

**ROSARIO GACOS, ARNULFO PRIETO, AND RENITA PRIETO,
PETITIONERS, VS. COURT OF APPEALS, SOLOMON BRIONES,
LEONOR BRIONES, AND TEODULFO MENDONES, RESPONDENTS.**

G.R. Nos. 85962-63. August 03, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals dated October 11, 1985 which affirmed the decision of the then Court of First Instance of Sorsogon, Branch II, now Regional Trial Court of Sorsogon, declaring the Brioneses, plaintiffs in Civil Case No. 1008, as the owners and entitled to the possession of the 1,292-square meter portion of the land in litigation, and the Gabitos, defendants in Civil Case No. 1049, as the owners and entitled to the possession of Lot No. 2452 of the Irosin Cadastral tax mapping containing an area of 84 square meters.

The controversy which gave rise to the two (2) consolidated cases jointly heard and tried by the then Court of First Instance of Sorsogon involved a parcel of land reportedly containing an area of 2,242 square meters which formed part of the 6,584 square meter unregistered land owned by Eladio Gacos. After the parcel of land was inherited by Petrona Gacos, one of the three (3) daughters of Eladio Gacos, the same was successively sold in 1948 to Marcial Olaybal, then sold by the latter to Rosario Gacos in 1950, then sold by the latter to Arnulfo Prieto in 1973.

The facts, as found by the appellate court, are as follows:

Eladio Gacos owned a 6,584 square meter unregistered land located in San Pedro district, Irosin, Sorsogon. During the time he was ill sometime in 1935 or 1936, he verbally adjudicated to his three (3) daughters, namely, Petrona, Fortunata and Lucia, their respective inheritance shares by dividing the property lines from east to west and assigned the northernmost portion to Fortunata, the middle portion to Lucia, and the southernmost portion to Petrona.

Upon adjudication of their respective shares, Petrona immediately took possession and occupied her 1/3 share of the land while her two sisters took possession of their shares only upon the death of their father in 1937.

Sometime in 1948, or before the land was formally partitioned, Petrona offered to sell to her nephew-in-law, Marcial Olaybal, son-in-law of her sister Fortunata G. Cambal, a part of her share which was pointed and indicated to him. The transaction was consummated in a document written in Spanish dated March 13, 1948 captioned "Escritura de Venta Absoluta" describing therein the land inherited by Petrona as containing an area of 2,720 square meters. He immediately took possession of the land, measured it and declared the same in his name under Tax Declaration No. 5487 (Exh. "A" -1008) issued to him during the general revision in April, 1948 indicating therein an area of 866 square meters.

On January 16, 1949, Petrona Gacos died. She was survived by her four (4) minor children, namely: Leonora,

Solomon, Constantino and Benjamin, all surnamed Briones, who were left to the care and custody of her sister Lucia but were later brought to Manila where they grew up. Petrona Gacos was married to Constantino Briones, Sr. who predeceased her.

Before her death, Petrona Gacos, then afflicted with tuberculosis, instructed her sister Lucia, who administered the remaining portion of her property, to sell the small area on the east for her funeral expenses and novena. After her death, Lucia Gacos, following the wish of her sister, sold on February 22, 1949 to Teodolfo Mendones the said portion of land on the east containing an area of 84 square meters in a document of sale captioned "Documento de Compra Absoluta" (Exh. "5"-1049) expressly stating therein that the proceeds were to be spent for said funeral expenses and novena.

Teodolfo Mendones took possession of the land and declared the same in his name under Tax Declaration No. 6307 (Exh. "V-1"-1008; Exh. "20-A"-1049), later revised Tax Declaration No. 6307 (Exh. "V"-1008; Exh. "20"-1049).

On May 14, 1950, Lucia Gacos on her own behalf and in representation of the deceased Petrona Gacos, and Jose Cambal, in behalf of his deceased mother, Fortunata Gacos, executed an "Agreement of Partition of Real Property" (Exh. "3"-1008; Exh. "C"-1049) formally confirming what was apportioned to them by their father as their respective shares in the 6,854 square meter land, to wit: Petrona, 2,242 square meters; Lucia, 2,148 square meters; and Fortunata, 2,194 square meters.

On or about the month of December, 1950, Marcial Olaybal offered to sell to Encarnacion Gacos the parcel of land he bought in 1948 from Petrona Gacos but when the sale was consummated in a "Deed of Absolute Sale" dated December 30, 1950, the name Rosario Gacos, sister of Encarnacion, appeared as the vendee (Exh. "2"-1008; Exh. "B"-1049). The property sold was described therein as containing an area of 2,025 square meters (a 1,159 square meter difference in area from what he declared in the Tax Declaration No. 5487) and bounded as follows: on the North, formerly of late Eladio Gacos, now Lucia Gacos and Rosario Gacos; on the East, national road Juban-Irosin-Bulan; on the South, irrigation canal; and on the West, heirs of Petrona Gacos.

Rosario Gacos took possession of the land and registered the deed of absolute sale with the Office of the Register of Deeds of Sorsogon and declared the same in her name under Tax Declaration No. 7047 (Exh. "22"-1008; Exh. "V"-1049).

Seventeen years later, or on April 4, 1967, Rosario Gacos executed a document captioned "Ratification of Ownership of Realty" (Exh. "H"-1008; Exh. "10"-1049) consolidating into one parcel of land for taxation purposes the four(4) small adjoining parcels of land, namely: (1) the 866 square meter parcel of land covered by Tax Declaration No. 7047 acquired from Marcial Olaybal; (2) the 351 square meter parcel of land bought from Lucia Gacos on July 6, 1950 and the 534 square meter parcel of land acquired from Lucia Gacos on January 19, 1951, both parcels covered by Tax Declaration No. 7865; and (3) the 1,200 square meter parcel of land covered by Tax Declaration No. 4150 bought from Cornelia Galit; and (4) the 2,246 square meter parcel of land covered by Tax Declaration No. 4152 bought from Rogelio Galit. In lieu of the three (3) separate tax declarations, she was issued Tax Declaration No. 8179-A (Exh. "17"-1008; Exh. "O"-1049) which was later revised by Tax Declaration No. 11024 covering the total area, as reported in four (4) tax declarations, of 5,187 square meters.

On October 24, 1973, or six (6) years after the four parcels of land were consolidated into one tax declaration, Rosario Gacos sold the contiguous land covered by said Tax Declaration No. 11024 to her nephew, Arnulfo Prieto, son of her sister Encarnacion Gacos and Roque Prieto. Arnulfo Prieto took possession of the said land and declared the same in his name under Tax Declaration No. 9177 which was later cancelled by Tax Declaration No. 9330.

On March 14, 1975, Arnulfo Prieto entered into a 15-year lease contract with his sister Vivencia Prieto allowing her to use the land for her own purposes (Exh. "7"-1008; Exh "G"-1049). A ricemill was constructed thereon by Vivencia Prieto.

On August 1, 1975, the children of Petrona Gacos, namely, Leonora, Solomon, Constantino, Jr. and Benjamin, all surnamed Briones, executed a "Deed of Extra-judicial Settlement" (Exh."D"-1008) adjudicating onto themselves the 1/3 undivided portion of the 2,242 square meters of their mother's share of inheritance from Eladio Gacos after Leonora G. Briones was informed in 1972 by her aunt, Lucia, that a portion of the land had been sold to Encarnacion Gacos although Rosario Gacos appeared in the deed of sale as the vendee, and that a ricemill had been constructed on the land. In the same document, they constituted and appointed their cousin, Jesus G. Gabito, as their attorney-in-fact to do for and in their behalf whatever necessary anent the said land in Irosin, Sorsogon.

CIVIL CASE NO. 1008

On September 1, 1975, Solomon, Leonora, Constantino and Benjamin, all surnamed Briones, legitimate heirs of the late Petrona Gacos, filed a complaint before the then CFI of Sorsogon, docketed as Civil Case No. 1008, seeking to recover the 1,352 square meter land situated in San Pedro District, Irosin, Sorsogon from the defendants Rosario Gacos and Arnulfo Prieto, which they alleged to be the remnant of a 2,242 square meter land inherited by their mother Petrona Gacos from her father Eladio Gacos after Petrona sold a portion therefrom consisting of 866 square meters to Marcial Olaybal.

Plaintiffs Brioneses alleged, among others, that the remnant of the land which they inherited by operation of law from their mother, Petrona Gacos, who died in 1949, were administered by their aunt, Lucia Gacos, in the concept of negotiorum gestio as they were then minors and were taken to Manila where they grew up; that when Lucia Gacos died in 1971, Rosario Gacos came into the possession of the land in question and then executed a document captioned "Ratification of Ownership" for the purpose of having the said land declared in her name for taxation purposes and filed the same with the Office of the Provincial Assessor of Sorsogon in 1967; that without lawful authority, Rosario Gacos sold the land to Arnulfo Prieto in or about 1973, who despite demands made, refused to return the same to the Brioneses.

Defendants Rosario Gacos and Arnulfo Prieto admitted in their answer that Petrona Gacos inherited the land from her father Eladio Gacos but contended that what Petrona Gacos sold to Marcial Olaybal on March 13, 1948 was not a portion of the land but the whole share of Petrona Gacos consisting of 2,780 square meters as per document of sale (Escritura de Venta Absoluta), thus, there is no remnant consisting of 1,352 square meters to speak of.

Defendants also contended that considering that plaintiffs are no longer owners of the land in dispute since 1948, they are therefore total strangers to the same and have no legal right to intervene in the execution of the said "Ratification of Ownership" by Rosario Gacos; that because of the continued and undisturbed possession for 27 years of the land in dispute by Arnulfo Prieto and that of his predecessors-in-interest Rosario Gacos, whatever rights plaintiffs may now have over this land have already been long barred by acquisitive prescription.

At the pre-trial hearing held on November 5, 1975, plaintiffs and defendants stipulated, among others, that both parties will secure the services of a licensed geodetic engineer, sharing the fees pro-rata, the same to be taxed as costs against the losing parties.

Pursuant to the pre-trial order of November 5, 1975, the court commissioned Geodetic Engineer Carlos S. Borromeo to relocate and survey the inheritance share of Petrona Gacos. On December 29, 1975, Geodetic Engineer Borromeo submitted his report to the trial court which, in brief, stated that the property claimed by the plaintiffs is designated in the survey as Lot No. 1724 with an area of 1248 sq. meters (Brioneses) and Lot No.

2452 of Irosin Cadm-462-D with an area of 83 sq. meters (Mendones) or a total area of 1321 square meters, bounded on the North by the property of Rosario Gacos, part of Lot 1724, and a proposed roadwidening; on the East by National Road, proposed roadwidening, and Lot No. 2053 (PC Barracks); on the South by Irrigation Canal beyond said Irrigation by Lot No. 1720 (Magdalena Baswel); and on the West by Lot No. 1514 (Encarnacion Gacos).

CIVIL CASE NO. 1049

Sometime on June 1, 1976, spouses Arnulfo Prieto and Renita Chua Prieto filed a complaint with the then CFI of Sorsogon, docketed as Civil Case No. 1049, seeking to recover from Teodolfo Mendones and Visitacion Borrega and spouses Jesus and Merced Gabitos the 84-square meter portion of hereditary share of Petrona Gacos which, according to plaintiffs, such hereditary share was entirely sold by Petrona Gacos to their predecessor-in-interest, Marcial Olaybal, sometime in 1950. Plaintiffs claimed that the eastern portion of the said hereditary share was fraudulently and without authority sold by Lucia Gacos to Teodolfo Mendones who thereafter sold it to spouses Jesus and Merced Gabitos; that spouses Gabitos hurriedly constructed a residential house thereon blocking from public view the Prieto Ricemill and damaging their business.

In their answer, defendants Mendones and Gabitos denied that Petrona Gacos sold the entire area of her hereditary share to Marcial Olaybal, alleging, that Marcial Olaybal did not, and could not have legally sold to Rosario Gacos, alleged predecessor-in-interest of the plaintiffs, the entire hereditary estate because what was sold was only 866 square meters of the total area of 2,242 square meters; that the Mendoneses acquired the 84-square meter portion in good faith and for value on February 22, 1949 as evidenced by a document of sale executed by Lucia Gacos with the conformity of Petrona Gacos' brothers and sister pursuant to the instruction of late Petrona Gacos during her illness; that having lawfully acquired the lot, the Mendoneses have the right to legally sell the same to the other defendants, the Gabitos, who acquired it in good faith, for value and under color of title; that the Gabitos, as rightful owners by virtue of purchase, are entitled to the exercise of their right of dominion over the said lot by building a residential house thereon.

At the pre-trial conference on August 4, 1976 in Civil Case No. 1049, plaintiffs Prietos and defendants Mendones and Gabito entered into a stipulation of facts and, among others, simplified the issues into the following: (1) whether the sale executed by Petrona Gacos in favor of Marcial Olaybal on March 13, 1948 really reflected the true intent of the parties; and (2) whether acquisitive prescription lies in favor of the defendants spouses Mendones and spouses Gabito.

After joint trial, as the two cases are related to each other, the then CFI of Sorsogon rendered its decision (pp. 90-124, Record on Appeal, p. 89, Rollo) in favor of plaintiffs Brioneses in Civil Case No. 1008 and in favor of defendants Mendones and Gabitos in Civil Case No. 1049, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered:

IN CIVIL CASE NO. 1008

“(a) Declaring the Brioneses the owners of the 1,292-square meter portion of the land in litigation as described in paragraph 3 of the Complaint and reflected in the sketch plan (Exhs. 'B' & 'B-2'), and entitled to the possession thereof;

“(b)

“(c) Requiring the parties to engage the services of a geodetic engineer to survey the land, defining and segregating the 1,292 square meters unsold portion the of land from the property measuring 866 square meters

sold to the Prietos.

IN CIVIL CASE NO. 1049

“(a) Declaring the Gabitos the owners and entitled to the possession of the land in question and designated as Lot No. 2452 of the Irosin Cadastral tax mapping;

“(b) Ordering the plaintiffs to desist from disturbing the Gabitos’ possession.

"With costs against the Prietos in both cases.

"SO ORDERED." (pp. 49-50, Rollo)

Dissatisfied, the Prietos appealed to the Court of Appeals assailing principally, among others, the findings of the trial court that Petrona Gacos sold only 866 square meters out of her hereditary share to Marcial Olaybal on March 13, 1948, and that the portion sold by Lucia Gacos to Teodolfo Mendones on February 22, 1949, described later as Lot No. 2452, could be a part of the unsold portion of Petrona Gacos’ share.

On October 11, 1985, the Court of Appeals promulgated its decision affirming the decision of the lower court (pp. 49-63, Rollo). The motion for reconsideration was denied on November 22, 1988 (pp. 65-67, Rollo).

Hence, the instant petition for review.

In disputing the findings of the appellate court, petitioners argued that the contract of sale "Escritura de Venta Absoluta" dated March 18, 1948 from Petrona Gacos to Marcial Olaybal clearly indicates that the property conveyed is not a portion of her hereditary share but her entire share in the inheritance of her father Eladio Gacos, thus the following description of the land in the said deed of sale:

“x x x la parcela de terreno urbano que a mi me pertenece en herencia de nuestro difunto padre, Eladio Gacos, situado en la distrito de San Pedro, Irosin, Sorsogon, de 2,780 m.c. o sea VEINTISIETE AREAS, lindado al Norte y Oeste, con el terreno del difunto Eladio Gacos; correspondiente a los demas herederos mencionados arriba, con la viuda del difunto Severo Gacos, Sra. Angela viuda de Gacos, al este, la Carretera Nacional de Irosin Juban y Bulan, y al Sur, un canal de regadio al otro lado de los citados herederos. La mejora permanentes 10 ponos de coco fructiferos. Los limites visibles, son la carretera nacional y estacas de arboles visibles. x x x" (p. 440, Records)

Petitioners contended that in delineating the boundaries of the property sold, as in the cases of *Smith Bell and Co. v. Director of Lands*, 50 Phil. 879 (1924); *Buiser v. Cabrera*, 81 Phil. 699 (1948), and *Sta. Ana v. Hernandez*, G.R. No. L-16394, December 17, 1966, 18 SCRA 973 (1966), the boundaries indicated in the deed of sale (*Escritura de Venta Absoluta*) as enclosing the land and indicating its limit put its identification beyond doubt and not the area mentioned in its description (pp. 18-19, Rollo).

The argument would have merit if, as in the cases cited, the boundaries of the land claimed by petitioners to have been sold to them in its entirety were certain and definite. This is not true in the instant case where the boundaries given in the "Escritura de Venta Absoluta" dated March 13, 1948 between Petrona Gacos and Marcial Olaybal do not coincide with the boundaries described in the "Deed of Absolute Sale" dated December 30, 1950 when Marcial Olaybal sold the same land to and Rosario Gacos. The said boundaries of the land claimed do not even coincide with the boundaries of the hereditary share of Petrona Gacos stated in "Agreement of Partition of Real Property." (Exh. "3"-1008; Exh. "C"-1049) executed on May 14, 1950.

The boundaries described in the "Escritura de Venta Absoluta" are not only general but vague. Translated in English, it states that the subject property is bounded on the North and West by the land of the late Eladio Gacos

and other heirs abovementioned, together with the widow of the late Severo Gacos, Mrs. Angela Vda. de Gacos, on the East by National Road Irosin-Juban-Bulan, and on the South, irrigation canal, and beyond the heirs abovementioned.

Neither the statement concerning the area (2,750 square meters) in the "Escritura de Venta Absoluta" identifies with absolute certainty the land sold by Petrona Gacos to Marcial Olaybal as it does not coincide with the area (2,025 square meters) stated in the "Deed of Absolute Sale" between Marcial Olaybal and Rosario Gacos. The variance in the boundaries and the statement of the area (a difference of 1159 square meters) thus put to doubt the identity of the land sold by Petrona Gacos to Marcial Olaybal which was eventually transferred by the latter to Rosario Gacos. The rule thus enunciated in the cases cited by petitioners does not apply. Neither the exception to the rule that area prevails when the boundaries relied upon do not identify the land beyond doubt applies in the instant case.

Recourse by the trial court therefore to other proofs other than the "Escritura de Venta Absoluta" which are closely related to and contemporaneous with Marcial Olaybal's acquisition of the land was warranted under the rules on interpretation of written agreements under Rule 130, Section 7 par. (a) in relation to Article 1371 of the Civil Code. On appeal by petitioners, all the evidence were meticulously re-examined and carefully analyzed by the Court of Appeals.

It is thus apparent that the decision of the Court of Appeals resolved the basic issue of the comparative weight of the parties' respective proofs in substantiation of their conflicting claims of ownership and possession of the disputed land. Imperative considerations of sound policy, therefore, bar a review of the findings of the Court of Appeals by this Court.

This Court has emphatically declared that it is not the function of the Supreme Court to analyze or weigh such evidence all over again, its jurisdiction being limited to reviewing errors of law that might have committed by the lower court (*Morales vs. Court of Appeals*, G.R. No. 91003, May 23, 1991, 197 SCRA 391 (1991); *Banigued vs. Court of Appeals*, G.R. No. L- 47531, February 20, 1984, 127 SCRA 596 (1984). In the absence of showing that the findings complained of are totally devoid of support in the record, or that they are so glaringly erroneous as to constitute serious abuse of discretion, as petitioners failed to do in the instant case, such findings must stand, for this Court is not expected or required to examine or contrast the oral argument and documentary evidence submitted by the parties (*Santa Ana, Jr. vs. Hernandez*, G.R. L-16394, December 17, 1966, 18 SCRA 973 (1966).

Besides, We are not prepared to overturn the findings of the Court of Appeals that only a portion of the hereditary share of Petrona Gacos was sold to Marcial Olaybal on March 13, 1948 containing an area of 866 square meters. It correctly relied on Tax Declaration No. 5487 (Exh. "A"-1008) dated October 24, 1948 of Marcial Olaybal himself declaring in his name the disputed land with an area of 866 square meters as well as the "sketch plan" of the said land (Exh. "R"-1008) and the "field sheet" (Exh. "R-1"-1008) specifying the area of 866 square meters in both documents, submitted by Marcial Olaybal to the assessors' office during the general revision in April, 1948. The Court of Appeals likewise correctly relied on his testimony during the trial on March 27, 1976 that he bought only 866 square meters of the land of Petrona Gacos which said Court correctly categorized as an admission of a party to a relevant fact under Section 22, Rule 130 of the Rules of Court. Considering that he even pointed and specifically identified the land he bought in the sketch plan made by Geodetic Engineer Carlos Borromeo (Exh. "B"-1008) by encircling the area sold to him with a red ballpen line (Exh. "B-1"-1008).

It must be noted that the boundaries stated in the "Deed of Absolute Sale" dated December 30, 1950 between Marcial Olaybal and Rosario Gacos indicates the following: "NORTH, formerly Eladio Gacos, now Lucia Gacos and Rosario Gacos; SOUTH, irrigation canal; EAST, National Road; WEST, Heirs of the late Petrona Gacos".

The boundary on the west clearly indicates that Petrona Gacos did not sell her entire share to Marcial Olaybal in 1948; neither did Marcial Olaybal sell the entire hereditary share of Petrona Gacos to Rosario Gacos in 1950 for he cannot sell what he does not own.

In support of their theory on the primacy of the area within the boundaries as indicated in the "Escritura de Venta Absoluta" over and above the area as may stated therein or elsewhere, petitioners also claimed that the sale of the disputed land in the instant case is a sale for a "lump sum" (a cuerpo cierto or por precio alzado), not at the rate per unit under Art. 1542 of the Civil Code where the vendor "shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract" (p. 23, Rollo).

In *Buiser vs. Cabrera, etc.* 81 Phil. 669 (1948) involving the question whether, in describing the fourth parcel of land covered in the mortgage contract with description of its boundaries therein, the parties to the said contract of mortgage intended to include therein the entire lot of 4,008 square meters which Nemesio Cabrera had inherited from his father or only that portion of 500 square meters, as stated in the mortgage contract, on which his house was built, the Court rejected petitioner's contention that Article 1542 (formerly 1471) of the Civil Code applies to support his theory that in case of conflict between the boundaries and the area the former should prevail. In ruling that only that portion of 500 square meters is included in the mortgage contract on the basis of the findings that the boundaries relied upon do not identify the land beyond doubt, the Court applied instead the provisions found in Article 1372 (formerly Art. 1283) and Article 1378 (formerly Art. 1289) of the New Civil Code, thus:

"ART. 1372. However general the terms of a contract may be, they shall not be understood to comprehend things that are distinct and cases that are different from those upon which the parties intended to agree.

"ART. 1378. When it is absolutely impossible to settle doubts by the rules established in the preceding articles, and the doubts refer to incidental circumstances of a gratuitous contract, the least transmission of rights and interests shall prevail. If the contract is onerous, the doubt shall be settled in favor of the greatest reciprocity of interest."

The Court finds the abovequoted articles applicable in the instant case. It must be observed that the "Escritura de Venta Absoluta" was consummated in favor of a close relative, a nephew-in-law (Marcial Olaybal) of Petrona Gacos, he being married to the daughter of her sister Fortunata Gacos-Cambal. Thus, in accordance with Article 1378 of the Civil Code, said contract should be interpreted as "to effect the least possible transmission of rights or interests." Besides, Petrona Gacos could not have sold her entire hereditary share as she and her four (4) minor children were then staying in the disputed land with her sister Lucia.

Petitioners then argued that their continued possession in good faith and in the concept of an owner with just title over the disputed property which includes that of their predecessors-in-interest, Rosario Gacos, for 27 years ripened into ownership by acquisitive prescription.

Possession, under the Civil Code, to constitute the foundation of a prescriptive right, must be possession under claim of title (*en concepto de dueño*) or it must be adverse (*Cuayong vs. Benedicto*, 37 Phil. 783). Acts of possessory character performed by one who holds by mere tolerance of the owner are clearly not "*en concepto de dueño*," and such possessory acts, no matter how long so continued, do not start the running of the period of prescription (*Manila Electric Company vs. IAC*, G.R. No. 71393, June 28, 1989).

Even under ordinary acquisitive prescription of immovables and other real rights through adverse possession of 10 years, the possession of petitioners' predecessors-in-interest of the unsold portion of 1,159 square meters cannot be characterized as adverse possession in good faith (Art. 1134, Civil Code; *Negrete vs. CFI of Marinduque*, L-31267, November 24, 1972, 48 SCRA 113). As found by the trial court and the appellate court, as early as April 26, 1949, petitioners' predecessors-in-interest, Rosario Gacos, knew and recognized the sale on

February 22, 1949 by Lucia Gacos to Teodolfo Mendones of the eastern portion (Lot No. 2452) of the hereditary estate of Petrona Gacos reportedly containing an area of 84 square meters. In the "Escritura de Venta con Pacto de Retro" dated April 26, 1949 (Exh."BB"-1008; Exh. "26"-1049) between Lucia Gacos and Rosario Gacos involving the share of Lucia Gacos, Teodolfo Mendones is mentioned as the boundary owner on the south. In fact, Encarnacion Prieto, mother of petitioners, signed as a witness in the said pacto de retro sale, thus impliedly recognizing the ownership of the lot involved in Civil Case No. 1049.

If the entire hereditary share of Petrona was sold on March 13, 1948, as asserted by petitioners, the eastern portion (Lot 2452) of her hereditary estate involved in Civil Case No. 1049 could not have been sold to Teodolfo Mendones on February 22, 1949. Petitioners never raised any objection on the exercise of Teodolfo Mendones of his dominical rights over the said eastern portion when the latter mortgaged the land as a collateral for a loan with the Rural Bank of Bulan, Inc. which was discharged and released on April 15, 1975. Earlier, or on July 7, 1972, Teodolfo Mendones even leased the 84 square meter land to Jesus Gabito (Exh "W"-1008; Exh. "21"-1049) who, on May 21, 1975, bought the same from Teodolfo Mendones (Exh. "X"-1008; Exh. "22"-1049). For their part, the spouses Gabito constructed a residential house thereon and declared the land under Tax Declaration No. 7371 (Exh. "EE"-1008; Exh. "29"-1049). There was even a fence constructed by Marcial Olaybal separating the property he bought from that of Petrona Gacos (p. 7, Court of Appeal decision, pp. 49-63, Rollo).

We take judicial notice of the road-widening project of the national highway (Juban-Irosin-Bulan National Road) of the then Department of Public Highways, now the DPWH, undertaken sometime in the 1970's which required a 15-meter road-right of way from the centerline of the road. This road-widening project had materially altered the areas of the disputed land thus substantially reducing the areas appertaining to two or all of the parties considering that a welcome rotonda was constructed leading to the three neighboring towns of Bulan, Bulusan and Matnog (Samar-Masbate route) and Juban (Sorsogon, Sorsogon route). In the same manner, developments in the configuration of disputed land, natural or man-made, like the expansion of the ditches into irrigation canals, and other improvements thereon had also materially altered the areas stated in the documents of sale mentioned in the instant case. Thus, the services of a duly licensed geodetic engineer which the trial court required the parties to engage is necessary to determine the actual metes and bounds of the disputed land to apportion the areas in accordance with the decision in the instant case.

ACCORDINGLY, the decision of the Court of Appeals dated October 11, 1985 affirming that of the then Court of First Instance of Sorsogon, Branch 11, now Regional Trial Court of Sorsogon, dated December 4, 1979, is AFFIRMED. Costs against petitioners.

SO ORDERED.

Cruz, (Chairman), Grino-Aquino, and Bellosillo, JJ., concur.

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