



Republic of the Philippines
Supreme Court
Manila


SECOND DIVISION

ANTIPOLO INING (deceased),
survived by MANUEL VILLANUEVA,
TEODORA VILLANUEVA-FRANCISCO,
CAMILO FRANCISCO,
ADOLFO FRANCISCO,
LUCIMO FRANCISCO, JR.,
MILAGROS FRANCISCO,*
CELEDONIO FRANCISCO,
HERMINIGILDO FRANCISCO;
RAMON TRESVALLES,
ROBERTO TAJONERA,
NATIVIDAD INING-IBEA (deceased)
survived by EDILBERTO IBEA,
JOSEFA IBEA, MARTHA IBEA,
CARMEN IBEA, AMPARO IBEA-
FERNANDEZ, HENRY RUIZ,
EUGENIO RUIZ and PASTOR RUIZ;
DOLORES INING-RIMON (deceased)
survived by JESUS RIMON,
CESARIA RIMON GONZALES and
REMEDIOS RIMON CORDERO;
and PEDRO INING (deceased)
survived by ELISA TAN INING (wife)
and PEDRO INING, JR.,

Petitioners,

- versus -

LEONARDO R. VEGA,
substituted by LOURDES VEGA,
RESTONILLO I. VEGA,
CRISPULO M. VEGA,
MILBUENA VEGA-RESTITUTO,
and LENARD VEGA,

Respondents. 

G.R. No. 174727

Present:

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, *and*
PERLAS-BERNABE, *JJ.*

Promulgated:
AUG 12 2013

X ----- X

* Sometimes referred to as Milagrosa Francisco in some parts of the records.

DECISION

DEL CASTILLO, J.:

One who is merely related by affinity to the decedent does not inherit from the latter and cannot become a co-owner of the decedent's property. Consequently, he cannot effect a repudiation of the co-ownership of the estate that was formed among the decedent's heirs.

Assailed in this Petition for Review on *Certiorari*¹ are the March 14, 2006 Decision² of the Court of Appeals (CA) in CA-G.R. CV No. 74687 and its September 7, 2006 Resolution³ denying petitioners' Motion for Reconsideration.⁴

Factual Antecedents

Leon Roldan (Leon), married to Rafaela Menez (Rafaela), is the owner of a 3,120-square meter parcel of land (subject property) in Kalibo, Aklan covered by Original Certificate of Title No. (24071) RO-630⁵ (OCT RO-630). Leon and Rafaela died without issue. Leon was survived by his siblings Romana Roldan (Romana) and Gregoria Roldan Ining (Gregoria), who are now both deceased.

Romana was survived by her daughter Anunciacion Vega and grandson, herein respondent Leonardo R. Vega (Leonardo) (also both deceased). Leonardo in turn is survived by his wife Lourdes and children Restonilo I. Vega, Crispulo M. Vega, Milbuena Vega-Restituto and Lenard Vega, the substituted respondents.

Gregoria, on the other hand, was survived by her six children: petitioners Natividad Ining-Ibea (Natividad), Dolores Ining-Rimon (Dolores), Antipolo, and Pedro; Jose; and Amando. Natividad is survived by Edilberto Ibea, Josefa Ibea, Martha Ibea, Carmen Ibea, Amparo Ibea-Fernandez, Henry Ruiz and Pastor Ruiz. Dolores is survived by Jesus Rimon, Cesaria Rimon Gonzales and Remedios Rimon Cordero. Antipolo is survived by Manuel Villanueva, daughter Teodora Villanueva-Francisco (Teodora), Camilo Francisco (Camilo), Adolfo Francisco (Adolfo), Lucimo Francisco, Jr. (Lucimo Jr.), Milagros Francisco, Celedonio Francisco, and Herminigildo Francisco (Herminigildo). Pedro is survived by his wife, Elisa Tan Ining and Pedro Ining, Jr. Amando died without issue. As for

¹ *Rollo*, pp. 10-52.

² *CA rollo*, pp. 97-107; penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Enrico A. Lanzas and Apolinario D. Bruselas, Jr.

³ *Id.* at 136.

⁴ *Id.* at 113-120.

⁵ Exhibit "A," Folder of Exhibits for the Respondents. The property is alternately referred to in the various pleadings and in the decisions of the trial and appellate courts as "Original Certificate of Title No. RO-630 (24071)," or "Original Certificate of Title No. RO-630 (2407)," or "Original Certificate of Title No. RO-630 (240710)," or "Original Certificate of Title No. 630."

Jose, it is not clear from the records if he was made party to the proceedings, or if he is alive at all.

In short, herein petitioners, except for Ramon Tresvalles (Tresvalles) and Roberto Tajonera (Tajonera), are Gregoria's grandchildren or spouses thereof (Gregoria's heirs).

In 1997, acting on the claim that one-half of subject property belonged to him as Romana's surviving heir, Leonardo filed with the Regional Trial Court (RTC) of Kalibo, Aklan Civil Case No. 5275⁶ for partition, recovery of ownership and possession, with damages, against Gregoria's heirs. In his Amended Complaint,⁷ Leonardo alleged that on several occasions, he demanded the partition of the property but Gregoria's heirs refused to heed his demands; that the matter reached the level of the *Lupon Tagapamayapa*, which issued a certification to file a court action sometime in 1980; that Gregoria's heirs claimed sole ownership of the property; that portions of the property were sold to Tresvalles and Tajonera, which portions must be collated and included as part of the portion to be awarded to Gregoria's heirs; that in 1979, Lucimo Francisco, Sr. (Lucimo Sr.), husband of herein petitioner Teodora, illegally claimed absolute ownership of the property and transferred in his name the tax declaration covering the property; that from 1988, Lucimo Sr. and Teodora have deprived him (Leonardo) of the fruits of the property estimated at ₱1,000.00 per year; that as a result, he incurred expenses by way of attorney's fees and litigation costs. Leonardo thus prayed that he be declared the owner of half of the subject property; that the same be partitioned after collation and determination of the portion to which he is entitled; that Gregoria's heirs be ordered to execute the necessary documents or agreements; and that he (Leonardo) be awarded actual damages in the amount of ₱1,000.00 per year from 1988, attorney's fees of ₱50,000.00, and lawyer's appearance fees of ₱500.00 per hearing.

In their Answer⁸ with counterclaim, Teodora, Camilo, Adolfo, Lucimo Jr. and Herminigildo claimed that Leonardo had no cause of action against them; that they have become the sole owners of the subject property through Lucimo Sr. who acquired the same in good faith by sale from Juan Enriquez (Enriquez), who in turn acquired the same from Leon, and Leonardo was aware of this fact; that they were in continuous, actual, adverse, notorious and exclusive possession of the property with a just title; that they have been paying the taxes on the property; that Leonardo's claim is barred by estoppel and laches; and that they have suffered damages and were forced to litigate as a result of Leonardo's malicious suit. They prayed that Civil Case No. 5275 be dismissed; that Leonardo be declared to be without any right to the property; that Leonardo be ordered to surrender the certificate of title to the property; and that they be awarded ₱20,000.00 as moral

⁶ Assigned to Branch 8.

⁷ Records, pp. 10-14.

⁸ Id. at 28-31.

damages, ₱10,000.00 as temperate and nominal damages, ₱20,000.00 as attorney's fees, and double costs.

The other Gregoria heirs, as well as Tresvalles and Tajonera were declared in default.⁹

As agreed during pre-trial, the trial court commissioned Geodetic Engineer Rafael M. Escabarte to identify the metes and bounds of the property.¹⁰ The resulting Commissioner's Report and Sketch,¹¹ as well as the Supplementary Commissioner's Report,¹² were duly approved by the parties. The parties then submitted the following issues for resolution of the trial court:

1. Whether Leonardo is entitled to a share in Leon's estate;
2. Whether Leon sold the subject property to Lucimo Sr.; and
3. Whether Leonardo's claim has prescribed, or that he is barred by estoppel or laches.¹³

In the meantime, Leonardo passed away and was duly substituted by his heirs, the respondents herein.¹⁴

During the course of the proceedings, the following additional relevant facts came to light:

1. In 1995, Leonardo filed against petitioners Civil Case No. 4983 for partition with the RTC Kalibo, but the case was dismissed and referred to the Kalibo Municipal Trial Court (MTC), where the case was docketed as Civil Case No. 1366. However, on March 4, 1997, the MTC dismissed Civil Case No. 1366 for lack of jurisdiction and declared that only the RTC can take cognizance of the partition case;¹⁵

2. The property was allegedly sold by Leon to Enriquez through an unnotarized document dated April 4, 1943.¹⁶ Enriquez in turn allegedly sold the property to Lucimo Sr. on November 25, 1943 via another private sale

⁹ See Order dated September 3, 1997, id. at 49.

¹⁰ See Order dated October 30, 1998, id. at 151.

¹¹ Exhibits "5" and "5-1," Folder of Exhibits for the Respondents.

¹² Exhibit "T," id.

¹³ See Pre-Trial Order dated August 4, 1999, records, pp. 192-193.

¹⁴ Id. at 198-199.

¹⁵ Id. at 12.

¹⁶ Exhibit "4," Folder of Exhibits for the Petitioners.

document;¹⁷

3. Petitioners were in sole possession of the property for more than 30 years, while Leonardo acquired custody of OCT RO-630;¹⁸

4. On February 9, 1979, Lucimo Sr. executed an Affidavit of Ownership of Land¹⁹ claiming sole ownership of the property which he utilized to secure in his name Tax Declaration No. 16414 (TD 16414) over the property and to cancel Tax Declaration No. 20102 in Leon's name;²⁰

5. Lucimo Sr. died in 1991; and

6. The property was partitioned among the petitioners, to the exclusion of Leonardo.²¹

Ruling of the Regional Trial Court

On November 19, 2001, the trial court rendered a Decision,²² which decreed as follows:

WHEREFORE, premises considered, judgment is hereby rendered:

1. Dismissing the complaint on the ground that plaintiffs' right of action has long prescribed under Article 1141 of the New Civil Code;

2. Declaring Lot 1786 covered by OCT No. RO-630 (24071) to be the common property of the heirs of Gregoria Roldan Ining and by virtue whereof, OCT No. RO-630 (24071) is ordered cancelled and the Register of Deeds of the Province of Aklan is directed to issue a transfer certificate of title to the heirs of Natividad Ining, one-fourth (1/4) share; Heirs of Dolores Ining, one-fourth (1/4) share; Heirs of Antipolo Ining, one-fourth (1/4) share; and Heirs of Pedro Ining, one-fourth (1/4) share.

For lack of sufficient evidence, the counterclaim is ordered dismissed.

With cost against the plaintiffs.

SO ORDERED.²³

¹⁷ Exhibit "9," *id.*

¹⁸ Records, pp. 267-269, 271.

¹⁹ Exhibit "11," Folder of Exhibits for the Petitioners.

²⁰ Exhibit "12," *id.*

²¹ Exhibit "15," *id.*

²² Records, pp. 262-279; penned by Judge Eustaquio G. Terencio.

²³ *Id.* at 278-279.

The trial court found the April 4, 1943 and November 25, 1943 deeds of sale to be spurious. It concluded that Leon never sold the property to Enriquez, and in turn, Enriquez never sold the property to Lucimo Sr., hence, the subject property remained part of Leon's estate at the time of his death in 1962. Leon's siblings, Romana and Gregoria, thus inherited the subject property in equal shares. Leonardo and the respondents are entitled to Romana's share as the latter's successors.

However, the trial court held that Leonardo had only 30 years from Leon's death in 1962 – or up to 1992 – within which to file the partition case. Since Leonardo instituted the partition suit only in 1997, the same was already barred by prescription. It held that under Article 1141 of the Civil Code,²⁴ an action for partition and recovery of ownership and possession of a parcel of land is a real action over immovable property which prescribes in 30 years. In addition, the trial court held that for his long inaction, Leonardo was guilty of laches as well. Consequently, the property should go to Gregoria's heirs exclusively.

Respondents moved for reconsideration²⁵ but the same was denied by the RTC in its February 7, 2002 Order.²⁶

Ruling of the Court of Appeals

Only respondents interposed an appeal with the CA. Docketed as CA-G.R. CV No. 74687, the appeal questioned the propriety of the trial court's dismissal of Civil Case No. 5275, its application of Article 1141, and the award of the property to Gregoria's heirs exclusively.

On March 14, 2006, the CA issued the questioned Decision,²⁷ which contained the following decretal portion:

IN LIGHT OF ALL THE FOREGOING, this appeal is **GRANTED**. The decision of the Regional Trial Court, Br. 8, Kalibo, Aklan in Civil Case No. 5275 is **REVERSED** and **SET ASIDE**. In lieu thereof, judgment is rendered as follows:

1. Declaring 1/2 portion of Lot 1786 as the share of the plaintiffs as successors-in-interest of Romana Roldan;
2. Declaring 1/2 portion of Lot 1786 as the share of the defendants as

²⁴ Art. 1141. Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

²⁵ Records, pp. 284-286.

²⁶ Id. at 302.

²⁷ CA *rollo*, pp. 97-107.

successors-in-interest of Gregoria Roldan Ining;

3. Ordering the defendants to deliver the possession of the portion described in paragraphs 8 and 9 of the Commissioner's Report (Supplementary) to the herein plaintiffs;

4. Ordering the cancellation of OCT No. RO-630 (24071) in the name of Leon Roldan and the Register of Deeds of Aklan is directed to issue transfer certificates of title to the plaintiffs in accordance with paragraphs 8 and 9 of the sketch plan as embodied in the Commissioner's Report (Supplementary) and the remaining portion thereof be adjudged to the defendants.

Other claims and counterclaims are dismissed.

Costs against the defendants-appellees.

SO ORDERED.²⁸

The CA held that the trial court's declaration of nullity of the April 4, 1943 and November 25, 1943 deeds of sale in favor of Enriquez and Lucimo Sr., respectively, became final and was settled by petitioners' failure to appeal the same. Proceeding from the premise that no valid prior disposition of the property was made by its owner Leon and that the property – which remained part of his estate at the time of his death – passed on by succession to his two siblings, Romana and Gregoria, which thus makes the parties herein – who are Romana's and Gregoria's heirs – co-owners of the property in equal shares, the appellate court held that only the issues of prescription and laches were needed to be resolved.

The CA did not agree with the trial court's pronouncement that Leonardo's action for partition was barred by prescription. The CA declared that prescription began to run not from Leon's death in 1962, but from Lucimo Sr.'s execution of the Affidavit of Ownership of Land in 1979, which amounted to a repudiation of his co-ownership of the property with Leonardo. Applying the fifth paragraph of Article 494 of the Civil Code, which provides that "[n]o prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership," the CA held that it was only when Lucimo Sr. executed the Affidavit of Ownership of Land in 1979 and obtained a new tax declaration over the property (TD 16414) solely in his name that a repudiation of his co-ownership with Leonardo was made, which repudiation effectively commenced the running of the 30-year prescriptive period under Article 1141.

The CA did not consider Lucimo Sr.'s sole possession of the property for more than 30 years to the exclusion of Leonardo and the respondents as a valid

²⁸ Id. at 106-107. Emphases in the original.

repudiation of the co-ownership either, stating that his exclusive possession of the property and appropriation of its fruits – even his continuous payment of the taxes thereon – while adverse as against strangers, may not be deemed so as against Leonardo in the absence of clear and conclusive evidence to the effect that the latter was ousted or deprived of his rights as co-owner with the intention of assuming exclusive ownership over the property, and absent a showing that this was effectively made known to Leonardo. Citing *Bargayo v. Camumot*²⁹ and *Segura v. Segura*,³⁰ the appellate court held that as a rule, possession by a co-owner will not be presumed to be adverse to the other co-owners but will be held to benefit all, and that a co-owner or co-heir is in possession of an inheritance *pro-indiviso* for himself and in representation of his co-owners or co-heirs if he administers or takes care of the rest thereof with the obligation to deliver the same to his co-owners or co-heirs, as is the case of a depositary, lessee or trustee.

The CA added that the payment of taxes by Lucimo Sr. and the issuance of a new tax declaration in his name do not prove ownership; they merely indicate a claim of ownership. Moreover, petitioners' act of partitioning the property among themselves to the exclusion of Leonardo cannot affect the latter; nor may it be considered a repudiation of the co-ownership as it has not been shown that the partition was made known to Leonardo.

The CA held further that the principle of laches cannot apply as against Leonardo and the respondents. It held that laches is controlled by equitable considerations and it cannot be used to defeat justice or to perpetuate fraud; it cannot be utilized to deprive the respondents of their rightful inheritance.

On the basis of the above pronouncements, the CA granted respondents' prayer for partition, directing that the manner of partitioning the property shall be governed by the Commissioner's Report and Sketch and the Supplementary Commissioner's Report which the parties did not contest.

Petitioners filed their Motion for Reconsideration³¹ which the CA denied in its assailed September 7, 2006 Resolution.³² Hence, the present Petition.

Issues

Petitioners raise the following arguments:

²⁹ 40 Phil. 857, 872 (1920).

³⁰ 247-A Phil. 449, 458 (1988).

³¹ CA *rollo*, pp. 113-120.

³² Id. at 136.

I

THE APPELLATE COURT COMMITTED GRAVE ABUSE OF DISCRETION IN REVERSING THE DECISION OF THE TRIAL COURT ON THE GROUND THAT LUCIMO FRANCISCO REPUDIATED THE CO-OWNERSHIP ONLY ON FEBRUARY 9, 1979.

II

THE APPELLATE COURT ERRED IN NOT UPHOLDING THE DECISION OF THE TRIAL COURT DISMISSING THE COMPLAINT ON THE GROUND OF PRESCRIPTION AND LACHES.³³

Petitioners' Arguments

Petitioners insist in their Petition and Reply³⁴ that Lucimo Sr.'s purchase of the property in 1943 and his possession thereof amounted to a repudiation of the co-ownership, and that Leonardo's admission and acknowledgment of Lucimo Sr.'s possession for such length of time operated to bestow upon petitioners – as Lucimo Sr.'s successors-in-interest – the benefits of acquisitive prescription which proceeded from the repudiation.

Petitioners contend that Leonardo's inaction – from Lucimo Sr.'s taking possession in 1943, up to 1995, when Leonardo filed Civil Case No. 4983 for partition with the RTC Kalibo – amounted to laches or neglect. They add that during the proceedings before the *Lupon Tagapamayapa* in 1980, Leonardo was informed of Lucimo Sr.'s purchase of the property in 1943; this notwithstanding, Leonardo did not take action then against Lucimo Sr. and did so only in 1995, when he filed Civil Case No. 4983 – which was eventually dismissed and referred to the MTC. They argue that, all this time, Leonardo did nothing while Lucimo Sr. occupied the property and claimed all its fruits for himself.

Respondents' Arguments

Respondents, on the other hand, argue in their Comment³⁵ that –

For purposes of clarity, if [sic] is respectfully submitted that eighteen (18) legible copies has [sic] not been filed in this case for consideration in banc [sic] and nine (9) copies in cases heard before a division in that [sic] all copies of pleadings served to the offices concern [sic] where said order [sic] was issued were not furnished two (2) copies each in violation to [sic] the adverse parties [sic] to the clerk of court, Regional Trial Court, Branch 8, Kalibo, Aklan, Philippines; to the Honorable Court of Appeals so that No [sic] action shall be taken on such pleadings, briefs, memoranda, motions, and other papers as fail [sic] to comply with the requisites set out in this paragraph.

³³ *Rollo*, p. 40

³⁴ *Id.* at 278-281.

³⁵ *Id.* at 259-275.

The foregoing is confirmed by affidavit of MERIDON F. OLANDESCA, the law secretary of the Petitioner [sic] who sent [sic] by Registered mail to Court of Appeals, Twentieth Division, Cebu City; to Counsel for Respondent [sic] and to the Clerk of Court Supreme Court Manila [sic].

These will show that Petitioner has [sic] violated all the requirements of furnishing two (2) copies each concerned party [sic] under the Rule of Courts [sic].³⁶

Our Ruling

The Court denies the Petition.

The finding that Leon did not sell the property to Lucimo Sr. had long been settled and had become final for failure of petitioners to appeal. Thus, the property remained part of Leon's estate.

One issue submitted for resolution by the parties to the trial court is whether Leon sold the property to Lucimo Sr. The trial court, examining the two deeds of sale executed in favor of Enriquez and Lucimo Sr., found them to be spurious. It then concluded that no such sale from Leon to Lucimo Sr. ever took place. Despite this finding, petitioners did not appeal. Consequently, any doubts regarding this matter should be considered settled. Thus, petitioners' insistence on Lucimo Sr.'s 1943 purchase of the property to reinforce their claim over the property must be ignored. Since no transfer from Leon to Lucimo Sr. took place, the subject property clearly remained part of Leon's estate upon his passing in 1962.

Leon died without issue; his heirs are his siblings Romana and Gregoria.

Since Leon died without issue, his heirs are his siblings, Romana and Gregoria, who thus inherited the property in equal shares. In turn, Romana's and Gregoria's heirs – the parties herein – became entitled to the property upon the sisters' passing. Under Article 777 of the Civil Code, the rights to the succession are transmitted from the moment of death.

Gregoria's and Romana's heirs are co-owners of the subject property.

Thus, having succeeded to the property as heirs of Gregoria and Romana,

³⁶ Id. at 272-273.

petitioners and respondents became co-owners thereof. As co-owners, they may use the property owned in common, provided they do so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights.³⁷ They have the full ownership of their parts and of the fruits and benefits pertaining thereto, and may alienate, assign or mortgage them, and even substitute another person in their enjoyment, except when personal rights are involved.³⁸ Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.³⁹ Finally, no prescription shall run in favor of one of the co-heirs against the others so long as he expressly or impliedly recognizes the co-ownership.⁴⁰

For prescription to set in, the repudiation must be done by a co-owner.

Time and again, it has been held that “a co-owner cannot acquire by prescription the share of the other co-owners, absent any clear repudiation of the co-ownership. In order that the title may prescribe in favor of a co-owner, the following requisites must concur: (1) the co-owner has performed unequivocal acts of repudiation amounting to an ouster of the other co-owners; (2) such positive acts of repudiation have been made known to the other co-owners; and (3) the evidence thereof is clear and convincing.”⁴¹

From the foregoing pronouncements, it is clear that the trial court erred in reckoning the prescriptive period within which Leonardo may seek partition from the death of Leon in 1962. Article 1141 and Article 494 (fifth paragraph) provide that prescription shall begin to run in favor of a co-owner and against the other co-owners only from the time he positively renounces the co-ownership and makes known his repudiation to the other co-owners.

³⁷ CIVIL CODE, Article 486.

Each co-owner may use the thing owned in common, provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. The purpose of the co-ownership may be changed by agreement, express or implied.

³⁸ CIVIL CODE, Article 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.

³⁹ CIVIL CODE, Article 494, first paragraph.

No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

⁴⁰ CIVIL CODE, Article 494, fifth paragraph.

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

⁴¹ *Robles v. Court of Appeals*, 384 Phil. 635, 649-650 (2000).

Lucimo Sr. challenged Leonardo's co-ownership of the property only sometime in 1979 and 1980, when the former executed the Affidavit of Ownership of Land, obtained a new tax declaration exclusively in his name, and informed the latter – before the *Lupon Tagapamayapa* – of his 1943 purchase of the property. These apparent acts of repudiation were followed later on by Lucimo Sr.'s act of withholding Leonardo's share in the fruits of the property, beginning in 1988, as Leonardo himself claims in his Amended Complaint. Considering these facts, the CA held that prescription began to run against Leonardo only in 1979 – or even in 1980 – when it has been made sufficiently clear to him that Lucimo Sr. has renounced the co-ownership and has claimed sole ownership over the property. The CA thus concluded that the filing of Civil Case No. 5275 in 1997, or just under 20 years counted from 1979, is clearly within the period prescribed under Article 1141.

What escaped the trial and appellate courts' notice, however, is that while it may be argued that Lucimo Sr. performed acts that may be characterized as a repudiation of the co-ownership, the fact is, he is not a co-owner of the property. Indeed, he is not an heir of Gregoria; he is merely Antipolo's son-in-law, being married to Antipolo's daughter Teodora.⁴² Under the Family Code, family relations, which is the primary basis for succession, exclude relations by affinity.

Art. 150. Family relations include those:

- (1) Between husband and wife;
- (2) Between parents and children;
- (3) Among other ascendants and descendants; and
- (4) Among brothers and sisters, whether of the full or half blood.

In point of law, therefore, Lucimo Sr. is not a co-owner of the property; Teodora is. Consequently, he cannot validly effect a repudiation of the co-ownership, which he was never part of. For this reason, prescription did not run adversely against Leonardo, and his right to seek a partition of the property has not been lost.

Likewise, petitioners' argument that Leonardo's admission and acknowledgment in his pleadings – that Lucimo Sr. was in possession of the property since 1943 – should be taken against him, is unavailing. In 1943, Leon remained the rightful owner of the land, and Lucimo Sr. knew this very well, being married to Teodora, daughter of Antipolo, a nephew of Leon. More significantly, the property, which is registered under the Torrens system and covered by OCT RO-630, is in Leon's name. Leon's ownership ceased only in

⁴² *Rollo*, p. 294.

1962, upon his death when the property passed on to his heirs by operation of law.


In fine, since none of the co-owners made a valid repudiation of the existing co-ownership, Leonardo could seek partition of the property at any time.

WHEREFORE, the Petition is **DENIED**. The assailed March 14, 2006 Decision and the September 7, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 74687 are **AFFIRMED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest 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.

**ANTONIO T. CARPIO***Associate Justice**Chairperson***CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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***Chief Justice*