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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

HEIRS of ROGER JARQUE,
Petitioners,

-versus-

MARCIAL JARQUE, LELIA JARQUE-LAGSIT, and TERESITA JARQUE-BAILON,
Respondents.

G.R. No. 196733

Present:
BERSAMIN, *J.*,*
Acting Chairperson,
DEL CASTILLO,
JARDELEZA,
TIJAM, and
GESMUNDO, *JJ.*[**]

Promulgated:

NOV 21 2018

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DECISION

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court filed by the heirs of Roger Jarque (Roger) (petitioners) seeking to nullify the Court of Appeals' (CA) September 7, 2010 Decision[2] and April 12, 2011 Resolution[3] in CA-G.R. SP No. 110989 (assailed Decisions). The assailed Decisions granted the petition for review under Rule 42 filed by Marcial Jarque (Marcial), Lelia Jarque-Lagsit (Lelia), and Teresita Jarque-Bailon (Teresita) (collectively, respondents) against the Decision[4] dated June 19, 2009 of the Regional Trial Court (RTC), Branch 52, Sorsogon City, which affirmed the Decision[5] dated March 7, 2007 of the 1[st] Municipal Circuit Trial Court (MCTC), Casiguran, Sorsogon.

This case pertains to the ownership of an unregistered parcel of land situated at Boton, Casiguran, Sorsogon, denominated as Lot No. 2560 and

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* Designated as Acting Chairperson of the First Division per Special Order No. 2606 dated October 10, 2018.

** Designated as Acting Member of the First Division per Special Order No. 2607 dated October 10, 2018.

1 *Rollo*, pp. 12-27.

2 *Id.* at 35-48; penned by Associate Justice Hakim S. Abdulwahid, and concurred in by Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan.

3 *Id.* at 63-64.

4 *Id.* at 80-84; rendered by Assisting Judge Raul E. De Leon.

5 *Id.* at 131-139; rendered by Presiding Judge Amado D. Dimaano.

declared under the name of Laureano[6] Jarque (Laureano). Laureano was married to Servanda Hagos (Servanda) with whom he had four children, namely: Roger, Lupo, Sergio, and Natalia.[7] Petitioners are the heirs of Roger, the original plaintiff in this case.[8] On the other hand, respondents are the living children of Lupo.[9]

Petitioners claim that since their grandfather Laureano's death in 1946, their father, Roger, inherited Lot No. 2560 and exercised all attributes of ownership and possession over it.[10] Upon Servanda's death in 1975, their children orally partitioned among themselves the properties of their parents' estate such that Lot No. 2560 and another parcel of land in Busay, Sorsogon were ceded to Roger.[11]

On June 20, 1960, Roger mortgaged Lot No. 2560 to Dominador Grajo which he redeemed through his nephew Quirino Jarque before the period of redemption expired. He subsequently mortgaged the property again to Benito Coranes (Benito) for ₱700.00. However, when Roger was about to redeem the property, Benito told him that it had already been redeemed by Lupo. When Roger went to Lupo to take back the property, Lupo pleaded with Roger to let the property remain with him as he needed a source of income to support his children's education. Roger acceded to Lupo's request.[12]

When Lupo died in 1980, Roger informed Lupo's wife, Asuncion, of his desire to take back the property. Asuncion however, requested that she be allowed to continue possessing the property since she needed a source of livelihood for her family's survival. Once again, Roger acquiesced.[13]

Upon Asuncion's death in 1981, her eldest child, Dominga, likewise pleaded with Roger to allow her to continue possession of the property.[14] Again, Roger yielded to the request. When Dominga died in 1992, single and without issue, her siblings, respondents here, continued to possess the property under the same terms and conditions as their predecessors-in-interest. Thus, from 1992 until the filing of the complaint, Roger and his children repeatedly asked to take back the property, which respondents rejected under the same assurance that they will take care of the property.[15]

In 2004, Roger's sons, Eduardo and Laureano, went to Casiguran to finally take back the property for good. However, they were surprised to discover that respondents were already claiming ownership over Lot No.

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6 Also referred to as "Lauriano" in some parts of the records.
7 *Rollo*, p. 36.
8 *Id.* at 35.
9 *Id.* at 35-37.
10 *Id.* at 65.
11 *Id.* at 36.
12 *Id.*
13 *Rollo*, pp. 36-37.
14 *Id.* at 37.
15 *Id.* at 66.

2560.[16] Upon inquiry with the Municipal Assessor's Office, they found that Dominga, during her lifetime, executed and registered a Ratification of Ownership of Real Property,[17] where she claimed to have acquired the property thru redemption from Benito. Likewise, they learned that Marcial and Teresita executed a Waiver and Confirmation of Rights of Real Property[18] in favor of Lelia, who caused the issuance of a tax declaration over the property in her name.[19]

This prompted Roger to file a complaint for annulment of deeds and other documents, recovery of ownership and possession, accounting, and damages against respondents with the MCTC of Casiguran, Sorsogon.[20]

For their part, respondents claim that upon Laureano's death in 1946, Servanda took charge of all the deceased's properties. On December 21, 1972, Servanda sold Lot No. 2560 to Benito, with a reservation of the right to repurchase the same within a period of two years. When the period to repurchase was about to expire, Servanda requested her granddaughter, Dominga to redeem the property. Dominga yielded to her grandmother's request and repurchased the property for ₱950.00 on April 2, 1974.[21] Thereafter, she took possession of Lot No. 2560 and religiously paid the taxes due on it. Later on, Dominga transferred all her rights over the property to Lelia, who took possession of the property in the concept of an owner.[22]

On March 7, 2007, the MCTC rendered a Decision in favor of petitioners. It: (1) declared petitioners as the rightful owners and possessors of the property; and (2) directed respondents to vacate the property and surrender ownership and possession to petitioners. The MCTC concluded that redemption is not a mode of acquisition of property and found no other instrument which shows that Lot No. 2560 was conveyed to Dominga. It further ruled that respondents' possession cannot ripen into ownership because it was not adverse, but was only by petitioners' mere tolerance. The MCTC also ruled that Dominga and respondents are possessors in bad faith. Lastly, it ruled that prescription does not lie against petitioners because the deed of ratification is void.[23] Hence, the MCTC nullified: (1) the Ratification of Ownership of Real Property dated May 24, 1991 executed by Dominga; (2) the Waiver and Confirmation of Rights of Real Property dated April 18, 1994 executed by Marcial and Teresita; (3) the Declaration of Real Property in the name of Lelia under Tax Declaration No. 05-002-0913 and Property Index No. 032-05-002-03-025; and (4) the Declaration of Real Property in the name of Dominga. It also awarded petitioners moral damages in the

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[16] *Id.*
[17] *Rollo*, p. 73.
[18] *Id.* at 74.
[19] *Id.* at 67.
[20] *Id.* at 51.
[21] *Id.* at 37-38, 135.
[22] *Id.* at 38.
[23] *Id.* at 136-138.

amount of ₱30,000.00, exemplary damages in the amount of ₱10,000.00, and attorney's fees and costs of suit in the amount of ₱20,000.00. Lastly, it directed respondents to pay the amount of ₱950.00 plus interests at the legal rate of 12% *per annum* to be computed from October 1974 until May 1991.[24]

The RTC affirmed *in toto* the MCTC's Decision on June 19, 2009, and denied respondents' motion for reconsideration on September 18, 2009.[25]

In its Decision dated September 7, 2010, the CA reversed the RTC and the MCTC. It ruled that under the Spanish Civil Code of 1889 (Old Civil Code), the law applicable at the time of Laureano's death in 1946, Servanda, as wife of Laureano, is the owner of 1/2 of the conjugal property. Considering that there was no partition yet at the time the contract of sale with right to repurchase was executed, Servanda had the right to dispose of her share in the conjugal property. Subsequently, when Servanda transferred her right of redemption over Lot No. 2560 to Dominga in 1974, the latter rightfully exercised the right of redemption and acquired ownership of the property. The CA found that apart from Roger's bare allegations, there is nothing to support the claimed oral partition. Even assuming that there was a partition, the same happened long after the sale of Lot No. 2560 to Benito because the alleged oral partition happened only after Servanda's death.[26]

In this petition, petitioners argue that the CA erred in holding that Servanda was entitled to 1/2 of the estate of Laureano as her share in the conjugal property and to the usufruct of a portion equal to that corresponding by way of legitime to each of the legitimate children. Under the Old Civil Code, Servanda could not inherit from Laureano since all of the latter's children were qualified to inherit from him. Thus, Servanda had no authority to alienate the property from 1946 onwards.[27] Consequently, Servanda could not have authorized Dominga to "repurchase" the property in question because the sale with the right to purchase was itself void. Assuming Servanda had the authority to dispose of or alienate Lot No. 2560, the CA erred in not finding that the contract between Servanda and Benito was an equitable mortgage.[28]

Petitioners further assert that there was no tangible evidence supporting the CA's conclusion that Servanda transferred her right to repurchase the property in favor of Dominga. The document presented to prove this (Ratification of Ownership of Real Property) was not in the official language of the courts and was executed only on May 24, 1991, or 16 years after Servanda's death. Compared to the CA, the MCTC and RTC,

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[24] *Id.* at 139.
[25] *Id.* at 40.
[26] *Id.* at 43-47.
[27] *Id.* at 21.
[28] *Id.* at 22

as trial courts, are in a better position to assess, apprise, interpret, evaluate, and rule on the relevancy, pertinence, and credibility of the evidence.[29]

Petitioners aver that redemption is not a mode of conveyance that would vest in Dominga, as redemptioner, full ownership of the property. Further, the oral partition entered into by the children of Laureano was valid.[30]

In their comment[31] dated November 2, 2011, respondents assert that the issue of the application of the Old Civil Code was raised for the first time only on appeal. Moreover, assuming it applies, Servanda had authority to dispose of Lot No. 2560 because it is not shown that Laureano and Servanda were married, or that the property is conjugal property or exclusive property of Laureano. Respondents assert that they have proven their ownership by preponderance of evidence. They also claim that they have acquired Lot No. 2560 by prescription.

In their reply[32] dated February 14, 2012, petitioners countered that the Old Civil Code is of judicial notice, and its application needs no evidence. Moreover, the marriage between Laureano and Servanda is presumed.

The sole issue presented is who among the parties has the better right over the property.

We grant the petition.

I

Laureano died in 1946, prior to the effectivity of Republic Act (R.A.) No. 386 or the New Civil Code on August 30, 1950. At the time of his death, the governing law as to the property relations between husband and wife and the successional rights among the decedent's heirs is the Old Civil Code.[33]

Under the Old Civil Code, the default property regime of the husband and wife is the conjugal partnership of gains.[34] This includes: (1) property acquired for a valuable consideration during the marriage at the expense of the common fund, whether the acquisition is made for the partnership or for one of the spouses only; (2) property obtained by the industry, wages or work of the spouses or of either of them; and (3) the fruits, income, or

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[29] *Id.* at 23-24.
[30] *Id.* at 22.
[31] *Id.* at 96-105.
[32] *Id.* at 112-119.
[33] See *Noel v. Court of Appeals*, G.R. No. 59550, January 11, 1995, 240 SCRA 78, 87.
[34] CIVIL CODE (1889), Art. 1315. Persons about to be joined in matrimony may, before entering into the marriage, establish by contract the conditions to which the conjugal partnership is to be subject with respect to their present or future property, subject only to the limitations prescribed by this code.
In default of a contract relating to such property, it shall be deemed that the marriage has been contracted under the regime of the legal conjugal partnership.

interest collected or accrued during the marriage, derived from the partnership property, or from that which belongs separately to either of the spouses.[35] Unless proved otherwise, properties acquired during the marriage are considered partnership property.[36]

Upon the death of either spouse, the conjugal partnership is dissolved. The surviving spouse is entitled to his or her 1/2 share in the partnership,[37] while the remaining half belongs to the estate of the deceased which will be inherited by his forced heirs.

Laureano and Servanda, having lived together as husband and wife, are presumed to have been lawfully married.[38] When Laureano died and the partnership was dissolved, Servanda acquired her 1/2 share in the conjugal partnership, while the other half devolved to the estate of Laureano.[39] In turn, their four children (including Roger) succeeded to the 2/3 of the estate of Laureano as his forced heirs.[40] On the other hand, Servanda's successional rights over the estate of Laureano was limited to the usufruct of the legitimate children's share.[41]

The record shows that the parties admitted the property's conjugal nature for being "originally owned by the late spouses [Laureano] Jarque and [Servanda] Hagos."[42] No evidence was submitted to show that it was either the exclusive property of Laureano or the paraphernal property of Servanda. Hence, it belongs to the conjugal partnership, to be divided equally between them or their estate upon the dissolution of marriage.[43] However, it was not shown that a partition was effected between Servanda or the heirs of the estate of Laureano. With this missing piece of

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[35] CIVIL CODE (1889), Art. 1401.

[36] CIVIL CODE (1889), Art. 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.

[37] CIVIL CODE (1889), Art. 1417. The conjugal partnership ceases upon the dissolution of the marriage or when it is declared void.

x x x x

[38] CIVIL CODE (1889), Art. 54. In the cases mentioned in Paragraph 2 of the next preceding article, one of the means of proving marriage shall be evidence that a man and woman lived together constantly as husband and wife and that their children are declared to be legitimate, in their birth certificates, unless overcome by proof that one of them was bound by a former marriage.

[39] CIVIL CODE (1889), Art. 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.

x x x x

Art. 1426. The net remainder of the partnership property shall be divided, share and share alike, between the husband and wife, or their respective heirs.

[40] CIVIL CODE (1889), Art. 808. The legitime of legitimate children and descendants consists of two-thirds of the hereditary estate of the father and of the mother.

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[41] CIVIL CODE (1889), Art. 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.

x x x x

[42] *Rollo*, p. 106. Pre-trial Order dated September 8, 2006.

[43] CIVIL CODE (1889), Art. 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.

information, it was error for the CA to conclude that Servanda had the authority to execute the Deed of Sale with Right of Repurchase over the property.

The absence of a partition between the estates of Servanda and Laureano resulted in a co-ownership between Servanda and her children over the properties.[44] This co-ownership remained and continued even when R.A. No. 386, or the New Civil Code, took effect on August 30, 1950. Thus, the New Civil Code provisions on co-ownership now governs their rights.[45]

II

We, nevertheless, find that a partition occurred when Roger occupied Lot No. 2560 in the concept of owner after Laureano's death.

In general, a partition is the separation, division, and assignment of a thing held in common among those to whom it may belong.[46] Every act intended to put an end to indivision among co-heirs is deemed to be a partition.[47] In *Hernandez v. Andal*,[48] we explained:

> 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.
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> "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.
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> "In numerous cases it has been held or stated that parol partitions 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

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[44] See *Taningco v. Register of Deeds of Laguna*, G.R. No. L-15242, June 29, 1962, 5 SCRA 381, 382-383.

[45] See *Carvajal v. Court of Appeals*, G.R. No. L-44426, February 25, 1982, 112 SCRA 237; and *Herbon v. Palad*, G.R. No. 149542, July 20, 2006, 495 SCRA 544.

[46] CIVIL CODE, Art. 1079.

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

[48] 78 Phil. 196 (1947).

> 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 parol 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 and enforce such partition agreed to by the parties." x x x[49] (Citation omitted.)

In this case, Roger's exercise of ownership over Lot No. 2560 after Laureano's death in 1946 is established by evidence. In 1960, he was able to mortgage the property to, and subsequently redeem it from, Dominador Grajo. This is also supported by Quirino Jarque (Quirino), Sergio's son and Roger's nephew, who testified that: (1) Lot No. 2560 and another one in Busay, Casiguran, Sorosogon were Roger's shares or inheritance from his parents' estate; (2) respondents' father, Lupo's share is the cocoland in Sta. Cruz, Casiguran, Sorsogon which was sold by Lupo's son, Marcial; and (3) his father Sergio inherited a rice field in Cagdagat, Casiguran, Sorsogon of which Quirino is the tiller and cultivator.[50]

As soon as Lot No. 2560 was identified, occupied, and possessed by Roger to the exclusion of all the other heirs, the co-ownership as to said property was terminated. These are acts which happened prior to the alleged sale of the property to Benito in 1972. Thus, at the time of the sale, Servanda had no right to sell Lot No. 2560 either as sole owner or co-owner.

This conclusion holds true even if Servanda, as Laureano's surviving spouse, had usufructuary rights over the property. Usufruct, in essence, is nothing else but the right to enjoy another's property.[51] While this right to enjoy the property of another temporarily includes both the *jus utendi* and

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[49] *Id.* at 203. See also *Maglucot-Aw v. Maglucot*, G.R. No. 132518, March 28, 2000, 329 SCRA 78, 97-98; and *Quimpo, Sr. v. Abad Vda. de Beltran*, G.R. No. 160956, February 13, 2008, 545 SCRA 174, 183-184.

[50] *Rollo*, p. 133.

[51] CIVIL CODE, Art. 562. Usufruct gives a right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides. See also *Moralidad v. Pernes*, G.R. No. 152809, August 3, 2006, 497 SCRA 532, 541.

the *jus fruendi*, the owner retains the *jus disponendi* or the power to alienate the same.[52] Having only the usufruct over the property, Servanda may only sell her right of usufruct over, and not the title to, Lot No. 2560. Necessarily, her successors may acquire only such rights.

III

Assuming there was no partition, the co-ownership between Servanda and the heirs to the estate of Laureano over the net remainder of the conjugal partnership subsisted at the time Servanda allegedly executed the Deed of Sale with Right of Repurchase in 1972.

Article 493 of the New Civil Code, which is a re-enactment of Article 399 of the Old Civil Code, provides for the extent of a co-owner's right over his share in the co-ownership:

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

In interpreting Article 493 of the New Civil Code, we said in *Carvajal v. Court of Appeals*[53] that:

> While under Article 493 of the New Civil Code, each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto and he may alienate, assign or mortgage it, and even substitute another person in its enjoyment, the effect of the alienation or the mortgage with respect to the co-owners, shall be limited, by mandate of the same article, to the portion which may be allotted to him in the division upon the termination of the co-ownership. **He has no right to sell or alienate a concrete, specific, or determinate part of the thing in common to the exclusion of the other co-owners because his right over the thing is represented by an abstract or ideal portion without any physical adjudication.** An individual co-owner cannot adjudicate to himself or claim title to any definite portion of the land or thing owned in common until its actual partition by agreement or judicial decree. Prior to that time all that the co-owner has is an ideal or abstract quota or proportionate share in the entire thing owned in common by all the co-owners. What a co-owner may dispose of is only his *undivided aliquot share,* which shall be limited to the portion that may be allotted to him upon partition. Before partition, a co-heir

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[52] *Moralidad v. Pernes, supra.*

[53] G.R. No. L-44426, February 25, 1982, 112 SCRA 237

> can only sell his successional rights.[54] (Italics in the original; emphasis supplied; citations omitted.)

Accordingly, while Servanda may sell her undivided *aliquot* share as a co-owner, she may not alienate the whole of Lot No. 2560 to the exclusion of the other co-owners. More importantly, Servanda cannot claim specific title to the property. Thus, what may only be considered sold to Benito, and which was eventually redeemed by Dominga, is Servanda's right over her undivided *aliquot* share in the property—not the right over her lot.[55] Thus, Dominga may only claim such rights that Servanda had possessed at the time of the sale.

IV

The next point we shall address is Dominga's rights when she redeemed Lot No. 2560 from Benito. To recall, Servanda sold the property with right to repurchase the same within a period of two years on December 21, 1972. Respondents claim that Servanda transferred her *right to repurchase* Lot No. 2560 to Dominga, and requested that Dominga repurchase the property within the period.[56] Heeding the request, Dominga repurchased Lot No. 2560 and took possession of it. For their part, petitioners assert that redemption is not a mode of conveyance that would vest in Dominga, as redemptioner, title to the property.

We hold that Dominga did not acquire ownership over Lot No. 2560 because it was not proven that Servanda's right to repurchase the same was transferred to her.

In a sale with right to repurchase (*pacto de retro*), the title and ownership of the property sold are immediately vested in the vendee, subject to the resolutory condition of repurchase by the vendor within the stipulated period.[57] The right of repurchase agreed upon is one of conventional redemption governed by Article 1601,[58] in relation to Article 1616,[59] of the New Civil Code. This right is separate and distinct from the legal redemption granted to co-owners under Article 1620[60] of the New Civil

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[54] *Id.* at 240.

[55] See *Recio v. Heirs of Spouses Aguedo and Maria Altamirano*, G.R. No. 182349, July 24, 2013, 702 SCRA 137, 151.

[56] *Rollo*, p. 38.

[57] *David v. David*, G.R. No. 162365, January 15, 2014, 713 SCRA 326, 335-336.

[58] CIVIL CODE, Art. 1601. Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of Article 1616 and other stipulations which may have been agreed upon.

[59] CIVIL CODE, Art. 1616. The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale, and in addition:

(1) The expenses of the contract, and any other legitimate payments made by reason of the sale;

(2) The necessary and useful expenses made on the thing sold.

[60] CIVIL CODE, Art. 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.

Should two or more co-owners desire to exercise the right of redemption, they may only do so in proportion to the share they may respectively have in the thing owned in common.

Code. More importantly, the right to repurchase is separate from the title or ownership over the property subject of the sale with *pacto de retro*.[61]

As a rule, the right to repurchase under Article 1601 may only be exercised by the vendor, or his successors.[62] If so exercised, the ownership of the property reverts back to the vendor or his successor.[63] On the other hand, if a third person redeems the property on behalf of the vendor, he or she does **not** become owner of the property redeemed, but only acquires a lien over the property for the amount advanced for its repurchase.[64] As such, the third person's right merely consists of the right to be reimbursed for the price paid to the vendee.

In this case, the right to repurchase belonged to Servanda which she may, undoubtedly, transfer to anyone, including Dominga. However, we find that the claim that Servanda transferred her right of repurchase to Dominga so as to make the latter acquire title to or ownership over the *aliquot* share of Servanda in her own right is not supported by evidence.

As summarized by the MCTC, respondents presented the following pieces of evidence to support their case: (1) Deed of Sale with Right to Repurchase executed by Servanda in favor of Benito; (2) letter signed by one Augorio A. Coranes to the effect that Dominga redeemed the property from his father Benito in the year 1974 in the amount of ₱950.00; (3) certification signed by eight neighbors to the effect that Dominga is in possession of, and the one actually farming, the lot located in Sug-ong Boton, Casiguran, Sorsogon for almost 17 years; (4) letter indorsement signed by a Legal Officer I of the Municipal Agrarian Reform Office in Casiguran, Sorsogon addressed to the Barangay Captain of Boton, Casiguran, Sorsogon regarding the complaint of Dominga against Roger; (5) letter dated May 16, 1991 signed by the Barangay Captain of Boton to the effect that Dominga is in possession of the property for almost 17 years; (6) Waiver and Confirmation of Real Property executed by Marcial and Teresita in favor of Lelia; (7) tax declaration of real property in the name of Lelia; (8) declaration of real property in the name of Dominga; (9) testimony of Ruben Mina that since 1970s, Dominga tilled the land during her lifetime; (10) testimony of Teresita that Servanda asked Dominga to repurchase the same as it was better that the lot was owned by Dominga, and that the latter repurchased and possessed the same in the concept of owner; (11) testimony of Marcial that the land was previously owned and tilled by Dominga until plaintiff tried to grab possession of the property in 1991; and (12) testimony of Carlos H. Mateos that as adjoining owner of the property, he knows

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[61] See *Gonzaga v. Garcia*, 27 Phil. 7 (1914).

[62] *Gallar v. Husain*, G.R. No. L-20954, May 24, 1967, 20 SCRA 186, 191, citing *Ordoñez v. Villaroman*, 78 Phil. 116 (1947).

[63] *David v. David*, *supra* note 57.

[64] See *Guinto v. Lim Bonfing and Abendan*, 48 Phil. 884 (1926).

Dominga to be the owner of the land when she repurchased the property from Domingo, and that she cultivates the land through her brother.[65]

However, nothing therein could be a basis for the fact of transfer of the right to repurchase which would make Dominga the successor of Servanda. As aptly noted by the MCTC:

> Indeed the sole evidence presented by [respondents] to bolster its claim of ownership over subject lot is the Ratification of Ownership of Real Property (Annex "C") dated May 24, 1991 executed by Dominga Jarque. It is very patent however in said deed itself that her basis for ratifying her ownership on the lot is the fact that she REDEEMS the property from Benito Coranes. There is no other instrument used showing that the property was conveyed to Dominga by any other mode of acquisition of property allowed by law, either by purchase, or by succession, or by donation. x x x[66]

What was only established by respondents' evidence is the fact of Dominga's repurchase, *i.e.*, that Dominga paid ₱950.00 for the repurchase of the property on behalf of her grandmother, Servanda. Similarly, there was no evidence that Servanda transferred or assigned ownership over her *aliquot* share in the co-ownership to Dominga. Thus, at most, Dominga may only be considered as agent of Servanda in redeeming Lot No. 2560. However, Dominga, as an agent, merely re-acquired the rights Servanda previously possessed, *i.e.*, her *aliquot* share in the co-ownership or her usufruct. On the other hand, if Dominga acted in her own name in redeeming the property, she may only be considered as a third person paying the purchase price on behalf of Servanda. In both cases, Dominga's exercise of Servanda's right of redemption does not vest in her title to, or ownership over, Lot No. 2560. The title devolved back to the co-ownership, subject only to the lien over the property in the amount advanced by Dominga.

V

At this juncture, we hold that whether there was an oral partition that occurred after the death of Servanda will no longer affect the disposition of this case, it being shown that respondents and their predecessor-in-interest Dominga did not acquire any title to the property in the concept of an owner at the time of the sale of the property. Moreover, we need not belabor petitioners' claim that the sale with right of repurchase is an equitable mortgage, in light of our disposition that the sale only affects Servanda's rights as usufruct at most, and the right of repurchase having been exercised.

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[65] *Rollo*, pp. 134-136.
[66] *Id.* at 136.

Respondents, nevertheless, argue that they acquired ownership over Lot No. 2560 through extraordinary prescription of 30 years, to be counted from 1974, or the date of Dominga's possession of the property.

Acquisitive prescription, as a mode of acquiring ownership, may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession in good faith and with just title for 10 years. Meanwhile, if possession is without good faith and just title, acquisitive prescription can only be extraordinary in character which requires uninterrupted adverse possession for 30 years.[67] In both cases, we emphasized in *Marcelo v. Court of Appeals*[68] that this possession must be in the concept of owner:

> Acquisitive prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. **In order to ripen into ownership, possession must be in the concept of an owner, public, peaceful and uninterrupted.** Thus, mere possession with a juridical title, such as, to exemplify, by a usufructuary, a trustee, a lessee, an agent or a pledgee, not being in the concept of an owner, cannot ripen into ownership by acquisitive prescription, unless the juridical relation is first expressly repudiated and such repudiation has been communicated to the other party. **Acts of possessory character executed due to license or by mere tolerance of the owner would likewise be inadequate.** Possession, to constitute the foundation of a prescriptive right, must be *en concepto de dueno*, or, to use the common law equivalent of the term, that possession should be adverse, if not, such possessory acts, no matter how long, do not start the running of the period of prescription.[69] (Emphasis supplied; citations omitted.)

Both trial courts found that respondents' possession was only by mere tolerance, and later, they became possessors in bad faith. On the other hand, the CA did not rule on the issue of prescription, having ruled that Dominga acquired title to the property when Servanda transferred her right of repurchase to her.

We agree with the trial courts' finding that respondents' possession of the property did not give rise to their ownership over it. There is no dispute that respondents are in possession of Lot No. 2560 since its repurchase from Benito in 1974 until the filing of the complaint. However, whether their possession was adverse and in the concept of owner, with just title and in good faith, is another matter.

Here, we find that respondents' possession over the property is without any just title and good faith; rather, it was only by mere tolerance for the first 10 years of possession. Notably, when respondents acquired the right of Dominga over the property, they did not acquire any title to the

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[67] *Abalos v. Heirs of Vicente Torio*, G.R. No. 175444, December 14, 2011, 662 SCRA 450, 457.
[68] G.R. No. 131803, April 14, 1999, 305 SCRA 800.
[69] *Id.* at 807-808.

property but only Dominga's right to the lien equivalent to the amount advanced by her. Moreover, from the time Dominga possessed the property until respondents succeeded to her rights, their possession was only by mere tolerance of Roger. As such, they could not have acquired the property through ordinary prescription of 10 years. Likewise, respondents did not acquire the property by extraordinary prescription. Respondents' possession only became adverse when Dominga executed the Deed of Ratification of Ownership of Real Property in 1991. Roger, nevertheless, repeatedly offered to redeem the property from respondents and asserted his ownership over the property since 1992 up to the filing of the complaint. Thus, respondents' possession did not meet the requirement of "uninterrupted adverse possession for 30 years." Consequently, respondents' claim that they acquired the property by prescription fails.

From the foregoing, we reinstate the MCTC Decision. We, nevertheless, modify the interest rates in accordance with our ruling in *Nacar v. Gallery Frames*.[70] Since the obligation of ₱950.00 is a forbearance of money, the amount of ₱950.00 shall earn interest from the time of demand in the counterclaim. The awards of moral and exemplary damages and attorney's fees shall earn interest at the rate of 6% *per annum* from the time they became determinable, *i.e.*, date of the MCTC Decision, until finality of this judgment. The total amount shall thereafter earn interest at the rate of 6% *per annum* from such finality of judgment until its satisfaction.[71]

WHEREFORE, the petition is **GRANTED**. The MCTC Decision dated March 7, 2007 is **REINSTATED** subject to the following **MODIFICATIONS**: (1) The amount of ₱950.00 representing the payment made by Dominga Jarque shall earn interest at the rate of 12% *per annum* from the date of judicial demand on August 26, 2005[72] until June 30, 2013, and interest at the rate of 6% *per annum*, computed from July 1, 2013 up to the date of finality of this Decision; and (2) the awards of moral and exemplary damages and attorney's fees shall likewise earn interest at the rate of 6% *per annum* from the time of the finality of this Decision. The total monetary awards shall thereafter earn interest at the rate of 6% *per annum* from the finality of judgment until its satisfaction.

No costs.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

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[70] G.R. No. 189871, August 13, 2013, 703 SCRA 439.
[71] *Id.* at 453-454.
[72] *Rollo*, pp. 15, 65.

WE CONCUR:

LUCAS P. BERSAMIN
Acting Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ALEXANDER G. GESMUNDO
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.

LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's attestation, it is hereby certified 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***
Senior Associate Justice

*** Per Section 12, R.A. 296, The Judiciary Act of 1948, as amended.