CARMEN FANGONIL – HERRERA, PETITIONER, VS. TOMAS FANGONIL, PURA FANGONIL TINO, MARINA FANGONIL, MARIANO FANGONIL, MILAGROS FANGONIL-LAYUG AND VICTORIA FANGONIL ESTOQUE, RESPONDE...

G.R. NO. 169356. August 28, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

In this instant Petition for Review under Rule 45 of the Revised Rules of Court, petitioner assails the (a) Decision issued by the Court of Appeals dated 30 January 2004 in CA-G.R. CV No. 61990, and (b) the Resolution of the same Court dated 15 July 2005 denying petitioner's Motion for Reconsideration. Petitioner urges this Court to modify the assailed Decision of the Court of Appeals which affirmed the Decision dated 9 October 1998 of the Regional Trial Court (RTC) of Agoo, La Union, Branch 31 in Special Proceedings Case No. A-806 for Judicial Partition. The petition prays that the two parcels of land, one located in Magsaysay, Tubao, La Union, more particularly described as:

> A parcel of rice land which the middle portion (15,364 sq. m) has been included and situated in Barrio Lloren, Tubao, La Union, declared under Tax Dec. Number 2889. Bounded on the North, by the property of Manuel Ordoña; on the East, by the property of Severino Padilla, Nicolas Caniero, and Heirs of V. Selga; on the South, by the properties of Manuel Ordoña and Francisco Padilla; and on the West, by a river; containing an area of more than two hectares; x x x.[2]

and the other in San Nicholas East, Agoo, La Union, designated as:

> A parcel of unirrigated rice land without permanent improvements, situated in Barrio San Nicolas, Agoo, La Union with an area of 10,777 sq. m. (1 Ha. 1,777 sq. m.) more or less, visible by signs of pilapiles around its perimeter, assessed at P400.00, declared for tax purposes in my name under Tax Declaration Number 6373, and bounded-on the North, by Donato Eslao; on the East, by the Heirs of Flaviano Fangonil, and others; on the South, by Eulalio Fangonil; and on the West, by the heirs of Remgio Boado; x x x.[3]

be adjudged solely to petitioner to the exclusion of respondents. In addition, petitioner requests that another parcel of land located in Poblacion, Tubao, La Union, be divided in accordance with the manner she proposes.

The following are the antecedent facts:

Petitioner and respondents[4] are children of the late Fabian Fangonil and Maria Lloren Fangonil[5] of Tubao, La Union. The Fangonil spouses had 7 children: Tomas, Pura, Marina, Mariano, Milagros, Sinforoso, and Carmen. Fabian died on 1 June 1953, while Maria Lloren died on February 1976. The spouses died intestate, leaving an estate consisting of 7 parcels of land herein specified:

> Parcel 1 - a 1,800 square meter residential land located at Poblacion, Tubao, La Union, which is facing the Town Plaza;

Parcel 2 - a 922 square meter residential lot located at Barangay Sta. Barbara, Agoo, La Union;

Parcel 3 - a 54,759 square meter agricultural land located at Francia West, Tubao, La Union;

Parcel 4 - an 84,737 square meter agricultural land located at Francia West, Tubao, La Union;

Parcel 5 - a 5,821 square meter parcel of agricultural land located at Francia Sur, Tubao, La Union;

Parcel 6 - a 17,958 square meter parcel of agricultural land located at Magsaysay, Tubao, La Union;

Parcel 7 - 9,127 square meter parcel of agricultural land located at San Nicolas East, Agoo, La Union.

The only remaining heirs are the 7 children. Prior to an extrajudicial settlement executed by the heirs in 1983, there was never any settlement of the estate. The parties do not dispute that the succeeding transactions involving parcels 6 and 7 took place. Fabian Fangonil, with the consent of Maria Lloren Fangonil, obtained a loan secured by a mortgage over a 15,364 square meter middle portion of the sixth parcel of land for P1,450.00, executed under a Deed of Mortgage[6] in favor of Francisca Saguitan on 20 April 1949. A portion of the sixth parcel, with an area of 4,375 square meters, was sold with a right to repurchase to a certain Constantino Oribello for P1,450.00 on 15 December 1953. The transaction was under an agreement designated as a Deed of Pacto de Retro Sale[7] between Maria Lloren Fangonil, who was a widow by then, and Constantino Oribello. On the other hand, the seventh parcel of land was sold, with a right to repurchase, by Fabian Fangonil to Quirino Estacio under an agreement denominated as Deed of Sale with Pacto de Retro[8] on 12 December 1949 for P2,600.00. The total amount received by the Fangonil spouses for the properties was P5,500.00.

The parcels above-mentioned were never repurchased or redeemed by the Fangonil spouses. Prior to foreclosure, the portion of the sixth parcel covered by a Deed of Mortgage was released from the mortgage on 20 April 1956 upon petitioner's payment of P1,950.00 to Francisca Suguitan. The portion of the sixth parcel covered by the Deed of Pacto de Retro Sale was repurchased on 16 October 1956 upon petitioner's payment of P1,550.00 to Constantino Oribello. On the other hand, the seventh parcel subject of the Deed of Sale with Pacto de Retro was repurchased by petitioner on 13 November 1959 upon the payment of P2,600.00 to Quirino Estacio. Petitioner paid the total amount of P6,100.00 for the redemption of parcels 6 and 7.

On 14 November 1983, the parties executed an Extrajudicial Settlement and Partial Partition of the estate of the Fangonil spouses covering the seven parcels of land. Although petitioner signed the extrajudicial settlement, she refused to accede to the proposed manner of partition of parcel 1. Thereafter, all the heirs concerned, except petitioner, executed a joint affidavit dated 19 December 1994, stipulating on the partition of parcel 1. On 2 February 1995 or 11 years after the execution of the extrajudicial settlement, petitioner executed an affidavit[9] refuting the portions pertaining to parcels 6 and 7, on the ground that her late brother Sinforoso Fangonil who was a Regional Trial Court (RTC) Judge then, committed misrepresentation and convinced her to sign the said settlement.

On 1 March 1995, six of the seven children of the Fangonil spouses, excluding herein petitioner, filed with the RTC a petition for judicial partition of the seven parcels of land, with prayer for appointment of Marina Fangonil as administratrix. The case was docketed as Special Proceedings Case No. A-806. Petitioner intervened before the trial court to oppose the petition. She likewise prayed that she be appointed administratrix, claiming exclusive ownership over parcels 6 and 7.

The parties agreed to submit the case for decision based on the pleadings, considering there was no disagreement as to the manner of sharing Parcels 2, 3, 4, and 5 of the estate. In addition, on 16 September 1996, the respondent heirs deposited in court P7,453.00[10] as payment to petitioner and her brother Tomas Fangonil as the only outstanding debtors of the estate as specified in the 14 November 1983 extrajudicial settlement. On 2 September

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1998, respondents, through counsel, submitted a Manifestation/Motion dated 31 August 1998, proposing a manner of computation for repayment to petitioner, the pertinent portions of which read:

> - 3. That the currency rate of the Philippine Peso to the U.S. Dollar on November 13, 1959 is P3.90 to U.S. $1.00;
>
> - 4. That the currency rate of the Philippine Peso to the U.S. Dollar as of this date August 31, 1998 is P42.00 to U.S. $1.00;
>
> - 5. So that the amount of indebtedness of P6,100.00 on November 13, 1959 has now the equivalent of P65,790.00 as of 31 August 1998;
>
> 5.1 The equivalent amount of P65,790.00 shall be proportionately paid by all the heirs with each and every heir having a share in said indebtedness in the amount of P9,398.57;[11]

On 7 October 1998, the RTC issued an Order generally approving the manifestation/motion except for the computation, modifying the amount to P138,100.00 as the present equivalent of the amount of P6,100.00 previously paid by petitioner to redeem parcels 6 and 7. In its Decision[12] dated 9 October 1998, the RTC ruled in favor of respondents herein and declared parcels 6 and 7 as part of the estate of the spouses Fangonil to be partitioned and ordered the partition of parcel 1 based on the manner proposed by respondents. It ordered the payment of the estate debt to petitioner and her brother in the amount of P138,100.00, the money equivalent of the P6,100.00 paid by her at the time of redemption of parcels 6 and 7. The dispositive portion of the decision reads:

> WHEREFORE, upon the foregoing premises, this court hereby adjudicates and partitions the inherited properties, including the controversial parcels 6 and 7, in accordance with the following:
>
> FIRST PARCEL
> x x x x
> This is divided into two (2) segments, the Eastern Portion and Western Portion.
>
> The Eastern Portion shall belong to three (3) heirs, namely Tomas Fangonil, Sinforoso Fangonil represented by Victoria Estoque and Marina Fangonil. The Western Portion shall belong to two (2) heirs, the Southwestern part belongs to Pura F. Tino and the Northwestern part belongs to Carmen Fangonil Herrera x x x.
>
> SECOND PARCEL
> x x x x
> This parcel goes to Mariano Fangonil and Milagros Fangonil Layug.
>
> THIRD PARCEL
> x x x x
> A drawing of lots was conducted on April 25, 1997 with respect to parcel 3. Parcel 3 was divided into seven by Geodetic Engineer Gerardo Dacayanan. The result was the following (see also, Order dated April 25, 1997, page 166, Record of the case):
> Lot 1 (A) - Milagros F. Layug
> Lot 2 (B) - Tomas Fangonil
> Lot 3 (C) - Mariano Fangonil
> Lot 4 (D) - Pura F. Tino
> Lot 5 (E) - Sinforoso Fangonil
> Lot 6 (F) - Carmen F. Herrera
> Lot 7 (G) - Marina Fangonil
> x x x x

FOURTH PARCEL

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x x x x

The same thing happened. There was a drawing of lots. The result was the following:

Lot 1 (A) - Marina Fangonil
Lot 2 (B) - Carmen F. Herrera
Lot 3 (C) - Tomas Fangonil
Lot 4 (D) - Sinforoso Fangonil
Lot 5 (E) - Milagros F. Layug
Lot 6 (F) - Pura F. Tino
Lot 7 (G) - Mariano Fangonil
x x x x

FIFTH PARCEL

x x x x

On May 2, 1997, the drawing of lots on Parcel 5 was conducted. The result was as follows:

Lot 1 - Pura F. Tino
Lot 2 - Marina Fangonil
Lot 3 - Milagros F. Layug
Lot 4 - Sinforoso Fangonil
Lot 5 - Carmen F. Herrera
Lot 6 - Mariano Fangonil
Lot 7 - Tomas Fangonil

SIXTH PARCEL

x x x x

On August 27, 1998, the drawing of lots was conducted with respect to the controversial parcels, the sixth parcel and the seventh parcel. The result on the sixth parcel was as follows:

Lot 1 - Pura F. Tino
Lot 2 - Sinforoso Fangonil
Lot 3 - Tomas Fangonil
Lot 4 - Marina Fangonil
Lot 5 - Carmen F. Herrera (boycotted the draw)
Lot 6 - Mariano Fangonil
Lot 7 - Milagros F. Layug

x x x x

SEVENTH PARCEL

x x x x

The draw was made on the same day, August 27, 1998. Just like in the drawing of lots for the Sixth Parcel, Carmen F. Herrera boycotted the draw. Hence, the Court ruled that since there are seven rolled papers for the seven heirs to draw, the last undrawn rolled-paper containing the lot number shall be for Carmen Herrera. The result for the draw for the seventh parcel was as follows:

Lot 1 - Carmen Herrera
Lot 2 - Tomas Fangonil
Lot 3 - Milagros F. Layug
Lot 4 -Marina Fangonil
Lot 5 - Sinforoso Fangonil

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> Lot 6 - Mariano Fangonil
> Lot 7 - Pura F. Tino

It should be noted that after the draws on August 27, 1998, Atty. Baltazar, counsel for [respondents], manifested that he will file a motion as regards the accounting of the produce of the sixth and seventh parcels. However, what he filed was the Manifestation/Motion dated August 31, 1998.

The six heirs (excluding Carmen F. Herrera) shall reimburse the amount of P138,100.00, each one contributing the amount of P19,728.57, to Carmen F. Herrera. Since the other six heirs did not insist on the accounting of the produce with respect to parcels 6 and 7, Carmen F. Herrera does not have to render an accounting. As a matter of fact, this Court, in its Order dated October 7, 1998, considered the produce of the said two (2) parcels, which she appropriated from the '50s to the present as interest on her money.[13]

Petitioner appealed the above RTC Decision to the Court of Appeals, alleging the unfair and prejudicial manner of partition of parcel 1 and claiming exclusive ownership over parcels 6 and 7. The Court of Appeals denied the appeal in its Decision promulgated 30 January 2004, the dispositive portion of which reads:

> WHEREFORE, the October 9, 1998 Decision of the Regional Trial Court of Agoo, La Union, Branch 31, in Special Proceeding Case No. A-806, is AFFIRMED in toto."[14]

Under said decision, the Court of Appeals affirmed in toto the findings of the trial court, pronouncing that petitioner failed to adduce any evidence that would support her claim that the distribution was not equal and prejudicial to her interest. It concurred with the trial court in concluding that, at the most, she is only entitled to the reimbursement of the amount she spent for redemption of the questioned lots in an amount equivalent to what her money commanded then, stating that petitioner is simply holding the said property in trust for the other co-heirs. At the same time, it upheld the trial court's finding on the equivalent of the money which petitioner paid to redeem and repurchase parcels 6 and 7, but the dispositive portion merely indicated the amount of P130,100.00.

Petitioner filed a Motion for Reconsideration of the 30 January 2004 Decision which the Court of Appeals denied in a Resolution dated 15 July 2005. Dissatisfied with the final resolution of the Court of Appeals on the matter, petitioner now comes before this Court via a Petition for Review under Rule 45 of the Revised Rules of Court. Petitioner insists she is the exclusive owner of parcels 6 and 7 and rejects the partition of parcel 1 as being unequal and prejudicial, raising the following issues:

> I.
> THE RESPONDENT COURT GRAVELY ERRED IN SUSTAINING THE MANNER IN WHICH PARCEL 1 IS TO BE PARTITIONED BASED ON THE PRIVATE RESPONDENTS' POSITION WHICH IS CLEARLY UNEVEN AND UNFAIR TO THE PETITIONER WHOSE SHARE WILL THEN BE FOUND AT THE REAR PORTION OF THE SAID LOT.
>
> II.
> THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT PARCELS 6 AND 7 SHALL BE OWNED SOLELY AND EXCLUSIVELY BY THE PETITIONER BEING THE ONLY ONE WHO REDEEMED AND REPURCHASED SAID PARCELS IN THE 1950'S EVEN WHILE THE PARENTS OF THE PARTIES WERE STILL ALIVE.
>
> III.
> THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE PRIVATE RESPONDENTS' RIGHT TO CLAIM A SHARE IN PARCELS 6 AND 7 HAD LONG PRESCRIBED AS A RESULT OF THEIR INACTION FOR MORE THAN FORTY (40) YEARS WHERE THEY ALLOWED THE PETITIONER TO EXERCISE FULL OWNERSHIP OVER SAID PARCELS,

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EVEN ASSUMING WITHOUT ADMITTING THAT AT FIRST, THEY HAVE THE RIGHT TO REDEEM THE SAID PARCELS.

IV.
THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING THAT THE PRIVATE RESPONDENTS' RIGHT TO CLAIM A SHARE IN PARCELS 6 AND 7 HAD LONG BEEN BARRED BY LACHES AS A RESULT OF THEIR INACTION FOR MORE THAN FORTY (40) YEARS WHERE THEY ALLOWED THE PETITIONER [TO] EXERCISE FULL OWNERSHIP OVER SAID PARCELS, EVEN ASSUMING WITHOUT ADMITTING THAT AT FIRST, THEY HAVE THE RIGHT TO REDEEM THE SAID PARCELS.

V.
THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT THE MONEY EQUIVALENT OF THE MONEY OF THE OPPOSITOR-APPELLANT WHICH SHE USED TO REPURCHASE AND REDEEM PARCELS 6 AND 7 IN THE 1950'S WOULD ONLY BE P138,100.00 IN TODAY'S MONEY, EVEN ASSUMING WITHOUT ADMITTING THAT THE SAID PARCELS COULD BE REDEEMED BY THE ESTATE OF FABIAN AND MARIA LLOREN.[15]

Petitioner's arguments are fallacious.

With respect to procedural matters, respondents argue that the petition is a combination of an appeal via a petition for review on certiorari under Rule 45 and an independent civil action of certiorari under Rule 65 of the Revised Rules of Court. This is based on the observation that petitioner impleaded the Court of Appeals as one of the respondents while at the same time raising issues of fact alone. Respondents posit that these are indicative of an "intention to categorize the petition to be under both Rules 65 and 45 of the Rules of Court" and should be dismissed outright. Although petitioner erroneously impleaded the Court of Appeals as one of the respondents, petitioner clearly and rightly invoked Rule 45 of the Revised Rules of Court as the remedy availed of. As we held in National Irrigation Administration v. Court of Appeals,[16] the appeal from a final disposition of the Court of Appeals is a petition for review under Rule 45 and not a special civil action under Rule 65 of the Revised Rules of Court. Under Rule 45 of the Revised Rules of Court, decisions, final orders or resolutions of the Court of Appeals, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case.[17] The correct procedure is not to implead the Court of Appeals. This Court has ruled in several instances that where the Court of Appeals is impleaded as respondent in the Petition for Review, and the petition clearly invokes Rule 45, the Court of Appeals is merely omitted from the title of the case pursuant to Sec. 4(a) of Rule 45 of the Revised Rules of Court.[18] The Court of Appeals is herein omitted from the title of the case, as a liberal interpretation of the rules on technicality, in pursuit of the ends of justice and equity.[19]

We now discuss respondents' contention that only factual issues have been brought to this Court.

Under Section 1, Rule 45, providing for appeals by certiorari before the Supreme Court, it is clearly enunciated that only questions of law may be set forth.[20]Questions of fact may not be raised unless the case falls under any of the following exceptions[21]:

(1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the

> respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

In this particular instance, we are clearly faced with issues of fact. A question of fact is involved when the doubt or difference arises as to the truth or falsehood of alleged facts or when the query necessarily invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevance of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.[22]We find that the only questions to be resolved are the following: (a) whether or not the respondent court gravely erred in affirming the partition of parcel 1 in accordance with the findings of the trial court; and (b) whether or not the respondent court gravely erred in not finding that exclusive ownership of the properties in question has been vested in petitioner.

In the exercise of the Supreme Court's power of review, this Court is not a trier of facts, and unless there are excepting circumstances, it does not routinely undertake the re-examination of the evidence presented by the contending parties during the trial of the case.[23] Factual matters are beyond the jurisdiction of this Court.[24] In petitions for review on certiorari under Rule 45 of the Revised Rules of Court, this Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record or the assailed judgment is based on a misapprehension of facts. As held in Philippine Airlines, Inc. v. Court of Appeals,[25] factual findings of the Court of Appeals are conclusive[26] on the parties and carry even more weight when the said court affirms the factual findings of the trial court.[27] Absent any palpable error or arbitrariness, the findings of fact of the lower court are conclusive. On this ground alone, the appeal warrants a dismissal.

Setting aside the procedural defects, the appeal must fail based on the merits. Upon perusal of the records of the case, it is evident to this Court that no cogent reason exists to disturb the decision of the Court of Appeals.

Petitioner contends that the manner of partition of parcel 1 by the RTC, as affirmed by the Court of Appeals, is unfair and prejudicial to her interest. However, she was not able to adduce substantial evidence aliunde to support her allegations. Respondents stress that the Fangonil spouses appropriated portions of Parcel 1 to Carmen, Pura, Tomas, Marina, and Sinforoso, by pointing out specific areas pertaining to each. Carmen, Tomas, and Marina built their houses on parcel 1. Prior to the order of partition, an ocular inspection of parcel 1 was conducted by the RTC to determine which manner of partition it would approve. During said ocular inspection, however, the RTC saw existing structures upon which the homes of Carmen, Tomas, Marina, and a store of Carmen were situated. The arrangement was allegedly based on their oral agreement. This same arrangement allotting an equal area of 362 square meters to each of the heirs was made the basis of the manner of partition proposed by respondents and later on approved by both the RTC and Court of Appeals.

Anent the rights of the parties pertaining to parcels 6 and 7, petitioner insists that her act of paying for the repurchase and release from mortgage of parcels 6 and 7 was on the understanding with her parents that she would thereafter be the owner thereof. She asserts that her exercise of acts of ownership over parcels 6 and 7, to the exclusion of her parents and siblings, reveals she is the exclusive owner of these lots. She cites several circumstances in support of her contention that respondents never considered parcels 6 and 7 part of the estate of their parents and are not co-owners thereof. First, petitioner presented real estate tax receipts indicating that she had been the one paying for the realty taxes of the property. Secondly, petitioner asserts she has been the only one hiring tenants for and benefiting from the produce of parcels 6 and 7. Lastly, the non-attempt of respondents to partition parcels 6 and 7 within 10 years from the death of the Fangonil spouses, as well as to reimburse her if indeed such was the agreement, demonstrates that they never considered the said parcels part of the estate of their parents.

After a thorough examination of the cases cited by petitioner and a painstaking review of the case records, this Court cannot give credence to petitioner's stance. The scales of justice overwhelmingly tilt in favor of respondents and against petitioner's assertion that exclusive ownership of parcels 6 and 7 has vested in her. The fact that it was petitioner's money that was used for the repurchase of the properties does not make her the owner thereof, in the absence of convincing proof that would indicate such. This is more so if other evidence was adduced to show such is not the case. Neither will petitioner's exercise of acts of ownership over the properties bring us to that conclusion. It is evident that petitioner was allowed to maintain possession and enjoy the fruits of the property only by the mere tolerance of the other co-owners.[28] Moreover, although we recognize that real estate tax receipts indicating payment of realty tax and possession of the parcels are indicia of ownership, such are not conclusive proof of ownership, in the presence of other circumstances and evidence showing otherwise.[29] As a matter of fact, although the receipts indicate that the real estate tax payments for parcels 6 and 7 for the years following their repurchase and release were made by petitioner, the receipts also state that the declared owner of the properties is still the decedent Fabian Fangonil.

Petitioner and respondents executed an extrajudicial settlement dated 14 November 1983, wherein it was stipulated that the Fangonil spouses died intestate, leaving 7 parcels of land in their names. Parcels 6 and 7 were included. It further stipulated that petitioner and her brother Tomas (now deceased) are the only creditors of the estate, categorically stating petitioner is a creditor of the estate in the amount of P8,700.00. This amount represents what was paid for by her for the repurchase and release from the mortgage lien of parcels 6 and 7 in the 1950s. Pertinent records of the case reveal that the amount actually advanced for the repurchase was P6,100.00. The aforementioned extrajudicial settlement, which was later on submitted to the RTC for consideration in the judicial partition, taken together with petitioner's comment[30] in the same proceedings, are clear and categorical evidences that the transaction between petitioner and her parents was a mere loan. Under this extrajudicial settlement, respondents and petitioner included parcels 6 and 7 as part of the estate of their deceased parents. It is particularly stated therein that petitioner and her brother Tomas are the only creditors of the estate. Although petitioner's comment allegedly maintained her claims on parcels 6 and 7, she categorically admitted therein that the amount totaling P8,700.00 referred to in the extrajudicial settlement represents the personal money she used for the redemption of parcels 6 and 7.

Thus, petitioner is a mere creditor of the estate and not an owner of parcels 6 and 7. An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake, or that no such admission was made.[31] We find that petitioner's affidavit retracting her acquiescence to the stipulation on parcels 6 and 7 in the extrajudicial settlement deserves scant consideration for being self-serving. Absent positive proof that the earlier statements made by petitioner resulted from palpable mistake, retractions thereof, especially if unsupported by evidence, lack credence.[32]

As to the issue of prescription, petitioner's possession of parcels 6 and 7 did not ripen into sole and exclusive ownership thereof. First, prescription applies to adverse, open, continuous, and exclusive possession. In order that a co- owner's possession may be deemed adverse to the other co-owners, the following elements[33] must concur: (1) that he has performed unequivocal acts of repudiation amounting to an ouster of the other co-owners; (2) that such positive acts of repudiation have been made known to the other co-owners; and (3) that the evidence thereon must be clear and convincing. Clearly, petitioner cannot claim adverse possession in the concept of an owner where she voluntarily executed documents stating that she was a mere creditor and/or co-owner. Mere silent possession by a co- owner; his receipt of rents, fruits or profits from the property; his erection of buildings and fences and the planting of trees thereon; and the payment of land taxes cannot serve as proofs of exclusive ownership, if it is not borne out by clear and convincing evidence that he exercised acts of possession which

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unequivocably constituted an ouster or deprivation of the rights of the other co-owners.[34] In this case, we find that petitioner effected no clear and evident repudiation of the co- ownership. Petitioner's only act of repudiation of the co-ownership was when she refused to honor the extrajudicial settlement in 1994. Alternatively, possession by a co-owner is like that of a trustee and shall not be regarded as adverse to the other co-owners, but in fact as beneficial to all of them.[35] A co-ownership is a form of trust, with each owner being a trustee for each other.[36] Mere actual possession by one will not give rise to the inference that the possession was adverse because a co-owner is, after all, entitled to possession of the property.[37] Thus, as a rule, prescription does not run in favor of a co-heir or co-owner as long as he expressly or impliedly recognizes the co-ownership; and he cannot acquire by prescription the share of the other co-owners, absent a clear repudiation of the co-ownership.[38] An action to demand partition among co-owners is imprescriptible, and each co-owner may demand at any time the partition of the common property.[39]

On the matter of laches, we find no sufficient cause to apply the principle of laches, it being a principle grounded on equity. Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it.[40] Several circumstances must be present. First, there should exist conduct on the part of the defendant or one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy. Second, there is delay in asserting the complainant's right, the complainant having had knowledge or notice of defendant's conduct and having been afforded an opportunity to institute a suit. Third, defendant had no knowledge or notice that the complainant would assert the right on which he bases his claim. Fourth, the defendant will suffer injury or prejudice in the event relief is accorded the complainant, or the suit is not held barred. Petitioner failed to prove the presence of all four established requisites of laches. Moreover, there is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances, with the question of laches addressed to the sound discretion of the court.[41]Because laches is an equitable doctrine, its application is controlled by equitable considerations and should not be used to defeat justice or to perpetuate fraud or injustice.[42]

Regarding the issue on the computation of the money to be paid to petitioner as reimbursement for the amount she advanced to repurchase and release parcels 6 and 7 from the mortgage debt, the Court of Appeals adopted the amount as computed by the RTC based on the present peso money equivalent.[43] There is a discrepancy between the amount of indebtedness as quoted by the Court of Appeals from the RTC decision and the amount cited by the Court of Appeals in the latter part of its decision. However, the amount stated in the paragraph before the dispositive portion was P130,100.00, without any other indication that it intended to modify the amount determined by the RTC while the body of the Court of Appeals decision quoting the RTC decision indicated the amount of indebtedness as P138,100.00. There was obviously a typographical error, with the body of the decision stating that the Court of Appeals was affirming the RTC's manner of computation totaling P138,100.00. Moreover, in the body and dispositive portion, the Court of Appeals upheld the RTC's decision in toto. Even then, the amount found by the RTC on the basis of the formula it used in the Order dated 7 October 1998 was erroneous.[44]

Still applying the present peso-dollar exchange rate, a slight modification in the computation is hereby ordered. The present peso equivalent of the P6,100.00 indebtedness incurred on 13 November 1959 by the Fangonil spouses and payable to petitioner should be computed based on the following figures:

> The currency exchange rate of the Philippine Peso to the United States Dollar in the 1950s, which is P2.00:$1.00;

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> Currency exchange rate of the Philippine Peso to the United States Dollar as of the date of finality of this judgment.

Therefore, the present peso money equivalent of the P6,100.00 should be derived from the succeeding formula:

> [(Current exchange rate of the Philippine Peso to the United States Dollar as of the date of finality of this judgment divided by the exchange rate in the 1950s)] multiplied by P6,100.00

WHEREFORE, premises considered, the instant Petition for Review is DENIED. The (a) Decision issued by the Court of Appeals dated 30 January 2004 and (b) its Resolution dated 15 July 2005 denying petitioner's Motion for Reconsideration dated 23 February 2004 are hereby AFFIRMED, with MODIFICATION as to the amount to be reimbursed to petitioner. The present peso equivalent of the P6,100.00 indebtedness is hereby ordered reimbursed to petitioner which amount shall be computed based on current peso-dollar exchange rates at the time of finality of judgment, applying the formula below:

> [(Current exchange rate of the Philippine Peso to the United States Dollar as of the date of finality of this judgment divided by the exchange rate in the 1950s)] multiplied by P6,100.00

The equivalent amount shall be proportionately paid by all the heirs with each and every heir having a share in the said indebtedness. No Costs.

SO ORDERED.

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

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[1] The Court of Appeals was removed from the original title of the case in compliance with the requirements under Rule 45 of the Revised Rules of Court.

[2] Hereinafter referred to as parcel 6. Rollo, p. 213.

[3] Hereinafter referred to as parcel 7. Id. at 212.

[4] Respondent Victoria Estoque is the daughter of a brother of the other respondents, the late Baguio

Regional Trial Court Executive Judge Sinforoso Fangonil.

[5] Hereinafter referred to as the Fangonil spouses.

[6] Under this Deed of Mortgage dated 20 April 1949, it is stated, among others:

> "That I reserve to myself, my heirs, and assigns the right and to redeem the above mentioned middle portion for the same amount of One Thousand Four Hundred Fifty (P1,450.00) Pesos, Philippine Currency, without interest thereon except enjoying the fruits and products of said portion of land raised therefrom by the mortgagee until said property is redeemed, and failure of mortgagor to redeem said property shall remain in full force and effect and be inforceable (sic) in accordance with law." Rollo, p. 213.

[7] Under the pertinent provisions of the Deed of Pacto de Retro Sale dated 15 December 1953, it is stated, among others:

> "That we have agreed with the purchaser that I shall have the right to repurchase the land above described for the same amount of One Thousand Four Hundred Fifty (P1,450.00) PESOS, Philippine currency in any time during the month of May of each year within the period of TEN (10) years effective from this date of execution of this instrument and that failure on my part to exercise my right as above stipulated will render this instrument the character of absolute and irrevocable sale without the necessity of executing my further deed to

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consolidate the ownership of the same unto the vendee." Id. at 214.

[8] Deed of Sale with Pacto de Retro dated 12 December 1949. Pertinent provisions of the contract state:

> "That I hereby reserve the right to repurchase the said property within the period of TEN (10) years from and after the execution of this instrument by paying back to the vendee, his heirs or assigns, the same price of Two Thousand Six Hundred (P2,600.00) Pesos, Philippine Currency; and on my, or my heirs" or assigns" failure to exercise the right of redemption within the period stipulated, this instrument shall automatically become an absolute deed of sale and absolute title to the property shall become irrevocably vested in the vendee, his heirs and assigns." Id. at 212.

[9] Paragraph 9 reads:

That, in all these years, such forbearance of my brothers and sisters on my acts of ownership and possession of the properties is in abiding with an oral agreement of partition with our parents who, having caused these properties to be the subject of sale with pacto de retro or mortgage (salda in the locality), enjoined their children that whoever redeems or repurchases any or all of these properties shall take possession of and own the property so redeemed or repurchased.

Paragraph 12 reads:

That x x x (b) because my signature on the Extrajudicial Settlement of Estate and Partial Partition have been procured against my better judgment; and (c) considering that the said properties cannot be the subject of agreement(s) other than the oral agreement which my brothers and sisters abided to in all these years, I hereby repudiate my agreement on the portion of the Extrajudicial Settlement of Estate and Partial Partition which states on page 5 thereof: "The properties described above as Sixth and Seventh Parcels shall be partitioned and settled in a separate agreement for the reason that they have not yet agreed on the manner of the disposal of the same. Records, p. 12.

[10] Records, pp. 95-96. Computed as:123

A. Estate Debt to Petitioner
Add: Estate Debt to Tomas

P 8,700.00
P 1,500.00

Total Estate Debt
Divide among seven heirs

P10,200.00
/7

P1,457.00 per heir

B. Estate Debt to Petitioner
Less: Share in Estate Debt

P8,700.00
P1,457.00

Amount to be reimbursed Petitioner

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P7,243.00

[11] Records, p. 342.

[12] Penned by Judge Clifton U. Ganay. Id. at 350-368.

[13] Records, pp. 361-368.

[14] Penned by Former Associate Justice Elvi John S. Asuncion with Associate Justices Lucas P. Bersamin and Godardo A. Jacinto, concurring; rollo, p. 39.

[15] Rollo, pp. 17-19.

[16] 376 Phil. 362, 372-373 (1999), as cited in Macasasa v. Sicad, G.R. No. 146547, 20 June 2006, 491 SCRA 368, 376.

[17] Mercado v. Court of Appeals, G.R. No. 150241, 4 November 2004, 441 SCRA 463, 469.

[18] Selegna Management and Development Corporation v. United Coconut Planters Bank, G.R. No. 165662, 3 May 2006, 489 SCRA 125.

[19] Anent the procedural defects raised by respondent, the Court agrees that the correct procedure, as mandated by Section 4, Rule 45 of the 1997 Rules of Civil Procedure, is not to implead the lower court which rendered the assailed decision. However, impleading the lower court as respondent in the petition for review on certiorari does not automatically mean the dismissal of the appeal but merely authorizes the dismissal of the petition. Besides, formal defects in petitions are not uncommon. The Court has encountered previous petitions for review on certiorari that erroneously impleaded [the Court of Appeals.] In those cases, the Court merely called the petitioners" attention to the defects and proceeded to resolve the case on their merits.

The Court finds no reason why it should not afford the same liberal treatment in this case. While unquestionably, the Court has the discretion to dismiss the appeal for being defective, sound policy dictates that it is far better to dispose of cases on the merits, rather than on technicality as the latter approach may result in injustice. This is in accordance with Section 6, Rule 1 of the 1997 Rules of Civil Procedure which encourages a reading of the procedural requirements in a manner that will help secure and not defeat justice.

Simon v. Canlas, G.R. No. 148273, 19 April 2006, 487 SCRA 433, 444-446.

[20] Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

[21] It should be stressed that under the 1997 Rules of Civil Procedure, as amended, only questions of law may be raised in a petition for review before this Court. However, this Rule is not absolute, it admits of the exceptions, as provided in the text.

Pamplona Plantation Company, Inc. v. Tinghil, G.R. No. 159121, 3 February 2005, 450 SCRA 421, 427-428; Maglucot-aw v. Maglucot, 385 Phil. 720, 729-730 (2000); Philippine Rabbit Bus Lines, Inc. v. Macalinao, G.R. No. 141856, 11 February 2005, 451 SCRA 63, 68-69; Halili v. Court of Appeals, 350 Phil. 906, 912 (1998); Fuentes v. Court of Appeals, 335 Phil. 1163, 1168-1169 (1997); Geronimo v. Court of Appeals, G.R. No. 105540, 5 July 1993, 224 SCRA 494, 498-499; Lacanilao v. Court of Appeals, 330 Phil. 1074, 1079-1080 (1996).

[22] Manzano v. Court of Appeal, 344 Phil. 240, 252-253 (1997).

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[23] The Philippine American Life and General Insurance Co. v. Gramaje, G.R. No. 156963, 11 November 2004, 442 SCRA 274, 283, citing Insular Life Assurance Co., Ltd. v. Court of Appeals, G.R. No. 126850, 28 April 2004, 428 SCRA 79, 85-86; New City Builders, Inc. v. National Labor Relations Commission, G.R. No. 149281, 15 June 2005, 460 SCRA 220, 227; Security Bank & Trust Co. v. Gan, G.R. No. 150464, 27 June 2006, 493 SCRA 239, 242-243; Pleyto v. Lomboy, G.R. No. 148737, 16 June 2004, 432 SCRA 329, 336.

[24] Barcenas v. Tomas, G.R. No. 150321, 31 March 2005, 454 SCRA 593.

[25] 274 Phil. 624 (1997).

[26] Agasen v. Court of Appeals, 382 Phil. 391, 398-399 (2000); Ancog v. Court of Appeals, G.R. No. 112260, 30 June 1997, 274 SCRA 676, 681, citing Meneses v. Court of Appeals, G.R. No. 82220, 14 July 1995, 246 SCRA 162, 171; Heirs of Jose Olviga v. Court of Appeals, G.R. No. 104813, 21 October 1993, 227 SCRA 330, 336.

[27] Usero v. Court of Appeals, G.R. No. 152115, 26 January 2005, 449 SCRA 357, 358.

[28] Santos v. Santos, 396 Phil. 928, 946-947 (2000).

[29] Director of Lands v. Intermediate Appellate Court, G.R. No. 70825, 11 March 1991, 195 SCRA 38, 44; Ferrer- Lopez v. Court of Appeals, G.R. No. L-50420, 29 May 1987, 150 SCRA 393, 402; De Guzman v. Court of Appeals, G.R. No. L-47378, 27 February 1987, 148 SCRA 75, 81.

[30] Petitioner, in her comment as intervenor in the aforementioned judicial partition case, admitted the following:

"That she likewise ADMITS the allegations in paragraph 4 of the petition but hereby adds that it was her personal money which was used to pay the mortgage indebtedness of the late Fabian Fangonil to Francisca Saguitan in a document covered by Deed of Mortgage (sixth parcel) executed on April 20, 1949; that she was the only one among the heirs who paid the repurchase price in the Deed of Pacto de Retro (sixth parcel) executed by the late Maria Lloren Vda. de Fangonil in favor of Constantino Oribello dated December 15, 1953; that it was only the herein intervenor who paid the repurchase price in the Deed of Sale under Pacto de Retro executed by Fabian Fangonil in favor of Quirino Estacio dated December 12, 1949 involving the Seventh Parcel. Rollo, p. 54.

[31] Taken from the provision on judicial admissions, Section 4, Rule 129, Revised Rules of Court.

[32] Id.

[33] Salvador v. Court of Appeals, G.R. No. 109910, 5 April 1995, 243 SCRA 239, 251; Robles v. Court of Appeals, 384 Phil. 635, 649-650 (2000); Deiparine v. Court of Appeals, 360 Phil. 51, 63 (1998); Adile v. Court of Appeals, G.R. No. L-44546, 29 January 1988, 157 SCRA 455, 461; Aguirre v. Court of Appeals, G.R. No. 122249, 29 January 2004, 421 SCRA 310, 322.

[34] Salvador v. Court of Appeals, id. at 251.

[35] Id.

[36] Mallilin, Jr. v. Castillo, 389 Phil. 153, 164 (2000).

[37] Heirs of Salud Dizon Salamat v. Tamayo, 358 Phil. 797, 803-804 (1998).

[38] Robles v. Court of Appeals, 384 Phil. 635, 649 (2000); Trinidad v. Court of Appeals, 352 Phil. 12, 37 (1998).

[39] Article 494, Civil Code of the Philippines.

[40] Eduarte v. Court of Appeals, 370 Phil. 18, 27 (1999); Catholic Bishop of Balanga v. Court of Appeals, 332

Phil. 206, 218-219 (1996).

[41] Agra v. Philippine National Bank, 368 Phil. 829, 842-843 (1999), citing Jimenez v. Fernandez, G.R. No. 46364, 6 April 1990, 184 SCRA 190, 197.

[42] Jimenez v. Fernandez, id., cited in Cometa v. Court of Appeals, 404 Phil. 107, 120-121 (2001).

[43] The RTC applied the present peso money equivalent based on the proposal of respondents in their Manifestation/Motion dated 31 August 1998, wherein it clearly stipulated that the amount of indebtedness to be judicially determined is to be based on its present equivalent. The RTC modified the stipulated 1950s currency exchange rate between the Philippine Peso and United States Dollar.

[44] Relevant provisions of the aforementioned order read:

> "The Philippine Peso should have a rate of exchange with the United States dollar computed at 2:1 because the transactions were in the 1950s. Hence, if the present exchange rate is P42.00:$1.00, then the amount of P6,100.00 in the 1950s has its equivalence at present in the amount of P138,100.00." Records, p. 347.

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