

REMIGIA[] GRAGEDA, CLARITA GRAGEDA-IMPERIAL, MOSAD-LINO GRAGEDA, ANTONIO GRAGEDA, MERLIN GRAGEDA AND HEIRS OF JUAN MOROÑA GRAGEDA, REPRESENTED BY HIS WIDOW, MARCELITA N. GRAGEDA...

G.R. No. 169536. September 21, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review on Certiorari assailing the Decision dated 31 August 2005, of the Court of Appeals in CA-G.R. SP No. 89563, dismissing the appeal taken by petitioners from the 15 March 2005 Order of the Regional Trial Court (RTC), Branch 3, of Legazpi City, in SCA Case No. 10440. In its 15 March 2005 Order, the RTC dismissed petitioners' Petition for Certiorari under Rule 65 of the Rules of Court, assailing; (a) the 22 September 2004 Order of the Municipal Circuit Trial Court (MCTC) of Camalig-Jovellar, granting the Motion for Issuance of Alias Writ of Execution filed by private respondent Haudiny Grageda, and (b) the 13 January 2005 Order, issued by the same court denying petitioners' Motion for Reconsideration.

The factual and procedural antecedents of this case are as follows:

Juan Navia Grageda owned a 1,527 square meter parcel of land in Quirangay, Camalig, Albay, denominated as Lot No. 6386, and the residential house standing thereon. On 27 July 1982, Juan Navia Grageda died single and without issue. He left the following as his heirs:

- (1) his sister, petitioner Remigia Grageda;
- (2) the two daughters of his deceased brother Lauro Grageda, namely: Dorotea Grageda Naga and Lina Grageda-Solano;
- (3) the six children of another late brother, Amado Grageda, to wit: Antonio Grageda, Merlin Grageda, Haudiny Grageda, Juan Moroña Grageda, Hipolito Grageda, and Aurea Grageda-Villa;
- (4) the two children of a third late brother, Moises Grageda, namely: Mosadlino Grageda, and Clarita Grageda-Imperial.

A fourth brother, Rufo Grageda, also died single and without issue.

In July 1998, Dorotea Grageda-Naga and Lina Grageda-Solano (referred to in the title of the Complaint as Lina Solano-Naga), heirs of Lauro Grageda, filed with the MCTC of Camalig-Jovellar, Albay a Complaint[1] for partition of Lot No. 6386 and its improvement/s, which was docketed as Civil Case No. C-655. Impleaded as defendants therein were all the other surviving heirs of Juan Navia Grageda.

Of the defendants, only Remigia Grageda (sister heir of Juan Grageda), Mosadlino Grageda (one of the heirs of Moises Grageda) and Juan Moroña Grageda (one of the heirs of Amado Grageda) tendered an Answer to the Complaint. In their Answer, they averred that they do not know of any person by the name of Lina Solano-Naga,

although Lauro Grageda was known to have several children, among whom was Estaquio Grageda who is not a party to the case.[2] They manifested that they do not have any interest in the subject property because it "now belongs to a third person, who was never made a party to this case." [3] They also claimed that "the properties of Juan Navia Grageda had already been the subject of a Deed of Extrajudicial Partition and Exchange executed by his siblings Amado Grageda, Lauro Grageda, Rufo Grageda, and Remegia Grageda, and his nephew Mosadlino Grageda and niece Clara Grageda Imperial, and duly notarized by RTC Judge Gregorio Consulta, then MCTC Judge of Camalig-Jovellar, immediately after the death of said Juan Grageda in the year 1983." [4] As regards the house constructed on the subject lot, they averred that it "was constructed at the expense of petitioner Remegia Grageda, a public school teacher, and said house now belongs to a third person who was not impleaded as a party defendant in this case." [5]

On 31 March 2000, the MCTC issued its Decision in Civil Case No. C-655. The MCTC pertinently ruled:

The defendants, however, contend that the estate of the late Juan Navia Grageda was extrajudicially divided among his heirs. But, they did not adduce any credible proof that Lot No. 6386 was included on such division. Further, there is no evidence on record showing that the plaintiff's predecessor-in-interest, the late Lauro Grageda, has agreed to dispose or part away in favor of another person his share in Lot No. 6386.

As to the claim by the defendants that a third person has acquired ownership over Lot No. 6386, there is no iota of proof adduced on record to lend credence to such claim. This Court finds such claim baseless. Anyway, the admission by the defendants Remegia Grageda and Juan Morona Grageda that they are staying on the house built over Lot No. 6386 negates such claim.

Now, Juan Navia Grageda died single, without a child, and without a will. His intestate heirs, his brothers Rufo, Lauro, Amado and Moises, his sister Remegia, hence inherit his estate in equal shares. (Article 1004, Civil Code). As Lauro Grageda is now deceased, his share on Juan's estate goes to his own estate. As the plaintiffs are the heirs of the late Lauro Grageda, (Article 979, Ibid.), they can rightfully claim whatever property interest belonging to his estate.

Clearly, the plaintiffs are co-heirs to the estate of the late Juan Navia Grageda. As co-heirs, they are co-owners of such estate. As Lot No. 6386 appears as the remaining part of such estate, as co-owners of such land, they can rightfully demand for its partition. Article 494, the Civil Code, is explicit of this, stating, in part, as follows, to wit: "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 xxx xxx". And such partition should not be limited on Lot No. 6386, but should include the house built on it, because such house is but an accessory to it. (Article 445, Ibid.).[6]

The dispositive portion of the MCTC Decision provides:

WHEREFORE, Premises considered, judgment is hereby rendered as follows, to wit:

- Ordering the partition of Lot No. 6386, including the house built on it, into four (4) equal shares, among Remegia Grageda, Heirs of Amado Grageda, Heirs of Moises Grageda and the Heirs of Lauro Grageda, the latter represented by the plaintiffs Dorotea Grageda-Naga and Lina Grageda-Solano. They shall contribute equally for any such expenses necessary to effect such partition;

- Ordering the defendants to pay the plaintiffs the following sums of money:

- 2.a. The amount of Twenty Thousand Pesos, Philippine currency, as attorney's fees, to include counsel's appearance fees;

- 2.b. The amount of Five Thousand Pesos, Philippine currency, as and by way of litigation expenses.

The defendants shall pay the costs of suit.[7]

On 16 January 2001, the MCTC issued an Order commissioning Geodetic Engineer Ramon Magdaong to conduct a survey of the subject lot, to carry out the partition, and to submit his report thereon. The full contents of such Order are as follows:

Geodetic engineer Ramon Magdaong is hereby commissioned to conduct a survey on re: partition of Lot No. 6386 pursuant to and to carry out that portion of the decision, dated March 31, 2000 re: partition of Lot No. 6386 into four (4) equal shares, on the above-entitled case. Engineer Magdaong shall consider the value of the house standing on such lot as he partition it pursuant to his commission.

Thus, engineer Magdaong is hereby directed to appear and thus take his oath as commissioner before this Court on February 8, 2001, at 9:30 o'clock in the morning.

Within a period of ten (10) days after Engineer Magdaong has taken his commissioner's oath, he will convene the parties to a meeting before he conduct his survey to partition Lot No. 6386.

Commissioner Magdaong shall notify the parties, their counsels and this Court of the date and precise time he will conduct his survey to partition Lot No. 6386. Such survey shall be transparent, and the parties shall have the option to attend it, assisted by another geodetic engineer of their choice, if they so wish, and they can raise objection/s as commissioner Magdaong conduct his survey, and the latter is hereby required to note any and all objections.

Within a period of fifteen (15) days after commissioner Magdaong has completed his survey to partition Lot No. 6386, he shall submit with this Court his written report embodying the result of such survey, furnishing separate copies thereof to the parties thru their counsels.

Commissioner Magdaong's compensation for his work shall be taxed as costs against the parties here, pursuant to the above decision.

Send separate copies of this order upon Engineer Ramon Magdaong, who resides in Daraga, Albay, the parties and their counsels.[8]

On 22 October 2001, Dorotea Grageda-Naga and Lina Grageda-Solano filed a Manifestation stating that the disputed property had already been partitioned in accordance with MCTC's Order.[9] It appears, however, that only the one-fourth share pertaining to the plaintiffs had been segregated.

On 9 May 2002, private respondent Haudiny Grageda and his brother Hipolito Grageda filed before the MCTC of Camalig-Jovellar a Complaint against their siblings Juan Moroña Grageda, Aurea Grageda-Villa, Antonio Grageda and Merlin Grageda for the partition, amongst themselves, of the one-fourth share in Lot No. 6487 pertaining to their late father, Amado Grageda. The case was docketed as Civil Case No. C-691.[10]

On 4 June 2002, Juan Moroña Grageda, Aurea Grageda-Villa, Antonio Grageda, and Merlin Grageda filed a Motion to Dismiss[11] Civil Case No. C-691, alleging, inter alia, that since Haudiny Grageda and Hipolito Grageda had not filed their separate Answer in Civil Case No. C-655, they are deemed to have adopted the answer filed by Remigia Grageda, Mosadlino Grageda, and Juan Moroña Grageda, wherein they manifested that the property now belongs to a third person.

On 9 September 2003, the MCTC dismissed the Complaint in Civil Case No. C-691 without prejudice, on the ground that the same is premature inasmuch as the ¼ share pertaining to the Heirs of Amado Grageda had not yet been segregated. The MCTC held as follows:

This action for Partition commenced by the plaintiffs is anchored on the Decision dated March 31, 2002, rendered by this court in Civil Case No. C-655 (RTC No. 9834) entitled "DOROTEA GRAGEDA-NAGA and

LINA SOLANO-NAGA vs. REMEGIA GRAGEDA, JUAN MOROÑA-GRAGEDA, ANTONIO GRAGEDA, MERLIN GRAGEDA, [J]UADINI GRAGEDA, HIPOLITO GRAGEDA, AUREA GRAGEDA, CLARITA GRAGEDA-IMPERIAL and MOSADLINO GRAGEDA," which provided among others that Lot No. 6386, including the house built on it, be partitioned into four equal shares among Remigia Grageda, the heirs of Amado Grageda, the heirs of Moises Grageda and the heirs of Lauro Grageda.

In this case (CC No. C-691), the plaintiffs and the defendants are all children/heirs of the late AMADO GRAGEDA. The complaint filed in this case prayed that the $\frac{1}{4}$ share adjudged as pertaining to the heirs of AMADO GRAGEDA, now co-owned by his children be partitioned.

Section 2, Rule 69 of the Rules of Court provides as follows:

"Order for partition, and partition by agreement thereunder. - If after the trial the court finds that the plaintiff has no right thereto, it shall order the partition of the real estate among all the parties in interest. Thereupon, the parties may, if they are able to agree, make the partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by all the parties, and such partition, together with the order of the court confirming the same, shall be recorded in the registry of deeds of the place in which the property is situated.

Hence, under the aforequoted rule, there are two stages in every action for partition.

The first phase is the determination of whether or not a co-ownership in fact exists and a partition is proper. This phase existed and ended by virtue of the Decision in Civil Case No. C-655 entitled, "Dorotea Gragera-Naga and Lina Grageda-Solano vs. Remegia Grageda, et al."

The second phase commences when the parties are unable to agree upon the partition agreed by the court. In that event, partition shall be effected for the parties by the court with the assistance of not more than three commissioners.

A perusal of the records in Civil Case No. C-655 (RTC No. 9834) showed that the approved partition segregated only the $\frac{1}{4}$ share appertaining to the heirs of Lauro Grageda, and the respective $\frac{1}{4}$ individual shares appertaining to Remigia Grageda, Heirs of Moises Grageda, and Heirs of Amado Grageda (the father of the parties in this case [C.C. No. C-691] remained unsegregated. Hence, except for the segregated $\frac{1}{4}$ portion pertaining to the heirs of Lauro Grageda, the remaining $\frac{3}{4}$ portion of Lot 6386, including a portion of the house remained undivided.

Nonetheless, as discussed above, the total $\frac{3}{4}$ shares pertaining to Remigia Grageda, heirs of Moises Grageda, and heirs of Amado Grageda are not yet segregated, hence, it will still be premature for the herein plaintiffs to ask for partition of the $\frac{1}{4}$ share pertaining them as heirs of Amado Grageda.

WHEREFORE, for lack of cause of action, and pre-maturity of action, this case is DISMISSED, without prejudice.[12]

Haudiny and Hipolito Grageda filed a Motion for Reconsideration, but the same was denied.

Haudiny Grageda, acting alone, filed on 15 December 2003, a Motion for the Issuance of an Alias Writ of Execution in Civil Case No. C-655, seeking to execute the partition of the remaining three-fourths portion of the subject property among the remaining heirs.

On 22 September 2004, the MCTC directed the parties, within fifteen days from receipt of its Order, to submit a project of partition of the lot involved in said case.

Petitioners filed a Motion for Reconsideration of said Order. On 13 January 2005, the MCTC effectively denied the Motion, and directed Geodetic Engineer Ramon Magdaong to partition the remaining three-fourths undivided part of Lot No. 6386, holding that it could "not add and/or declare" that which is not in the Decision, and that it is

simply mandated to carry out its terms.

Petitioners filed a Petition for Certiorari with the RTC of Legazpi City, docketed as SCA Case No. 10440. The RTC dismissed the Petition on the ground that it is patently without merit and manifestly intended for delay, and that the question raised therein is "too insubstantial and deserves scant consideration." Petitioners appealed to the Court of Appeals, which rendered the assailed Decision, the dispositive portion of which states:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the appeal at bench must be, as it hereby is, DENIED DUE COURSE, and consequently DISMISSED. Without special pronouncement as to costs.[13]

Thus, this Petition for Review on Certiorari, where petitioners raise the sole issue:

IS THE COURT OF APPEALS CORRECT IN FINDING THAT PRIVATE RESPONDENT'S CLAIM IN HIS MOTION FOR EXECUTION FILED IN CIVIL CASE NO. C-655 IS NOT A COMPULSORY CROSS-CLAIM WHICH HE COULD ENFORCE AT ANY TIME?[14]

Petitioners argue that private respondent Haudiny Grageda's claim in his Motion for Execution in Civil Case No. C-655 filed with the MCTC is in the nature of a "compulsory cross-claim," which he should have ventilated in the said case by filing an answer separate from that filed by petitioners Remigia Grageda and Mosadlino Grageda and petitioner Marcelita N. Grageda's late husband, Juan Morona Grageda, who were the only defendants to file an Answer thereto.[15] Petitioners submit that it was necessary for private respondent Haudiny Grageda to file a separate Answer in Civil Case No. C-655, because the defendants who actually filed their Answer disclaimed any interest in the lot involved in said case, which they averred, already belonged to another person not impleaded as a defendant therein.[16] According to petitioners, by private respondent Haudiny Grageda's failure to file a separate answer in Civil Case No. C-655, he was deemed to have adopted the answer filed by the answering defendants, and that the admissions made by the answering defendants in their answer should be binding on Haudiny Grageda.[17]

Petitioners further argue that since private respondent Haudiny Grageda did not file a separate Answer or a cross-claim in Civil Case No. C-655, the issue in said case was limited to whether the plaintiffs therein (Dorotea Grageda Naga and Lina Grageda-Solano) had the right to a share in Lot No. 6386.[18] According to petitioners, the issue of whether the defendants in Civil Case No. C-655 (which include petitioners and private respondent in the case at bar), could likewise demand a partition of Lot No. 6386 among themselves was not properly raised in said case. Thus, there was no opportunity to introduce evidence against private respondent Haudiny Grageda in Civil Case No. C-655, because he did not contest the claim made by the answering defendants in their Answer therein that the lot involved in said case already belongs to a third person.[19]

Presented with these arguments, the very same arguments raised by petitioners with the MCTC and the RTC, the Court of Appeals held that the MCTC was correct in ordering the execution of its 31 March 2000 Decision, with respect to the remaining $\frac{3}{4}$ of the subject property. According to the Court of Appeals, petitioners' arguments were baseless, since there was no evidence with respect to its claim that the subject property was now owned by a third person, and since the MCTC Decision has already become final and executory. Thus:

It should be easy enough to see that this cross-claim hypothesis which is the petitioners' mainstay in this appeal is a subtle, cunning ruse or attempt by the petitioners to deprive private respondent Haudiny Grageda, son of the late Amado Grageda, - by way of perceived procedural technicality, - of what is lawfully and rightfully his share in the subject lot as a co-heir and co-owner under the Civil Code of the Philippines. For, as the MCTC pointed out in its decision in Civil Case No. C-655, the defendants therein (Remigia Grageda, Juan Grageda and Mosadlino Grageda) "did not adduce any credible proof that Lot No. 6386 was included (in) such division. Further, there is no evidence on record showing that the plaintiffs' predecessor-in-interest, the late Lauro

Grageda, has agreed to dispose (of) or part away [with] in favor of another person [with] his share (in) Lot No. 6386." The same court moreover noted that "As to the claim by the defendants that a third person (i.e. Rosadel N. Grageda) has acquired ownership over Lot No. 6386, there is no iota of proof adduced on record to lend credence to such claim. This Court finds such claim baseless. Anyway, the admission by the defendants Remigia Grageda and Juan Morona Grageda that they were staying (in) the house built over Lot No. 6386 negates such claim." We are bound by this finding of the MCTC judgment, as this has already attained finality, and is, therefore, irrevocable.

Quite apart from the foregoing, Haudiny Grageda (and his brother Hipolito Grageda's) failure or inability to tender an answer in Civil Case No. C-655 should not be held up against them. For these two must have known, as they are presumed to know, that an action for partition, is, as a general proposition, imprescriptible (last paragraph of Art. 494 of the Civil Code). In point of fact, on March 21, 2002 these two filed a complaint for partition with damages (Civil Case No. 691 of the MCTC of Camalig-Jovellar) against their siblings Juan Morona Grageda, Aurea Grageda-Villa, Antonio Grageda and Marlin Grageda in line with the decision of the same court in Civil Case No. C-655. And, even as this action (Civil Case No. C-691) was dismissed on the ground that it was premature (See MCTC Order dated Sept. 9, 2003 in civil Case No. C-691), for the reason that while the first phase of a partition proceeding under Sec. 2, Rule 69 of the Rules of Court had been ended and concluded by a decision in Civil Case No. 655, the second phase had yet to be finalized and concluded, the required three commissioners for the partition not having been appointed by the court yet. To be noted, too, is the fact that said dismissal was "without prejudice."

Nevertheless, it cannot escape notice that upon a timely "Motion for Reconsideration and Appointment of Commissioners" the MCTC, in an order dated February 2, 2004, ruled that "As to the prayer for appointment of commissioner, this court is of the opinion that the same may be proper in Civil Case No. C-655 and not in this case." What is more, the decision in this case has obviously become final and executory, as stressed in the January 13, 2005 order of MCTC Judge Nimfa C. Gomez, who therein hastened to add that "This court cannot add and/or declare that which is not in the Decision, but is simply mandated to carry out its terms. In order to do this, the Ex Parte Manifestation of Atty. Hermel R. Marantal stated in No. 2 above (viz. "there is now a need to order the appointed commissioner, Engr. Ramon Magdaong, to proceed with the partition of said $\frac{3}{4}$ remaining shares so as to fully implement the final and executory judgment of this Honorable Court dated March 31, 2000 and for said commissioner to thereafter submit his report') is GIVEN DUE COURSE." [20]

We agree with the Court of Appeals.

The cross-claim argument presented by petitioners is directed against the correctness of the judgment and, thus, should have been the subject of an appeal from the 31 March 2000 MCTC Decision. These arguments cannot be threshed out in a Petition for Certiorari against a Motion for Execution of such Decision.

Petitioners' argument that Civil Case No. C-655 was tried and decided on the basic issue of whether the plaintiffs therein (Dorotea Grageda Naga and Lina Grageda-Solano), had a right to a share in Lot No. 6386, is contradicted by the dispositive portion of the Decision of the MCTC and the subsequent 16 January 2001 Order of the MCTC. The dispositive portion of the final and executory Decision of the MCTC on Civil Case No. C-655, clearly ordered the partition of Lot No. 6386 into four equal shares. One of those shares was ordered to be awarded to the Heirs of Amado Grageda, of which private respondent Haudiny Grageda is a part. The 16 January 2001 Order of the MCTC (commissioning Geodetic Engineer Ramon Magdaong to conduct a survey of the subject lot, to carry out the partition, and to submit his report thereon), on the other hand, confirms that the MCTC intended in its Decision to order the partition of Lot No. 6386 into four equal shares, and not merely to segregate the one-fourth share of the plaintiffs therein.

It is basic that when there is a conflict between the dispositive portion or fallo of a Decision and the opinion of the court contained in the text or body of the judgment, the former prevails over the latter.[21] An order of execution

is based on the disposition, not on the body, of the Decision.[22] This rule rests on the theory that the fallo is the final order while the opinion in the body is merely a statement ordering nothing.[23]

Indeed, the foregoing rule is not without an exception. We have held that where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail.[24] The case at bar, however, does not fall under this exception. The MCTC Decision, while primarily dealing with the right of the plaintiffs to their one-fourth share in the subject property, likewise discussed, albeit sparingly, the ownership of the entire Lot No. 6386, and not just the right of the plaintiffs thereto. Specifically, the Decision discussed that the allegation of third-person ownership is baseless due to the complete absence of evidence proving such claim, and the admission by Remigia Grageda and Juan Moroña Grageda that they were staying in the house built on Lot No. 6386.[25]

Finally, petitioners' contention that Haudiny Grageda's failure to file a separate Answer in Civil Case No. C-655 resulted in his adopting the Answer filed by the answering defendants, including the admissions thereon, is unavailing. The principle petitioners are evidently referring to is based on Rule 9, Section 3(c) of the Rules of Court, which provides:

(c) Effect of partial default. -- When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.

Thus, in *Tanhu v. Judge Ramolete*,[26] we held:

Stated differently, in all instances where a common cause of action is alleged against several defendants, some of whom answer and the others do not, the latter or those in default acquire a vested right not only to own the defense interposed in the answer of their co-defendant or co-defendants not in default but also to expect a result of the litigation totally common with them in kind and in amount whether favorable or unfavorable. The substantive unity of the plaintiffs cause against all the defendants is carried through to its adjective phase as ineluctably demanded by the homogeneity and indivisibility of justice itself. Indeed, since the singleness of the cause of action also inevitably implies that all the defendants are indispensable parties, the court's power to act is integral and cannot be split such that it cannot relieve any of them and at the same time render judgment against the rest. Considering the tenor of the section in question, it is to be assumed that when any defendant allows himself to be declared in default knowing that his co-defendant has already answered, he does so trusting in the assurance implicit in the rule that his default is in essence a mere formality that deprives him of no more than the right to take part in the trial and that the court would deem anything done by or for the answering defendant as done by or for him. The presumption is that otherwise he would not have seen to it that he would not be in default. Of course, he has to suffer the consequences of whatever the answering defendant may do or fail to do, regardless of possible adverse consequences, but if the complaint has to be dismissed in so far as the answering defendant is concerned, it becomes his inalienable right that the same be dismissed also as to him. It does not matter that the dismissal is upon the evidence presented by the plaintiff or upon the latter's mere desistance, for in both contingencies, the lack of sufficient legal basis must be the cause. x x x.

The effects, therefore, of a failure to file a separate Answer when other co-defendants (against whom a common cause of action was alleged) had already filed theirs, are limited to the following:

- While the non-answering defendants may be declared in default, the court would still try the case against them on the assumption that they are deemed to have adopted the Answer of the answering defendants; and
- If declared in default, the defaulting party is deprived of no more than the right to take part in the trial. Consequently, the result of the litigation, whether favorable or unfavorable, shall affect and bind the defaulting party and the answering defendant with equal force and effect.

Thus, in this case, while it is implied that Haudiny Grageda has adopted the Answer of the answering defendants in Civil Case No. C-655, such adoption cannot result in a waiver of private respondent Haudiny Grageda's right to take part in the favorable results of the litigation. Under the principle of *renuntiatio non præsumitur*, a waiver of right may not be performed unless the will to waive is indisputably shown by him who holds the right.[27] Private respondent Haudiny Grageda's supposed waiver of his right to a share in the subject property must therefore be express[28] and cannot be lightly presumed from his failure to tender a separate Answer to the Complaint in Civil Case No. C-655. As the result of the litigation as to the answering defendants, whether favorable or unfavorable, would likewise be applicable to Haudiny Grageda, the disposition of the MCTC (that the subject property be partitioned into four equal shares, one share of which to be awarded to the Heirs of Amado Grageda) should be adjudged applicable to him.

WHEREFORE, the instant Petition is hereby DENIED. The Decision of the Court of Appeals dated 31 August 2005 is AFFIRMED. No costs.

SO ORDERED.

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

[*] Sometimes spelled "Remegia" in the rollo.

[1] Rollo, p. 46.

[2] Id. at 50.

[3] Id. at 50-51.

[4] Id. at 51.

[5] Id.

[6] Id. at 54-55.

[7] Id. at 55.

[8] Id. at 56-57.

[9] Id. at 58.

[10] Id. at 59-62.

[11] Id. at 63-64.

[12] Id. at 71-72.

[13] Id. at 33.

[14] Id. at 114.

[15] Id. at 114-115.

[16] Id. at 115.

[17] Id. at 115.

[18] Id.

[19] Id. at 116.

[20] Id. at 30-32.

[21] PH Credit Corporation v. Court of Appeals, 421 Phil. 821, 833 (2001).

[22] Id. at 833-834.

[23] Rosales v. Court of Appeals, 405 Phil. 638, 655 (2001).

[24] Id.

[25] Rollo, p. 54.

[26] 160 Phil. 1101, 1131-1132 (1975).

[27] Testate Estate of Mota. v. Serra, 47 Phil. 464, 469-470 (1925).

[28] Id.

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