R. No. 155138, 8 June 2004, 431 SCRA 401, 406; *Spouses Dela Cruz v. Joaquin*, G.R. No. 162788, 28 July 2005, 464 SCRA 576, 582.

[37] Paragraphs 37-38; Petitioners' Memorandum, page 20; rollo, p. 254.

The subject matter of the complaint in this case is ostensibly the partition of an aliquot share consisting of 47.2 hectares of pro indiviso land in the Estate of the late Alicia Marasigan. In order, however, to be able to partition the estate of Alicia, it should include the much larger area of 496 hectares located not only in Pili over which Branch 31 of the RTC of Pili, Camarines Sur has jurisdiction, but also in Minalabac, Camarines Sur, over which Branches 19 to 28 of the RTC of Minilabac have jurisdiction.

It may be conceded that Branch 31 could also have jurisdiction over those properties within the jurisdiction of Branches 19 to 28; still, the trial court has not properly acquired jurisdiction over the entire 496 hectares of land because respondents have not prayed for or paid the appropriate docket fees for it. The action for partition should cover not only the Estate of Alicia Marasigan, but also the larger estate of 496 hectares. Thus, the Regional Trial Court has no jurisdiction over the partition case filed.

[38] On page 20 of petitioners' Memorandum, they argue:

The specific prayer of the complaint is for the partition of 2/2 pro indiviso share in Hacienda Sta. Rita, and not 496 hectares of land, which should be the proper subject of partition.

The general prayer cannot include the partition of 496 hectares which is not sought; but even if it can refer to that large area, the court has not acquired jurisdiction over the case for non-payment of the appropriate docket fees.

If this case will be allowed to continue, it can only be for the partition of 496 hectares of land and only after payment of the appropriate docket fees.

[39] G.R. No. 123215, 2 February 1999, 302 SCRA 522, 532.

[40] *Asset Privatization Trust v. Court of Appeals*, G.R. No. 121171, 29 December 1998, 300 SCRA 579, 599.

[41] 131 Phil. 556, 564 (1968).

[42] In the Motion for Reconsideration filed subsequent thereto, petitioners admit receiving said Resolution of the Court of Appeals dated 10 October 2003 on 24 October 2003.

[43] *Wee v. Galvez*, G.R. No. 147394, 11 August 2004, 436 SCRA 96, 108-109.

[44] *Sepulveda, Sr. v. Pelaez*, G.R. No. 152195, 31 January 2005, 450 SCRA 302, 312, citing *Vda. de Daffon v. Court of Appeals*, 436 Phil. 233, 241 (2002); *Maglucot-aw v. Maglucot*, 385 Phil. 720, 730-731 (2000).

[45] *Maglucot-aw v. Maglucot*, *id.* at 730-731.

[46] G.R. No. 94457, 16 October 1997, 280 SCRA 642, 657.

[47] *Fuentes, Jr. v. Office of the Ombudsman*, G.R. 164865, 11 November 2005, 474 SCRA 779, 795.

[48] *Noceda v. Court of Appeals*, G.R. No. 119730, 2 September 1999, 313 SCRA 504, 520; *Asia Traders Insurance Corporation v. Court of Appeals*, 467 Phil. 531, 539 (2004); *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corporation*, G.R. No. 152613, 23 June 2006, 492 SCRA 355, 379.

[49] *Commissioner of Internal Revenue v. A. Soriano Corporation*, G.R. No. 113703, 31 January 1997, 267 SCRA 313, 319.

[50] *Gabionza v. Court of Appeals*, G.R. No. 112547, 18 July 1994, 234 SCRA 192, 198.

[51] CA Rollo, p. 23.

[52] *People v. Bernal*, G.R. No. 113685, 19 June 1997, 274 SCRA 197, 207.

[53] *Flores v. Court of Appeals*, 328 Phil. 992, 1024 (1996).

[54] *Estrada v. Desierto*, G.R. No. 156160, 9 December 2004, 445 SCRA 655, 666.

[55] *Griffith v. Court of Appeals*, 428 Phil. 878, 888 (2002), citing *Hontiveros v. Regional Trial Court, Br. 25, Iloilo City*, G.R. No. 125465, 29 June 1999, 309 SCRA 340, 354.

[56] Noceda v. Court of Appeals, G.R. No. 119730, 2 September 1999, 313 SCRA 504, 517; Cruz v. Court of Appeals, G.R. No. 122904, 15 April 2005, 456 SCRA 165, 171.

[57] Miranda v. Court of Appeals, 163 Phil. 285, 316-317 (1976).

[58] Fabular v. Court of Appeals, 204 Phil. 654, 657 (1982).

[59] Omnibus Order in Special Civil Action No. P-`99-'97 dated 5 May 2003; rollo, p. 187.

[60] Lapulapu Development and Housing Corporation v. Group Management Corporation, 437 Phil. 297, 313 (2002).

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