



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**LEONARDO NOTARTE,
GUILLERMO NOTARTE,
REGALADO NOTARTE AND
HEIRS OF FELIPE NOTARTE,**
Petitioners,

- versus -

GODOFREDO NOTARTE,
Respondent.

G.R. No. 180614

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

Promulgated:

29 AUG 2012

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DECISION

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari filed under Rule 45 which seeks to set aside the Decision¹ dated August 10, 2007 and Resolution² dated November 14, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 92591 and to reinstate the Decision³ dated September 1, 2004 of the Municipal Trial Court (MTC) of Bani, Pangasinan dismissing respondent's complaint for recovery of possession and damages. The CA affirmed the Decision⁴ dated March 21, 2005 of the Regional Trial Court (RTC) of Alaminos City, Pangasinan, Branch 54 reversing the MTC judgment.

¹ Rollo, pp. 257-271. Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Jose C. Reyes, Jr. and Ramon R. Garcia concurring.

² Id. at 279-280.

³ Id. at 142-164. Penned by Judge Benjamin N. Abella.

⁴ Id. at 198-204. Penned by Judge Jules A. Mejia.

As culled from the records, the facts of this case follow:

The properties subject of controversy form part of a 263,233-square meter land situated in Barrio Quinaoayanan, Municipality of Bani, Province of Pangasinan, and covered by Original Certificate of Title (OCT) No. 48098 issued on November 6, 1931. The original registered owners with 1/7 share each are Vicenta Notarte, the wife of Hilario Hortaleza; Paulino Notarte, married to Maria Camba; Juan Notarte, married to Gregoria Castillo; Bernardo Notarte, married to Dorotea Orasa; Cirila Notarte, the wife of Luis Castelo; Fausto Notarte, married to Martina Natino; and spouses Ricardo Namoca and Eusebia Ortaleza. Vicenta, Paulino, Juan, Bernardo, Cirila and Fausto, all surnamed Notarte, are brothers and sisters, while Ricardo Namoca is their cousin.⁵

The parties in this case are close relatives. Petitioner Felipe Notarte is the uncle of respondent Godofredo Notarte whose father, Alejandro Notarte, is the brother of Felipe. Felipe and Alejandro are the sons of Juan Notarte. Petitioner Guillermo Notarte is the brother of Godofredo while petitioner Leonardo Notarte is their cousin, being the son of Felipe. Petitioner Regalado Notarte is the son of Leonardo.⁶

On October 15, 1984, Godofredo bought from Patrocenia Nebril-Gamboa a parcel of land, as evidenced by the Deed of Absolute Sale⁷ she executed in his favor and describing the property sold as follows:

A parcel of land, situated in Quinaoayanan, Bani, Pangasinan, consisting of pasture and unirrigated riceland, containing an area of **29,482 sq.m.**, more or less. Bounded on the N. by Leonardo Notarte; on the NE. by Nenita Notarte; on the SE. by Jose Nano; on the S. by Guillermo Notarte; and on the W. by Leonardo Notarte, which limits are indicated by fences on all sides. Declared under Tax Declaration No. 255 and 256 still in the name of Emiliano Gamboa who donated it to Procopio Gamboa and Desiderio Gamboa and in turn Desiderio and Procopio sold it to Antonio Gamboa and Patrocenia Nebril who has adjudicated the entire parcel of land unto herself, the herein vendor; assessed *in toto* at P1,120.00. **This is part of the land covered by Original Certificate of Title No. 48098, Pangasinan.** (Emphases supplied.)

⁵ Pre-Trial Order, records, p. 94; Exhibit "O," records, p. 183; TSN, March 2, 1999, pp. 9-10.

⁶ TSN, March 2, 1999, pp. 7-9; TSN, June 29, 2000, p. 11.

⁷ Exhibit "K," records, p. 176.

On the same date, Godofredo filed his Affidavit of Adverse Claim in the Registry of Deeds to protect his rights on the land he acquired from Patrocenia “pending the completion of all proper documents for the segregation of *separate portions* of the whole parcel of land under aforesaid title [OCT No. 48098].” Thereafter, Godofredo declared the land in his name under Tax Declaration No. 982 for the year 1985, indicating its area as 29,482 sq.m.⁸

Godofredo initially filed in the MTC a complaint for “Partition, Subdivision Survey and Recovery of Possession With Damages” against Felipe and Guillermo (Civil Case No. 36). An Amended Complaint for “Recovery of Possession With Damages” was admitted by the said court on January 10, 1997, whereby the prayer for subdivision survey of the adjoining lots respectively occupied by the parties was abandoned. The Second Amended Complaint which included as additional defendants Leonardo and Regalado, was likewise admitted on September 16, 1997.⁹

In his Second Amended Complaint, Godofredo described the property he acquired from Patrocenia, as follows:

A parcel of unirrigated riceland and pasture land situated in Quinaoayanan, Bani, Pangasinan, containing an area of **27,604.714 sq.m.**, more or less. Bounded on the North and West by Felipe Notarte; on the East by Jose Nano; and on the South by Guillermo Notarte and Leonardo Notarte. Assessed at P6,900 under tax declaration No. 8341 in the name of the plaintiff. **This was part of Bernardo Notarte’s 1/7 share of the land covered by Original Certificate of Title No. 48098.**¹⁰ (Emphases supplied.)

Godofredo claimed that his land was acquired by Patrocenia from Procopio Gamboa and Desiderio Gamboa who acquired the same from Emiliano Gamboa who in turn acquired it from Bernardo Notarte in separate transactions and conveyances in writing. He likewise averred that the heirs of Bernardo have executed pertinent documents renouncing their interest,

⁸ Records, pp. 177, 181 (Exhibits “L” and “N-2”).

⁹ Id. at 1-15, 45 and 78.

¹⁰ Id. at 1.

action and participation over the subject land in favor of Godofredo and/or his predecessors-in-interest.

Godofredo alleged that the above-described land used to be intact but the petitioners, taking advantage of his absence, took possession of portions of his land thereby reducing it to barely 13,000 sq.m., with Guillermo occupying 6,333 sq.m. more or less on the southern side, while Leonardo and Regalado jointly encroached over 8,272 sq.m. more or less on the western side. Godofredo claimed that all demands upon the petitioners to return the aforesaid portions and conciliations before the Barangay authorities failed.

In their Answer with Counterclaim,¹¹ petitioners denied having encroached on respondent's land, contending that respondent instituted this complaint to increase the actual size of his land at the expense of the adjoining owners. Petitioners asserted that they have been in actual, notorious, public and exclusive possession of their respective parcels for a very long time even before respondent bought his property from Patrocenia Gamboa. They claimed that their common ascendant, Felipe, owned 10 hectares of the property covered by OCT No. 48098 which he acquired by purchase as early as 1951 and the latest in 1967. The 37,604-sq. m. portion of Felipe's land being occupied by petitioners, which area adjoins respondent's property on the west, was acquired by Felipe from James Turner by virtue of a Quitclaim Deed dated April 2, 1951. Petitioners also alleged that there are other co-owners of the whole undivided land covered by OCT No. 48098 who are indispensable for the final and complete determination of this case.

In his Reply,¹² respondent pointed out that he had purchased a portion with a definite area of 27,604.714 sq.m. which is within the 1/7 share of Bernardo Notarte. Petitioners knew about this because one of them (Leonardo) bought only one hectare of the said share. Being a registered

¹¹ Id. at 51-54 79-82.

¹² Id. at 83-85.

land, their possession of the encroached portion they do not own is illegal, no matter how long. As to the property of Felipe, respondent argued that its alleged area is immaterial even if it were true that he acquired 10 hectares because the fact is that he had not acquired any portion of Bernardo's 1/7 share; why then did Felipe take possession of a western portion of Bernardo's 1/7 share which belongs to respondent? Respondent also claimed that what Felipe acquired from Turner was the 1/7 share of Juan Notarte, which is situated north of Bernardo's 1/7 share, one hectare of which was bought by Leonardo. Thus, petitioners are occupying not only the 37,604 sq.m. acquired from Turner but also the western portion of respondent's land measuring almost one hectare north of and adjacent to Leonardo's one hectare. Respondent further averred that the land covered by OCT No. 48098 is no longer undivided as it had been physically segregated into the designated shares of the registered owners, and various transfer certificates of title have been issued. Since Bernardo's 1/7 share was segregated in metes and bounds, the controversy lies in the boundaries of said share minus the one hectare of Leonardo. Since petitioners are illegally possessing portions of that share which respondent as present owner wants to recover, there are no indispensable parties other than those who have taken possession of the encroached portion. Respondent added that a survey to determine the extent of his land based on the documents he would present will certainly solve the case with finality.

Respondent filed a motion for the conduct of survey on the disputed lands "to correct and remove overlapping of boundaries of the parties' adjacent lots" which was opposed by the petitioners. The MTC denied the motion stating that this would pre-empt the issues under contention because of the ongoing trial to determine the boundaries of the subject properties which are in dispute.¹³

At the trial, respondent testified that he had known the land covered by OCT No. 48098 since 1951. The shares of Juan and Paulino Notarte

¹³ Id. at 138-139, 141-143 and 146.

were foreclosed by Turner, and were later redeemed by Felipe and Manuel Urbano, respectively. Manuel Urbano also bought the share of Fausto Notarte. The shares of Paulino and Fausto were already transferred in the name of Urbano (TCT Nos. 4927 and 4928). Cornelio Gamboa acquired a portion of the share of Ricardo Namoca while another portion thereof went to Godofredo Namoca. Vicenta Notarte's share went to Juan, Felipe and Virgilio Tugas. The present owners of the portion representing Cirila Notarte's share are petitioner Guillermo and Lopercio Orilla. As to Bernardo Notarte's share, respondent testified that one hectare was sold to petitioner Leonardo while the remaining 27,604 sq.m. was bought by him. Respondent likewise presented a Deed of Extrajudicial Partition with Quitclaim and Confirmation of Sale dated April 28, 1995 executed in his favor by the heirs of Bernardo. Respondent presented other documents evidencing the transfer from the original registered owner Bernardo to him as the present owner, and thereafter proceeded to draw a sketch on yellow paper and described to the court the limits of his land, including the areas encroached by the respondents. On May 8, 1985, he had the land surveyed but Felipe and Guillermo did not agree. Respondent stated that Guillermo encroached 6,233 sq.m. on the southern portion of his land, a riceland which produces 15 sacks of *palay* a year valued at ₱5,000.00 while Leonardo and Regalado are occupying 8,272 sq. m. of forest land on the western side of his land which are planted with *madre cacao* and tamarind trees that yields ₱3,000 harvest per year since 1985.¹⁴

On cross-examination, respondent admitted that the signatories to the Deed of Extrajudicial Partition With Quitclaim and Confirmation of Sale were some of the alleged heirs of Bernardo, and that OCT No. 48098 is still existing. He saw the land for the first time in 1951 when he was 15 years old. The whole land had been partitioned among the original owners even prior to 1951; their respective shares have been pointed to them by their father, Eriberto Notarte. The share of Vicenta on the west is presently owned by Felipe and Nely Mendoza; Paulino's share on the east was

¹⁴ TSN, March 2, 1999, pp. 9-14; TSN, May 4, 1999, pp. 3-20.

acquired by Manuel Urbano; however, as to the portion now owned by Jose Doctor, he does not know who was the original owner. It was in 1985 that he found out about the encroachment on his land by Guillermo and Leonardo. At the time he bought the land in October 1984, it was Patrocenia Gamboa who was in possession. When he occupied the land in 1985, there was no fence yet but upon returning from Pampanga, the encroached areas were already fenced. Respondent affirmed that he had resided in Pampanga for more than 20 years from 1961 to 1985. In 1984, his brother Guillermo convinced him to buy the land that adjoins the riceland occupied by him (Guillermo) as a tenant of Patrocenia. On the other hand, Leonardo's house was built on his father's land and it is Leonardo's son Regalado who is residing on the encroached portion. Respondent admitted that when he bought the land from Patrocenia, she did not point to him the boundaries of his land and just handed him the document; he was the one who tried to locate the boundaries of the land.¹⁵ He knew that the whole property covered by OCT No. 48098 had already been partitioned because his grandparents have been in possession of their share and they sold it, and because there were dispositions already made. The land under his possession pertains to the share of Bernardo. He affirmed that the well is situated about 100 meters west from the house of Guillermo and that one hectare of Bernardo's share is already owned by Leonardo. However, Leonardo encroached on his land, in excess of the said one hectare by removing the fence. Leonardo through his son Regalado is also in possession of the land of Felipe on the western side.¹⁶

Respondent presented as witness Leila P. Pamo, an employee of the Municipal Assessor's Office. She testified on the status of the property covered by OCT No. 48098, verified as Lot 1 PSU-25967, Cad. Lot 6035. This property had already been subdivided as per the Certification issued by the Municipal Assessor listing several tax declarations obtained by the present owners. She identified the said certification as well as 15 tax

¹⁵ TSN, May 6, 1999, pp. 7, 10-27; TSN, August 24, 1999, pp. 3-4.

¹⁶ TSN, August 24, 1999, pp. 5-15.

declarations covering various parcels of the land under OCT No. 48098 in the names of various individuals. However, she admitted on cross-examination that she did not secure a subdivision plan of Lot No. 6035 as there was none on file with their office and neither did she verify if there was such document on file with the Registry of Deeds.¹⁷

Petitioners' first witness was Patrocenia NebrilGamboa who testified that Guillermo is the son of her cousin, and has been working as her tenant since 1968. She claimed that she has already donated to Guillermo the land he had been farming and presented a Deed of Donation dated February 21, 1997. This 450-sq. m. land she donated to Guillermo lies on the western side near the property of Felipe. Previously, she donated two parcels to Guillermo in 1977 and 1983. She then clarified that the transaction in 1983 was a Deed of Absolute Sale. These two parcels (1 ½ or 2 hectares) which she conveyed to Guillermo adjoin each other and are separated by a fence from that parcel she sold to Godofredo; the boundaries between these properties are also marked by coconuts (east) and bamboos (west). There is a well that was dug up by Guillermo who uses it as a source of water; Guillermo's house was erected about five meters away from this well. She described the metes and bounds of her property as follows: North - Felipe, West - Felipe, East - pathway, South - she forgot. The western and northern sides of her land that adjoins the property of Felipe are ricelands with bamboos as boundary on the west. She also stated that there are many who erected their houses on the property and their respective areas were just pointed to them. Her own parcel still has no separate title from the mother title (OCT No. 48098). However, she maintained that there is no clear partition. As to the precise area, it may be that she had occupied less than what is stated in her documents but she did not complain; they cannot resolve the matter because of several owners and she had no time.¹⁸

On cross-examination, Patrocenia confirmed that in 1984 she sold a parcel of land to Godofredo which is the same land she bought from

¹⁷ TSN, October 5, 1999, pp. 2-8.

¹⁸ TSN, May 18, 2000, pp. 4-18.

Procopio and Desiderio Gamboa. She likewise confirmed her signature in the Deed of Absolute Sale in favor of Godofredo but not as to the area stated. She remembered having sold her land separately to Godofredo and Guillermo. The land she sold to Guillermo was acquired by her from Bienvenido Cortez who in turn bought the same from Cirila Notarte. As to the land she sold to Godofredo, it came from Bernardo Notarte. When Guillermo became her tenant on her land which she subsequently donated to him, he constructed his house thereon (1968), which house still remains in the same place.¹⁹

The second witness for petitioners was Epefania C. Camba, Jr., Municipal Assessor of Bani, Pangasinan. When presented with the Certification dated October 1, 1999 regarding OCT No. 48098, he said he could not recall having issued the same although it may have indeed been issued by him. He does not know who are the present owners of the land covered by said title, nor if the same was already subdivided. The basis of the aforesaid certification are the tax declarations issued but he could not remember if there was proof of subdivision or partition on file with their office. He explained that when a property is subdivided, it means there is already a tax declaration on file but without reference to a subdivision plan or instrument of partition.²⁰

Petitioner Leonardo Notarte testified that he knows the boundaries of the land bought by Godofredo from Patrocenia which adjoins his own property. The boundaries of Godofredo's land are: North - Leonardo, East - Jose Nano, South - Guillermo, and West - Leonardo. Leonardo claimed that the land west of Godofredo's land was given to him by his parents as "sabong"; he also owns another lot southwest which he bought from Bernardo Notarte. He described the boundaries of the lot sold to him by Bernardo as follows: North – Felipe, East – Guillermo, South – Godofredo Namoca, and West – Narcisa Oblanca (now Mely Mendoza). Said land is covered by a tax declaration in his name. As to his property adjoining that of Godofredo

¹⁹ Id. at 18; TSN, June 8, 2000, pp. 2-9.

²⁰ TSN, June 29, 2000, pp. 3-7.

Notarte, Leonardo said it is bounded on the west by “bayog,” fence and bamboos. This property was acquired by his father from James Turner as evidenced by a Deed of Quitclaim executed by Turner dated April 2, 1951. His father acquired the southwestern portion of the 2/7 parcel from Turner while the northern portion went to Celestino Ortaleza. He maintained that the original land covered by OCT No. 48098 was never partitioned; their respective areas of possession were just pointed to them. There was no extrajudicial or judicial partition executed. On the land of Guillermo, Leonardo testified that he knows it was bought by Guillermo from Patrocenia but he does not know how Guillermo was able to buy it. The boundary of the lands of Guillermo and Godofredo consists of bamboo, coconut and star apple trees. Leonardo further claimed that his son Regalado had a dispute with Godofredo’s wife a long time ago about the cutting of the fence.²¹

On cross-examination, Leonardo said that after buying one hectare from Bernardo in 1964, he immediately took possession and declared it in his name. As to the other land he had acquired from his father which is north of Godofredo’s property, he admitted that they have not yet executed a document. Four years after acquiring the parcel of land from James Turner, his father Felipe and Celestino divided the same between themselves. His father declared it for tax purposes before but he cannot locate it. The portion that went to Celestino is now occupied by Manuel Urbano. Leonardo further claimed that Guillermo twice bought land from Patrocenia; the sale to Godofredo of his parcel came first. The land acquired from Cirila Notarte was exclusively possessed by Patrocenia. He admitted that Bernardo originally owned the parcel of land that was eventually bought by Godofredo, although such portion presently owned by Godofredo used to be occupied by Feliciano Gamboa to whom Bernardo mortgaged the same. However, Leonardo claimed he does not know who else acquired the remaining portion of Bernardo’s land aside from the 10,000 sq.m. he bought from Bernardo whose lots are not in one place. He insisted that the 1/7 share of Juan Notarte which was acquired by his father Felipe is not yet

²¹ Id. at 11-16, 19, 21-25.

partitioned. While admitting that he was in possession thereof and already given to him by his father, Leonardo said *he does not know the exact area occupied by him*, only the specific location because his house was constructed on the western part. As to the boundaries of Godofredo's property surrounded by a fence, Leonardo described it as follows: North - Felipe, East - Nano, South - Guillermo and West - Felipe.²²

Petitioner Guillermo Notarte testified that her aunt Patrocenia was his former landlord. Patrocenia donated one hectare of her land to him as his homelot before he accepted the tenancy in 1968. He identified his signature in the Deed of Confirmation of Donation in his favor dated February 21, 1997. He also bought from Patrocenia more than one hectare of land in 1977, and another parcel in 1983. When Godofredo returned from Pampanga looking for land to buy, he told Godofredo to buy the remaining part of the land being tenanted by him (Guillemo), which is more than one and a half hectares³ meters from his land on the north. He and Godofredo went around the land before the latter bought it. The boundaries of the land purchased by Godofredo are as follows: North - Felipe, West - Felipe, South - Guillermo, and East - Nano. Their lands are separated by bamboo and "bayog" (west), fence (made by their "ancestors"), *madre cacao* (in-between), coconut (east), star apple tree and dike (north). He further claimed that he does not know the actual area of the property bought by Godofredo from Patrocenia; its western side adjoining Felipe's property is a riceland. He insisted that the whole 263,000 was never partitioned; his neighbors just told him about the boundaries of his land. He believes that Godofredo wanted to get their land.²³

On cross-examination, Guillermo said that of the two parcels owned by Patrocenia, the one she bought from Emiliano Gamboa was acquired first. These two parcels are adjoined on the north and south. The parcel on the north was the one given to him in 1968 where he constructed his house, dug the well and planted coconut and star apple trees. Almost a year after,

²² Id. at 25-34; TSN, July 27, 2000, pp. 3-10.

²³ TSN, August 3, 2000, pp. 3-25.

Patrocenia again instituted him as tenant on her second parcel of land. He does not know from whom Patrocenia acquired the first parcel, but he knows the second parcel to have been acquired by her from Cortez. The first lot he acquired from Patrocenia is covered by a tax declaration stating the area as 4,227 sq.m. while the second lot he bought has an area of 5,773 sq.m. However, he does not know the actual area of the land he is presently occupying, and its metes and bounds.²⁴

The last witness was petitioner Regalado Notarte who testified that the land he is occupying belongs to his grandfather Felipe which lies northwest of Godofredo's land. Before Godofredo acquired the said land, it was Guillermo who was cultivating the same. He described the then visible boundary limits of the property as follows: North and South - dike, bamboo, "bayog," and *madre cacao*; West - fence made of bamboo, *madre cacao* and *aludig*; and East - pathway for carabao carts. He constructed his house in 1990 on this land owned by Felipe and nobody then prevented him from doing so.²⁵

On cross-examination, Regalado admitted that it was his father Leonardo who told him to build his house on the land which he said is owned by Felipe.²⁶

Respondent made the following formal offer of evidence:

- [Exhibit]"A" - [TCT] No. 4927 in the name of Manuel C. Urbano[II] covering a segregated portion of 33,737 sq.m. of the parcel of land under OCT No. 48098.
- [Exhibit]"B" - [TCT] No. 4928 in the name of Manuel C. Urbano[II] covering a segregated portion of 30,650 sq.m. of the parcel of land under OCT No. 48098.
- [Exhibit]"C" - [TCT] No. 3517 in the name of Cornelio Gamboa covering a segregated portion of 15,684 sq.m. of the parcel of land under OCT No. 48098.
- [Exhibit]"D" - *Escritura de Compra-venta*, dated July 1, 1929 executed by Bernardo Notarte in favor of Emiliano

²⁴ Id. at 27-34; TSN, October 5, 2000, pp. 2-7.

²⁵ TSN, March 14, 2002, pp. 3-7.

²⁶ Id. at 8.

Gamboa covering the land that was ultimately sold to [Godofredo Notarte].

- [Exhibit]“E” - *Escritura de Donacion Esponsalicia*, dated January 21, 1948 executed by Emiliano Gamboa in favor of his son Procopio Gamboa covering 14,741 sq.m. of the land under Exhibit “D.”
- [Exhibit]“F” - Deed of Donation *Propter Nuptias* dated April 17, 1957 executed by Emiliano Gamboa in favor of his son Desiderio Gamboa covering 13[,]586 sq.m. of the land under Exhibit “D”.
- [Exhibit]“G” - Deed of Sale of Realty dated April 2, 1963 executed by Desiderio Gamboa and Procopio Gamboa in favor of Antonio Gamboa, married to Patrocenia Nebril-Gamboa covering the lands under Exhibits “E” and “F.”
- [Exhibit]“H” - Affidavit of Quitclaim dated April 30, 1973 executed by Primitivo Notarte, surviving child of Bernardo Notarte, in favor of Patrocenia Nebril, wife of Antonio Gamboa over the parcels of land covered by Exhibit “D”.
- [Exhibit]“I” - Affidavit of Adjudication dated May 10, 1983 executed by Patrocenia N. Gamboa covering the land under Exhibit “G”.
- [Exhibit]“J” - Affidavit of Adverse Claim dated March 10, 1983 executed by Patrocenia Nebril, then widow of Antonio Gamboa stating antecedent facts leading to their acquisition of Bernardo Notarte’s land under OCT No. 48098 of which she has an adverse claim, and registered it on March 23, 1983.
- [Exhibit]“K” - Deed of Absolute Sale dated October 15, 1984 executed by Patrocenia N. Gamboa in favor of the plaintiff Godofredo Notarte covering the land that is the subject of Exhibits “D” to “J.”
- x x x x
- [Exhibit]“L” - Affidavit of Adverse Claim dated October 15, 1984 executed by Godofredo Notarte stating that he bought the portion of 29,483 sq.m. of the land under OCT No. 48098. The affidavit was registered on October 15, 1984.
- [Exhibit]“M” - Extrajudicial Settlement With [Q]uitclaim and Confirmation of Sale dated April 28, 1995 executed by heirs of Bernardo Notarte whereby they confirmed the sale executed by Bernardo Notarte to Emiliano Gamboa, and so on and so forth up to the sale in favor of x x x Godofredo Notarte.
- [Exhibit]“N” - [TD] No. 18884, effective 2000 in the name of Godofredo Notarte covering the land he bought from Patrocenia Nebril.

- [Exhibit]“N-1” - [TD] No. 3449, effective 1952 in the name of Emiliano Gamboa covering the land he bought from Bernardo Notarte.(Exh. “D”)
- [Exhibit]“N-2” - [TD] No. 98, effective 1985 in the name of Godofredo Notarte, x x x covering the same land under Exhibit “N”.
- [Exhibit]“N-3” - [TD] No. 237, effective 1983 in the name of Emiliano Gamboa covering the land under Exh. N-1.
- [Exhibit]“N-4” - [TD] No. 255, effective 1980 in the name of Emiliano Gamboa covering the same land under Exh. N-3.
- [Exhibit]“N-5” - [TD] No. 2981, effective 1974 in the name of Emiliano Gamboa covering the same land under Exh. N-4.
- [Exhibit]“N-6” - [TD] No. 3953, effective 1966 in the name of Emiliano Gamboa covering the same land under Exh. N-5.
- [Exhibit]“O” - Co-owner’s Duplicate copy of OCT No. 48098 issued to Godofredo Notarte.
- [Exhibit]“P” - Sketch made by Godofredo Notarte on the witness stand showing his land.
- [Exhibit]“P-1”to “P-6”- The visible limits of [Godofredo Notarte’s] land in all the cardinal directions.
- [Exhibit]“Q” - The Barangay Certification to file action. x x x
- [Exhibit]“R” - The encircled portion in Exhibit “1” for the defendants, the land claimed by [Godofredo Notarte].
- [Exhibit]“R-1” - The blue shaded portion north of Leonardo Notarte which is the portion encroached by Felipe, Leonardo and Regalado.
- [Exhibit]“R-2” - The place marked “X” in Exh R-1 where the house of Regalado Notarte stands.
- [Exhibit]“R-3” - The blue shaded elongated portion which is encroached by Guillermo Notarte.
- [Exhibit]“R-4” - The dug well on the southern side of Godofredo’s land. It is within the portion encroached by Guillermo Notarte.
- [Exhibit]“R-5” - The stamps of dead madre cacao trees on the northern side of [Godofredo’s] land.
- [Exhibit]“R-6” - The live madre cacao trees also on the northern side of [Godofredo’s] land.
- [Exhibit]“R-7” - The trail on the western side of [Godofredo’s]land.
- Exhibits R and series are within Exhibit“1” of the defendants x x x.
- [Exhibit]“S” - The Certification issued by the Municipal Assessor of Bani, Pangasinan stating that Lot 1, Psu-25967 or Psd-4816 is identical to cadastral lot No. 6035 and the same

had been subdivided into several lots for various lot owners.

- [Exhibit]“T” - [TD] No. 8181 in the name of Charles and Clark Mendoza covering a segregated portion of the land under OCT No. 48098.
- [Exhibit]“T-1” - [TD] No. 8347 in the name of Leonardo Notarte also covering a segregated portion[.]
- [Exhibit]“T-2” - Patrocenia G. Castillo’s [TD] No. 7928 likewise covering a segregated portion.
- [Exhibit]“T-3” - [TD] No. 8765 in the name of Manuel Urbano II covering another segregated portion.
- [Exhibit]“T-4” - [TD] No. 8764 in the name of Manuel Urbano covering another segregated portion.
- [Exhibit]“T-5” - [TD] No. 8354 in the name of Nenita Notarte covering another segregated portion.
- [Exhibit]“T-6” - [TD] No. 8254 in the name of Godofredo Nam[o]ca covering another segregated portion.
- [Exhibit]“T-7” - [TD] No. 8346 in the name of Helardo Notarte covering another separate portion.
- [Exhibit]“T-8” - [TD] No. 8348 in the name of Leonardo Notarte covering another separate portion.
- [Exhibit]“T-9” - [TD] No. 8334 in the name of Fausto Notarte covering another separate portion.
- [Exhibit]“T-10” - [TD] No. 8335 in the name of Felipe Notarte covering a segregated portion.
- [Exhibit]“T-11” - Godofredo Notarte’s [TD] No. 8341 covering a segregated portion.
- [Exhibit]“T-12” - [TD] No. 8343 in the name of Guillermo Notarte covering another separate portion.
- [Exhibit]“T-13” - [TD] No. 8526 in the name of Lupercio Orilla covering another separated portion.
- [Exhibit]“T-14” - [TD] No. 8342 in the name of Guillermo Notarte covering another segregated portion.²⁷

In its Order²⁸ dated May 16, 2000, the MTC denied admission of the following documentary evidence and stating the reasons for its ruling: (1) Exhibits “A,” “B,” “C,” “S,” “T,” “T-1” to “T-4,” for lack of showing of any written formal partition entered into by the registered owners and because the memorandum of encumbrances of OCT No. 48098 does not show any

²⁷ Records, pp. 160-163.

²⁸ Id. at 211-213.

previous partition to bind their transferees/assigns; (2) Exhibit “D” as there is no showing that the land subject matter thereof is the same land owned by Bernardo Notarte covered by OCT No. 48098; (3) Exhibit “E” being in Ilocano dialect and carries no translation; (4) Exhibit “F” for lack of showing that the land donated is part of the land bought from Bernardo Notarte; (5) Exhibit “G” in the absence of proof that the two lands were the same land earlier donated and subject matter of the case; (6) Exhibits “H,” “I” and “J” for being hearsay, the affiants not having testified thereto; (7) Exhibit “K” there being no proof that the land conveyed to Godofredo emanated from Bernardo Notarte and then to Emiliano Gamboa; (8) Exhibit “M” for being hearsay, the extrajudicial settlement is more of a sworn statement; (9) Exhibits “N-1,” “N-3” to “N-6,” there being no clear showing that these were formally identified in court and covers the land in question; these are simply photocopies with no chance for comparison in the alleged original; (10) Exhibits “D” to “M” which were already denied admission.

On September 1, 2004, the MTC rendered judgment dismissing the complaint. Citing its non-admission of Exhibits “D,” “E,” “F,” “G,” “H,” “I,” “J,” “K” and “M,” the said court ruled that respondent has not proven his claim that he acquired 27,604.714 sq.m. from the 1/7 share of Bernardo Notarte. On the other hand, it found petitioners to have established their actual possession of their respective portions even long before respondent acquired his land.

On appeal by respondent, the RTC reversed the MTC. The RTC found that from the evidence it is convincingly clear that respondent owns the 27,604 sq. m. described in his second amended complaint and identified his land with the statement of its metes and bounds and the visible limits thereof. Because there is overlapping of boundaries in this case, the RTC said that the area of the adjoining parcels gains significance. The *fallo* of the RTC Decision reads:

WHEREFORE, the appealed decision of the court a quo is Set Aside, and this Honorable Court renders judgment, to wit:

1. ORDERING the defendant GUILLERMO NOTARTE to vacate and surrender the southern portion containing an area of 6,333 square meters of plaintiff's land and to pay actual damages of P40,000.00;
2. ORDERING the defendants LEONARDO NOTARTE, REGALADO NOTARTE AND FELIPE NOTARTE to vacate and surrender EIGHT THOUSAND TWO HUNDRED SEVENTY TWO (8,272) square meters western portion of plaintiff's land and to pay jointly and severally actual damages of P20,000.00;
3. ORDERING the defendants jointly and severally to pay the plaintiff attorney's fees and litigation expenses of P10,000.00.

IT IS SO ORDERED.²⁹

Petitioners elevated the case to the CA which dismissed their appeal. The CA held that it was a palpable mistake on the part of the MTC to conclude that no partition had been made by the registered owners and their successors-in-interest, and on the basis of that conclusion denied admission of most of the material exhibits of respondent. The CA found that as early as 1951 and even before the issuance of OCT No. 48098, the registered owners have effected an oral or informal partition of the big parcel of land, complete with the demarcation of its boundaries as pertaining to the respective owners thereof by visible boundary limits such as dike, "*mojon*," live trees and the like. Assessing the evidence on record, the CA made the following observations:

The statement of facts as presented herein is mainly culled from the decision of the MTC. On the face of the said decision, respondent Godofredo testified clearly and graphically as to the location and physical description of the subject land, in relation to the big parcel of land covered by OCT No. 48098. The series of conveyances from the registered owner Bernardo Notarte up to Antonio and Patrocenia Gamboa were related by Godofredo in painstaking details, all supported by documentary evidence. The trial court however precipitately concluded that the land being described in the said series of conveyances is not clearly referred to as the subject land, despite the stipulation of the parties at the pre-trial that the lands being referred to by the parties in the present case all form part of the big parcel of land covered by OCT No. 48098. Certainly, by the said conclusion formed by the trial court, and thereby sweeping aside all the material exhibits of respondent, the latter stood no chance at all in proving his claim, notwithstanding the clarity of his testimony, as bolstered by his documentary evidence.³⁰

²⁹ *Rollo*, p. 204.

³⁰ *Id.* at 268-269.

Their motion for reconsideration having been denied by the CA, petitioners are now before us alleging grave error committed by said court in affirming the RTC which rendered judgment based on exhibits that were denied admission by the MTC.

Petitioners reiterate that there was no legal formal partition of the whole parcel of land covered by OCT No. 48098. They cite several entries in the said title which will show that the transactions referred to therein pertain to undivided portions of the entire land. In particular, petitioners point out that Exhibit “M” (Deed of Extrajudicial Settlement With Quitclaim and Confirmation of Sale) cannot be used as basis for an adverse ruling against them as said document was correctly determined by the MTC as a mere sworn statement and hearsay evidence.

Petitioners emphasize that the issue of whether the whole parcel of land covered by OCT No. 48098 has been legally partitioned is material to respondent’s claim that the portions of land allegedly encroached by petitioners belong to him. They argue that a partition must be a concerted act of all the heirs and not only individual acts of each of the co-heirs. Citing a portion of respondent’s appellant’s brief filed before the RTC, petitioners point out that respondent stated the reason behind the execution of Exhibit “M” which is the fact that “[t]he chain of documents covering the transactions beginning with Bernardo Notarte to Emiliano Gamboa, to Procopio Gamboa and Desiderio Gamboa, to Antonio Gamboa and to Godofredo Notarte do not clearly identify the land in question as part of [the] registered land under OCT No. 48098. x x x”³¹

The issues to be resolved are: (1) whether the MTC erred in not admitting most of the documentary exhibits formally offered by the respondent as indicated in its May 16, 2000 Order; (2) whether the 263,000 sq. m. land covered by OCT No. 48098 had been partitioned by the registered owners; and (3) whether petitioners have encroached on respondent’s land.

³¹ Id. at 29.

On the *first issue*, we agree with the CA that most of the documentary exhibits not admitted by the MTC are material to respondent's claim. Evidence is admissible when it is relevant to the issue and is not excluded by the law or the rules³² or is competent. The exclusion of previous documents of transfer executed by Patrocenia Gamboa's predecessors-in-interest, based merely on the MTC's impression that they do not clearly indicate it was the same parcel sold by her to respondent, was improper considering that the parties stipulated at the pre-trial that the lands involved in this controversy form part of the property covered by OCT No. 48098.

It may be recalled that what respondent sought to establish is the previous ownership by Bernardo, one of the original registered owners, of the specific parcel (1/7 share in the property covered by OCT No. 48098) from which Patrocenia acquired a portion, as well as the actual area of such portion acquired by Patrocenia. The relevance of those documents evidencing this series of conveyances from Bernardo to Emiliano Gamboa, the latter's donation to his sons Procopio and Desiderio Gamboa, the latter's sale of the same lots to Antonio Gamboa, husband of Patrocenia who later adjudicated unto herself all properties left by her husband – was thus plainly obvious. Besides, Patrocenia *admitted* while testifying on cross-examination, that the land she sold to respondent came from the share of Bernardo. Thus:

Q- So there were series of transactions could you still remember, is that right?

A- Yes, sir.

Q- Now, but why you cannot remember anymore transactions regarding to the acquisition of a parcel of land by Godofredo Notarte?

A- **The land that was sold to Godofredo Notarte came from Bernardo Notarte, sir.**

Q- And you remember now, that Bernardo Notarte sold that land to Emeliano Gamboa?

A- What I know is that, the land I sold to Godofredo came from Bernardo Notarte, sir.³³ (Emphasis supplied.)

³² RULES OF COURT, Rule 128, Sec. 3.

³³ TSN, June 8, 2000, pp. 7-8.

The non-admission of copies of tax declarations in the name of Emiliano Gamboa was likewise erroneous because these were in fact presented and identified in court by respondent and his counsel during his direct testimony.³⁴ The MTC further said these tax declarations do not show that they cover the subject land, the same reason it cited for denying admission to the previous documents of transfer. The rest of the documentary exhibits of respondent were denied admission on the ground of absence of a formal partition of the property covered by OCT No. 48098, which is again erroneous because what respondent sought to prove is an oral partition among the registered owners that may be inferred from various transactions on certain segregated portions as evidenced by those documents.

As aptly observed by the CA, respondent stood no chance of being able to establish his claim after the MTC precipitately denied admission to almost all his documentary evidence which are actually relevant and competent to prove his ownership and identity of his land. The MTC thus erred in rejecting the formal offer of documentary evidence that is clearly relevant to respondent's cause of action.

Even assuming that the MTC had reservations about the relevancy of some exhibits offered by the respondent, still, it should have admitted the same subject to judicial evaluation as to their probative value. In connection with evidence which may appear to be of doubtful relevancy, incompetency, or admissibility, this Court has held that:

[I]t is the safest policy to be liberal, not rejecting them on doubtful or technical grounds, but admitting them unless plainly irrelevant, immaterial or incompetent, for the reason that their rejection places them beyond the consideration of the court, if they are thereafter found relevant or competent; on the other hand, their admission, if they turn out later to be irrelevant or incompetent, can easily be remedied by completely discarding them or ignoring them.³⁵

³⁴ TSN, May 4, 1999, pp. 11-12.

³⁵ *Atienza v. Board of Medicine*, G.R. No. 177407, February 9, 2011, 642 SCRA 523, 529, citing *Francisco*, EVIDENCE RULES OF COURT IN THE PHILIPPINES RULES 128-134 (3rd ed. 1996) p. 9 and *People v. Jaca, et al.*, 106 Phil. 572, 575 (1959).

On the *second issue*, we sustain the RTC and CA in finding that the property covered by OCT No. 48098 had already been partitioned long before respondent purchased his lot. Under Article 1082 of the Civil Code, every act which is intended to put an end to indivision among co-heirs is deemed to be a partition even though it should purport to be a sale, an exchange, or any other transaction. Partition may thus be inferred from circumstances sufficiently strong to support the presumption.³⁶

In this case, the original registered owners had either mortgaged or sold their respective 1/7 shares, in whole or in part. Although the deeds of conveyances and those early entries in OCT No. 48098 indicated the portions being mortgaged or sold as pertaining to *proindiviso* shares, the said owners' successors-in-interest eventually took possession of the respective portions acquired by them beginning 1951 or thereabouts. These transferees who are mostly relatives likewise introduced improvements on their respective lots, and have also exercised acts of ownership thereon. That these respective shares of the original registered owners were merely designated orally – their individual portions having been simply pointed to them, as testified to by respondent and Patrocenia – is immaterial.

The existence of early annotations (Spanish) on OCT No. 48098, cited by the MTC, indicating that the subject of foreclosure sale in favor of James Turner as 2/7 *pro indiviso* or undivided portion, do not support the petitioners' contention that the property remains un-partitioned. This is because subsequent entries clearly show that the co-owners have either mortgaged or disposed *specific* portions of the land, as in fact three transfer certificates of title were issued separately to Manuel Urbano II and Cornelio Gamboa covering physically segregated areas with their respective technical descriptions.³⁷ Patrocenia herself testified that she took possession of her lots acquired from the shares of Bernardo and Cirila, and that she had instituted Guillermo as tenant on her land in 1968. Petitioner Leonardo, on

³⁶ *Maglucot-Aw v. Maglucot*, G.R. No. 132518, March 28, 2000, 329 SCRA 78, 95, citing *Hunt v. Rabitoay*, 125 Mich. 137, 84 NW 59.

³⁷ Exhibits "A," "B" and "C," records, pp. 166-168.

his part, testified that he has been residing on the land since he was a child, and that he bought a hectare of land from Bernardo in 1964. He likewise named the present owners of adjoining lots pertaining to the shares of the other original registered owners. Leonardo and Guillermo further testified on the visible boundaries of their respective lands which they have fenced, as well as that acquired by the respondent. Also, specific portions under possession and claim of ownership by various persons are already covered by individual tax declarations as evidenced by the Certification dated October 1, 1999 issued by the Office of the Municipal Assessor. Tax Declaration No. 8449 in the name of Emiliano Gamboa was issued in 1962. Clearly, petitioners' insistence that the whole parcel under OCT No. 48098 remains undivided and un-partitioned is contradicted by the documentary evidence and their own declarations.

The validity of an oral partition is already well-settled.³⁸ It is not required, contrary to the MTC's stated reason for denying some documentary exhibits to prove partition, such as the individual TCTs obtained by Manuel Urbano II and Cornelio Gamboa over portions they have acquired, that the partition agreement be registered or annotated in OCT No. 48098 to be valid.³⁹ In another case, we have held that after exercising acts of ownership over their respective portions of the contested estate, petitioners are estopped from denying the existence of an oral partition.⁴⁰

Here, none of the original co-owners has disputed the fact of partition, as it is only petitioners, as present owners and successors-in-interest of Juan Notarte, who are insisting that no partition had yet taken place merely because OCT No. 48098 was only partially cancelled and many of the present owners have not yet secured their own separate transfer certificates of title. Petitioners' stance is unreasonable and seems to be more of an afterthought aimed solely at defeating respondent's claim. Notably,

³⁸ *Maglucot-Aw v. Maglucot*, supra note 36 at 97.

³⁹ See *Maglucot-Aw v. Maglucot*, id. at 96.

⁴⁰ *Crucillo v. Intermediate Appellate Court*, G.R. No. 65416, October 26, 1999, 317 SCRA 351, 366, citing *Barcelona, et al. v. Barcelona and Ct. of Appeals*, 100 Phil. 251 (1956) and *Hernandez v. Andal*, 78 Phil. 196 (1947).

Leonardo categorically testified that his father Felipe Notarte acquired the 1/7 share of Juan Notarte which was redeemed from James Turner, and that he was occupying the said parcel, with his father even donating to him a portion as a wedding gift (“sab-ong”) and another one hectare was bought by him from Bernardo; these portions were already declared in his name for tax purposes indicating therein *the areas* under their possession. It is indeed unbelievable for the registered owners’ successors-in-interest, which include petitioners, to have taken possession of their respective portions for which they paid valuable consideration, introduced improvements and paid the realty taxes due thereon, if those lots have not been physically segregated. In any event, estoppel had set in as to bar petitioners as present owners from denying an oral partition in view of acquiescence thereto by their predecessors-in-interest, as well as their own acts of ownership over those portions they have been occupying.

On this point, this Court has ruled that:

On general principle, independent and in spite of the statute of frauds, courts of equity have enforced oral partition when it has been completely or partly performed.

Regardless of whether a parol partition or agreement to partition is valid and enforceable at law, equity will in proper cases, where the parol partition has actually been consummated by the taking of possession in severalty and the exercise of ownership by the parties of the respective portions set off to each, recognize and enforce such parol partition and the rights of the parties thereunder. Thus, it has been held or stated in a number of cases involving an oral partition under which the parties went into possession, exercised acts of ownership, or otherwise partly performed the partition agreement, that equity will confirm such partition and in a proper case decree title in accordance with the possession in severalty.

In numerous cases it has been held or stated that parol partition may be sustained on the ground of estoppel of the parties to assert the rights of a tenant in common as to parts of land divided by parol partition as to which possession in severalty was taken and acts of individual ownership were exercised. And a court of equity will recognize the agreement and decree it to be valid and effectual for the purpose of concluding the right of the parties as between each other to hold their respective parts in severalty.

A parol partition may also be sustained on the ground that the parties thereto have acquiesced in and ratified the partition by taking possession in severalty, exercising acts of ownership with respect thereto, or otherwise recognizing the existence of the partition.

A number of cases have specifically applied the doctrine of part performance, or have stated that a part performance is necessary, to take a parcel partition out of the operation of the statute of frauds. It has been held that where there was a partition in fact between tenants in common, and a part performance, a court of equity would have regard to enforce such partition agreed to by the parties.⁴¹ (Emphasis supplied.)

On the *third issue*, we hold that respondent has established by preponderance of evidence the identity and his ownership of the subject land.

The governing law is Article 434 of the Civil Code which provides:

Art. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim.

The first requisite: the identity of the land. In an *accion reivindicatoria*, the person who claims that he has a better right to the property must first fix the identity of the land he is claiming by describing the location, area and boundaries thereof. Anent the second requisite, *i.e.*, the claimant's title over the disputed area, the rule is that a party can claim a right of ownership only over the parcel of land that was the object of the deed.⁴²

To prove the identity of the land he bought from Patrocenia, respondent submitted in evidence deeds of conveyances from the original sale made by Bernardo in 1929 in favor of Emiliano Gamboa, up to the acquisition thereof by Patrocenia. As can be gleaned from the proceedings before the MTC, ownership by respondent was not disputed but only the exact area because the deeds presented by him showed only the area and location with respect to adjoining owners, but did not describe the boundaries of the land sold in metes and bounds.

We note the discrepancies in the areas stated in the 1929 *Escritura de Compra-Venta* (27,172 sq.m.), deeds of donation executed by Emiliano

⁴¹ *Hernandez v. Andal*, 78 Phil. 196, 203 (1947) cited in *Tan v. Lim*, G.R. No. 128004, September 25, 1998, 296 SCRA 455, 473-474.

⁴² *Hutchison v. Buscas*, G.R. No. 158554, May 26, 2005, 459 SCRA 214, 220, citing *Heirs of Anastacio Fabela v. Court of Appeals*, G.R. No. 142546, August 9, 2001, 362 SCRA 531, 542 and *Veterans Federation of the Philippines v. Court of Appeals*, G.R. No. 119281, November 22, 2000, 345 SCRA 348, 357.

Gamboa (total of 28,327 sq.m.), Deed of Absolute Sale executed by Desiderio and Procopio Gamboa (27,172 sq.m.), and the Deed of Absolute Sale executed by Patrocenia (29,482 sq.m.). However, since respondent traces ownership of his land to Bernardo, the area and boundaries stated in the 1929 *Escritura de Compra-Venta* should control. Respondent sought to recover 27,604 sq.m., a figure he arrived at by deducting the 10,000 sq.m. subsequently sold by Bernardo to Leonardo in 1964, from the 37,604.714 sq.m. which corresponds to the actual area of Bernardo's 1/7 share under OCT No. 48098. However, any increase in the statement of the area in the subsequent deeds of conveyances executed by Bernardo's successors-in-interest should not affect the area specified by Bernardo himself in the 1929 sale to Emiliano Gamboa, which was only 27,172 sq.m. Thus, respondent is entitled to **27,172 sq.m.** only, as this is the actual area acquired by Patrocenia from her predecessors-in-interest.

As to the claims of Leonardo and Guillermo over certain portions in excess of the areas lawfully acquired by them from Bernardo and Patrocenia (pertaining to the portion she bought from the share of Cirila Notarte), the RTC correctly rejected the same. Leonardo failed to show any document evidencing the supposed donation of his father and admitted he does not even know its exact area. Guillermo, on the other hand, claimed to have received 450-sq.m. from Patrocenia by virtue of an oral donation in 1968 when he was instituted as a tenant on her land. However, the Deed of Confirmation of Donation dated February 21, 1997 mentioned a previous donation made in January 1983, and not 1968. In any case, the requirement as to form for contracts of donation to be valid and enforceable, are absolute and indispensable.⁴³ The alleged prior oral donation by Patrocenia was thus void and ineffective; it is not binding upon third parties like respondent who purchased a definite portion of Patrocenia's land in good faith, for value and

⁴³ See *Unchuan v. Lozada*, G.R. No. 172671, April 16, 2009, 585 SCRA 421, 433.
Art. 749 of the Civil Code reads:

In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

evidenced by a duly notarized deed of sale. Guillermo also supposedly bought 4,227 sq.m. from Patrocenia but the latter testified that this parcel she sold to Guillermo actually came from the 1/7 share of Cirila and different from the property she sold to respondent.

It is settled that what really defines a piece of land is not the area mentioned in its description, but the boundaries therein laid down, as enclosing the land and indicating its limits.⁴⁴ We have held, however, that in controversial cases where there appears to be an overlapping of boundaries, the actual size of the property gains importance.⁴⁵

As already stated, the location of respondent's land is not in dispute because the adjoining owners are clearly identified. Petitioners in their Answer with Counterclaim merely contended that respondent just wants to increase the actual area of his property. And while petitioners insisted on the visible physical boundaries to mark the limits of respondent's land, petitioners Leonardo and Guillermo could not tell the exact areas under their possession. These portions, still unregistered land, were also not described in metes and bounds under their deeds of conveyances. The controversy then lies in the delineation of the physical boundaries of the subject properties by metes and bounds, notwithstanding that the documentary evidence adduced by respondent established his ownership over a portion of Bernardo's share, in an area *enclosed by specified adjoining lots/owners*, to the extent of 27,172 sq.m.

The identity of the land sought to be recovered may be established through the survey plan of the property.⁴⁶ In this case, a survey could have settled the issue of overlapping boundaries especially since the properties involved are all unregistered and, apparently unsurveyed. Even assuming that the portions occupied by petitioners have already been surveyed, the

⁴⁴ *Heirs of Anastacio Fabela v. Court of Appeals*, supra note 42, at 543, citing *Vda. de Tan v. Intermediate Appellate Court*, G.R. No. 65532, August 31, 1992, 213 SCRA 95, 102.

⁴⁵ *Heirs of Juan Oclarit v. Court of Appeals*, G.R. No. 96644, June 17, 1994, 233 SCRA 239, 248.

⁴⁶ Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Vol. II, 1992 ed., p. 72, citing *Director of Lands v. Funtilar*, No. L-68533, May 23, 1986, 142 SCRA 57.

non-presentation of any approved survey plan would raise a presumption that if presented, such piece of evidence would be adverse to their claim. The MTC did not grant respondent's motion for the conduct of a survey to correct the "overlapping boundaries" of the subject lots, stating that it would "pre-empt the issues under contention." However, the MTC in its decision ruled that respondent has not established his cause of action for the reason that most of his documentary evidence were denied admission, but upheld the claims of petitioners based on the latter's long possession and occupation of their portions.

Having ruled that respondent has established the identity and ownership of the land he acquired from Patrocenia with an area of 27,172 sq.m., this Court deems it just and proper to give him the opportunity to prove the alleged encroachment by petitioners and the extent of such encroachment. For this purpose, a survey is necessary to ascertain the physical boundaries of the subject lands by metes and bounds. Hence, remand of this case to the MTC for the conduct of a survey by qualified geodetic engineers, is in order.

As to the grant of actual damages in favor of respondent, we find no legal or factual basis for such award, being based merely on respondent's bare testimony in court. In any case, it would be premature to affirm any pronouncement on damages resulting from encroachment being claimed by the respondent pending the resolution of the factual issue of overlapping boundaries.

WHEREFORE, the Decision dated August 10, 2007 of the Court of Appeals in CA-G.R. SP No. 92591 is **AFFIRMED in PART**. The Decision dated March 21, 2005 of the Regional Trial Court of Alaminos City, Pangasinan, Branch 54 in Civil Case No. A-2964 is **MODIFIED**, as follows:

1. Respondent Godofredo Notarte is hereby declared the lawful owner of 27,172 square meters of the lot which is a portion of the 1/7 share of Bernardo Notarte in the property covered by OCT

No. 48098, the boundaries thereof as described in the Second Amended Complaint are as follows: North - Felipe Notarte; West - Felipe Notarte; East - Jose Nano; South - Leonardo Notarte and Guillermo Notarte.


2. The award of actual damages is **DELETED**. The order to vacate the alleged areas encroached by petitioners is likewise **SET ASIDE**, subject to the outcome of the survey and resolution on the issue of overlapping boundaries, consistent with our dispositions herein.
3. This case is hereby **REMANDED** to the Municipal Trial Court of Bani, Pangasinan for further proceedings. Said court is directed to order the conduct of a survey of the properties involved in this case. For this purpose, the said court shall appoint commissioners and proceed in accordance with Sections 2 to 13, Rule 32 of the 1997 Rules of Civil Procedure, as amended.

No pronouncement as to costs.

SO ORDERED.


MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice