

**LORENZO BERICO AND VISITACION SANCHEZ, PETITIONERS, VS.
THE HONORABLE COURT OF APPEALS (FORMER NINTH DIVISION),
CIRIACO FLORES AND FELISA BAREJA, RESPONDENTS.**

G.R. No. 96306. August 20, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In the double sale of an immovable property under Article 1544 of the Civil Code, does prescription bar an action by the first vendees, who are in possession of the said property, against the second vendee for the annulment of a transfer certificate of title over the property procured by the latter who has knowledge of the first sale and who recognizes the first vendees' possession?

This is the core issue in the instant case.

Both the trial court and the public respondent resolved the issue in favor of the first vendees -- the herein private respondents.

From the pleadings of the parties and the decisions of the trial court and public respondent, the following uncontroverted facts have been established.

A certain Jose de los Santos owned a 98,254 square-meter parcel of land designated as Lot No. 785, PLs-32 located at Balo--Andang, San Ramon, San Pascual (now Claveria), Masbate; the property is specifically described in Original Certificate of Title (OCT) No. P-671 issued on 31 May 1956. On 31 October 1961, Jose sold, in a private document (Exhibit "C"), a 2¼ hectare portion thereof to the private respondents. On 26 November 1963, however, he executed another deed of sale which he acknowledged before a notary public (Exhibit "B"). Private respondents took possession of the portion sold to them immediately after the 1961 sale and declared the same for taxation purposes in the name of private respondent Ciriaco Flores (Exhibit "D"); private respondents likewise paid the taxes thereon (Exhibits "E" to "E--20," inclusive).

On 3 January 1963, Jose de los Santos sold one-half of Lot No. 785 to petitioner Lorenzo Berico (Exhibit "1"). Thereafter, or on 30 March 1963, Jose's minor children sold to the same petitioner the remaining half (Exhibit "1-A"). Jose de los Santos represented his children in this transaction.

Petitioner Berico was aware of the 1961 sale of a portion of the lot to the private respondents and of the latter's possession thereof. On this point, the trial court made the following factual findings which the public respondent adopted:

"When Berico bought the land from Jose delos Santos covered by Original Certificate of Title No. P-671 in two (2) separate instruments on January 3, 1963 and March 30, 1963, he had prior knowledge that a portion thereof had been sold to plaintiffs Ciriaco Flores and Felisa Bareja in 1961. Such knowledge was established by the fact that when Lorenzo Berico went to the disputed land in 1963, plaintiff confronted him concerning the boundaries of the area (t.s.n., p. 41, March 1, 1988), and in fact, pointed to him the boundary of the

property he bought from Jose delos Santos in the presence of his wife and the former owner, Jose delos Santos. They even traced out the boundary through a tie line. In fact, Flores planted coconut trees along the boundary of his property and Berico also planted coconut trees along the boundary of his property. (t.s.n., p. 41, March 1, 1988) These facts were not denied by Berico. Thus, Lorenzo Berico was aware that the area plaintiffs bought from Jose delos Santos was within, or part of, the whole area covered by Original Certificate of Title No. P-671.

At the time of the confrontation concerning the boundaries of the properties of plaintiffs and defendants, Flores had already constructed a house occupied by one of his tenants. (t.s.n., p. 41, March 1, 1988) He possessed his property since 1961. He planted around 400 coconut trees.

Berico had knowledge of the plaintiffs' possession and occupation of their disputed property when he caused the cancellation of Original Certificate of Title No. P-671 and secured in lieu thereof, Transfer Certificate of Title No. T-1346 on June 5, 1968 and when, on the same date, he registered the deeds of sale with the Register of Deeds conveying to him the entire property. These facts undoubtedly show Lorenzo Berico's evident bad faith."^[1]

Despite such knowledge and recognition of the sale in favor of and the possession of the property by the private respondents, petitioner Berico registered on 5 June 1968 the two deeds of sale in his favor and caused the cancellation of OCT No. P-671; the latter also secured the issuance in his name of Transfer Certificate of Title (TCT) No. T-1346. He paid the appropriate taxes thereon only from 1973 to 1986 (Exhibit "8"). It appears, however, that he declared the property for taxation purposes in his wife's name in 1968 (Exhibit "7").

On the other hand, it was only on 8 November 1978 that the private respondents registered the deed of sale in their favor after discovering the cancellation of OCT No. P-671 and issuance in favor of petitioner Berico of TCT No. T-1346.

On 14 December 1978, private respondents filed against the petitioners a complaint for "Annulment of Title"^[2] with the then Court of First Instance (now Regional Trial Court) of Masbate. Docketed as Civil Case No. 2828, the case was raffled off to Branch 46 thereof. In their complaint, the private respondents prayed, inter alia, that judgment be issued:

"2. Annuling (sic) Transfer Certificate of Title No. T-1346 in the name of defendant Lorenzo Berico insofar as it includes or affects plaintiffs' property described in paragraph 2 above of this complaint;

3. Ordering the defendants to respect and recognize plaintiffs' superior right of and possession of the said property;"^[3]

After trial, the lower court handed down a decision^[4] in favor of the private respondents. Its adjudicatory portion reads as follows:

"WHEREFORE, judgment is hereby rendered annulling Transfer Certificate of Title No. T--1346 in the name of Lorenzo Berico, and ordering the Register of Deeds for the Province of Masbate to cancel said transfer certificate of title and in lieu thereof, issue a new transfer certificate of title in the name of Lorenzo Berico and Vecitacion (sic) Sanchez of San Ramon, Claveria, Masbate to contain an area of 9.8254 hectares less 2.2500 hectares which is described in paragraph 2 of the complaint and hereby adjudged as owned by Ciriaco Flores and Felisa Bareja of Pasig, Claveria, Masbate. Defendants are ordered to pay plaintiffs attorney's fee (sic) of P3,000.00 and litigation expenses of P2,000.00; and pay the costs.

SO ORDERED."^[5]

The verdict is based on the trial court's findings that:

"Lorenzo Berico's act in causing the cancellation of Original Certificate of Title No. P-671 and securing a new Transfer Certificate of Title No. T-1346, knowing that his transfer certificate included a property not his but belonging to plaintiff Flores makes him a holder in bad faith of a certificate and is not to be accorded the protection of the law." [6]

The said court ruled that since the registration by the petitioner of his deed of sale was done in bad faith, the same was ineffective and inoperative by virtue of Article 1544 of the Civil Code. It stressed that the fundamental premise of this codal provision is good faith. [7] Berico's registration did not then confer upon him any right; it was as if there had been no registration at all. Therefore, the private respondents who first took possession of the portion sold to them in good faith, should be preferred. [8] The trial court further expressed the view that since the petitioners knew of the 1961 sale in favor of the private respondents, such knowledge amounted to an "automatic registration" of such sale since actual knowledge is equivalent to registration. [9]

Petitioners appealed the adverse decision to the public respondent and, in their Appellants' Brief, raised two main issues, viz.: (1) whether or not the action of the private respondents is barred by prescription and (b) whether or not the acquisition by the petitioners of Jose de los Santos' land was tainted with bad faith. [10]

Anent the first issue, petitioners insist that an "action founded on fraud prescribed in four (4) years or one based on constructive trust is barred after the lapse of ten (10) years because the issuance of title is constructive notice to the public, including the petitioner [Jaramil vs. Court of Appeals, G.R. No. L-31858, August 31, 1977; Dela Cerna vs. Dela Cerna, G.R. No. 28938 (sic), August 31, 1976; Pons Realty Corp. vs. Court of Appeals, G.R. No. L-48074, December 14, 1978]." They aver that TCT No. T-1346 was issued in petitioner Lorenzo Berico's name on 5 June 1968, and it was only on 14 December 1978 -- or after the lapse of "10 years, 6 months and 9 days" -- that the private respondents filed the complaint for annulment of title. Hence, the same was filed after the expiration of the proper prescriptive period. As to the second issue, petitioners maintain that at the time they purchased the property, the certificate of title "was clean"; it did not show that any portion thereof had been sold to the private respondents. [11]

In its decision promulgated on 31 August 1990, [12] the respondent Court upheld the trial court, but amended the dispositive portion of the appealed decision thus:

"WHEREFORE, the judgment appealed from herein is AMENDED to the effect that instead of annulling Transfer Certificate of Title No. T-1346 in the name of defendant-appellant Lorenzo Berico, said appellant is ordered to execute a deed of reconveyance of 2.25 has. out of the land titled in his name in favor of plaintiffs, which deed of reconveyance shall be annotated in appellants' TCT No. T-1346, until such time as the corresponding partition and subdivision of the land covered by said title is effected between the parties herein.

The rest of the judgment herein appealed from is AFFIRMED, with costs against defendants-appellants." [13]

On the issue of prescription, the respondent Court ruled that the registration of the questioned land's sale in favor of the petitioners and the issuance of the corresponding certificate of title to them were fraudulent and vitiated by bad faith; hence, the same did not operate as constructive notice thereof to the whole world. It added that the four-year prescriptive period for the filing of the private respondents' action against the petitioners must be counted or computed from the former's discovery of the fraud committed against them by the latter which, in this case, was on 8 November 1978 -- the day they came to know for the first time that petitioner Lorenzo Berico had caused the cancellation of OCT No. P-671 and the issuance of TCT No. T-1346. [14] As regards the second issue, the public respondent enumerated the instances which prove the petitioners' knowledge of the prior sale in favor of the private respondents. [15]

Furthermore, the public respondent reiterated the rule that the rights conferred by law upon one of the two

purchasers of the same real property who has registered his title in the registry of deeds, do not come into being if the registration is not made in good faith. "Mere registration of the sale is not enough; good faith must concur with registration, for bad faith renders the registration futile." [16] Their motion to reconsider the said decision having been denied in the public respondent's Resolution of 6 November 1990, [17] the petitioners filed the instant petition.

In the Resolution of 3 June 1991, this Court gave due course to the petition and required the parties to submit their respective memoranda, which the petitioners and private respondents did on 8 August 1991 and 8 October 1991, respectively.

We do not find the action initiated by the private respondents in Civil Case No. 2828 before the trial court as one for the reconveyance of property based on fraud or for the enforcement of an implied or constructive trust as the petitioners strongly suggest.

The action is denominated as one for the annulment of TCT No. T-1346 insofar as the same affects that portion of Lot No. 785 which was sold to the private respondents. Such annulment is premised on the argument that the said portion's inclusion in the title is null and void since the sale thereof by vendor Jose de los Santos to the petitioners clearly fails to meet the requisite in Article 1544 of the Civil Code of prior registration in good faith; it has been proven that the latter knew of the previous sale to, and possession of the said property by, the private respondents.

As already adverted to, the action is governed by Article 1544 of the Civil Code which prescribes the rules in determining the rights of the vendees in the double sale of property. The said provision reads:

"ART. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. (1473)."

It is clear that in the double sale of an immovable, as obtains in this case, the ownership of the property shall belong to the vendee who, in good faith, first recorded the sale in the Registry of Property. The term "good faith" in the second paragraph is not found in the corresponding paragraph of Article 1473 of the old Civil Code from which Article 1544 of the new Civil Code was taken. However, in the 1918 case of *Leung Yee vs. F.L. Strong Machinery Co. and Williamson*, [18] this Court ruled that the force and effect accorded by law to an inscription in a public registry presupposes good faith on the part of the person who enters such inscription. Thus:

"It has been suggested that since the provisions of article 1473 of the Civil Code require 'good faith,' in express terms, in relation to 'possession' and 'title,' but contain no express requirement as to 'good faith' in relation to the 'inscription' of the property in the registry, it must be presumed that good faith is not an essential requisite of registration in order that it may have the effect contemplated in this article. We cannot agree with this contention. It could not have been the intention of the legislator to base the preferential right secured under this article of the code upon an inscription of title in bad faith. Such an interpretation placed upon the language of this section would open wide the door to fraud and collusion. The public records cannot be converted into instruments of fraud and oppression by one who secures an inscription therein in bad faith. The force and effect given by law to an inscription in a public record presupposes the good faith of him who enters such inscription; and rights created by statute, which are predicated upon an inscription in a public registry, do not and cannot accrue under an inscription 'in bad faith,' to the benefit of the person who thus makes the

inscription."

As this Court stated in *Palanca vs. Director of Lands*,^[19] the record to which Article 1473 of the Civil Code refers is that made in good faith, for the law will not protect anything done in bad faith.

It therefore goes without saying that the rights conferred by Article 1473 of the old Civil Code, now Article 1544 of the new Civil Code, "upon one of the two purchasers of the same real property who has registered his title in the registry of deeds, do not come into being if the registration is not made in good faith."^[20] Otherwise stated, in order that a purchaser of realty may merit the protection of the second paragraph of Article 1544, the said purchaser must act in good faith in registering his deed of sale.^[21] Verily, good faith is the fundamental premise of the preferential rights established in the said Article.^[22] Hence, mere registration is not enough; good faith must concur with it.^[23]

Since the petitioners had prior knowledge of the sale of the questioned portion to the private respondents and even recognized and respected the latter's possession thereof, they acted with gross and evident bad faith in registering the deed of sale and in obtaining TCT No. T-1346 in their favor. Thus, the registration of the deed of sale was ineffectual and vested upon them no preferential rights to the property in derogation of the rights of the private respondents. The subsequent issuance of TCT No. T-1346, to the extent that it affects the latter's property, conferred no better right than the registration which was the source of the authority to issue the said title. The spring cannot rise higher than its source. Considering, therefore, that as of that time the private respondents had not as yet registered the sale in their favor, the third paragraph of Article 1544 should then apply. Accordingly, since it has been proven that the private respondents were the anterior possessors in good faith, ownership of the questioned portion vested in them by the sheer force of the said third paragraph. Besides, the private respondents subsequently registered the deed of sale in their favor on 8 November 1978. For all legal intents and purposes, they were the first to register the deed of conveyance. There can be no question that since they were the first vendees, their registration enjoyed the presumption of good faith.

Petitioners cannot seek refuge in the theory of implied or constructive trust and its corresponding rule on prescription. No trust, be it express or implied, is involved in the instant case. It cannot be inferred, as the petitioners suggest, from the fraudulent inclusion of the private respondents' property in TCT No. T-1346. Such a position probably stems from the petitioners' erroneous reading of Article 1456 of the new Civil Code which provides:

"ART. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes."

It is to be emphasized that the private respondents never parted with the ownership and possession of that portion of Lot No. 785 which they had purchased from Jose de los Santos; nor did the petitioners ever enter into possession thereof. As earlier stated, the issuance of TCT No. T-1346 did not operate to vest upon the latter ownership over the private respondents' property. That act has never been recognized as a mode of acquiring ownership. As a matter of fact, even the original registration of immovable property does not vest title thereto; it is merely evidence of such title over a particular property.^[24] The Torrens system of land registration should not be used as a means to perpetrate fraud against the rightful owner of real property. Registration, to be effective, must be made in good faith.^[25]

Since the private respondents did not part with their ownership and possession of that portion of Lot No. 785 which they had purchased from Jose de los Santos in 1961, and since the petitioners had prior knowledge of such acquisition and possession, it cannot be said that the latter "acquired" the same through fraud. The fraud mentioned in Article 1544 is understood to be either actual or constructive fraud. Actual fraud is intentional fraud;

it consists in deception, intentionally practiced to induce another to part with property or to surrender some legal right, and which accomplishes the end designed.[26] Constructive fraud, on the other hand, is a breach of legal or equitable duty which, irrespective of the moral guilt of the fraud feisor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests.[27] The latter usually proceeds from a breach of duty arising out of a fiduciary or confidential relationship.[28] In the instant case, none of the elements of both kinds of fraud exists. Petitioners practiced no deception on the private respondents to induce the latter to part with the ownership or deliver the possession of the property to them. Moreover, no fiduciary relations existed between the two parties.

In a more real sense, and insofar as prescription is concerned, petitioners may only acquire ownership of the questioned property -- assuming that they did not register the deed of sale in their favor -- through extraordinary acquisitive prescription under Article 1137 of the Civil Code, and not by ordinary acquisitive prescription since they cannot claim just title or good faith.

Finally, the complaint for annulment of title filed by the private respondents is substantially one for the quieting of title[29] -- to quiet their title against a cloud cast by the claim of the petitioners. It is settled that an action to quiet title does not prescribe.[30]

WHEREFORE, for lack of merit, the instant petition is DENIED, with costs against the petitioners.

SO ORDERED.

Feliciano, (Chairman), and Bidin, JJ., concur.

Romero, J., see separate concurring opinion.

Melo, J., see dissenting opinion.

[1] Rollo, 23-24.

[2] Annex "C" of Petition; Rollo, 33-40.

[3] Id., 35-36.

[4] Annex "E" of Petition; Id., 41-52. Per Judge Jaime D. Discaya.

[5] Rollo, 52.

[6] Id., 48.

[7] Citing *Bernas vs. Bolo*, 81 Phil. 16 [1948].

[8] Citing *Salvoro vs. Tañega*, 87 SCRA 349 [1978].

[9] Rollo, 50.

[10] Id., 57.

[11] Rollo, 58-60.

[12] Annex "A" of Petition; Id., 18-31. Per Associate Justice Alicia V. Sempio-Diy, concurred in by Associate Justices Fidel P. Purisima and Venancio D. Aldecoa, Jr.

[13] Id., 31.

[14] Citing *Cardente vs. Intermediate Appellate Court*, 155 SCRA 685 [1987]; *Caram vs. Laureta*, 103 SCRA 7

[1981]; *Salvoro vs. Tañega*, supra.

[15] *Rollo*, 26-27.

[16] *Id.*, 28, citing *Bergado vs. Court of Appeals*, 173 SCRA 497 [1989]; *Cardente vs. Intermediate Appellate Court*, supra.

[17] *Id.*, 32.

[18] 37 Phil. 644, 648-649 [1918].

[19] 43 Phil. 149, 154 [1922].

[20] *Arcenas vs. Del Rosario*, 67 Phil. 238, 243 [1939], citations omitted; *Bergado vs. Court of Appeals*, supra.

[21] *Carbonell vs. Court of Appeals*, 69 SCRA 99 [1976].

[22] *Bernas vs. Bolo*, supra.

[23] *Cardente vs. Intermediate Appellate Court*, supra.; *Concepcion vs. Court of Appeals*, 193 SCRA 586 [1991]; *Vda. de Jomoc vs. Court of Appeals*, 200 SCRA 74 [1991].

[24] *Solid State Multi-Products Corp. vs. Court of Appeals*, 196 SCRA 630 [1991], citing *De Guzman vs. Court of Appeals*, 156 SCRA 701 [1987]; *Cruz vs. Cabana*, 129 SCRA 656 [1984].

[25] *Bornales vs. Intermediate Appellate Court*, 166 SCRA 519 [1988], citing *Palanca vs. Director of Lands*, supra.

[26] 37 C.J.S. 210.

[27] 37 C.J.S. 211-212.

[28] *Id.*, 213.

[29] Article 476, Civil Code.

[30] *Caragay-Layno vs. Court of Appeals*, 133 SCRA 718 [1984]; *Coronel vs. Intermediate Appellate Court*, 155 SCRA 270 [1987]; *Solid State Multi-Products Corp. vs. Court of Appeals*, supra.; *Mendoza vs. Navarette*, 214 SCRA 337 [1992].

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DISSENTING OPINION

MELO, J.:

I agree with the conclusion arrived at by the majority of my distinguished colleagues that petitioner is indeed a buyer in bad faith of the realty in dispute and that his registration of the deeds of sale are ineffective as against private respondents. What I consider to be a fallacy of non-sequitur is the proposition expressed in the ponencia to the effect that private respondents' exclusive dominion had been established by sheer force of Article 1544 of the New Civil Code, independently of any court action instituted precisely to settle the matter of who, as between petitioner and private respondents, enjoys a better right over the same parcel of land which had been alienated to

them.

To my mind, only a judicial pronouncement of private respondents' ownership via the complaint for annulment of title initiated below (or any analogous proceeding) can confer the right acknowledged by Article 1544 which could have been realized had prescription not set in. Unfortunately for private respondents, the action they filed in the court of origin was time-barred since it was filed only on December 4, 1978 or more than ten (10) years after the issuance of Transfer Certificate of Title No. 1346 in the name of herein petitioner on June 5, 1966.

In plain and simple terms, more paramount to the question of ownership involving a double sale as resolved by Article 1544 is the query on whether it was still proper for private respondents, or any party for that matter, to maintain a suit for enforcement thereof bearing in mind the substantive rules on prescription of actions. All actions, said Justice Gutierrez in *Tolentino vs. Court of Appeals* (162 SCRA 66 [1988]), have a prescriptive period, unless an exception is provided and are, therefore, susceptible to extinction if not seasonably aired through proper channels within the time-frame fixed by law. In this particular case, I hold the view that private respondents' right of action was extinguished through the inevitable ticking of the clock and for Us to take the cudgels for their indifference by affirming their so-called ownership due to Article 1544 is certainly incongruous, nay, illusory.

I Vote to grant the petition.

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SEPARATE Concurring OPINION

ROMERO, J.:

I am in complete agreement with the majority opinion in holding that Article 1544 of the Civil Code finds application in the present case and on the basis thereof, pronounced that private respondents' right over the disputed property prevailed as against petitioner. Clearly, the facts have woven a clear case of double sales with the provisions of Article 1544 governing squarely and exclusively.

The majority opinion correctly set aside petitioner's theory that a trust relation, more particularly a constructive trust, was established between private respondents and themselves in the absence of the element of fraud as contemplated under Article 1456.

Allow me, however, to add that considering the concept of a constructive trust, the provisions of Article 1456 can hardly come into play in the case at bar. Constructive trust is a remedy in equity introduced by American law, but it traces its roots to the legal system of Greece and Rome which adopted it in an effort to temper the rigorous or overly strict application of statute law or where, in light of the peculiar circumstances of a case, the remedy afforded under positive law may be unwarranted or inadequate. This, in application of the legal maxim "summum jus, summa injuria" or "circumstances alter cases."

Aptly, Aristotle defined "equity," whose etymological origin is the Greek word "epiqueia," to be a "correction of the law where, by reason of its universality, it is deficient."

The concept took a parallel course in England where the term refers to the "jurisdiction and system of rules, principles, practice and remedies developed by the English Courts of Chancery, in those cases that the original Courts of Law (King's Bench, Queen's Bench, Common Pleas, and King's Exchequer) could not, because of technical rules, provide adequate remedy that would render complete justice to a party with a meritorious

case." [1]

From time immemorial, therefore, courts that have had recourse to equity have done so, not in disregard of positive statute law, but precisely in recognition of its doctrinal flaws that may well result in inflicting unintended injustice. Putting it in proper perspective, "it is not the function of equity to assist in creating causes of action where none are alleged." [2]

In consonance with the above principles, Article 1456 on constructive trust is a trust raised by construction of law or arising by operation of law for purposes of equity in order to satisfy the demands of justice where the remedy at law is void or proves deficient. It may, thus, be only invoked to aid justice and not to perpetrate an injustice. Therefore, it would be paradoxical for this Court if it were to believe the petitioners who despite being undoubtedly in bad faith, sought protective cover under the mantle of Article 1456. A call for equity will not countenance petitioners' bad faith which borders on duplicity and fraud. Equity may not be invoked to deprive private respondents of an existing legal right provided under Article 1544; nor may equity purport to establish a right which does not exist in favor of petitioners. Stated otherwise, where the rights of the parties litigants, private respondents in this instance, are clearly defined by statutes, legal principles and precedents, resort to equity finds no favor before the eyes of the courts. In *Rodriguez-Luna v. Intermediate Appellate Court*, [3] the Court, speaking thru Justice Abad Santos, stated: "We are unwilling to apply equity instead of strict law in this case because to do so will not serve the ends of justice." For justice is attained, in the first instance, within the parameters of the applicable existing law. Such is in keeping with the views of the eminent and well-respected civilist, Mr. Justice J.B.L. Reyes of this same Court when he urged upon the courts the exercise of judicial self-restraint in applying the principles of equity to situations such as the instant case. He thus cautioned:

"Manifestly, excessive reliance upon equity in solving legal problems possesses certain disadvantages: for one, legal principles become eroded and uncertain in their operation; for another, the application of equity depends on the individual sense of justice of the Courts and becomes variable according to the membership of the Tribunals. In the case of the Supreme Court, especially, it dilutes its essential mission of settling uncertainties of the law through its decisions, and makes difficult to foresee the direction of future awards. Every judgment on the basis of equity becomes an ad hoc adjudication, unusable for other cases, so that previous awards do not serve as a guide, a variability that adversely affects the people's quest for justice, since situations basically similar can lead to different solutions. Hence, equity as a legal tool demands circumspection and realization of the fact that, unless carefully controlled, its tendency is to make the Judiciary assume legislative power." [4]

On the basis of the foregoing, I vote to DENY the petition. Accordingly, the decision of the Court of Appeals is AFFIRMED.

[1] J.B.L. Reyes, "The Trend Toward Equity versus Positive Law in Philippine Jurisprudence," Lecture delivered in the U.P. Law Center Seminar on Analytical Survey of Selected Supreme Court Decisions in Civil Law, 1983 and published with the same title, p. 2.

[2] *Tracey Development Co. v. People*, 106 N.E. 330 (1914).

[3] G.R. No. L-62988, February 28, 1985, 135 SCRA 242.

[4] *Id.* at 16.

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