

**JESUS E. ULAY, PETITIONER, VS. MARANGUYOD BUSTAMANTE,
SALOME BUSTAMANTE-SAROL, HEIRS OF ADELAIDA
BUSTAMANTE-PEDROROJA, NAMELY: MARIO PEDROROJA,
GERALDINE P. EDERA, SHEILA P. LUB...**

G.R. Nos. 231721-22. March 18, 2021

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CAGUIOA, J:

Before the Court is a Petition for Review[1] (Petition) under Rule 45 of the Rules of Court (Rules), assailing the Decision[2] dated March 31, 2016 (assailed Decision) and the Resolution[3] dated October 25, 2016 (assailed Resolution) of the Court of Appeals[4] (CA) in CA-G.R. CV No. 03521-MIN and CA-G.R. CV No. 03524-MIN. The decretal portion of the Decision reads:

WHEREFORE, in view of the foregoing, the Decision dated October 29, 2013, of the Regional Trial Court, 11[th] Judicial Region, Branch 4, Panabo City, in Civil Case No. 26-2003 for Recovery of Possession and Civil Case No. 37-2005 for Annulment of Deeds, Title, Reconveyance and Damages is hereby AFFIRMED with MODIFICATION. The Deed of Exchange dated April 5, 1999 executed by the Heirs of Juan represented by Emelita Comendador and the Heirs of Gregoria represented by Dionisia C. Ampong is hereby declared valid; the Deed of Waiver executed by Felicitas Remillano-Boyles, Reynante Remillano Carlos and Emelita R. Comendador is hereby declared null and void; and the rate of interest imposed on the purchase price of P60,000.00 is reckoned from the finality of this decision at the rate of 6% in accordance with recent jurisprudence until it shall have been fully paid.

SO ORDERED.[5]

The Facts

During their lifetime, Candido Bustamante and Candida Dela Cruz-Bustamante (Spouses Bustamante) owned a 19-hectare unregistered parcel of land designated as Lot No. 1089, located in Taba, La Paz, Carmen, Davao and covered by Homestead Application No. 46102 (E-35169) in the name of Candido Bustamante. Lot No. 1089 was later inherited by Eugenio Bustamante (Eugenio), Spouses Bustamante's only son.[6] Eugenio later married Juana Bustamante (Juana) and had five children, namely: Victoria Bustamante-Quijada (Victoria), Gregoria Bustamante-Concha (Gregoria), Salome Bustamante-Sarol (Salome), Ramon Bustamante (Ramon) and Adelaida Bustamante-Pedroroja (Adelaida) (collectively, the Bustamantes).[7]

After Eugenio's death, Juana and the Bustamantes partitioned Lot No. 1089 through a Deed of Extrajudicial Partition[8] (DEP) dated November 15, 1977. In the DEP, Juana and the Bustamantes waived their rights over a 5-hectare portion of Lot No. 1089 in favor of a certain Ramon Tajo and divided the remaining 11-hectare portion equally among themselves, resulting in six portions with an area of 1.9379 hectares each.[9]

On December 7, 1979, a survey of Lot No. 1089 was conducted and an approved subdivision plan was accordingly issued. In the subdivision plan, the shares of Juana and one of her daughters, Gregoria, were inadvertently interchanged.[10] The discrepancy between the DEP and the subdivision plan is illustrated as

follows:

Lot Number

DEP

(November 15, 1977)

Subdivision Plan

(December 7, 1979)

Lot No. 1089-E (1.9379 hectares)

Juana

Gregoria

Lot No. 1089-F (1.9379 hectares)

Gregoria

Juana

Despite the erroneous designation in the subdivision plan, Juana and Gregoria took possession of their respective shares in accordance with the DEP so that Juana continued possessing Lot No. 1089-E and Gregoria maintained possession of Lot No. 1089-F.[11]

On January 12, 1981, Original Certificate of Title (OCT) No. P-17509[12] was issued over Lot No. 1089-E in Gregoria's name, following the erroneous designation in the subdivision plan.[13] Juana and Gregoria, however, continued to possess their respective lots in accordance with the sketch provided in the DEP.[14]

Upon Gregoria's passing, Lot No. 1089-F which she continued to possess prior to her death was inherited by her eight children, namely: Veneranda Concha (Veneranda), Dionisia Concha-Ampong (Dionisia), Roger B. Concha[15] (Roger), Ernesto B. Concha (Ernesto), Amelia Concha-Ginsola[16] (Amelia), Erlinda Concha-Amoso[17] (Erlinda), Hilyn Concha-Monday (Hilyn) and Estelita B. Concha (Estelita) (collectively, Gregoria Heirs).[18]

Meanwhile, Juana, then a widow, cohabitated with one Arturo Remillano (Arturo). Such cohabitation bore two children, namely Emelita Remillano-Comendador (Emelita) and Felicitas Remillano-Boyles (Felicitas) (collectively, the Remillanos).[19]

After Juana's passing, the series of events that followed facilitated the transfer and exchanges of possessions over Lot No. 1089-E and Lot No. 1089-F and gave rise to the instant controversy.[20]

On April 5, 1999, four out of the eight Gregoria Heirs, namely Ernesto, Erlinda, Amelia, and Hilyn on one hand, and Emelita (purportedly representing all the heirs of Juana) on the other, executed a Deed of Exchange[21] dated April 5, 1999 wherein Ernesto, Erlinda, Amelia, and Hilyn ceded their rights over Lot No. 1089-E the title over which was issued in Gregoria's name, their mother, and Emelita, for her part, ceded the rights of the Remillanos over Lot No. 1089-F. The Deed of Exchange was undertaken in conformity with the original designations provided in the DEP.

Pursuant to said Deed of Exchange, on January 16, 2001, Ernesto, Erlinda, Amelia, and Hilyn later executed a Deed of Sale[22] dated January 16, 2001 which sold a specific 9,689[23] square meters (sq. m.) portion of Lot No. 1089-F to herein petitioner, Jesus Ulay (Jesus).[24]

On May 3, 2001, Maranguyod Bustamante (Maranguyod), the widow of Ramon (one of the Bustamantes) entered the 9,689-sq. m. portion of Lot No. 1089-F, which Jesus purchased, and erected a pre-fabricated house thereon. On the same day, Jesus demanded Maranguyod to remove the improvements from the lot but to no avail.[25] Jesus was thereafter prompted to file an action for recovery of possession (Recovery case) against Maranguyod on April 8, 2003.[26]

During the pendency of the Recovery case, on September 17, 2004, the Remillanos executed an Affidavit of Waiver, where they waived their participation over Lot No. 1089-F in favor of Jesus and two of Gregoria's children, Dionisia and Roger, as well as assigned specific portions for the three in the following manner: 0.7266 hectare for Dionisia, 0.2422 hectare for Roger, and 0.9690 hectare for Jesus.[27]

On December 23, 2004, still during the pendency of the Recovery case, OCT No. P-41507 covering the disputed 9,689-sq. m. portion of Lot No. 1089-F was issued in Jesus' name.[28]

Prompted by these circumstances, the Bustamantes filed an action for annulment of deeds, reconveyance, and damages (Annulment case) against Jesus, the Gregoria Heirs, and the Remillanos.[29] The Bustamantes averred that their rights were prejudiced when the Remillanos exchanged Lot No. 1089-F with four of Gregoria Heirs, and later on subsequently sold a specific portion of the same lot to Jesus. They further argued that Jesus was not a buyer in good faith since he was aware that Juana had several other children who did not participate in the said sale.[30]

The Recovery and Annulment cases were jointly tried by the Regional Trial Court, Branch 4, Panabo City, Davao Del Norte (RTC).

Ruling of the RTC

In a Joint Decision[31] dated October 29, 2013, the RTC ruled in favor of the Bustamantes, with the dispositive portion of the same reading:

WHEREFORE, premised on the foregoing, the Court hereby renders judgment, as follows:

- Dismissing the CIVIL CASE NO. 26-2003 entitled Jesus Ulay vs. Maranguyod Bustamante for Recovery of Possession for lack of merit;
- Declaring NULL and VOID the Deed of Sale dated January 16, 2001 executed by Ernesto [C]oncha, Erlinda Concha-Amoso, Amalia Concha-Ginsola and Hilyn Concha-Monday in favor of Jesus Ulay;
- Ordering Ernesto Concha, Erlinda Concha-Amoso, Amalia Concha-Ginsola and Hilyn Concha-Monday to REIMBURSE jointly and severally Jesus Ulay the purchase price amounting to SIXTY THOUSAND PESOS ONLY ([P]60,000.00) plus legal interest of 12% [per annum] since the date it was allegedly sold until fully paid;
- Declaring NULL and VOID the Deed of Exchange dated April 5, 1999 executed by the heirs of Gregoria Bustamante and the heirs of Juana Bustamante;
- Declaring VALID the Affidavit of Waiver executed by defendants Felicitas Remillano-Boyles, Reynante Remillano-Carlos and Emelita Remillano-Comendador on September 17, 2004 ONLY with respect to the ideal shares of Felicitas Remillano-Boyles, and Emelita Remillano-Comendador;
- Declaring VOID the Original Certificate of Title No. P-41507 registered in the name of Jesus Ulay; and
- Ordering Jesus Ulay to reconvey the subject property, except the ideal shares of Felicitas Remillano-Boyles, and Emelita Remillano-Comendador, to the heirs of Juana Bustamante, excluding Felicitas Remillano-Boyles and Emelita Remillano-Comendador.

SO ORDERED.[32]

The RTC declared the Deed of Exchange between four of Gregoria Heirs and Emelita null and void for having been executed without the consent of the Bustamantes.[33] In this connection, the RTC concluded that the designation of Juana and Gregoria's shares as reflected in the subdivision plan must prevail over the designation in the DEP since there was never any attempt on the part of Juana and the Bustamantes to correct the same.[34]

Hence, the RTC: (i) nullified the Deed of Sale executed in Jesus' favor; (ii) nullified Jesus' OCT No. P-41507; (iii) dismissed the Recovery case; (iv) directed the Remillanos to reimburse Jesus P60,000.00 representing the purchase price paid pursuant to the void Deed of Sale with 12% interest per annum; (v) affirmed the validity of the Affidavit of Waiver with respect to the inchoate shares of the Remillanos as heirs of Juana; and (vi) ordered Jesus to reconvey the 9,689-sq. m. portion to the Bustamantes with the exception of the Remillanos' inchoate shares.

Aggrieved, Jesus filed separate appeals before the CA which were later consolidated pursuant to the CA's Resolution dated February 27, 2015.[35]

Ruling of the CA

On March 31, 2016, the CA issued the assailed Decision affirming the RTC in part. Contrary to the RTC's finding, the CA stressed that the DEP constitutes a binding contract which is enforceable not only against the Bustamantes who were the parties thereto, but also their successors-in-interest.[36] It held that with respect to the erroneous designation in the subdivision plan, the same could have easily been corrected by a relocation survey.[37] It added that nevertheless, the fact that neither Juana nor Gregoria undertook said correction did not mean that they acquiesced to the survey's mistaken designations, since Juana and Gregoria remained in possession of their shares in Lot No. 1089 as designated in the DEP during their lifetimes.[38]

The CA also ruled that Gregoria's registration of Lot No. 1089-E, despite the fact that she only possessed Lot No. 1089-F as designated to her by the DEP, is of no moment. It reminded that registering a piece of land under the Torrens System does not create or vest title, a certificate of title is merely an evidence of ownership, and that issuance of the same in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named therein.[39]

With respect to the Deed of Exchange, the CA held that the same was valid notwithstanding the fact that it was only signed by some of Juana's heirs since it was merely executed for the purpose of correcting the erroneous subdivision plan and carrying out the intent of the parties under the DEP. It also found that the Deed of Exchange may not be said to have prejudiced the rights of the other co-owners who were not signatories thereto since the same redounded to their benefit.[40]

Moreover, the CA ruled that the Remillanos had no right to convey a specific portion of Lot No. 1089-F prior to the partition of the same,[41] and consequently declared the Affidavit of Waiver void in its entirety. It ruled that prior to any partition, the Remillanos could not validly claim specific portions of said property, or cede portions thereof to another.[42]

In the matter of the Deed of Sale to Jesus, the CA affirmed the RTC and ruled that the same was also null and void, since it purported to sell a specific 9,689-sq. m. portion of an unpartitioned land that was co-owned by all the Gregoria Heirs, and not only by the four who were signatories to it.[43] It continued that as a result, OCT No. P-41507 under Jesus' name was likewise void, and it was but proper for said portion to be reconveyed to the Gregoria Heirs.[44]

The CA further affirmed the RTC's Decision insofar as it dismissed the Recovery case, and directed the

Remillanos to reimburse Jesus the amount of P60,000.00.[45] Finally, the CA modified the rate of interest from 12% to 6% per annum, in accordance with the prevailing jurisprudence.[46]

Jesus filed a motion for reconsideration which was denied by the CA through the assailed Resolution.[47]

Aggrieved, Jesus brought the case to this Court via Rule 45 of the Rules. Essentially, Jesus avers that the Bustamantes have no cause of action against him since they have absolutely no interest in Lot No. 1089-F as heirs of Juana, considering that Gregoria had acquired it pursuant to the DEP, and had exclusively passed it on to her children after her death. On this basis, Jesus argued that the lower courts committed reversible error when they declared the Deed of Sale and OCT No. P-41507 void.

Issue

The sole issue brought before the Court is whether the CA erred in affirming the RTC's Decision insofar as it declared the Deed of Sale and OCT No. P-41507 null and void.

To resolve this, the Court is invited to make the following requisite determinations:

(i)

Which between the DEP and the later subdivision plan is binding?

(ii)

Is the Deed of Exchange between Ernesto, Erlinda, Amelia, and Hilyn (of the Gregoria Heirs) on one hand, and Emelita (of the Remillanos) on the other valid?

(iii)

Is the Deed of Sale over a specific 9,689-sq. m. portion of Lot No. 1089-F between Ernesto, Erlinda, Amelia, and Hilyn (of the Gregoria Heirs) and Jesus valid?

(iv)

Is the Affidavit of Waiver executed by the Remillanos in favor of Jesus, Dionisia, and Roger (of the Gregoria Heirs) valid?

The Court's Ruling

The Petition is partly meritorious.

Preliminary, the Court must correct the primary submission of Jesus that the Bustamantes have no cause of action against Lot No. 1089-F since the same was not Juana's share, but was designated to Gregoria in the DEP, and possessed by her during her lifetime.

The error of this claim is in its incompleteness, with its omission of the fact that the claim of the Bustamantes is anchored on the interchanged designation of the lots in the subdivision plan. It appears that in the Annulment case, as far as the Bustamantes were concerned, Juana's designated share in Lot No. 1089 became Lot No. 1089-F, pursuant to the subdivision plan. Pursuant to this belief, the Bustamantes averred that their rights were prejudiced when the Remillanos undertook the Deed of Exchange and swapped Lot No. 1089-F with Lot No. 1089-E in favor of four of Gregoria Heirs. The subdivision plan's designation of Juana as the owner of Lot No. 1089-F thereby gave rise to the Bustamantes', as Juana's heirs, cause of action against an adverse possession which was facilitated by virtue of a disposition and exchange of Lot No. 1089-F which they were not party to.

With respect to the validity of the subsequent transfers of Lot No. 1089-E and Lot No. 1089-F, the Court here finds that: (i) the DEP prevails over the erroneous subdivision plan, which consequently rendered the Deed of

Exchange but a surplusage; (ii) the Affidavit of Waiver executed by the Remillanos is invalid and similarly without consequence by virtue of the DEP; and (iii) the Deed of Sale in favor of Jesus is valid but only to the extent of the ideal or pro-indiviso shares of the Gregoria Heirs who took part in the sale.

First, the Court agrees with the CA's finding that the DEP is a binding contract that is enforceable against the parties thereto, as well as their successors-in-interest. The same may not be undermined or otherwise altered by a subsequent subdivision plan which contained a clearly and undisputedly erroneous interchanging of designation of lot vis-a-vis the heir.

The text of the DEP is clear enough with respect to the Bustamantes' intention of partition and the portions which were to correspond to each of them, to wit:

x x x x

That they are the only heirs in law of the late Eugenio Bustamante who died intestate in Taba, La Paz, Carmen, Davao (formerly Tuganay, Panabo, Davao) sometime in 1938 and who at the time of his death left no debt; Juana (Mora) vda. de Bustamante is his surviving spouse and Victorina, Gregoria, Salome, Adelaida and Ramon, all surnamed, Bustamante, are the only children of the afore-named deceased with Juana (Mora) vda. de Bustamante;

x x x x

That after the death of the late Eugenio Bustamante, his heirs, the herein parties succeeded to and applied for the aforementioned parcel of land as Heirs of Candido Bustamante, they being the only heirs and successors of the deceased Eugenio Bustamante;

x x x x

That the parties herein have agreed, as they do hereby agree, to divide and partition the remaining area of eleven (11) hectares, more or less, of the afore-mentioned parcel of land among themselves in the following manner:

JUANA (MORA) VDA. DE BUSTAMANTE - 1.9379 hectares, [pro-indiviso]

SALOME BUSTAMANTE - 1.9379 hectares, [pro-indiviso]

GREGORIA BUSTAMANTE - 1.9379 hectares, [pro-indiviso]

ADELAIDA BUSTAMANTE - 1.9379 hectares, [pro-indiviso]

VICTORINA BUSTAMANTE - 1.9379 hectares, [pro-indiviso]

RAMON BUSTAMANTE - 1.9379 hectares, [pro-indiviso]

the relative positions of their respective [pro-indiviso] shares [are] indicated by a sketch drawn at the back hereof, including the improvements thereon appertaining;

That the parties herein have recognized each other's right and interest over their respective shares as herein apportioned and likewise recognized their respective ownership over the improvements thereon appertaining and that they will protect each other from the claim of any person, whomsoever, over the same.

x x x x[48]

The DEP is therefore unequivocal with respect to the Bustamantes' intent to partition Lot No. 1089, the sizes of each of the allocated shares, and the positions of said shares in Lot No. 1089, as clearly illustrated in the sketch on the dorsal portion of said DEP.[49]

Accordingly, as between the DEP undertaken by the Bustamantes on the one hand, and the subdivision plan which contained an inadvertent error on the other, the DEP must prevail. The subdivision plan cannot, as it does

not, amend the DEP because that is the binding contract to which all the heirs agreed, whereas the subdivision plan was shown to have been made with an unintended error. This is so confirmed by the fact that subsequent to the subdivision plan, the parties nevertheless took possession of the lots consistent with the designations provided in the DEP.

Second, the Deed of Exchange was invalid but immaterial under the circumstances of the instant case. The Deed of Exchange, on its face, was a form of disposition of Lot No. 1089-E on the part of the Gregoria Heirs and Lot No. 1089-F on the part of Emelita (purportedly on behalf of the Remillanos), viz.:

WHEREFORE, the sole HEIRS OF GREGORIA BUSTAMANTE [do] hereby CEDE, TRANSFER and CONVEY unto the said HEIRS OF JUANA VDA. DE BUSTAMANTE that certain parcel of land here above-described x x x

That the respective parties hereby warrant to each other the ownership to the properties that have [been] respectively ceded, transferred and conveyed against all claims of any person whatsoever.

x x x x[50]

Proceeding from the validity of the DEP, the Court finds that the Deed of Exchange is but a redundancy, since it could no more restore to the Gregoria Heirs and Juana's heirs possessions that they never lost. In other words, Juana did not, by the erroneous subdivision plan, lose the possession and ownership of Lot No. 1089-E, and Gregoria, likewise, did not lose her possession and ownership of Lot No. 1089-F. The Deed of Exchange was, therefore, of no moment since the cessions it contained were ultimately unrequired.

On this score, the Court also confirms the CA's holding that the fact of the issuance of OCT No. P-17509 over Lot No. 1089-E in Gregoria's name is not immutable, considering that the same was mainly based on an inadvertent error in the subdivision plan which, in any case, was not followed by both Juana and Gregoria, who each continued to possess their respective shares in accordance with the designations contained in the DEP. The Court recalls that the fact that a person was able to secure a title in his name does not operate to vest ownership upon him of the subject land since registration of a piece of land under the Torrens System does not create or vest title and it is not a mode of acquiring ownership.[51] Worth noting on this point is the Court's ruling in *Naval v. Court of Appeals*,[52] to wit:

x x x A certificate of title is merely an evidence of ownership or title over the particular property described therein. It cannot be used to protect a usurper from the true owner; nor can it be used as a shield for the commission of fraud; neither does it permit one to enrich himself at the expense of others. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.[53]

Upon the same ground of validity of the DEP, the Affidavit of Waiver which the Remillanos and one Reynante Remillano Carlos (Reynante) executed in favor of Jesus, Dionisia and Roger is also invalid. Specifically, the Affidavit of Waiver sought to restore Lot No. 1089-F to the Gregoria Heirs who, in the broader analysis of the validity of the DEP vis-a-vis the erroneous subdivision plan, never lost their rightful ownership thereof. The Court additionally notes, as observed by the CA, that the personality of Reynante as one of the affiants in the said waiver appears to be unclear in the records, since Juana only had Felicitas and Emelita as her children from her cohabitation with Arturo. At any rate, regardless of his particular personality with respect to the said waiver over Lot No. 1089-F, the Court similarly finds the said waiver to be inconsequential as to him, whose interest in the property was not sufficiently shown. In all, the Affidavit of Waiver executed by the Remillanos in favor of the Gregoria Heirs is therefore a surplusage since the Remillanos could not cede to the Gregoria Heirs what the latter never lost. More so and by the same token, the said Affidavit of Waiver is also ineffectual with respect to Jesus,

since the Remillanos could not cede to the Gregoria Heirs what they did not own.

Third, on the matter of the Deed of Sale by virtue of which Ernesto, Erlinda, Amelia, and Hilyn sold a specific 9,689-sq. m. portion of the unpartitioned Lot No. 1089-F to Jesus, the Court here reverses the lower courts' findings and instead holds that the said sale is valid but only to the extent of the pro-indiviso shares of Ernesto, Amelia, Erlinda, and Hilyn, as the four Gregoria Heirs who participated in the sale of the 9,689-sq. m. portion in favor of Jesus. The said sale may not bind or extend to the pro-indiviso shares of Veneranda, Dionisia, Roger, and Estelita, as the four Gregoria Heirs who were not parties thereto. In other words, since there are a total of eight Gregoria Heirs with only half of them having sold the 9,689-sq. m. portion to Jesus, Jesus is therefore subrogated to the interest over only the pro-indiviso half of Lot No. 1089-F.

To clearly trace a navigation of the rules on which the Court premises this third conclusion, a review of pertinent Civil Code provisions is in order.

Article 1078 of the Civil Code provides that where there are two or more heirs, the whole estate of the decedent is, before partition, owned in common by such heirs:

Art. 1078. Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased. (n)

Time and again, the Court has outlined the specific rules that are in play when the seller of a property co-owns the object of said sale since under Article 491 of the Civil Code, a sale of the property owned in common amounts to an alteration thereof which requires the unanimous consent of the other co-owners, to wit:

Art 491. None of the co-owners shall, without the consent of the others, make alterations in the thing owned in common, even though benefits for all would result therefrom. However, if the withholding of the consent by one or more of the co-owners is clearly prejudicial to the common interest, the courts may afford adequate relief. (397a) (Emphasis supplied)

Nevertheless, a co-owner is allowed to alienate his or her part or pro-indiviso share in the co-ownership, with attendant limits as provided by Article 493 of the Civil Code, viz.:

Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. (399) (Emphasis supplied)

Relatedly, Article 1082 further provides for how an act may be construed as one intended to terminate the co-ownership:

Art. 1082. Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, an exchange, a compromise, or any other transaction. (n)

Based on these provisions, prior to partition, a sale of a definite portion of a common property requires the consent of all co-owners because it operates to partition the land with respect to the co-owner selling his or her specific share therein. Operatively, a co-owner is an owner of the whole and over the whole he exercises the right of dominion, but he is at the same time the owner of a portion which is truly abstract.[54] In the case of *National Bank v. Garcia*,[55] the Court reminded that:

While under Article 493 of the New Civil Code, each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto and he may alienate, assign or mortgage it, and even substitute another

person in its enjoyment, the effect of the alienation or the mortgage with respect to the co-owners, shall be limited, by mandate of the same article, to the portion which may be allotted to him in the division upon the termination of the co-ownership. He has no right to sell or alienate a concrete, specific, or determinate part of the thing in common to the exclusion of the other co-owners because his right over the thing is represented by an abstract or ideal portion without any physical adjudication. An individual co-owner cannot adjudicate to himself or claim title to any definite portion of the land or thing owned in common until its actual partition by agreement or judicial decree. Prior to that time all that the co-owner has is an [i]deal or abstract quota or proportionate share in the entire thing owned in common by all the co-owners. What a co-owner may dispose of is only his undivided aliquot share, which shall be limited to the portion that may be allotted to him upon partition. x x x[56]

Still on this point, the case of *Cabrera v. Ysaac*,[57] similarly involving a sale of a specific portion of unpartitioned co-owned property, instructs:

The rules allow respondent to sell his undivided interest in the co-ownership. However, this was not the object of the sale between him and petitioner. The object of the sale was a definite portion. Even if it was respondent who was benefiting from the fruits of the lease contract to petitioner, respondent has "no right to sell or alienate a concrete, specific or determinate part of the thing owned in common, because his right over the thing is represented by quota or ideal portion without any physical adjudication."

There was no showing that respondent was authorized by his co-owners to sell the portion of land occupied by Juan Cabrera, the Espiritu family, or the Borbe family. Without the consent of his co-owners, respondent could not sell a definite portion of the co-owned property.

Respondent had no right to define a 95-square-meter parcel of land, a 439-square-meter parcel of land, or a 321-square-meter parcel of land for purposes of selling to petitioner. The determination of those metes and bounds are not binding to the co-ownership and, hence, cannot be subject to sale, unless consented to by all the co-owners.[58]

Given the foregoing, the Court is now prevailed upon to resolve the instant situation where the sale by four of the Gregoria Heirs in favor of Jesus disposed of a specific 9,689-sq. m. portion of the unpartitioned Lot No. 1089-F without the consent of the other heirs.

In the interest of protecting the rights of the non-participating Gregoria Heirs on the one hand, and avoiding a wasteful and unnecessary voiding of the instant sale to Jesus on the other, the Court finds that the sale is valid and effective only insofar as the pro-indiviso shares of Ernesto, Amelia, Erlinda, and Hilyn, as the four Gregoria Heirs who participated in the sale are concerned, and may not extend to the pro-indiviso shares of Veneranda, Dionisia, Roger, and Estelita, as the four Gregoria Heirs who did not take part in the said sale.

To be sure, this predicament is not novel, and the Court has already earlier outlined the effects of a sale by one co-owner without the consent of all the co-owners as well as pronounced the existence of a legal basis to say that a sale of a specific portion of an unpartitioned co-owned property may nonetheless hold albeit in a limited extent.

On point is the 1968 case of *Estoque v. Pajimula*[59] (*Estoque*), which involved a sale of a definitely identified 1/3 portion of a co-owned unpartitioned property which did not enjoy the consent of the two other co-owners of the same. Here, the Court, speaking through Justice J.B.L. Reyes, reasoned:

The appellant's stand is that the deed in her favor was inoperative to convey the southeastern third of Lot 802 of the Rosario Cadastre notwithstanding the description in the deed itself, for the reason that the vendor being a mere co-owner, had no right to sell any definite portion of the land held in common but could only transmit her undivided share, since the specific portion corresponding to the selling co-owner is not known until partition takes place. x x x

x x x x

x x x While on the date of the sale to Estoque (Annex A) said contract may have been ineffective, for lack of power in the vendor to sell the specific portion described in the deed, the transaction was validated and became fully effective when the next day (October 29, 1951) the vendor, Crispina Perez, acquired the entire interest of her remaining co-owners (Annex B) and thereby became the sole owner of Lot 802 of the Rosario Cadastral survey. x x x[60]

The Court in Estoque characterized the sale therein of a specifically identified portion of an unpartitioned parcel of land as not invalid, but merely ineffective, in acknowledgement of the fact that the two other co--owners of the property did not consent to the said sale, but became effective when the selling co-owner became sole owner of the entire property.

This principle of upholding the validity of similar sales of co-owned properties despite the absence of consent of co-owners was also fleshed out in the 1988 case of *Bailon-Casilao v. Court of Appeals*,[61] where the Court opined:

As early as 1923, this Court has ruled that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale. x x x This is because under the aforementioned codal provision, the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common[,] x x x by virtue of the sales made by Rosalia and Gaudencio Bailon which are valid with respect to their proportionate shares, and the subsequent transfers which culminated in the sale to private respondent Celestino Afable, the said Afable thereby became a co-owner of the disputed parcel of land as correctly held by the lower court since the sales produced the effect of substituting the buyers in the enjoyment thereof x x x.

From the foregoing, it may be deduced that since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void. However, only the rights of the co-owner-seller are transferred, thereby making the buyer a co-owner of the property.

The proper action in cases like this is not for the nullification of the sale or for the recovery of the thing owned in common from the third person who substituted the co-owner or co-owners who alienated their shares, but the DIVISION of the common property as if it continued to remain in the possession of the co-owners who possessed and administered it x x x.

T[h]us, it is now settled that the appropriate recourse of co[--]owners in cases where their consent were not secured in a sale of the entire property as well as in a sale merely of undivided shares of some of the co-owners is an action for PARTITION under Rule 69 of the Revised Rules of Court. Neither recovery of possession nor restitution can be granted since the defendant buyers are legitimate proprietors and possessors in joint ownership of the common property claimed x x x.[62]

This ruling was also iterated in the case of *Paulmitan v. Court of Appeals*,[63] where the Court ruled that the sale of the property owned in common by one co-owner without the consent of the others did not give to the buyer ownership over the entire land but merely transferred to the buyer the undivided share of the seller, making the buyer the co-owner of the land in question.

More, in the recent case of *Bulatao v. Estonactoc*[64] (*Bulatao*), the Court further reconciled the inherent authority of co-owners to alienate their shares in a co-owned property vis-a-vis the requirement of consent of the co-owners in case the unpartitioned property is sold, viz.:

While in Estoque a specific portion of a co-owned property was sold, that situation is no different from a situation wherein a co-owner has sold the entire co-owned property, i.e., a specific parcel of land of which the seller has only an undivided interest therein, because the rationale for not recognizing the effectivity of the

disposition by a co-owner without the consent of the other co-owners over a specific portion equally applies to the disposition of the entire co-owned property, which is more than the undivided interest or share rightfully pertaining to the disposing co-owner.

Estoque characterizes the contract entered into by the disposing co-owner as "ineffective, for lack of power in the vendor to sell the specific portion described in the deed" and makes room for a subsequent ratification of the contract by the other co-owners or validation in case the disposing co-owner subsequently acquires the undivided or pro-indiviso interests of the other co-owners. Thus, the subsequent ratification or acquisition will validate and make the contract fully effective as of the date the contract was entered into pursuant to Article 1396 of the Civil Code, which provides that "[r]atification cleanses the contract from all its defects from the moment it was constituted" and Article 1434 of the Civil Code, which provides: "[w]hen a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee." [65]

Even more pertinent in the instant case, the Court in *Bulatao* elaborated that: (1) the various scenarios of unconsented sale of the property owned in common, e.g., sale of the entire property or sale of a specific identified portion thereof, all root their ineffectiveness in the lack of consent, and (2) for purposes of upholding the validity of said unconsented sale in a limited extent, the principle of estoppel must apply to prevent the seller from denying the validity of the sale to the extent of his or her pro-indiviso share, to wit:

While Article 493 of the Civil Code may not squarely cover the situations wherein a co-owner, without the consent of the other co-owners, alienate, assign or mortgage: (1) the entire co-owned property; (2) a specific portion of the co-owned property; (3) an undivided portion less than the part pertaining to the disposing co-owner; and (4) an undivided portion more than the part pertaining to the disposing co-owner, the principle of estoppel bars the disposing co-owner from disavowing the sale to the full extent of his undivided or [pro-indiviso] share or part in the co-ownership, subject to the outcome of the partition, which, using the terminology of Article 493, limits the effect of the alienation or mortgage to the portion that may be allotted to him in the division upon termination of the co-ownership. Under Article 1431 of the Civil Code, "[t]hrough estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." [66]

Applying all of the foregoing to the instant case, the Deed of Sale in favor of Jesus is therefore valid but only up to the extent of the pro-indiviso shares of Ernesto, Amelia, Erlinda, and Hilyn, as the four Gregoria Heirs who were the sellers in the Deed of Sale. By virtue of said Deed of Sale, Jesus has therefore been subrogated to the shares of Ernesto, Amelia, Erlinda, and Hilyn to the extent of 9,689 sq. m., pro-indiviso, that he purchased from them, thereby also making him a co-owner of Lot No. 1089-F to that same extent.

To recall, the total area of Lot No. 1089-F as provided in the DEP is 1.9379 hectares or 19,379 sq. m., which when divided among all eight Gregoria Heirs results in the said heirs being entitled to pro-indiviso 2,422.375 sq. m. each. It further appears that when Ernesto, Amelia, Erlinda, and Hilyn sold the specific 9,689-sq. m. portion of Lot No. 1089-F, they effectively sold an area that approximates the sum of their four respective shares (i.e., 9,689.50 sq. m.), or roughly half of the entire Lot No. 1089-F. However, since Lot No. 1089-F is an unpartitioned property and by virtue of the Deed of Sale to Jesus of the specific 9,689-sq. m. portion or approximately half of Lot No. 1089-F, Jesus was able to obtain OCT No. P-41507 over that portion, the correct pro-indiviso shares between and among Jesus, Veneranda, Dionisia, Roger, and Estelita should be reflected in both the 9,689-sq. m. lot covered by OCT No. P-41507 and the remaining unsold portion of Lot No. 1089-F in this proportion:

- (i) Jesus with one-half (1/2) pro-indiviso share;
- (ii) Veneranda with one-eighth (1/8) pro-indiviso share;
- (iii) Dionisia with one-eighth (1/8) pro-indiviso share;
- (iv) Roger with one-eighth (1/8) pro-indiviso share; and

(v) Estelita with one-eighth (1/8) pro-indiviso share

The resulting co-ownership and apportionment of shares is illustrated, thus:

Subject to the Deed of Sale executed by Ernesto, Amelia, Erlinda, and Hilyn in favor of Jesus

Resulting Co-ownership and Apportionment between and among Jesus, Veneranda, Dionisia, Roger, and Estelita

Lot No. 1089-F with area of 19,379 sq. m.

(unpartitioned property co-owned by the eight Gregoria Heirs, namely: Ernesto, Amelia, Erlinda, Hilyn, Veneranda, Dionisia, Roger, and Estelita)

9,689 sq. m. specific portion sold to Jesus and covered by OCT No. P-41507

4,844.50 sq. m. pro-indiviso share of Jesus

1,211.125 sq. m. pro-indiviso share of Veneranda

1,211.125 sq. m. pro-indiviso share of Dionisia

1,211.125 sq. m. pro-indiviso share of Roger

1,211.125 sq. m. pro-indiviso share of Estelita

9,690 sq. m. remaining unsold portion

4,845 sq. m. pro-indiviso share of Jesus

1,211.25 sq. m. pro-indiviso share of Veneranda

1,211.25 sq. m. pro-indiviso share of Dionisia

1,211.25 sq. m. pro-indiviso share of Roger

1,211.25 sq. m. pro-indiviso share of Estelita

The equitable resulting effects that may be gleaned from the above are the following: (1) Jesus is subrogated to the interests over the aggregate pro-indiviso share of a total of 9,689.50 sq. m. which corresponds to the total land area^[67] sold to him by Ernesto, Amelia, Erlinda, and Hilyn; and (2) Veneranda, Dionisia, Roger, and Estelita also ultimately preserve their pro-indiviso shares equivalent to 2,422.375 sq. m. each, or their respective original pro-indiviso shares in Lot No. 1089-F prior to the sale to Jesus.

Furthermore, pursuant to the validity of the Deed of Sale in favor of Jesus, the Court finds the same as sufficient basis to order Maranguyod to vacate the premises of the 9,689-sq. m. portion she so occupied and to turn over the same to the co-owners thereof, namely Jesus, Veneranda, Dionisia, Roger, and Estelita. This is in consonance with the principle embodied in Article 487 of the Civil Code which provides:

Art. 487. Any one of the co-owners may bring an action in ejectment. (n)

Article 487 allows anyone of the co-owners of an immovable property to bring an action in ejectment without joining the other co-owners, the same being deemed instituted for the benefit of all.^[68] Further, although it textually provides only for an action in ejectment, jurisprudence has since extended the meaning of "action" in this case to embrace other kinds of actions that seek to recover possession such as *accion publiciana* or *accion*

reivindicatoria,[69] as the Court held in *Mendoza v. Coronel*:[70]

We reiterate the *Arcelona* ruling that the controlling law is Article 487 of the Civil Code which categorically states:

Any one of the co-owners may bring an action in ejectment. (n)

Article 487 is a departure from the rule laid down in the case of *Palarca v. Baguisi* which held that an action for ejectment must be brought by all the co-owners. As explained by Tolentino, the law now allows a co-owner to bring an action for ejectment, which covers all kinds of actions for the recovery of possession, including forcible entry and unlawful detainer, without the necessity of joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all.[71]

In addition, the Court also accordingly finds that Maranguyod is not entitled to a reimbursement of the costs incurred in the introduction of the pre-fabricated house on the 9,689-sq. m. lot, as she is here considered a builder in bad faith, pursuant to Article 449 in relation to Articles 448, 450, and 451 of the Civil Code, viz.:

Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof. (361a)

Art. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right of indemnity. (362)

Art. 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent. (363a)

Art. 451. In the cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower. (n)

On this point, the Court appreciates that Maranguyod was not a co-owner of Lot No. 1089-F, much less the more specific 9,689-sq. m. lot which Jesus purchased. As the widow of one of Juana's children, Ramon, Maranguyod only legally holds a shared interest over Lot No. 1089-E which was the lot designated to and possessed by her mother-in-law Juana during the latter's lifetime, and not Lot No. 1089-F, the premises of which she entered. Since Maranguyod was well aware that her mother-in-law Juana owned and occupied a different lot from the one she occupied, and with the records bereft of any evidence to show that she built the pre-fabricated house thereon in good faith, Article 448 of the Civil Code may not be applied in her favor. On the contrary, as a builder in bad faith, Maranguyod has no right to recover her expenses over the improvements she introduced in the 9,689-sq. m. lot under Article 449 of the Civil Code. More, all the improvements there, including the pre-fabricated house constructed by Maranguyod, must redound to the co-ownership over the said lot.

The Court also observes that apart from the Recovery case which Jesus filed before the RTC as against Maranguyod, he could have also sought a judicial ejectment of the latter, by virtue of his authority to institute the same either on his own behalf or on those of his co-owners as well under Article 487[72] of the Civil Code, and in accordance with Section 1, Rule 70[73] of the Rules.

Furthermore, OCT No. P-41507 in the name of Jesus should therefore further contain an annotation that

Veneranda, Dionisia, Roger, and Estelita are co-owners thereof with Jesus, in accord with the findings stated herein and in the following proportions: (1) Jesus with 1/2 pro-indiviso share or 4,844.50 sq. m.; (2) Veneranda with 1/8 pro-indiviso share or 1,211.125 sq. m.; (3) Dionisia with 1/8 pro-indiviso share or 1,211.125 sq. m.; (4) Roger with 1/8 pro-indiviso share or 1,211.125 sq. m.; and (5) Estelita with 1/8 pro-indiviso share or 1,211.125 sq. m.

Finally, as a quid pro quo, the Court likewise deems it proper that the said co-owners pay Jesus for the registration fees and expenses which the latter incurred for the registration of the 9,689-sq. m. portion, in proportion to their respective shares thereto.

WHEREFORE, the Petition is PARTLY GRANTED. The Decision dated March 31, 2016 and the Resolution dated October 25, 2016 of the Court of Appeals, in CA-G.R. CV No. 03521-MIN and CA-G.R. CV No. 03524-MIN are hereby AFFIRMED with MODIFICATION, thus:

- The Deed of Exchange dated April 5, 1999 executed by the Heirs of Juana represented by Emelita Remillano-Comendador and the Heirs of Gregoria represented by Dionisia Concha-Ampong is DECLARED INVALID;

- The Affidavit of Waiver dated September 17, 2004 executed by Felicitas Remillano-Boyles, Reynante Remillano-Carlos and Emelita Remillano-Comendador is likewise DECLARED INVALID;

- The Deed of Sale dated January 16, 2001 executed by Ernesto B. Concha, Erlinda Concha-Amoso, Amelia Concha-Ginsola, and Hilyn Concha-Monday in favor of Jesus E. Ulay is VALID only to the extent of the pro-indiviso shares of the said sellers in Lot No. 1089-F;

- The Registry of Deeds of Davao City is hereby DIRECTED to annotate on Original Certificate of Title (OCT) No. P-41507 the names of Veneranda Concha, Dionisia Concha-Ampong, Roger B. Concha, and Estelita B. Concha as co-owners thereof, and reflect said co-ownership, thus:

(i)

Jesus E. Ulay with one-half (1/2) pro-indiviso share equivalent to 4,844.50 square meters;

(ii)

Veneranda Concha with one-eighth (1/8) pro-indiviso share equivalent to 1,211.125 square meters;

(iii)

Dionisia Concha-Ampong with one-eighth (1/8) pro-indiviso share equivalent to 1,211.125 square meters;

(iv)

Roger B. Concha with one-eighth (1/8) pro-indiviso share equivalent to 1,211.125 square meters; and

(v)

Estelita B. Concha with one-eighth (1/8) pro-indiviso share equivalent to 1,211.125 square meters.

- Maranguyod Bustamante is hereby ORDERED to vacate the premises of the property covered by OCT No. P-41507 and turn over the same to the co-owners thereof; and

- Veneranda Concha, Dionisia Concha-Ampong, Roger B. Concha, and Estelita B. Concha are hereby ORDERED to pay Jesus E. Ulay their proportionate shares in the registration fees and other related expenses incurred by the latter in obtaining OCT No. P-41507.

SO ORDERED.

Peralta, C. J., (Chairperson), Carandang, Zalameda, and Gaerlan, JJ., concur.

[1] Rollo, pp. 3-15.

[2] Id. at 21-37. Penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Edgardo T. Lloren.

[3] Id. at 39-42.

[4] Special Twenty-First Division and Former Special Twenty-First Division, respectively.

[5] Rollo, p. 36.

[6] Id. at 22.

[7] Id.

[8] Id. at 43-46.

[9] Id. at 22-23 and 43-44.

[10] Id. at 23, as seen in the Subdivision Plan Sketch, id. at 47.

[11] Id.

[12] Id. at 48-49.

[13] Id. at 23.

[14] Id.

[15] Sometimes referred to as "Rodrigo" in some parts of the rollo.

[16] "Amalia" in some parts of the rollo.

[17] Referred to as "Erlinda-Concha-Amosa" in some parts of the rollo.

[18] Rollo, p. 24.

[19] Id.

[20] Id.

[21] Id. at 50.

[22] Id. at 52-53.

[23] The area reflected on OCT No. 41507 is 9,690 sq. m.

[24] Rollo, p. 24.

[25] Id. at 25 and 57.

[26] Id. at 25.

[27] Id. at 24 and 54.

[28] Id. at 24.

[29] Id. at 25.

[30] Id.

[31] Id. at 56-69. Penned by Presiding Judge Dorothy P. Montejo-Gonzaga.

[32] Id. at 68-69. Emphasis in the original.

[33] Id. at 66.

[34] Id.

[35] Id. at 27.

[36] Id. at 29.

[37] Id. at 28.

[38] Id. at 28-29.

[39] Id. at 29, citing *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, G.R. No. 149679, May 30, 2003, 403 SCRA 291.

[40] Id. at 30.

[41] Id.

[42] Id.

[43] Id. at 30-31.

[44] Id. at 34.

[45] Id.

[46] Id. at 36.

[47] Id. at 39-42.

[48] Id. at 43-44. Emphasis supplied.

[49] Id. at 45.

[50] Id. at 50. Emphasis supplied.

[51] *Wee v. Mardo*, G.R. No. 202414, June 4, 2014, 725 SCRA 242, 256.

[52] G.R. No. 167412, February 22, 2006, 483 SCRA 102.

[53] Id. at 113, citing *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, *supra* note 39, at 298; *Lee Tek Sheng v. Court of Appeals*, 354 Phil. 556, 561 (1998); *De Pedro v. Romasan Development Corporation*, G.R. No. 158002, February 28, 2005, 452 SCRA 564, 575.

[54] *De Guia v. Court of Appeals*, G.R. No. 120864, October 8, 2003, 413 SCRA 114, 124.

[55] G.R. No. 182839, June 2, 2014, 724 SCRA 280.

[56] Id. at 291-292. Emphasis supplied.

[57] G.R. No. 166790, November 19, 2014, 740 SCRA 612.

[58] *Id.* at 631. Emphasis supplied; italics in the original.

[59] No. L-24419, July 15, 1968, 24 SCRA 59.

[60] *Id.* at 61-62. Emphasis and underscoring supplied; citations omitted.

[61] G.R. No. 78178, April 15, 1988, 160 SCRA 738.

[62] *Id.* at 745. Emphasis supplied; italics in the original; citations omitted.

[63] G.R. No. 61584, November 25, 1992, 215 SCRA 866.

[64] G.R. No. 235020, December 10, 2019, accessed at .

[65] *Id.* Emphasis supplied; citations omitted.

[66] *Id.* Emphasis supplied.

[67] With an excess of 0.5 sq. m., which is subject to a reimbursement or offset as the co-owners may deem proper.

[68] *Sering v. Plazo*, No. L-49731, September 29, 1988, 166 SCRA 84, 85.

[69] Sentencias of the Supreme Court of Spain dated April 6, 1968 and June 5, 1918, cited in Tolentino, CIVIL CODE, 1983 ed., Vol. II, p. 157; and it is noteworthy that at common law the word "ejectment" also has a broad signification as "a form of action by which possessory titles to corporeal hereditaments may be tried and possession obtained x x x [or] which lies to regain the possession of real property, with damages for the unlawful detention" (Bouvier's Law Dictionary).

[70] G.R. No. 156402, February 13, 2006, 482 SCRA 353.

[71] *Id.* at 358. Emphasis supplied.

[72] CIVIL CODE, Art. 487 provides:

Art. 487. Anyone of the co-owners may bring an action in ejectment. (n)

[73] RULES OF COURT, Rule 70, Sec. 1 provides:

SEC. 1. Who may institute proceedings, and when. - Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

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