Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CAROLINA (CARLINA) VDA. DE FIGURACION, HEIRS OF ELENA FIGURACION-ANCHETA, namely: LEONCIO ANCHETA, JR., and ROMULO ANCHETA, HEIRS OF HILARIA A. FIGURACION, namely: FELIPA FIGURACION-MANUEL, MARY FIGURACION-GINEZ, and EMILIA FIGURACION-GERILLA, AND HEIRS OF QUINTIN FIGURACION, namely: LINDA M. FIGURACION, LEANDRO M. FIGURACION, II, and ALLAN M. FIGURACION,
Petitioners,

- versus -

EMILIA FIGURACION-GERILLA,
Respondent.

G.R. No. 151334

Present:

SERENO, *C.J.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
MENDOZA,* and
REYES, *JJ.*

Promulgated:

FEB 13 2013

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DECISION

REYES, *J.*:

At bar is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated December 11, 2001 of the

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* Additional member per Raffle dated February 13, 2013.

1 *Rollo*, pp. 11-25.

2 Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Conchita Carpio Morales (now retired) and Sergio L. Pestaño, concurring; id. at 26-32.

Court of Appeals (CA) in CA-G.R. CV No. 58290, which reversed and set aside the Decision[3] dated June 26, 1997 of the Regional Trial Court (RTC) of Urdaneta, Pangasinan, Branch 49. The RTC decision (1) dismissed respondent Emilia Figuracion-Gerilla's (Emilia) complaint for partition, annulment of documents, reconveyance, quieting of title and damages, and (2) annulled the *Affidavit of Self-Adjudication* executed by petitioner Carolina (Carlina) Vda. De Figuracion (Carolina).

The Facts

The parties are the heirs of Leandro Figuracion (Leandro) who died intestate in May 1958. Petitioner Carolina is the surviving spouse. The other petitioners – Elena Figuracion-Ancheta, Hilaria A. Figuracion (Hilaria), Felipa Figuracion-Manuel (Felipa), Quintin Figuracion, and Mary Figuracion-Ginez – and respondent Emilia were Carolina and Leandro's children.[4]

Subject of the dispute are two parcels of land both situated in Urdaneta, Pangasinan, which were acquired by Leandro during his lifetime. These properties were: (1) Lot No. 2299 with a land area of 7,547 square meters originally covered by Transfer Certificate of Title (TCT) No. 4221-P;[5] and (2) Lot No. 705 measuring 2,900 square meters and covered by TCT No. 4220-P. Both lands were registered in the name of "Leandro Figuracion married to Carolina Adviento". Leandro executed a Deed of Quitclaim over the above real properties in favor of his six (6) children on August 23, 1955. Their shares, however, were not delineated with particularity because spouses Leandro and Carolina reserved the lots and its fruits for their expenses.

Also involved in the controversy is Lot No. 707 of the Cadastral Survey of Urdaneta, Pangasinan, with an area of 3,164 square meters originally owned by Eulalio Adviento (Eulalio), covered by Original Certificate of Title (OCT) No. 15867 issued in his name on August 21, 1917. Eulalio begot Agripina Adviento (Agripina) with his first wife Marcela Estioko (Marcela), whom Eulalio survived. When he remarried, Eulalio had another daughter, herein petitioner Carolina, with his second wife, Faustina Escabesa (Faustina).[6]

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[3] Id. at 37-46.

[4] As culled from the related case entitled *Emilia Figuracion-Gerilla v. Carolina Vda. De Figuracion, Elena Figuracion-Ancheta, Hilaria A. Figuracion, Felipa Figuracion-Manuel, Quintin Figuracion and Mary Figuracion-Ginez;* 531 Phil. 81 (2006).

[5] TCT No. 4221-P was later cancelled and replaced by TCT No. 101331 in view of Leandro's sale of the 162-square meter portion of the land to Lazaro Adviento.

[6] Supra note 4.

On November 28, 1961, Agripina[7] executed a *Deed of Quitclaim*[8] over the eastern half of Lot No. 707 in favor of her niece, herein respondent Emilia.

Soon thereafter or on December 11, 1962, petitioner Carolina executed an *Affidavit of Self-Adjudication*[9] adjudicating unto herself the entire Lot No. 707 as the sole and exclusive heir of her deceased parents, Eulalio and Faustina.[10] On the same date, Carolina also executed a *Deed of Absolute Sale*[11] over Lot No. 707 in favor of petitioners Hilaria and Felipa, who in turn immediately caused the cancellation of OCT No. 15867 and the issuance of TCT No. 42244 in their names.[12]

In 1971, Emilia and her family went to the United States and returned to the Philippines only in 1981. Upon her return and relying on the *Deed of Quitclaim*, she built a house on the eastern half of Lot No. 707.[13]

The legal debacle of the Figuracions started in 1994 when Hilaria and her agents threatened to demolish the house of Emilia who, in retaliation, was prompted to seek the partition of Lot No. 707 as well as Lot Nos. 2299 and 705. The matter was initially brought before the *Katarungang Pambarangay*, but no amicable settlement was reached by the parties.[14] On May 23, 1994, respondent Emilia instituted the herein Complaint[15] for the partition of Lot Nos. 2299, 705 and 707, annulment of the *Affidavit of Self-Adjudication*, *Deed of Absolute Sale* and TCT No. 42244, reconveyance of eastern half portion of Lot No. 707, quieting of title and damages.

In opposition, the petitioners averred the following special and affirmative defenses: (1) the respondent's cause of action had long prescribed and that she is guilty of laches hence, now estopped from bringing the suit; (2) TCT No. 42244 in the name of Felipa and Hilaria have already attained indefeasibility and conclusiveness as to the true owners of Lot No. 707; and (3) an action for partition is no longer tenable because Felipa and Hilaria have already acquired rights adverse to that claimed by respondent Emilia and the same amount to a repudiation of the alleged co-ownership.[16]

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7 Agripina died on July 28, 1963, single and without issue; records, p. 269.
8 Id. at 266.
9 Id. at 267.
10 Eulalio died on July 20, 1930 while Faustina died October 18, 1949.
11 Records, p. 271.
12 Id. at 272.
13 Uniform factual findings of the RTC and CA; *rollo*, pp. 26-32 and 37-46.
14 Records, p. 12.
15 Id. at 1-5.
16 Id. at 19-23.

During pre-trial conference, the issues were simplified into: (1) whether or not Lot Nos. 2299 and 705 are the exclusive properties of Leandro; and (2) whether or not respondent Emilia is the owner of the eastern half of Lot No. 707.[17]

On the basis of the evidence adduced by the parties, the RTC rendered its Decision dated June 26, 1997 disposing as follows:

> WHEREFORE, premises considered, the complaint for partition, reconveyance, quieting of title and damages is hereby ordered dismissed whereas the affidavit of self-adjudication[,] deed of sale and the transfer certificate of title involving Lot 707 are hereby declared null and void.
>
> No costs.
>
> SO ORDERED.[18]

The RTC ruled that a partition of Lot Nos. 2299 and 705 will be premature since their ownership is yet to be transmitted from Leandro to his heirs whose respective shares thereto must still be determined in estate settlement proceedings. Anent Lot No. 707, the RTC held that petitioner Carolina transferred only her one-half (½) share to Felipa and Hilaria and any conveyance of the other half pertaining to Agripina was void. While the RTC nullified the *Affidavit of Self-Adjudication*, *Deed of Absolute Sale* and TCT No. 42244, it refused to adjudicate the ownership of the lot's eastern half portion in favor of respondent Emilia since a settlement of the estate of Eulalio is yet to be undertaken.[19]

Respondent Emilia appealed to the CA, which, in its Decision dated December 11, 2001, ruled that the RTC erred in refusing to partition Lot No. 707. The CA explained that there is no necessity for placing Lot No. 707 under judicial administration since Carolina had long sold her ½ *pro indiviso* share to Felipa and Hilaria. Thus, when Carolina sold the entire Lot No. 707 on December 11, 1962 as her own, the sale affected only her share and not that belonging to her co-owner, Agripina. The proper action in such case is not the nullification of the sale, or for the recovery of possession of the property owned in common from the third person, but for a division or partition of the entire lot. Such partition should result in segregating the portion belonging to the seller and its delivery to the buyer.

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17 Pre-trial Order dated April 4, 1995; id. at 68-69.

18 *Rollo*, p. 46.

19 Id. at 43-45.

The CA, however, agreed with the RTC that a partition of Lot Nos. 2299 and 705 is indeed premature considering that there is a pending legal controversy with respect to Lot No. 705 and the accounting of the income from Lot No. 2299 and of the expenses for the last illness and burial of Leandro and Carolina, for which the lots appear to have been intended.

Accordingly, the decretal portion of the CA decision reads:

> WHEREFORE, premises considered, the present appeal is hereby GRANTED and the decision appealed from in Civil Case No. U-5826 is hereby VACATED and SET ASIDE. A new judgment is hereby rendered declaring Lot No. 707 covered by TCT No. 42244 to be owned by appellant Emilia Figuracion-Gerilla [herein respondent], ½ *pro indiviso* share, appellee Felipa Figuracion [herein petitioner], ¼ *pro indiviso* share, and appellee Hilaria Figuracion [herein petitioner], ¼ *pro indiviso* share, who are hereby directed to partition the same and if they could not agree on a partition, they may petition the trial court for the appointment of a commissioner to prepare a project of partition, in accordance with the procedure as provided in Rule 69 of the 1997 Rules of Civil Procedure, as amended.
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> No pronouncement as to costs.
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> SO ORDERED.[20]

Respondent Emilia appealed the CA's decision to the Court, docketed as G.R. No. 154322. In a Decision promulgated on August 22, 2006, the Court denied the appeal, concurring with the CA's ruling that a partition of Lot Nos. 2299 and 705 would be inappropriate considering that: (1) the ownership of Lot No. 705 is still in dispute; and (2) there are still unresolved issues as to the expenses chargeable to the estate of Leandro.

The present petition involves the appeal of the petitioners who attribute this sole error committed by the CA:

> THE DECISION RENDERED BY THE HONORABLE COURT OF APPEALS IS CONTRARY TO LAW AND EXISTING JURISPRUDENTIAL DICTA LAID DOWN BY THE HONORABLE SUPREME COURT.[21]

In view of the Court's ruling in G.R. No. 154322, the ensuing discussion shall concern only Lot No. 707.

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20 Id. at 32.

21 Id. at 16.

The Arguments of the Parties

The petitioners argue that respondent Emilia has no valid basis for her claim of ownership because the *Deed of Quitclaim* executed in her favor by Agripina was in fact a deed of donation that contained no acceptance and thus, void. The petitioners attached a copy of the *Deed of Quitclaim* and stressed on the following portions, *viz*:

> I, **AGRIPINA ESTIOKO ADVIENTO**, of le[ga]l age, Filipino citizen, single and a resident [of] San Vicenter (sic), Urdaneta City, Pangasinan, for and in consideration of the sum of ONE PESO ([₱]1.00), Philippine Currency and the services rendered by my niece EMILIA FIGURACION, 20 years old, single, Filipino citizen and a resident of San Vicente, Urdaneta City, Pangasinan, do hereby by these presentsw (sic) RENOUNCE, RELEASE and forever QUITCLAIM in favor of EMILIA FIGURACION, her heirs, and assigns the ONE[-]HALF (1/2) eastern portion of the following parcel of land more particularly described and bounded as follows to wit[.][22]

They further aver that the *Deed of Quitclaim* is riddled with defects that evoke questions of law, because: *(a)* it has not been registered with the Register of Deeds, albeit, allegedly executed as early as 1961; *(b)* a certification dated June 3, 2003 issued by the Office of the Clerk of Court (OCC) of the RTC of Urdaneta, Pangasinan, shows that it does not have a copy of the *Deed of Quitclaim*; *(c)* the Office of the National Archives which is the depository of old and new notarized documents has no record of the *Deed of Quitclaim* as evidenced by a certification dated May 19, 2003;[23] and *(d)* Atty. Felipe V. Abenojar, who supposedly notarized the *Deed of Quitclaim* was not commissioned to notarize in 1961 per the certification dated June 9, 2003 from the OCC of the RTC of Urdaneta, Pangasinan.[24]

Respondent Emilia, on the other hand, contends that the *Deed of Quitclaim* should be considered an onerous donation that requires no acceptance as it is governed by the rules on contracts and not by the formalities for a simple donation.[25]

The Court's Ruling

Issues not raised before the courts *a quo* cannot be raised for the first

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22 Id. at 17.
23 Id. at 194-200.
24 Id. at 201-206.
25 Id. at 77-86.

time in a petition filed under Rule 45

Records show that there is a palpable shift in the defense raised by the petitioners before the RTC and the CA.

In the Pre-Trial Order[26] of the RTC dated April 4, 1995, the parties agreed to limit the issue with regard to Lot No. 707 as follows: whether or not respondent Emilia is the owner of the eastern half portion of Lot No. 707. The petitioners' supporting theory for this issue was that "the *Deed of Quitclaim* dated November 28, 1961 was rendered ineffective by the issuance of [TCT No. 42244] in the name of Felipa and Hilaria."[27] On appeal to the CA, however, the petitioners raised a new theory by questioning the execution and enforceability of the *Deed of* Quitclaim. They claimed that it is actually a donation that was not accepted in the manner required by law.[28]

The inconsistent postures taken by the petitioners breach the basic procedural tenet that a party cannot change his theory on appeal as expressly adopted in Rule 44, Section 15 of the Rules of Court, which reads:

> Sec. 15. *Questions that may be raised on appeal.* – Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

Fortifying the rule, the Court had repeatedly emphasized that defenses not pleaded in the answer may not be raised for the first time on appeal. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.[29] The Court had likewise, in numerous times, affirmed that points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court.[30]

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[26] Records, pp. 68-69.

[27] Id. at 20.

[28] Opposition/Comment to the respondent's motion for reconsideration of the CA's Decision dated December 11, 2001; CA *rollo,* pp. 191-200.

[29] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation,* 535 Phil. 481, 490 (2006).

[30] *Philippine Ports Authority v. City of Iloilo*, 453 Phil. 927, 934 (2003).

While a party may change his theory on appeal when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory,[31] this exception does not, however, obtain in the case at hand.

Contrary to the petitioners' assertion, the Court finds that the issues on the supposed defects and actual nature of the *Deed of Quitclaim* are questions of fact that require not only a review or re-evaluation of the evidence already adduced by the parties but also the reception of new evidence as the petitioners themselves have acknowledged when they attached in the petition several certifications[32] in support of their new argument. It is settled that questions of fact are beyond the province of a Rule 45 petition since the Court is not a trier of facts.[33]

Accordingly, the Court will not give due course to the new issues raised by the petitioners involving the nature and execution of the *Deed of Quitclaim.* For their failure to advance these questions during trial, the petitioners are now barred by estoppel[34] from imploring an examination of the same.

The respondent can compel the partition of Lot No. 707

The first stage in an action for partition is the settlement of the issue of ownership. Such an action will not lie if the claimant has no rightful interest in the subject property. In fact, the parties filing the action are required by the Rules of Court to set forth in their complaint the nature and the extent of their title to the property. It would be premature to effect a partition until and unless the question of ownership is first definitely resolved.[35]

Here, the respondent traces her ownership over the eastern half of Lot No. 707 from the *Deed of Quitclaim* executed by Agripina, who in turn, was the co-owner thereof being one of the legitimate heirs of Eulalio. It is well to recall that the petitioners failed to categorically dispute the existence of the *Deed of Quitclaim*. Instead, they averred that it has been rendered ineffective by TCT No. 42244 in the name of Felipa and Hilaria—this contention is, of course, flawed.

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31 Id. at 935.
32 *Rollo*, pp. 199-200 and 206.
33 *Manguiob v. Arcangel,* G.R. No. 152262, February 15, 2012, 666 SCRA 39, 51.
34 See *Cuyo v. People of the Philippines,* G.R. No. 192164, October 12, 2011, 659 SCRA 69, 76.
35 *Ocampo v. Ocampo*, 471 Phil. 519, 534 (2004).

Mere issuance of a certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate, or that the registrant may only be a trustee, or that other parties may have acquired interest over the property subsequent to the issuance of the certificate of title.[36] Stated differently, placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed. The certificate cannot always be considered as conclusive evidence of ownership.[37] **In this case, co-ownership of Lot No. 707 was precisely what respondent Emilia was able to successfully establish, as correctly found by the RTC and affirmed by the CA.**

The status of Agripina and Carolina as the legitimate heirs of Eulalio is an undisputed fact. As such heirs, they became co-owners of Lot No. 707 upon the death of Eulalio on July 20, 1930. Since Faustina was predeceased by Eulalio, she likewise became a co-owner of the lot upon Eulalio's death. Faustina's share, however, passed on to her daughter Carolina when the former died on October 18, 1949. The *Affidavit of Self-Adjudication* executed by Carolina did not prejudice the share of Agripina because it is not legally possible for one to adjudicate unto himself an entire property he was not the sole owner of. A co-owner cannot alienate the shares of her other co-owners – *nemo dat qui non habet.*[38]

Hence, Lot No. 707 was a co-owned property of Agripina and Carolina. As co-owners, each of them had full ownership of her part and of the fruits and benefits pertaining thereto. Each of them also had the right to alienate the lot but only in so far as the extent of her portion was affected.[39]

Thus, when Carolina sold the entire Lot No. 707 on December 11, 1962 to Hilaria and Felipa without the consent of her co-owner Agripina, the disposition affected only Carolina's *pro indiviso* share, and the vendees, Hilaria and Felipa, acquired only what corresponds to Carolina's share. A co-owner is entitled to sell his undivided share; hence, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void and only the rights of the co-owner/seller are transferred, thereby making the buyer a co-owner of the property.[40]

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36 *Lacbayan v. Samoy, Jr.,* G.R. No. 165427, March 21, 2011, 645 SCRA 677, 690.
37 Id. at 689-690.
38 *Aromin v. Floresca,* 528 Phil. 1165, 1195 (2006).
39 NEW CIVIL CODE OF THE PHILIPPINES, Article 493.
40 *Aguirre v. Court of Appeals,* 466 Phil. 32, 48 (2004).

Accordingly, the deed of sale executed by Carolina in favor of Hilaria and Felipa was a valid conveyance but only insofar as the share of Carolina in the co-ownership is concerned. As Carolina's successors-in-interest to the property, Hilaria and Felipa could not acquire any superior right in the property than what Carolina is entitled to or could transfer or alienate after partition.

In a contract of sale of co-owned property, what the vendee obtains by virtue of such a sale are the same rights as the vendor had as co-owner, and the vendee merely steps into the shoes of the vendor as co-owner.[41] Hilaria and Felipa did not acquire the undivided portion pertaining to Agripina, which has already been effectively bequeathed to respondent Emilia as early as November 28, 1961 thru the *Deed of Quitclaim*. In turn, being the successor-in-interest of Agripina's share in Lot No. 707, respondent Emilia took the former's place in the co-ownership and as such co-owner, has the right to compel partition at any time.[42]

The respondent's right to demand for partition is not barred by acquisitive prescription or laches

The petitioners posit that the issuance of TCT No. 42244 in the name of Hilaria and Felipa over Lot No. 707 on December 11, 1962 was an express repudiation of the co-ownership with respondent Emilia. Considering the period of time that has already lapsed since then, acquisitive prescription has already set in and the respondent is now barred by laches from seeking a partition of the subject lot.

The contention is specious.

Co-heirs or co-owners cannot acquire by acquisitive prescription the share of the other co-heirs or co-owners absent a clear repudiation of the co ownership.[43] The act of repudiation, as a mode of terminating co-ownership, is subject to certain conditions, to wit: (1) a co-owner repudiates the co-ownership; (2) such an act of repudiation is clearly made known to the other co-owners; (3) the evidence thereon is clear and conclusive; and (4) he has

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41 *Panganiban v. Oamil*, G.R. No. 149313, January 22, 2008, 542 SCRA 166, 176.

42 NEW CIVIL CODE OF THE PHILIPPINES, Article 494. 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.

43 Article 494.

x x x x

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

been in possession through open, continuous, exclusive, and notorious possession of the property for the period required by law.[44]

The petitioners failed to comply with these conditions. The act of Hilaria and Felipa in effecting the registration of the entire Lot No. 707 in their names thru TCT No. 42244 did not serve to effectively repudiate the co-ownership. The respondent built her house on the eastern portion of the lot in 1981 without any opposition from the petitioners. Hilaria also paid realty taxes on the lot, in behalf of the respondent, for the years 1983-1987.[45] These events indubitably show that Hilaria and Felipa failed to assert exclusive title in themselves adversely to Emilia. Their acts clearly manifest that they recognized the subsistence of their co-ownership with respondent Emilia despite the issuance of TCT No. 42244 in 1962. Their acts constitute an implied recognition of the co-ownership which in turn negates the presence of a clear notice of repudiation to the respondent. To sustain a plea of prescription, it must always clearly appear that one who was originally a joint owner has repudiated the claims of his co-owners, and that his co-owners were apprised or should have been apprised of his claim of adverse and exclusive ownership before the alleged prescriptive period began to run.[46]

In addition, when Hilaria and Felipa registered the lot in their names to the exclusion of Emilia, an implied trust was created by force of law and the two of them were considered a trustee of the respondent's undivided share.[47] As trustees, they cannot be permitted to repudiate the trust by relying on the registration. In *Ringor v. Ringor*,[48] the Court had the occasion to explain the reason for this rule:

> **A trustee who obtains a Torrens title over a property held in trust for him by another cannot repudiate the trust by relying on the registration.** A Torrens Certificate of Title in Jose's name did not vest ownership of the land upon him. The Torrens system does not create or vest title. It only confirms and records title already existing and vested. It does not protect a usurper from the true owner. The Torrens system was not intended to foment betrayal in the performance of a trust. It does not permit one to enrich himself at the expense of another. Where one does not have a rightful claim to the property, the Torrens system of registration can confirm or record nothing. Petitioners cannot rely on the registration of the lands in Jose's name nor in the name of the Heirs of Jose M. Ringor, Inc., for the wrong result they seek. For Jose could not repudiate a trust by

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44 *Santos v. Santos,* 396 Phil. 928, 947 (2000), citing *Adille v. Court of Appeals*, 241 Phil. 487, 494-495 (1988).

45 Records, pp. 281-285.

46 *Galvez v. Court of Appeals*, 520 Phil. 217, 225 (2006).

47 NEW CIVIL CODE OF THE PHILIPPINES, Article 1456. If property is acquired through mistake or fraud, the person obtaining it is by force of law considered a trustee of an implied trust for the benefit of the person from whom the property comes.

48 480 Phil. 141 (2004).

> relying on a Torrens title he held in trust for his co-heirs. The beneficiaries are entitled to enforce the trust, notwithstanding the irrevocability of the Torrens title. The intended trust must be sustained.[49] (Citations omitted and emphasis ours)

Further, records do not reflect conclusive evidence showing the manner of occupation and possession exercised by Hilaria and Felipa over the lot from the time it was registered in their names. The only evidence of possession extant in the records dates back only to 1985 when Hilaria and Felipa declared the lot in their names for taxation purposes.[50] Prescription can only produce all its effects when acts of ownership, or in this case, possession, do not evince any doubt as to the ouster of the rights of the other co-owners. Hence, prescription among co-owners cannot take place when acts of ownership exercised are vague or uncertain.[51]

Moreover, the evidence relative to the possession, as a fact upon which the alleged prescription is based, must be clear, complete and conclusive in order to establish said prescription without any shadow of doubt; and when upon trial it is not shown that the possession of the claimant has been adverse and exclusive and opposed to the rights of the others, the case is not one of ownership, and partition will lie.[52] The petitioners failed to muster adequate evidence of possession essential for the reckoning of the 10-year period for acquisitive prescription.

The express disavowal of the co-ownership did not happen on December 11, 1962 when TCT No. 42244 was issued but in 1994 when Hilaria attempted to demolish Emilia's house thus explicitly excluding her from the co-ownership. It was the only time that Hilaria and Felipa made known their denial of the co-ownership. On the same year, the respondent instituted the present complaint for partition; hence, the period required by law for acquisitive period to set in was not met.

Anent laches, the Court finds it unavailing in this case in view of the proximity of the period when the co-ownership was expressly repudiated and when the herein complaint was filed. Laches is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it has abandoned it or declined to assert it.[53] More so, laches is a creation of equity and its application is controlled by equitable considerations. It cannot be used to defeat justice or perpetrate fraud and injustice. Neither should its application be used to prevent the

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49 Id. at 161-162.
50 Records, pp. 273-274.
51 *Heirs of Maningding v. CA,* 342 Phil. 567, 577 (1997).
52 Id.
53 *Cruz v. Cristobal,* 529 Phil. 695, 715 (2006).

rightful owners of a property from recovering what has been fraudulently registered in the name of another.[54]

Partition of Lot No. 707

Under the Old Civil Code[55] which was then in force at the time of Eulalio and Marcela's marriage, Lot No. 707 was their conjugal property.[56] When Marcela died, one-half of the lot was automatically reserved to Eulalio, the surviving spouse, as his share in the conjugal partnership.[57] Marcela's rights to the other half, in turn, were transmitted to her legitimate child, Agripina and surviving spouse Eulalio.[58] Under Article 834 of the Old Civil Code, Eulalio was entitled only to the usufruct of the lot while the naked ownership belonged to Agripina. When he remarried, Eulalio's one half portion of the lot representing his share in the conjugal partnership and his usufructuary right over the other half were brought into his second marriage with Faustina.[59]

When Eulalio died on July 20, 1930, ¼ portion of the lot was reserved for Faustina as her share in the conjugal partnership.[60] The remaining ¼ were transmitted equally to the widow Faustina and Eulalio's children, Carolina and Agripina.[61] However, Faustina is only entitled to the usufruct of the third available for betterment.[62]

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54 Supra note 46, at 228-229.

55 Based on the facts on record, Faustina, Eulalio's second wife and Eulalio himself respectively died on July 20, 1930 and October 18, 1949. Logically then, their marriage and Eulalio's first marriage with Marcela occurred prior to the said dates. Considering that the NEW CIVIL CODE took effect only in 1950, the above marriages, the distribution of the conjugal partnership therein and the successional rights of the heirs shall be governed by the provisions of the OLD CIVIL CODE.

56 OLD CIVIL CODE OF THE PHILIPPINES, Article 1407. All the property of the spouses shall be deemed partnership property in the absence of proof that it belongs exclusively to the husband or to the wife.

57 Article 1392. By virtue of the conjugal partnership the earnings or profits obtained by either of the spouses during the marriage belong to the husband and the wife, share and share alike, upon its dissolution; *Herbon v. Palad*, 528 Phil. 130, 145 (2006).

58 Article 807. The following are forced heirs:

1. Legitimate children and descendants, with respect to their legitimate parents and ascendants.
2. In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants.
3. The widower or widow, natural children legally acknowledged, and the father or the mother of the latter, in the manner, and to the extent established by Articles 834, 835, 836, 837, 841, 842 and 846; id.

59 Id. at 146.

60 Supra note 56.

61 Supra note 57.

62 Article 834. A widower or widow who, on the death of his or her spouse, is not divorced, or should be so by the fault of the deceased, shall be entitled to a portion in usufruct equal to that corresponding by way of legitime to each of the legitimate children or descendants who has not received any betterment.

If only one legitimate child or descendant survives, the widower or widow shall have the usufruct of the third available for betterment, such child or descendant to have the naked ownership until, on the death of the surviving spouse, the whole title is merged in him.

The usufructuary of Eulalio over the ½ portion inherited by Agripina earlier was merged with her naked ownership.[63] Upon the death of Faustina, the shares in Lot No. 707 which represents her share in the conjugal partnership and her inheritance from Eulalio were in turn inherited by Carolina[64] including Faustina's usufructuary rights which were merged with Carolina's naked ownership.[65]

Consequently, Agripina is entitled to 5/8 portion of Lot No. 707 while the remaining 3/8 pertains to Carolina. Thus, when Carolina sold Lot No. 707 to Hilaria and Felipa, the sale affected only 3/8 portion of the subject lot. Since the *Deed of Quitclaim*, bequeathed only the ½ eastern portion of Lot No. 707 in favor of Emilia instead of Agripina's entire 5/8 share thereof, the remaining 1/8 portion shall be inherited by Agripina's nearest collateral relative,[66] who, records show, is her sister Carolina.

In sum, the CA committed no reversible error in holding that the respondent is entitled to have Lot No. 707 partitioned. The CA judgment must, however, be modified to conform to the above-discussed apportionment of the lot among Carolina, Hilaria, Felipa and Emilia.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals in CA-G.R. CV No. 58290 dated December 11, 2001, is **AFFIRMED with MODIFICATIONS** as follows: (1) 3/8 portion of Lot No. 707 shall pertain in equal shares to Hilaria Figuracion and Felipa Figuracion-Manuel; (2) ½ portion of Lot. No. 707 shall pertain to Emilia Figuracion-Gerilla; and (3) 1/8 portion of Lot No. 707 shall pertain to the estate of Carolina (Carlina) Vda. De Figuracion. The case is **REMANDED** to the Regional Trial Court of Urdaneta, Pangasinan, Branch 49, who is directed to conduct a PARTITION BY COMMISSIONERS and effect the actual physical partition of the subject property, as well as the improvements that lie therein, in the foregoing manner. The trial court is **DIRECTED** to appoint not more than three (3) competent and disinterested persons, who should determine the technical metes and bounds of the property and the proper share appertaining to each co-owner, including the improvements, in accordance with Rule 69 of the Rules of Court. When it is made to appear to the commissioners that the real estate, or a portion thereof, cannot be divided without great prejudice to the interest of the parties, the court *a quo* may order it assigned to one of the parties willing to take the same, provided he

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63 Id.

64 Supra note 57.

65 Supra note 62.

66 NEW CIVIL CODE OF THE PHILIPPINES, Article 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased.

Article 1007. In case brothers and sisters of the half blood, some on the father's and some on the mother's side, are the only survivors, all shall inherit in equal shares without distinction as to the origin of the property.

pays to the other parties such sum or sums of money as the commissioners deem equitable, unless one of the parties interested ask that the property be sold instead of being so assigned, in which case the court shall order the commissioners to sell the real estate at public sale, and the commissioners shall sell the same accordingly, and thereafter distribute the proceeds of the sale appertaining to the just share of each co-owner. No pronouncement as to costs.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

JOSE CATRAL MENDOZA
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
Chief Justice