HEIRS OF MARCELA SALONGA BITUIN, PETITIONERS, VS. TEOFILO CAOLENG, SR., GONZALO CAOLENG, JUANA CAOLENG, ANGELA CAOLENG, JOSE GOZUM, ROSITA GOZUM, EUFROCINA GOZUM, LOURDES GOZUM,...

G.R. NO. 157567. August 10, 2007

Ponente: AZCUNA, J.

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AZCUNA, J.:

This petition for review on certiorari assails the June 20, 2002 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 54684, which reversed the March 13, 1996 Decision[2] of the Regional Trial Court (RTC) of Guagua, Pampanga, Branch 49, in Civil Case No. G-2107, as well as the May 18, 2003 Resolution[3] denying petitioners' motion for reconsideration.

The facts of the case, as culled from the records, are:

Two parcels of land were originally owned by siblings Juan Romero and Epifania Romero, the common ancestors of the parties in this instant petition. Both properties are located at Sta. Ines, Betis, Guagua, Pampanga covering an area of 1,713 square meters and 788 sq. m., respectively. The first property was denominated as Cad. Lot No. 3661, Cad. No. 376-D; the second land was denominated as Cad. Lot Nos. 3448 and 3449.[4] Juan Romero later married Maria Pecson, while Epifania Romero married Jose Caoleng.

Juan Romero and Maria Pecson bore Jacoba Romero. Agustin Caoleng was the only child of Epifania Romero and Jose Caoleng.

Eventually, Jacoba Romero married Antonio Salonga and they begot Marcela Salonga, the immediate predecessor-in-interest of petitioners. Marcela was married to German Bituin and they were blessed with ten children. On July 24, 1986, Marcela died intestate.[5]

Meanwhile, Agustin Caoleng married Maria David and they had seven children, respondents in this case. The children are: Silverio (deceased), Gonzalo, Rita (deceased), Juana, Teofilo, Angela, and Lourdes (deceased).

On October 9, 1989, petitioners, represented by their attorney-in-fact German Bituin, filed a Complaint for "Quieting of Title, Reconveyance, Ownership, Recovery of Possession, Damages, with Prayer for Preliminary Injunction" before the RTC of Guagua, Pampanga, Branch 49, against respondents.

Petitioners alleged in the Complaint that due to stealth and high-handed machination, Teofilo Caoleng succeeded in securing a title for Cad. Lot No. 3661 of Guagua Cadastre by fraudulently stating that the same was owned only by his late father, Agustin Caoleng. The Original Certificate of Title (OCT) No. 3399 under Free Patent No. (III-1) 002490[6] was issued on February 11, 1976 by the Bureau of Lands through the Register of Deeds of Pampanga.

Petitioners averred that they are entitled to the one-half pro-indiviso share of Cad. Lot Nos. 3661, 3448, and 3449

as the only surviving heirs of Juan Romero. They admit that the other half belongs to the surviving heirs of Epifania Romero, respondents herein. Petitioners likewise assert that respondents Gonzalo Caoleng, Arceli Manalac (the daughter of Lourdes Caoleng), Teofilo Caoleng together with daughter Victoria, Jose Caoleng, and Melanio Caoleng are occupying most of Cad. Lot Nos. 3448 and 3449. However, petitioners claim that they have been in the actual, physical, material, and continuous possession of a great part of Cad. Lot No. 3661; while the smaller portion thereof is being occupied by the respondent Gozums, the heirs of Rita Caoleng.

Petitioners further state that on November 24, 1983, an Extra-Judicial Settlement of Estate of Deceased Person with Sale[7] was executed wherein the subject of the instrument was a real property covered by OCT No. 3399 Free Patent No. (III-1) 002490 [Lot No. 3661], containing an area of 1,479 sq. m. In the said deed, Lot A, with an area of 162 sq. m., was adjudicated in favor of Teofilo Caoleng; Lot C, having an area of 148 sq. m., was given to Angela Caoleng; and Lot D, with an area of 148 sq. m., was adjudicated to the heirs of Rita Caoleng, the Gozums. In the same document, the shares of Gonzalo, Lourdes, and Juana, all surnamed Caoleng, were sold to Marcela Salonga and this portion was denominated as Lot B, having an area of 1,021 sq. m.

Furthermore, petitioners recounted that when Marcela Salonga Bituin died on July 24, 1986, the properties she left behind were consolidated and it was only at that time that they discovered OCT No. 3399, the document referring to the extra-judicial settlement, and the corresponding subdivision plan[8] which was issued after the execution of the extra-judicial settlement.

Pursuant to the subdivision plan, petitioners fenced the portion allotted to the late Marcela Salonga Bituin. Petitioners alleged that they have been in possession of the property since time immemorial. They claim that they were only able to fence the three sides of the property, excepting the side adjoining the portion being occupied by the Gozums, because of a misunderstanding as to the boundaries of the property.

On October 16, 1989, a Temporary Restraining Order[9] was issued by the court ordering respondents to desist temporarily from selling, disposing, conveying, or creating any encumbrance against Cad. Lot No. 3661 covered by OCT No. 3399 until the issue of ownership shall have been finally determined or unless otherwise ordered by the court.

In their Answer, respondents, except for Gonzalo Caoleng, declare that the complaint stated no cause of action because OCT No. 3399 of the Register of Deeds of Pampanga cannot be attacked, cancelled, and annulled through the remedy availed by the petitioners. According to them, a collateral attack of the title is not allowed by law. Moreover, respondents claim that petitioners are guilty of estoppel and laches since OCT No. 3399 was issued as early as February 11, 1978. They likewise allege that the deed of extra-judicial settlement was a forged document and, therefore, cannot give rise to any right on the part of petitioners.

On July 30, 1990, petitioners filed a Motion for Leave to Admit Amended Complaint.[10] In their Amended Complaint,[11] petitioners included in their claim Lot No. 3449, which they allegedly discovered to have been fraudulently titled by Teofilo Caoleng in the name of the heirs of Agustin Caoleng alone under OCT No. 3398 Free Patent No. (III-1) 002489[12] issued last February 11, 1976 by the Register of Deeds of Pampanga. Petitioners, therefore, pray that judgment be rendered in their favor and against respondents, as follows:

> a) ordering the cancellation and annulment of Original Certificates of Titles Nos. 3399 and 3398 of the Register of Deeds of Pampanga;
>
> b) declaring the Plaintiffs owners of Cad. Lots Nos. 3661, 3448, and 3449 of Guagua Cadastre to the extent of one half (½) pro-indiviso;
>
> c) ordering the Defendants to reconvey to Plaintiffs one half (½) pro-indiviso share of Cad. Lots Nos. 3661 and

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3449 and covered by O.C.T.'s Nos. 3399 and 3398 respectively;

d) ordering the Defendants to vacate Cad. Lots No. 3448 and 3449 to the extent of one half (½) pro-indiviso share;

e) ordering Defendants - Teofilo Caoleng, Sr. and Gozums, to pay jointly and severally the Plaintiffs the sum of P50,000.00 as and for attorney's fees and incidental expenses, aside from other litigation expenses and costs of this suit.

Plaintiffs pray further for such and other reliefs as may be just and equitable in the premises.[13]

During the trial, petitioners presented two witnesses, namely, Gonzalo Caoleng and German Bituin.

Gonzalo Caoleng is 81 years old and one of respondents herein. He testified, among other things, that Lot No. 3661 is located near the sugar land and is covered by Tax Declaration No. 07026-300.[14] Aside from Marcela Salonga Bituin, the other dwellers of this lot are Rita Caoleng and her family, Juana Caoleng, and Angela Caoleng. Gonzalo also affirmed that Marcela occupied a bigger portion of this land.[15] The witness stated that Lot Nos. 3448 and 3449 are covered by Tax Declaration No. 07026-215[16] and are situated near a creek and now occupied by Loudes Caoleng, Teofilo Caoleng, and Silverio Caoleng.[17] Gonzalo further testified that the disputed properties are titled though he had no idea how Teofilo Caoleng had them registered in the name of Agustin Caoleng. He elaborated that when the titles were released, Marcela summoned her relatives for a meeting and they agreed that the property being occupied by Marcela would be given to her. Thereafter, the parties prepared an agreement which they called Extra-Judicial Settlement of Estate of Deceased Person with Sale.[18] When shown a copy of the document, Gonzalo confirmed that the signature appearing on top of his typewritten name was his signature.[19] When asked to identify the signatures of Teofilo and Angela Caoleng, he did so and readily told the court that both Teolfilo and Angela signed the document at his residence.[20] After the execution of the deed, Gonzalo related that Lot No. 3661 was surveyed by the Bureau of Lands and a subdivision plan was prepared pursuant thereto. Lastly, the witness averred that the extra-judicial settlement was executed so that the share of Marcela would be given to her.[21]

The second witness, German Bituin, testified that he is the widower of Marcela Salonga Bituin. Salient points of his testimony show that petitioners are claiming more than 1,000 sq. m. of the disputed properties which are already in their possession. Some of the improvements made on the property were a fence and a bodega that unfortunately burned during the pendency of the case. He added that his family is occupying a bigger portion of Lot No. 3661 because his deceased wife was the sole heir of Jacoba Romero; and while Marcela was still alive, she exchanged her share with that of her cousin.[22] The witness explained that the contested lots are titled; but his family did not secure a separate title for themselves inasmuch as the relatives of his wife refused to acknowledge their right over the property after Marcela died. The relatives did not even recognize the extra-judicial settlement after the death of Marcela.[23]

The lone witness for respondents, Rosita Gabriana, testified that the signature appearing above her name in the extra-judicial settlement was not her signature. After discovering the forgery in the document, Rosita filed a complaint. She further avowed that the subdivision plan, presented as evidence for the petitioners, is likewise fake because it was based on a forged document.[24] On cross-examination, Rosita admitted that she came to know the properties subject of this case only when she saw the documents indicating that Agustin Caoleng was the owner of the lots. The witness admitted that she never learned how Agustin got the properties although she knows that Agustin is the owner of the lots.

On March 13, 1996, the trial court ruled in favor of petitioners. The fallo of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
>
> - Declaring plaintiffs as owner to the extent of 941 square meters of Lot 3661 now covered by Original Certificate No. 3399, Free Patent No. 002490 of the Registrar of Land Titles and Deeds of Pampanga. The remaining area shall belong to defendants.
>
> - Ordering defendants to cause the segregation of the aforementioned portion and to reconvey the same to plaintiffs. Segregations shall be accomplished by means of an approved subdivision plan and an agreement of subdivision/partition. The expense for the subdivision plan shall be born [sic] by plaintiffs and defendants pro-rata.
>
> - After the segregation and the subdivision plan have been accomplished defendants are ordered to surrender the owners' duplicate copy of OCT 3399, Free Patent No. 002490 to the Registrar of Land Titles and Deeds of Pampanga who inturn [sic] is directed to cancell [sic] said title and to issue two separate titles, one in the name of plaintiffs for 941 square meters and another in the name of defendants for 538 square meters on the basis of the approved subdivision plan to be submitted by the parties to the said office; the herein parties shall bear their own expense for their own title.
>
> - Ordering the defendants to pay plaintiffs P10,000.00 by way of attorney's fees and expense of litigation.
>
> SO ORDERED.[25]

Not satisfied with the decision of the RTC, respondents interposed an appeal.

Stating that respondents' ownership over Lot No. 3661 is based on OCT No. 3399 issued under Free Patent No. (III-1) 002490, the appellate court ruled that respondents are the registered owners of the lands in dispute. The CA reasoned that a free patent issued by the proper authority is granted only to qualified applicants and indicates that the land was previously public in character. Thus, OCT No. 3399 registered in the name of the respondents gives an indefeasible title in their favor.

As to the issue of reconveyance of property, the CA held that the action had prescribed. The CA further declared that the allegation of fraud on the part of respondents was not proven by petitioners as OCT No. 3399 was issued by the Government through a free patent. The dispositive portion of the CA decision reads:

> WHEREFORE, premises considered, the assailed decision dated March 13, 1996 is hereby REVERSED and SET ASIDE and a new one entered DISMISSING Civil Case No. G-2107.
>
> SO ORDERED.[26]

Petitioners now seek relief from this Court.

The lone issue raised by petitioners is whether or not the CA committed grave error in applying the law on prescription.

Petitioners posit that there are two fundamental legal grounds why prescription should not have been applied by the appellate court against them to defeat their rights over the property at issue:

> - Prescription was not raised by Respondents as a defense -- in a Motion to Dismiss, in their Answer, or even in their Appeal Brief; and
>
> - Petitioners were, have been, and still are in possession of the portion allotted to their predecessor-in-interest, Marcela Salonga-Bituin.[27]

In their Comment, respondents assert that reconveyance is not a proper remedy because the lands were previously public in character and only the Department of Environment and Natural Resources has the capacity to determine

who are qualified to be awarded. They add that the lots are covered by OCT Nos. 3398 and 3399, and, therefore, cannot be impugned collaterally. Lastly, respondents aver that they raised the defense of prescription in connection with estoppel and laches.

The petition is partly meritorious.

Well entrenched is the rule that an action for reconveyance prescribes in ten years, the reckoning point of which is the date of registration of the deed or the date of issuance of the certificate of title over the property. In an action for reconveyance, the decree of registration is highly regarded as incontrovertible. What is sought instead is the transfer of the property or its title, which has been erroneously or wrongfully registered in another person's name to its rightful or legal owner, or to one who has a better right.[28]

However, in a number of cases in the past, the Court declared that if the person claiming to be the owner of the property is in actual possession thereof, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe.[29] The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the rationale for the rule being that his undisturbed possession provides him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by the one who is in possession.[30]

In his testimony, Gonzalo Caoleng, who is one of respondents, admitted that Marcela Salonga Bituin occupies a portion of Lot No. 3661. His telling testimony follows:

> Q - Will you please tell us Mr. Witness who is now in possession of that land near the "sugar" land which is denominated as cadastral lot 3661?
>
> WITNESS:
> A - Rita Caoleng and her family, Sir.
>
> ATTY. DIMALANTA:
> Q - Who else?
> A - Juana and Angela, Sir.
> Q - Who else aside from these persons you mentioned?
>
> Atty. PUNZALAN:
>
> That is putting the answer to the mouth of the witness, objection, Your Honor.
>
> ATTY. DIMALANTA:
> Q - Are they the onely [sic] persons occupying that land?
> A - Yes, Sir.
> Q - What about on the portion of the land near the creek, who is in possession of the said land?
> A - I and Lourdes, Teofilo and Silverio, Sir.
> Q - What about this Marcela Salonga, what portion of the land was she occupying?
> A - She is occupying the land near the sugarland, Sir.
> Q - The one being occupied by Rita Caoleng?
> A - Yes, Sir.
> Q - Who is occupying a bigger portion of that land near the sugarland which [is] denominated as cadastral lot 3661?
> A - Marcela Salonga, Sir.
> Q - Are these properties covered by titles?
> A - Yes, Sir.

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Q - And how were they titled?
A - I don't know how Teofilo Caoleng had them registered in the name of Agustin Caoleng, Sir.

ATTY. DIMALANTA:
Q - Are you referring to these two lots?

WITNESS:
A - Yes, Sir.
Q - And how were you able to discover that these two parcels of land [were] caused to be titled by Teofilo Caoleng in the name of Agustin Caoleng?
A - When the titles were released, Marcela Salonga called a sort of a meeting among us, Sir.
Q - What did you talk in that meeting?
A - We agreed that the portion being occupied by Marcela Salonga would be given to her, Sir.
Q - When you said that portion, do you refer to the portion you mentioned covered by cadastral lot 3661?

ATTY. PUNZALAN:

That would be leading, Your Honor.

ATTY. DIMALANTA;

That is only a clarification.

COURT:

May answer.

WITNESS:
A - Yes, Sir.[31]

More revealing is the confession of the respondents' sole witness, Rosita Gabriana, when she testified in this manner:

Q - Mrs. Witness, will you please tell us if this case is covered by two properties, am I correct?
A - Yes, Sir.
Q - One is located near the Betis river, and the other is a former riceland or "mulahan"?
A - Yes, Sir.

ATTY. DIMALANTA:
Q - And the one located near the Betis river is occupied by Gonzalo Caoleng?

WITNESS:
A - Yes, Sir.
Q - And also by Teofilo Caoleng?
A - Yes, Sir.
Q - And also the daughter of Lourdes Caoleng by the name of Araceli Manalang, is it not?
A - Yes, Sir.
Q - And the daughter of Teofilo Caoleng by the name of Victoria Caoleng?
A - Yes, Sir.
Q - And also the two sons of Teofilo Caoleng by the name of Jose and Melanio?
A - I don't know, Sir.
Q - But you know Jose Caoleng?
A - There is, Sir.
Q - While this former agricultural land is now enclosed by a hallow [sic] block fence on three sides?
A - Yes, Sir.

> Q - And at the edge of the open side is the house of your sister and also the children of Rita Caoleng, is it not?
> A - Yes, Sir.
> Q - And it was the plaintiff, particularly German Bituin who caused the fencing of the three sides of the portion of the former agricultural land?
> A - Yes, Sir.[32]

Surprisingly, respondents did not controvert petitioners' allegations that they are in possession of a large portion of Lot No. 3661 in the cross-examination or any of the pleadings. If respondents were truly the owners of Lot No. 3661, why did they allow petitioners to stay there for such a long period of time? All this time that petitioners introduced improvements on the land in controversy, respondents did not oppose or complain about the improvements. Even the trial court was correct in observing that petitioners' possession of Lot No. 3661 is an advantage for them, thus:

> Gonzalo Caoleng, a man of 81 years of age and one of the defendants in this case testified for and in behalf of the plaintiffs. He supported the claim of the plaintiffs. His testimony is a declaration against his own interest because by saying that plaintiffs have an interest over the land in dispute he practically waived his right and interest, which is substantial over the property which is already titled in the name of the Heirs Agustin Caoleng and he happens to be one of the heirs of Agustin Caoleng being one of his children. His testimony which is credible deserves full faith and credit. A very old man, he undoubtedly has sufficient knowledge of the history of the disputed land especially of its possessor, so that when he said plaintiff Marcela Salonga was in possession of the bigger portion of Lot 3661 this testimony cannot be ignored.[33]

However, the appellate court decided otherwise and emphasized the fact that respondents are grantees of a free patent and eventually became holders of a title.

Elementary is the rule that simple possession of a certificate of title is not necessarily conclusive to a holder's genuine ownership of property. If a person obtains title that includes land to which he has no legal right, that person does not, by virtue of said certificate alone, become the owner of the land illegally or erroneously included.[34] This Court has held time and again that the rule on indefeasibility of title cannot be used for the perpetration of fraud against the legal owner.[35] Hence, registration proceedings could not be used as a shield for fraud. To hold otherwise would be to put a premium on land-grabbing and transgress the broader principle in human relations that no person shall unjustly enrich himself at the expense of another.[36]

In Vital v. Anore, et al.,[37] this Court ruled that:

> x x x if the registered owner, be he a patentee or his successor-in-interest to whom the free patent was transferred or conveyed, knew that the parcel of land described in the patent and in the Torrens title belonged to another and who together with his predecessors-in-interest has been in possession thereof, and if the patentee and his successor-in-interest were never in possession thereof, then the statute barring an action to cancel a Torrens title issued upon a free patent does not apply, and the true owner may bring an action to have the ownership or title to the land judicially settled, and if the allegations of the plaintiff that he is the true owner of the parcel of land granted as free patent and described in the Torrens title and that the defendant and his predecessor-in-interest were never in possession of the parcel of land and knew that the plaintiff and his predecessors-in-interest have been in possession thereof be established, then the court in the exercise of its equity jurisdiction, without ordering the cancellation of the Torrens title issued upon the patent, may direct the defendant, the registered owner, to reconvey the parcel of land to the plaintiff who has been found to be the true owner thereof.[38]

In the present case, it cannot be contradicted that petitioners have been in actual possession of Lot No. 3661. The reconveyance is just and proper in order to bring to a halt the intolerable anomaly that the patentees resort to in obtaining a Torrens title for the land which they and their predecessors never possessed and which has been

possessed by another in the concept of an owner.[39]

After a careful scrutiny of the pleadings of the case, it was unearthed that petitioners were asking for the reconveyance of the one-half portion of Lot Nos. 3661, 3448, and 3449. Sadly, this cannot be done as the records lack sufficient evidence to support this contention. Petitioners were only able to prove their right to ownership of the 1,021 sq. m. of Lot No. 3661 because they showed adequate proof of their lengthy possession of that area of land which was concurred in by the witness for the defendants. This Court cannot grant petitioners ownership of half of Lot Nos. 3448 and 3449 as they have not shown any credible and trustworthy evidence that they are entitled to that share in accordance with law or any existing jurisprudence.

WHEREFORE, in view of the foregoing, the petition is PARTIALLY GRANTED. The June 20, 2002 Decision of the Court of Appeals in CA-G.R. CV No. 54684 is MODIFIED.

The Court hereby AFFIRMS the ownership of petitioners of Lot No. 3661 to the extent of 1,021 square meters and respondents are ORDERED to RECONVEY title to the same to petitioners. The Register of Deeds is ORDERED to CANCEL OCT No. 3399 and ISSUE another certificate of title over the property in favor of petitioners, to the extent of 1,021 square meters, as co-owners thereof, and another certificate of title in the name of respondents for the remainder of the lot as pro-indiviso co-owners. No pronouncement as to costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

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[1]Penned by Associate Justice B.A. Adefuin-De La Cruz with Associate Justices Wenceslao I. Agnir, Jr., and Regalado E. Maambong concurring; rollo, pp. 26-37.

[2] Penned by Judge Rogelio C. Gonzales, id. at 38-47.

[3] Penned by Associate Justice B.A. Adefuin-De La Cruz with Associate Justices Mario L. Guariña III, and Regalado E. Maambong concurring, id. at 49.

[4]Records, Folder 1, p. 4.

[5] Id. at 3-4.

[6]Exhibit "4," Records, Index of Exhibits, p. 135.

[7] Exhibit "1," id. at 10-132.

[8] Exhibit "D," id. at 133.

[9]Records, Folder 1, pp. 18-19.

[10] Id. at 72.

[11] Id. at 73-80.

[12]Exhibit "3," Records, Index of Exhibits, p. 134.

[13]Records, Folder 1, p. 79.

[14]Exhibit "A," Records, Index of Exhibits, p. 128.

[15] TSN, July 8, 1992, pp. 5-6.

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[16] Exhibit "B," Records, Index of Exhibits, p. 129.

[17] TSN, July 8, 1992, pp. 5-6.

[18] Id. at 7-8.

[19]TSN, November 23, 1992, p. 2.

[20] Id. at 3-4.

[21] Id. at 4-5.

[22]TSN, July 26, 1993, p. 5.

[23] Id. at 6-7.

[24] TSN, October 10, 1994, pp. 4-5.

[25]Records, Folder 1, pp. 186-187.

[26] Rollo, p. 37.

[27] Id. at 8.

[28] Leyson v. Bontuyan, G.R. No. 156357, February 18, 2005, 452 SCRA 94, 113, citing Heirs of Pomposa Saludares v. Court of Appeals, G.R. No. 128254, January 16, 2004, 420 SCRA 51, 56.

[29] Aznar Brothers Realty Company v. Aying, G.R. No. 144773, May 16, 2005, 458 SCRA 496, 510, citing Heirs of Jose Olviga v. Court of Appeals, G.R. No. 104813, October 21, 1993, 227 SCRA 330.

[30] Cuizon v. Remoto, G.R. No. 143027, October 11, 2005, 472 SCRA 274, 286-287, citing Cabrera v. Court of Appeals, G.R. No. 108547, February 3, 1997, 267 SCRA 339, 354.

[31] TSN, July 8, 1992, pp. 5-7; emphasis supplied.

[32] TSN, November 11, 1994, pp. 6-7; emphasis supplied.

[33] Rollo, p. 44; emphasis supplied.

[34] Bejoc v. Cabreros, G.R. No. 145849, July 22, 2005, 464 SCRA 78, 87, citing Veterans Federation of the Philippines v. Court of Appeals, G.R. No. 119281, November 22, 2000, 345 SCRA 348.

[35]Id. at 87, citing Bayoca v. Nogales, G.R. No. 138201, September 12, 2000, 340 SCRA 154.

[36] Leyson v. Bontuyan , supra note 28, at 115, citing Almarza v. Arguelles, G.R. No. L-49250, December 31, 1987, 156 SCRA 718, 725.

[37] 90 Phil. 855 (1952).

[38] Id. at 858-859.

[39]Leyson v. Bontuyan , supra note 28, at 115, citing Linaza v. Intermediate Appellate Court, G.R. No. 73741, February 28, 1990, 182 SCRA 855, 860.

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