

**AURORA DEL BANCO, EVELYN DEL BANCO, FEDERICO TAIÑO,
SOLEDAD TAIÑO, JOVENCIO TAIÑO, SAMSON TAIÑO, NOE TAIÑO,
SOCORRO TAIÑO AND CLEOFAS TAIÑO, PETITIONERS, VS.
INTERMEDIATE APPELL...**

G.R. No. 72694. December 01, 1987

Ponente: PARAS, J.

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PARAS, J.:

THIS IS A PETITION FOR REVIEW ON CERTIORARI BY WAY OF APPEAL FROM: (A) THE DECISION OF RESPONDENT COURT OF APPEALS (INTERMEDIATE APPELLATE COURT)* PROMULGATED ON MAY 17, 1985 IN AC-G. R. CV NO. 70460, ENTITLED "ALEJANDRA PANSACOLA, ET AL. VS. DOMEN VILLABONA DEL BANCO, ET AL." WHICH REVERSED AND SET ASIDE THE JUDGMENT** OF THE TRIAL COURT; AND (B) ITS RESOLUTION OF OCTOBER 15, 1985 IN THE SAME CASE, DENYING PETITIONERS' MOTION FOR RECONSIDERATION OF THE AFOREMENTIONED DECISION AND THEIR SUPPLEMENT TO MOTION FOR RECONSIDERATION.

THE DISPOSITIVE PORTION OF THE QUESTIONED DECISION (ROLLO, P. 97) READS, AS FOLLOWS:

"ACCORDINGLY, THE DECISION APPEALED FROM IS HEREBY SET ASIDE INsofar AS IT DISMISSES THE COMPLAINT, AND ANOTHER ONE ENTERED -

(1) DECLARING PLAINTIFFS-APPELLANTS AND DEFENDANTS-APPELLEES, IN THEIR RESPECTIVE CAPACITIES AS DESCRIBED IN PAR. V OF THE COMPLAINT, AS CO-OWNERS OF THE PROPERTY IN DISPUTE, BUT SUBJECT TO THE FOUR-PART PRO-INDIVISO DIVISION ALREADY MADE BY SAID PROPERTY;

(2) ORDERING THE CANCELLATION OF ALL CERTIFICATES OF TITLE THAT MAY HAVE BEEN ISSUED TO ANY OF THE PARTIES HERETO; AND

(3) ORDERING THE COMPLETE AND FINAL PARTITION OF THE SUBJECT PROPERTY IN CONFORMITY WITH LAW.

FOR THIS PURPOSE, THIS CASE IS HEREBY REMANDED TO THE COURT OF ORIGIN SO THAT A FINAL PARTITION SHALL BE MADE IN ACCORDANCE WITH SECTIONS 2, 3, ET. SEQ., RULE 69 OF THE RULES OF COURT.

LET A COPY OF THIS DECISION BE FURNISHED TO THE REGISTER OF DEEDS FOR THE PROVINCE OF QUEZON."

THE FACTS OF THE CASE ARE TAKEN FROM THE DECISION OF THE APPELLATE COURT (ROLLO, P. 39) AS FOLLOWS:

IN A DOCUMENT EXECUTED IN THE MUNICIPALITY OF SAN RAFAEL, BULACAN, ON FEBRUARY

11, 1859, THREE BROTHERS, BENEDICTO PANSACOLA, JOSE PANSACOLA AND MANUEL PANSACOLA (KNOWN AS FR. MANUEL PEÑA) ENTERED INTO AN AGREEMENT WHICH PROVIDED, AMONG OTHERS:

(1) THAT THEY WILL PURCHASE FROM THE SPANISH GOVERNMENT THE LANDS COMPRISING THE ISLAND OF CAGBALITE WHICH IS LOCATED WITHIN THE BOUNDARIES OF THE MUNICIPALITY OF MAUBAN, PROVINCE OF TAYABAS (NOW QUEZON) AND HAS AN APPROXIMATE AREA OF 1,600 HECTARES;

(2) THAT THE LANDS SHALL BE CONSIDERED AFTER THE PURCHASE AS THEIR COMMON PROPERTY;

(3) THAT THE CO-OWNERSHIP INCLUDES DOMINGO ARCE AND BALDOMERO ANGULO, MINORS AT THAT TIME REPRESENTED BY THEIR FATHER, MANUEL PANSACOLA (FR. MANUEL PEÑA) WHO WILL CONTRIBUTE FOR THEM IN THE PROPOSED PURCHASE OF THE CAGBALITE ISLAND;

(4) THAT WHATEVER BENEFITS MAY BE DERIVED FROM THE ISLAND SHALL BE SHARED EQUALLY BY THE CO-OWNERS IN THE FOLLOWING PROPORTION: BENEDICTO PANSACOLA - 1/4 SHARE; JOSE PANSACOLA - 1/4 SHARE; AND, DOMINGO ARCE AND BALDOMERA ANGULO - 2/4 SHARES WHICH SHALL BE PLACED UNDER THE CARE OF THEIR FATHER, MANUEL PANSACOLA (FR. MANUEL PEÑA).

ON AUGUST 14, 1866, CO-OWNERS ENTERED INTO THE ACTUAL POSSESSION AND ENJOYMENT OF THE ISLAND PURCHASED BY THEM FROM THE SPANISH GOVERNMENT. ON APRIL 11, 1868 THEY AGREED TO MODIFY THE TERMS AND CONDITIONS OF THE AGREEMENT ENTERED INTO BY THEM ON FEBRUARY 11, 1859. THE NEW AGREEMENT PROVIDED FOR A NEW SHARING AND DISTRIBUTION OF THE LANDS, COMPRISING THE ISLAND OF CAGBALITE AND WHATEVER BENEFITS MAY BE DERIVED THEREFROM, AS FOLLOWS:

"(A) THE FIRST ONE-FOURTH (1/4) PORTION SHALL BELONG TO DON BENEDICTO PANSACOLA;

(B) THE SECOND ONE-FOURTH (1/4) PORTION SHALL BELONG TO DON JOSE PANSACOLA;

(C) THE THIRD ONE-FOURTH (1/4) PORTION SHALL HENCEFORTH BELONG TO THE CHILDREN OF THEIR DECEASED BROTHER, DON EUSTAQUIO PANSACOLA, NAMELY: DON MARIANO PANSACOLA; MARIA PANSACOLA AND DON HIPOLITO PANSACOLA;

(D) THE FOURTH AND LAST ONE-FOURTH (1/4) PORTION SHALL BELONG TO THEIR NEPHEWS AND NIECES (1) DOMINGO ARCE, (2) BALDOMERA ANGULO, (3) MARCELINA FLORES, (4) FRANCISCA FLORES (5) CANDELARIA DELA CRUZ, AND (6) GERVASIO PANSACOLA WHO, BEING ALL MINORS, ARE STILL UNDER THE CARE OF THEIR BROTHER, MANUEL PANSACOLA (FR. MANUEL PEÑA). THE LATTER IS THE REAL FATHER OF SAID MINORS."

ABOUT ONE HUNDRED YEARS LATER, ON NOVEMBER 18, 1968, PRIVATE RESPONDENTS BROUGHT A SPECIAL ACTION FOR PETITION IN THE COURT OF FIRST INSTANCE OF QUEZON, UNDER THE PROVISIONS OF RULE 69 OF THE RULES OF COURT, INCLUDING AS PARTIES THE HEIRS AND SUCCESSORS-IN-INTEREST OF THE CO-OWNERS OF THE CAGBALITE ISLAND IN THE SECOND CONTRACT OF CO-OWNERSHIP DATED APRIL 11, 1968. IN THEIR ANSWER SOME OF THE DEFENDANTS, PETITIONERS HEREIN, INTERPOSED SUCH DEFENSES AS PRESCRIPTION, RES JUDICATA, EXCLUSIVE OWNERSHIP, ESTOPPEL AND LACHES.

AFTER TRIAL ON THE MERITS, THE TRIAL COURT RENDERED A DECISION* DATED NOVEMBER

6, 1981 DISMISSING THE COMPLAINT, THE DISPOSITIVE PORTION OF WHICH READS AS FOLLOWS:

"WHEREFORE, AND IN THE LIGHT OF ALL THE FOREGOING THIS COURT FINDS AND SO HOLDS THAT THE CAGBALITE ISLAND HAS ALREADY BEEN PARTITIONED INTO FOUR (4) PARTS AMONG THE ORIGINAL CO-OWNERS OR THEIR SUCCESSORS-IN-INTEREST.

JUDGMENT IS THEREFORE RENDERED FOR THE DEFENDANTS AGAINST THE PLAINTIFFS DISMISSING THE COMPLAINT IN THE ABOVE ENTITLED CASE.

CONSIDERING THAT THE CROSS CLAIMS FILED IN THE ABOVE ENTITLED CIVIL CASE ARE NOT COMPULSORY CROSS CLAIMS AND IN ORDER THAT THEY MAY BE LITIGATED INDIVIDUALLY THE SAME ARE HEREBY DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED."

THE MOTION FOR RECONSIDERATION FILED BY THE PLAINTIFFS, PRIVATE RESPONDENTS HEREIN, WAS DENIED BY THE TRIAL COURT IN AN ORDER DATED FEBRUARY 25, 1982 (RECORD ON APPEAL, P. 241).

ON APPEAL, RESPONDENT COURT REVERSED AND SET ASIDE THE DECISION OF THE LOWER COURT (ROLLO, P. 117). IT ALSO DENIED THE MOTION FOR RECONSIDERATION AND THE SUPPLEMENT TO MOTION FOR RECONSIDERATION FILED BY PRIVATE RESPONDENTS, IN ITS RESOLUTION DATED OCTOBER 15, 1983 (ROLLO, P. 86).

INSTANT PETITION WAS FILED WITH THE COURT ON DECEMBER 5, 1985 (ROLLO, P. 12). PETITIONERS JOSEFINA PANSACOLA, ET AL. HAVING FILED A SEPARATE PETITION (G.R. No. 72620) ON THE SAME SUBJECT MATTER AND ISSUES RAISED IN THE INSTANT PETITION, THE COUNSEL FOR PRIVATE RESPONDENTS FILED A CONSOLIDATED COMMENT ON THE SEPARATE PETITIONS FOR REVIEW ON FEBRUARY 24, 1986 WITH THE FIRST DIVISION OF THE COURT (ROLLO, P. 119). IT APPEARS THAT COUNSEL FOR PETITIONERS ALSO FILED A CONSOLIDATED REPLY TO THE CONSOLIDATED COMMENT OF PRIVATE RESPONDENTS AS REQUIRED BY THE SECOND DIVISION OF THE COURT (ROLLO, P. 151). HOWEVER, PETITIONERS FILED A SEPARATE REPLY IN THE INSTANT CASE ON FEBRUARY 18, 1987 (ROLLO, P. 168) AS REQUIRED BY THE COURT IN A RESOLUTION OF THE SECOND DIVISION DATED NOVEMBER 24, 1986 (ROLLO, P. 160).

ON MAY 19, 1987, PRIVATE RESPONDENTS IN THE INSTANT PETITION FILED A MANIFESTATION PRAYING FOR THE DENIAL OF THE INSTANT PETITION IN THE SAME MANNER THAT G.R. No. 72620 WAS DENIED BY THE COURT IN ITS RESOLUTION DATED JULY 23, 1986 (ROLLO, P. 151). THEIR REJOINDER TO THE REPLY OF PETITIONERS WAS FILED ON MAY 25, 1987 (ROLLO, P. 179).

ON JUNE 8, 1987, THE COURT RESOLVED TO GIVE DUE COURSE TO THE PETITION (ROLLO, P. 192). THE MEMORANDUM OF PRIVATE RESPONDENTS WAS MAILED ON JULY 18, 1987 AND RECEIVED IN THE COURT ON JULY 29, 1987 (ROLLO, P. 112); THE MEMORANDUM FOR PETITIONERS WAS MAILED ON AUGUST 18, 1987 AND RECEIVED IN THE COURT ON SEPTEMBER 7, 1987 (ROLLO, P. 177).

THE SOLE ISSUE TO BE RESOLVED BY THE COURT IS THE QUESTION OF WHETHER OR NOT CAGBALITE ISLAND IS STILL UNDIVIDED PROPERTY OWNED IN COMMON BY THE HEIRS AND SUCCESSORS-IN-INTEREST OF THE BROTHERS, BENEDICTO, JOSE AND MANUEL PANSACOLA.

THE PANSACOLA BROTHERS PURCHASED THE ISLAND IN 1859 AS COMMON PROPERTY AND AGREED ON HOW THEY WOULD SHARE IN THE BENEFITS TO BE DERIVED FROM THE ISLAND. ON APRIL 11, 1868, THEY MODIFIED THE TERMS AND CONDITIONS OF THE AGREEMENT SO AS TO INCLUDE IN THE CO-OWNERSHIP OF THE ISLAND THE CHILDREN OF THEIR DECEASED BROTHERS EUSTAQUIO AND THE OTHER CHILDREN OF MANUEL PANSACOLA (FR. MANUEL PEÑA) WHO WERE COMMITTED IN THE AGREEMENT OF FEBRUARY 11, 1859. THE NEW AGREEMENT PROVIDED FOR A NEW SHARING PROPORTION AND DISTRIBUTION OF THE ISLAND AMONG THE CO-OWNERS.

ON JANUARY 20, 1907, THE REPRESENTATIVE OF THE HEIRS OF ALL THE ORIGINAL OWNERS OF CAGBALITE ISLAND ENTERED INTO AN AGREEMENT TO PARTITION THE ISLAND, SUPPLEMENTED BY ANOTHER AGREEMENT DATED APRIL 18, 1908. THE CONTRACT DATED JANUARY 20, 1907 PROVIDES AS FOLLOWS:

"SA MAUBAN, TAYABAS, IKA 20 NG ENERO NG 1907 CAMING MGA QUINATAWAN NG MGA IBANG COHEREDEROS NA HINDI CAHARAP, SA PULONG NA ITO, SA NASA NAMING LAHAT NA MAGCAROON NA NG CATAHIMICAN ANG AMING-AMING CABAHAAGUI SA PULONG KAGBALETE, SUMACATUID UPANG MAPAGTOOS ANG HANGAHAN NG APAT NA SAPUL NA PAGCACAHAAGUI NITONG MANANG ITO, PAGCACAUSAP NA NAMING LAHAT AT MAIHANAY AT MAPAGTALONAN ANG SAYSAY NG ISAT-ISA, AY CUSA NAMING PINAGCASUNDUAN AT PINASIYA ANG NANGASOSONOD: -

UNA: ANG MALAQUING CALUPAAN, ALIS ANG LAHAT NA PACATAN AY BABAHAGUIN ALINSUNOD SA PAGCABAKI NA GUINAWA SA CROQUIS NA NIYARI NG PRACTICO AGRIMENSOR DON JOSE GARCIA.

ICALAWA: ANG LOMINGOY, DOON ANG TUID NA GUHIT SA ILONG NG PAIT, AY PAGAAPATIN DING SINLAQUI AYON SA DATING PAGKAKABAKI.

ICATLO: CUNG MAGAWA NA ANG TUNAY NA PLANO AT ICAPIT NA SA LUPA, PAGLALAGAY NG NADARAPAT NA MOJON, ANG MASACUPAN NG GUHIT, SUMACATUID ANG CAINGIN AT PANANIM NG ISA NA NASACUPAN NG PUCTO NA NOOCOL SA IBA, AY MAPAPASULIT SA DAPAT MAGARI, NA PAGBABAYARAN NITO ANG NAGTANIM SA HALAGANG: - BAWAT CAPONONG NIOG NA NABUNGA, P1.00 'UN PESO); CUNG ANG BIAS AY ABOT SA ISANG VARA, P0.50; CUNG BAGONG TANIM O LOCLOC, P0.50 ANG CAPONO.

ICAPAT: ANG LAHAT NA PACATAN AY BACOD NA PAGAAPATIN AT BAWAT BAHAGUI AY NOOCOL SA ISAT-ISA SA APAT NA SANGA NG PAGANACANG NAGMANA.

ICALIMA: UPANG ANG NAIPATANIM NG BAWAT ISA AY MATAMA SA CANYA NG MAILAGAN ANG HIRAP NG LOOB NG NAGATIKHA; AY PAGTOTOLONG-TOLONAN NG LAHAT NAIBA NA MAHUSAY ANG DALAWANG PARTES NA MAGCALAPIT NA MAPA AYONG TUMAMA, HANGANG MAY PAGLULUARAN, SA NAGSIKAP AT MAOYANAM, MAIDACO SA LUGAR NA WALANG CAILANGANG PAG-USAPAN.

ICANIM: ANG CASULATANG ITO, CUNG MAPERMAHAN NA NA MAGCACAHAARAP SAMPONG NG MGA IBANG COHEREDEROS NA NOTIPICAHAN NITONG LAHAT NA PINAGCASUNDOAN AY MAHAHABILIN SA CAMAY NG AGRIMENSOR, AMADEO PANSACOLA, UPANG CANYANG MAPANUSUGAN ANG MAIPAGANAP ANG DITTOY NAOOTOS.

NA SA CATUNAYAN AT CATIBAYAN NG LAHAT NA NALALAGDA DITO, SA PAG GALANG AT PAG GANAP DITO SA PAINGACAISAHAN, AY PUMERMA SAMPO NG MGA SACSING CAHARAP

AT CATANTO NGAYONG FECHA AYON SA ITAAS."

THE CONTRACT DATED APRIL 18, 1908 PROVIDES AS FOLLOWS:

"SA MAUBAN, IKA 18 NG ABRIL NG 1908, SA PAGCACATIPON NG LAHAT NA FIRMANTES NITO AY PINAGCAISAHAN ITONG NANGASOSONOD: -

UNA - PINAGTITIBAY ANG MGA PINAGCASUNDOAN SA ITAAS NOONG 20 NG ENERO NG 1907, LIBAN NA LAMANG SA MGA PANGCAT NA UNA AT ICAPAT AT TONGCOL DOON PINASIYA NAMING BAHAGUININ NG HALOHALO AT PAPAREJO ANG CALUPAAN AT PACATAN.

YCALAWA - SA PAGESUCAT NG AGRIMENSOR NA SI AMADEO AT PAGGAWA NG PLANO AT DESCRIPCION AY PAGBABAYARAN SIYA NG SA BAWAT ISA NAOOCOL SA HALAGANG ISANG PISO SA BAWAT HECTAREA.

ICATLO - ANG CAUNTING PUCTO SA 'MAYANIBULONG' NA MAYCAINGIN NI G. ISIDRO ALTAMARINO, ASAWA NI RESTITUTA AY TUTUMBASAN NAMAN CAY G. NORBERTO PANSACOLA SA LUGAR NG DAPO CALAPIT NG PINANGALO NG GASING SUCAT.

ICAPAT - SA INILAHAD NA PLANO AY PINASIYA NANG ITOLOY AT UPANG MACA PAGPAREHISTRO ANG ISAT ISA AY PINAGCAISAHANG MAGCACAGASTOS NA PAREPAREHO PARA SA TABLANG PANGMOHON AT IBAT IBA PANG CAGASTUSAN.

SA CATUNAYAN AT CATIBAYAN AY CAMI, PUMIRMA." (RECORD ON APPEAL, P. 224)

THERE IS NOTHING IN ALL FOUR AGREEMENTS THAT SUGGESTS THAT ACTUAL OR PHYSICAL PARTITION OF THE ISLAND HAD REALLY BEEN MADE BY EITHER THE ORIGINAL OWNERS OR THEIR HEIRS OR SUCCESSORS-IN-INTEREST. THE AGREEMENT ENTERED INTO IN 1859 SIMPLY PROVIDES FOR THE SHARING OF WHATEVER BENEFITS CAN BE DERIVED FROM THE ISLAND. THE AGREEMENT, IN FACT, STATES THAT THE ISLAND TO BE PURCHASED SHALL BE CONSIDERED AS THEIR COMMON PROPERTY. IN THE SECOND AGREEMENT ENTERED IN 1868 THE CO-OWNERS AGREED NOT ONLY ON THE SHARING PROPORTION OF THE BENEFITS DERIVED FROM THE ISLAND BUT ALSO ON THE DISTRIBUTION OF THE ISLAND - EACH OF THE BROTHERS WAS ALLOCATED A 1/4 PORTION OF THE ISLAND WITH THE CHILDREN OF THE DECEASED BROTHER, EUSTAQUIO PANSACOLA ALLOCATED A 1/4 PORTION AND THE CHILDREN OF MANUEL PANSACOLA (FR. MANUEL PEÑA) ALSO ALLOCATED A 1/4 PORTION OF THE ISLAND. WITH THE DISTRIBUTION AGREED UPON EACH OF THE CO-OWNER IS A CO-OWNER OF THE WHOLE, AND IN THIS SENSE, OVER THE WHOLE HE EXERCISES THE RIGHT OF DOMINION, BUT HE IS AT THE SAME TIME THE SOLE OWNER OF A PORTION, IN THE INSTANT CASE, A 1/4 PORTION (FOR EACH GROUP OF CO-OWNERS) OF THE ISLAND WHICH IS TRULY ABSTRACT, BECAUSE UNTIL PHYSICAL DIVISION IS EFFECTED SUCH PORTION IS MERELY AN IDEAL SHARE, NOT CONCRETELY DETERMINED (3 MANRESA, CODIGO CIVIL, 3RD ED., PAGE 486, CITED IN LOPEZ VS. CUAYCONG, 74 PHIL. 601; DE LA CRUZ VS. CRUZ, 32 SCRA 307 [1970]; FELICES VS. COLEGADO, 35 SCRA 173 [1970]; DULTRA VS. CFI, 70 SCRA 465 [1976]; GATCHALIAN VS. ARLEGUI, 75 SCRA 234 [1977]).

IN THE AGREEMENT OF JANUARY 20, 1907, THE HEIRS THAT WERE REPRESENTED AGREED ON HOW THE ISLAND WAS TO BE PARTITIONED. THE AGREEMENT OF APRIL 18, 1908 WHICH SUPPLEMENTS THAT OF JANUARY 20, 1907 REVEALS THAT AS OF THE SIGNING OF THE 1908 AGREEMENT NO ACTUAL PARTITION OF THE ISLAND HAD AS YET BEEN DONE. THE SECOND AND FOURTH PARAGRAPHS OF THE AGREEMENT SPEAKS OF A SURVEY YET TO BE

CONDUCTED BY A CERTAIN AMADEO AND A PLAN AND DESCRIPTION YET TO BE MADE. VIRGILIO PANSACOLA, A SON OF THE SURVEYOR NAMED AMADEO WHO IS REFERRED TO IN THE CONTRACT DATED APRIL 18, 1908 AS THE SURVEYOR TO WHOM THE TASK OF SURVEYING CAGBALITE ISLAND PURSUANT TO SAID AGREEMENT WAS ENTRUSTED, HOWEVER, TESTIFIED THAT SAID CONTRACTS WERE NEVER IMPLEMENTED BECAUSE NOBODY DEFRAIDED THE EXPENSES FOR SURVEYING THE SAME (RECORD ON APPEAL, P. 225).

PETITIONERS INVOKE RES JUDICATA TO BAR THIS ACTION FOR PARTITION IN VIEW OF THE DECISION OF THE COURT IN G.R. No. 21033, "DOMINGO ARCE VS. MARIA VILLABONA, ET AL.," 21034, "DOMINGO ARCE VS. FRANCISCO PANSACOLA, ET AL.," AND 21035, "DOMINGO ARCE VS. EMILIANO PANSACOLA, ET AL." PROMULGATED ON FEBRUARY 20, 1958 (ROLLO, P. 141 AND BRIEF FOR DEFENDANTS-APPELLEES, P. 87 APPENDIX I), WHEREIN THE COURT SAID:

"CONSIDERING THE FACTS THAT HE WAITED FOR A PERIOD OF NEARLY 23 YEARS AFTER THE RETURN FROM HIS DEPORTATION BEFORE TAKING ANY POSITIVE ACTION TO RECOVER HIS PRETENDED RIGHT IN THE PROPERTY IN QUESTION, GIVES GREAT CREDIT, IN OUR OPINION, TO THE DECLARATION OF THE WITNESSES FOR THE DEFENSE (A) THAT THE ORIGINAL PARCEL OF LAND WAS PARTITIONED AS THEY CLAIM, AND (B) THAT THE PLAINTIFF HAD DISPOSED OF ALL THE RIGHT AND INTEREST WHICH HE HAD IN THE PORTION WHICH HAD BEEN GIVEN TO HIM."

THE ISSUE IN THE AFOREMENTIONED CASE WHICH WERE TRIED TOGETHER IS NOT WHETHER THERE HAS ALREADY BEEN A PARTITION OF THE CAGBALITE ISLAND. THE ACTIONS WERE BROUGHT BY THE PLAINTIFF TO RECOVER POSSESSION OF THREE DISTINCT PARCELS OF LAND, TOGETHER WITH DAMAGES. IN FACT THE WORD "PARTITION" WAS USED IN THE METAPHYSICAL OR IDEAL SENSE (NOT IN ITS PHYSICAL SENSE).

COMMENTING ON THE ABOVE RULING OF THE COURT IN CONNECTION WITH THE INSTANT CASE, THE RESPONDENT COURT SAID:

"CONCEDEDLY, THE SUPREME COURT DECISION IN G.R. Nos. 21033-35 (EXB. X) DID USE OR EMPLOY THE WORD 'PARTITION.' A CAREFUL READING OF THE SAID DECISION WILL, HOWEVER, REVEAL, AND WE SO HOLD, THAT THE EMPLOYMENT OR USE OF THE WORD 'PARTITION' THEREIN WAS MADE NOT IN ITS TECHNICAL AND LEGAL MEANING OR SENSE ADVERTED TO ABOVE, BUT, RATHER IN ITS IDEAL, ABSTRACT AND SPIRITUAL SENSE. THIS IS (AT) ONCE EVIDENT FROM THE BARE STATEMENT IN SAID DECISION TO THE EFFECT THAT THE PROPERTY WAS DIVIDED INTO FOUR PARTS, WITHOUT ANY REFERENCE TO THE SPECIFIC PARTS OF THE PROPERTY THAT MAY HAVE BEEN ADJUDICATED TO EACH OWNER. THERE BEING NO SUCH REFERENCE IN THE DECISION AND IN THE JUDGMENT AFFIRMED THEREIN TO THE ADJUDICATION OF SPECIFIC AND DEFINITE PORTIONS OF THE PROPERTY TO EACH CO-OWNER, THERE IS A CLEAR AND LOGICAL INFERENCE THAT THERE WAS INDEED NO ADJUDICATION OF SPECIFIC AND DEFINITE PORTIONS OF THE PROPERTY MADE TO EACH CO-OWNER."

IT MUST BE ADMITTED THAT THE WORD "PARTITION" IS NOT INFREQUENTLY USED BOTH IN POPULAR AND TECHNICAL PARLANCE (FULE VS. FULE, 52 PHIL. 750 (1929)). FOR PURPOSES OF THE AFOREMENTIONED CASE, EVIDENTLY THE COURT USED THE WORD "PARTITION" TO REFER TO THE DISTRIBUTION OF THE CAGBALITE ISLAND AGREED UPON BY THE ORIGINAL OWNERS AND IN THE LATER AGREEMENTS, BY THE HEIRS AND THEIR SUBSEQUENT SUCCESSORS-IN-INTEREST THERE NEED NOT BE A PHYSICAL PARTITION; A DISTRIBUTION OF

THE ISLAND EVEN IN A STATE OF INDIVISO OR WAS SUFFICIENT IN ORDER THAT A CO-OWNER MAY VALIDLY SELL HIS PORTION OF THE CO-OWNED PROPERTY. THE SALE OF PART OF A PARTICULAR LOT THUS CO-OWNED BY ONE CO-OWNER WAS WITHIN HIS RIGHT PRO-INDIVISO IS VALID IN ITS ENTIRETY (PAMPLONA VS. MORETO, 96 SCRA 775 [1980]) BUT HE MAY NOT CONVEY A PHYSICAL PORTION WITH BOUNDARIES OF THE LAND OWNED IN COMMON (MERCADO VS. LIWANAG, 5 SCRA 472 [1962]). DEFINITELY, THERE WAS NO PHYSICAL PARTITION OF THE ISLAND IN 1859. NEITHER COULD THERE HAVE BEEN ONE IN 1894 BECAUSE THE MANNER OF SUBDIVIDING THE ISLAND WAS ONLY PROVIDED FOR IN THE LATER AGREEMENTS ENTERED INTO BY THE HEIRS IN 1907 AND 1908. THERE WAS A DISTRIBUTION OF THE ISLAND IN 1868 AS AGREED UPON BY THE ORIGINAL CO-OWNERS IN THEIR AGREEMENT OF APRIL 11, 1868. ANY AGREEMENT ENTERED INTO BY THE PARTIES IN 1894 COULD BE NO MORE THAN ANOTHER AGREEMENT AS TO THE DISTRIBUTION OF THE ISLAND AMONG THE HEIRS OF THE ORIGINAL CO-OWNERS AND THE PREPARATION OF A TENTATIVE PLAN BY A PRACTICAL SURVEYOR, A MR. JOSE GARCIA, MENTIONED IN THE FIRST PARAGRAPH OF THE 1907 AGREEMENT, PREPARATORY TO THE PREPARATION OF THE REAL PLAN TO BE PREPARED BY THE SURVEYOR AMADEO, MENTIONED IN THE AGREEMENT OF APRIL 18, 1908.

WHAT IS IMPORTANT IN THE COURT'S RULING IN THE THREE AFOREMENTIONED CASES IS THAT, THE FACT THAT THERE WAS A DISTRIBUTION OF THE ISLAND AMONG THE CO-OWNERS MADE THE SALE OF DOMINGO ARCE OF THE PORTION ALLOCATED TO HIM THOUGH PRO-INDIVISO, VALID. HE THUS DISPOSED OF ALL HIS RIGHTS AND INTERESTS IN THE PORTION GIVEN TO HIM.

IT IS NOT DISPUTED THAT SOME OF THE PRIVATE RESPONDENTS AND SOME OF THE PETITIONERS AT THE TIME THE ACTION FOR PARTITION WAS FILED IN THE TRIAL COURT HAVE BEEN IN ACTUAL POSSESSION AND ENJOYMENT OF SEVERAL PORTIONS OF THE PROPERTY IN QUESTION (ROLLO, P. 148). THIS DOES NOT PROVIDE ANY PROOF THAT THE ISLAND IN QUESTION HAS ALREADY BEEN ACTUALLY PARTITIONED AND CO-OWNERSHIP TERMINATED. A CO-OWNER CANNOT, WITHOUT THE CONFORMITY OF THE OTHER CO-OWNERS OR A JUDICIAL DECREE OF PARTITION ISSUED PURSUANT TO THE PROVISION OF RULE 69 OF THE RULES OF COURT (RULE 71 OF THE OLD RULES), ADJUDICATE TO HIMSELF IN FEE SIMPLE A DETERMINATE PORTION OF THE LOT OWNED IN COMMON, AS HIS SHARE THEREIN, TO THE EXCLUSION OF OTHER CO-OWNERS (SANTOS JR. VS. BUENCONSEJO, 14 SCRA 407 [1965]; CARVAJAL VS. COURT OF APPEALS, 112 SCRA 237 [1982]). IT IS A BASIC PRINCIPLE IN THE LAW OF CO-OWNERSHIP BOTH UNDER THE PRESENT CIVIL CODE AS IN THE CODE OF 1889 THAT NO INDIVIDUAL CO-OWNER CAN CLAIM ANY DEFINITE PORTION THEREOF (DIVERSIFIED CREDIT CORPORATION VS. ROSADA, 26 SCRA 470 [1968]). IT IS THEREFORE OF NO MOMENT THAT SOME OF THE CO-OWNERS HAVE SUCCEEDED IN SECURING CADASTRAL TITLES IN THEIR NAMES TO SOME PORTIONS OF THE ISLAND OCCUPIED BY THEM (ROLLO, P. 10).

IT IS NOT ENOUGH THAT THE CO-OWNERS AGREE TO SUBDIVIDE THE PROPERTY. THEY MUST HAVE A SUBDIVISION PLAN DRAWN IN ACCORDANCE WITH WHICH THEY TAKE ACTUAL AND EXCLUSIVE POSSESSION OF THEIR RESPECTIVE PORTIONS IN THE PLAN AND TITLES ISSUED TO EACH OF THEM ACCORDINGLY (CARO VS. COURT OF APPEALS, 113 SCRA 10 [1982]). THE MECHANICS OF ACTUAL PARTITION SHOULD FOLLOW THE PROCEDURE LAID DOWN IN RULE 69 OF THE RULES OF COURT (MAGALLON VS. MONTEJO, 146 SCRA 282 [1986]).

NEITHER CAN SUCH ACTUAL POSSESSION AND ENJOYMENT OF SOME PORTIONS OF THE ISLAND BY SOME OF THE PETITIONERS HEREIN BE CONSIDERED A REPUDIATION OF THE CO-OWNERSHIP. IT IS UNDISPUTED THAT THE CAGBALITE ISLAND WAS PURCHASED BY THE ORIGINAL CO-OWNERS AS A COMMON PROPERTY AND IT HAS NOT BEEN PROVEN THAT THE ISLAND HAD BEEN PARTITIONED AMONG THEM OR AMONG THEIR HEIRS. WHILE THERE IS CO-OWNERSHIP, A CO-OWNER'S POSSESSION OF HIS SHARE IS CO-POSSESSION WHICH IS LINKED TO THE POSSESSION OF THE OTHER CO-OWNERS (GATCHALIAN VS. ARLEGUI, 75 SCRA 234 [1977]).

FURTHERMORE, NO PRESCRIPTION SHALL RUN IN FAVOR OF A CO-OWNER AGAINST HIS CO-OWNERS OR CO-HEIRS SO LONG AS HE EXPRESSLY OR IMPLIEDLY RECOGNIZES THE CO-OWNERSHIP (VALDEZ VS. OLONGA, 51 SCRA 71 [1973]; TERO VS. TERO, 131 SCRA 100 [1984]). CO-OWNERS CANNOT ACQUIRE BY PRESCRIPTION THE SHARE OF THE OTHER CO-OWNERS, ABSENT A CLEAR REPUDIATION OF THE CO-OWNERSHIP CLEARLY COMMUNICATED TO THE OTHER CO-OWNERS (MARIANO VS. DE VEGA, 148 SCRA 342 [1987]).

AN ACTION FOR PARTITION DOES NOT PRESCRIBE. ARTICLE 403 OF THE OLD CIVIL CODE, NOW ARTICLE 497, PROVIDES THAT THE ASSIGNEES OF THE CO-OWNERS MAY TAKE PART IN THE PARTITION OF THE COMMON PROPERTY, AND ARTICLE 400 OF THE OLD CODE, NOW ARTICLE 494 PROVIDES THAT EACH CO-OWNER MAY DEMAND AT ANY TIME THE PARTITION OF THE COMMON PROPERTY, A PROVISION WHICH IMPLIES THAT THE ACTION TO DEMAND PARTITION IS IMPRESCRIPTIBLE OR CANNOT BE BARRED BY LACHES (BUDLONG VS. PONDOC, 79 SCRA 24 [1977]). AN ACTION FOR PARTITION DOES NOT LIE EXCEPT WHEN THE CO-OWNERSHIP IS PROPERLY REPUDIATED BY THE CO-OWNER (JARDIN VS. HOLLASCO, 117 SCRA 532 [1982]).

ON JULY 23, 1986, THE COURT THROUGH ITS SECOND DIVISION DENIED THE PETITION FOR THE REVIEW OF G.R. No. 72620, THE PETITION FOR REVIEW ON CERTIORARI SEPARATELY FILED BY JOSEFINA PANSACOLA (ROLLO, P. 151).

PREMISES CONSIDERED, THE INSTANT PETITION IS LIKEWISE DENIED FOR LACK OF MERIT.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Gancayco, JJ., concur.

* PENNED BY ASSOCIATE JUSTICE DESIDERIO P. JURADO, CONCURRED IN BY JUSTICES CRISOLITO PASCUAL, JOSE C. CAMPOS, JR. AND MA. ROSARIO QUETULIO-LOSA.

**** PENNED BY JUDGE FERNANDO A. SANTIAGO.**

*** RENDERED BY JUDGE FERNANDO A. SANTIAGO.**

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