Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 9, 2020** *which reads as follows:*

"G.R. No. 215808 – (MARITES MERCADO LINAAC, MARIVIC MERCADO, ET AL., *petitioners* v. HEIRS OF RESTITUTO MERCADO, namely: FIRST MARRIAGE TO MATHILDE PELAEZ SANTIAGO MERCADO, herein represented by DR. SANTIAGO D. MERCADO, JR., ET AL., *respondents*). – This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[1] dated February 27, 2014 and Resolution[2] dated October 23, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 01994-MIN. The CA Decision and Resolution affirmed the Judgment[3] dated July 14, 2009 of the Regional Trial Court (RTC) of Medina, Misamis Oriental, Branch 26, which nullified the Deed of Donation in favor of petitioners and ordered the partition of the real properties among petitioners and respondents as co-heirs and co-owners.

The Facts

Petitioners Concordia Chuy Mercado, Marites Mercado Linaac, Marivic Mercado Paradela, et al. are the heirs of deceased Restituto "Augusto" Mercado Jr. (Augusto), the son of deceased Restituto Mercado, Sr. (Restituto Sr.) with his third wife Cresencia Fuentes.[4]

Respondents Dr. Santiago D. Mercado, Jr., Norma Mercado Pahati, Estrella Mercado Casiño, et al. are the heirs of Restituto Sr. from

1 *Rollo*, pp. 42-54; penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred by Associate Justices Jhosep Y. Lopez and Edward B. Contreras.
2 Id. at 56-57; penned by Associate Justice Edward B. Contreras and concurred by Associate Justices Oscar V. Badelles and Rafael Antonio M. Santos.
3 Id. at 58-71; penned by Presiding Judge Dan R. Calderon.
4 Id. at 44.

his marriage with his first wife Matilde Pelaez, and second wife Emilia Fuentes.[5]

This case involves the issues of ownership and partition of the real properties left behind by Restituto Sr. to all his heirs.

Restituto Sr. died in 1942 leaving behind the following real properties (subject properties):

> (a) A parcel of land declared in the name of HRS. of RESTITUTO MERCADO under Tax Dec. No. 020147 situated in Bauk-Bauk, Balingoan, Misamis Oriental, with Cadastral Lot No. 366 cad 706-A and bounded as follows: North, by seashore; East, by No. 029; by Municipal Road and Lot 031; West by Lot 032, containing an area of 1,484 square meters and assessed P35,000; including all pertinent improvements fund (sic) thereon;
>
> (b) A parcel of land declared in the name of HRS. RESTITUTO MERCADO under Tax Dec. 020153, situated in Bauk-Bauk, Balingoan, Misamis Oriental, under Cadastral Lot No. 3564 Cad. 703-D and bounded as follows: North, by Municipal Road; East, by Lot No. 037; South, by National Highway; West, by Lot 035; containing an area of 2,014 square meters and assessed at P140,560; all pertinent improvements found thereon;
>
> (c) A parcel of land covered by ORIGINAL CERTIFICATE OF TITLE NO. P-29394 of the Register of Deeds of Misamis Oriental, Lot No. 668, CAD 703-D. Bounded on the North along lines 1-2-3-4 by Lot 662; on the NE along lines 4-5-6-7-8-9-10 by Lot 667; on the South, along lines 10-11-12-13 by Lot 499, on the NW., along line 13-1 by Lot 669, all Cad. 703-D, Balingoan Cadastre containing an area of SIX THOUSAND THREE HUNDRED THIRTY (6,330) SQUARE METERS, more or less.
>
> (d) A parcel of land located at Bauk-Bauk, Balingoan, Misamis Oriental, bounded on the North by Brgy. San Alonzo & Mun. Road; South, by Lot Nos. 026, 017 Sec. 07; and on the West, by Lot No. 002; Sec. 08, Brgy. San Alonzo, with an area of 21,6495 (sic) square meters, more or less declared in the name of Restituto Mercado.[6]

On May 30, 2005, respondents filed a Complaint for Annulment of Donation and Partition with Damages against petitioners to contest the latter's claim over the subject properties. The CA summarized respondents' arguments as follows:

5 Id.
6 Id. at 44-45.

> Appellees asserted in their complaint that Augusto impersonated the real Restituto Sr. by executing a Deed of Donation of the above-described properties in favor of his wife and children without consulting his brothers and sisters. Augusto allegedly changed his name in his Baptismal Certificate to Restituto F. Mercado. It was specifically stated in the decree by Msgr. Tex Legitimas that it was a change of name of a child from "Augusto Mercado y Fuentes" to "Restituto F. Mercado."
>
> Appellees further asserted that the subject properties are all common properties as attested to in a written instrument by the children of Restituto Sr. of the first and second marriage. The properties described in paragraphs 4(a) and 4(b) of the complaint are declared in the name of the Heirs of Restituto Mercado as shown in the Real Property Historical Ownership and registered with the Provincial Assessors Office since 1958 until the year 2002 when the properties were donated by Augusto. The property described in paragraph 4(c) is also in the name of the Heirs of Restituto Mercado represented by Demetria Mercado Cezar, while the described in paragraph 4(d) is already owned by Demetria M. Cezar pursuant to the compromise agreement between her and Augusto in Civil Case No. 2332. Appellants were able to obtain new tax declarations over the subject properties in their name without payment of the donor's tax and in connivance with the Municipal Assessor of Balingoan, Misamis Oriental.
>
> Augusto refused to effect partition of the subject properties despite the appellees' incessant demands. Efforts towards a compromise agreement made by the appellees likewise failed.[7]

Petitioners responded and anchored their claim on a last will and testament (will) allegedly executed by Restituto Sr. where he willed the subject properties to Augusto. Petitioners also claim to have acquired the subject properties through acquisitive prescription. The CA summarized their arguments as follows:

> In their Answer with Counterclaim, appellants Concordia and children contended that the person referred to as Augusto Mercado was legally named and had always been publicly known as Restituto Mercado, Jr. as shown in his birth certificate. The decree by Msgr. Legitimas mentions "birth certificate" as basis for changing the baptismal name from "Augusto" to "Restituto Jr.". He used the name "Restituto" in his school records and in his public office although he was baptized "Augusto". In joint affidavits, his siblings Miguela M. Corales, Iluminada C. Danar, and Santiago P. Mercado, Lourdes M. Cloribel and Miguela M. Corales acknowledge him as "Restituto". He also signed the compromise agreement in Civil Case No. 2332 as "Restituto".

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7 Id. at 45-46.

> Appellants claimed that before his death in 1942, Restituto Sr. designated his daughter Miguela Mercado Corrales as administratrix of his property. He entrusted to her his last will and testament wherein he willed in favor of Restituto Jr. (Augusto) the properties identified in paragraphs 4(a) to 4(d) of the complaint. However, after his death when Restituto Jr. was only nine years old, the latter's half brothers and sisters tore up the said last will and testament. Nevertheless, after his college studies, Restituto Jr. took possession of the house and lots except for a portion encroached upon by Roberto Mercado Corrales and his mother Miguela. Restituto Jr.'s possession remained uninterrupted until his death in July 2002. The existence of the last will and testament is admitted in a joint affidavit 20 July 1980 by Santiago P. Mercado, Miguela Mercado Corrales, and Lourdes Mercado de Cloribel.
>
> As owner, Restituto Jr. and his heirs paid the realty taxes on the subject properties, filed an unlawful detainer suit against Demetria Mercado Cezar in Civil Case No. 2332, filed a complaint for quieting of title against Demetria's daughter and son-in-law involving the same property docketed as Civil Case No. 1000-M, and sold a coconut plantation to the Municipality of Balingoan, Misamis Oriental.[8]

The RTC Ruling

On July 14, 2009, the RTC issued its Judgment[9] in favor of respondents. The RTC declared the Deed of Donation executed by Augusto in favor of his heirs null and void, cancelled the tax declarations and titles issued by virtue of such donation, and ordered the partition of Lots 1 and 2 of the subject properties:

> WHEREFORE, Judgment is rendered declaring the Deed of Donation executed by Restituto F. Mercado, Jr. dated 27 June 2002 as NULL AND VOID, and all tax declarations or titles issued in the name of the defendants or any other person by virtue of said donation ordered CANCELLED; PARTITITON is hereby ordered among the legal heirs of Restituto Mercado, Sr. of the properties described in paragraphs 4(a) and 4(b) of the complaint, to wit:
>
> > (a) A parcel of land declared in the name of HRS. OF RESTITUTO MERCADO under Tax Dec. No. 020147 situated in Bauk-Bauk, Balingoan, Misamis Oriental, with Cadastral Lot No. 366 cad 703-A and bounded as follows: North, by seashore; East, by No. 0290; by Municipal Road and Lot 031; West by Lot 032, containing an area of 1,484 square meters and assessed P35,710; including all pertinent improvements found thereon;

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8 Id. at 46-47.
9 Id. at 58-71.

> (b) A parcel of land declared in the name of HRS. OF RESTITUTO MERCADO under Tax Dec. 020153, situated in Bauk-Bauk, Balingoan, Misamis Oriental, under Cadastral Lot No. 364 Cad. 703-D and bounded as follows: North, by Municipal Road; East, by Lot No. 037; South, by National Highway; West, by Lot 035; containing an area of 2,014 square meters and assessed at P140,560; all pertinent improvements found thereon;
>
> In addition, plaintiffs having been compelled to come to court to enforce their rights and thereby incur expenses, defendants are ordered to reimburse plaintiffs the sum of Seventy Thousand Pesos (P70,000.00) representing attorney's fees, the sum of Five Thousand Pesos (P5,000.00) representing reasonable litigation expenses; and, the costs of suit. In the absence of evidence of the nature of fruits demanded for accounting, no pronouncement on the same is made. All counterclaims are ordered dismissed.
>
> SO ORDERED.[10]

The RTC held that petitioners cannot validly claim ownership over the subject properties by virtue of the Deed of Donation executed by Augusto in their favor. Augusto could not have legally donated the subject properties which were not entirely his. Augusto claimed ownership over the subject properties based merely on Restituto Sr.'s alleged will which was never probated. However, it is clear that "no ownership can be claimed over property allegedly transferred by will unless the latter is proved and allowed in the proper court."[11]

The only evidence submitted by petitioners attempting to prove this will was a joint affidavit[12] executed by Santiago P. Mercado, Miguela Mercado Corrales, and Lourdes Mercado de Cloribel, which was even excluded by the court from the defense evidence on the ground of hearsay.

The RTC also held that petitioners' possession of the subject properties could not ripen into ownership since that a clear repudiation of the co-ownership is needed for a co-owner to acquire the property by prescription.

The CA Ruling

Aggrieved, petitioners appealed the RTC Judgment to the CA.

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10 Id. at 70-71.
11 Id. at 65.
12 Id. at 150.

On February 27, 2014, the CA issued its Decision[13] which denied the appeal and affirmed the RTC Judgment:

> WHEREFORE, the appeal is DENIED.
>
> Accordingly, the *14 July 2009* Judgment of the Regional Trial Court of Medina, Misamis Oriental, Branch 26, is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[14]

The CA affirmed the RTC ruling that Augusto's donation of the real properties in favor of petitioners was null and void. Augusto did not own these real properties because the alleged will of Restituto Sr. upon which he bases his ownership was never probated.[15] He thus "had no right to donate the entirety of the properties he and his co-heirs inherited from the estate of their father Restituto Sr."[16]

The CA also rejected petitioners' claim of ownership based on their alleged continuous, adverse, and uninterrupted possession of the properties. It was held that prescription cannot lie in favor of a co-owner unless there is clear and convincing evidence of a repudiation of the co-ownership, which is lacking in this case.[17]

Petitioners filed a motion for reconsideration[18] but was denied by the CA in its Resolution[19] dated October 23, 2014.

Petitioners thus filed the instant petition for review on *certiorari*[20] with this Court assailing the CA Decision and Resolution.

Respondents filed a comment[21] to the petition for review on *certiorari*, to which petitioners filed a reply.[22]

Issue

The sole issue in this case is whether or not the CA committed reversible error in affirming the RTC Decision nullifying the Deed of Donation and ordering the partition of the subject properties.

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13 Id. at 42-54.
14 Id. at 54.
15 Id. at 51.
16 Id. at 53.
17 Id. at 52.
18 Id. at 72-92.
19 Id. at 56-57.
20 Id. at 7-29.
21 Id. at 337-340.
22 Id. at 345-354.

Ruling of the Court

Petitioners primarily argued on appeal that (1) the RTC and CA erred in sustaining jurisdiction over the case despite respondents' alleged non-payment of complete docket fees, (2) the joint affidavit should have been admitted in evidence and deemed sufficient to prove Augusto's ownership over the real properties which he donated to petitioners, and (3) petitioners have acquired title to the real properties through extraordinary acquisitive prescription.[23]

The appeal is without merit.

At the outset, this Court will not delve into the procedural issue raised by petitioners which has already been ruled upon. It bears noting that the clerk of court explained the initial variance in the amount of docket fees assessed by their office to respondents due to the absence of tax declarations and the proper basis to determine the market values of the properties involved.[24]

It has also been pronounced in *United Overseas Bank v. Judge Ros*[25] that the rules on payment of docket fees may be liberally applied in cases for compelling reasons where the party does not deliberately intend to defraud the court in payment of docket fees, and is willing to abide by the rules by paying additional docket fees when required by the court.[26] This Court reiterates that "[w]hile there is a crying need to unclog court dockets on the one hand, there is on the other a greater demand for resolving genuine disputes fairly and equitably."[27] It is in this spirit of justice that We choose to decide this case on the merits to finally resolve all issues.

The Deed of Donation Executed by Augusto In Favor of Petitioners is Void.

Petitioners claim that Augusto owned the real properties he donated to them by virtue of the alleged will executed by Restituto Sr. in his favor.

This claim is bereft of legal and factual basis.

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23 Id. at 15.
24 Id. at 220-223.
25 556 Phil. 178 (2007).
26 Id. at 196.
27 *Santos v. Court of Appeals*, 323 Phil. 762, 771 (1996).

It is clear under Article 838 of the Civil Code that no will shall pass any real or personal property unless it is proved and allowed in court:

> Article 838. No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court.
>
> The testator himself may, during his lifetime, petition the court having jurisdiction for the allowance of his will. In such case, the pertinent provisions of the Rules of Court for the allowance of wills after the testator's a death shall govern. x x x

This is likewise provided under Section 1, Rule 75 of the Rules of Court (ROC):

> Section 1. *Allowance necessary. Conclusive as to execution.* — No will shall pass either real or personal estate unless it is proved and allowed in the proper court. Subject to the right of appeal, such allowance of the will shall be conclusive as to its due execution.

Even if a will has been lost or destroyed, Section 6, Rule 75 of the ROC provides that it may still be proved in accordance with the following requirements:

> Section 6. *Proof of lost or destroyed will. Certificate thereupon.* — No will shall be proved as a lost or destroyed will unless **the execution and validity of the same be established**, and the will is **proved to have been in existence at the time of the death of the testator**, or is shown to have been fraudulently or accidentally destroyed in the lifetime of the testator without his knowledge, nor unless **its provisions are clearly and distinctly proved by at least two (2) credible witnesses**. When a lost will is proved, the provisions thereof must be distinctly stated and certified by the judge, under the seal of the court, and the certificate must be filed and recorded as other wills are filed and recorded. (Emphasis and underscoring supplied)

In such cases, the case of *Suntay v. Suntay*[28] is instructive on the degree of proof necessary to establish the provisions of a lost will:

> Hence, granting that there was a will duly executed by Jose B. Suntay placed in the envelope (Exhibit A) and that it was in existence at the time of, and not revoked before, his death, still the testimony of Anastacio Teodoro alone falls short of the legal requirement that the provisions of the lost will must be "clearly and distinctly proved by at least two credible witnesses." Credible witnesses mean competent witnesses and those who testify to facts from or upon hearsay are neither competent nor credible witnesses.[29]

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28 90 Phil. 500 (1954).
29 Id. at 507-508.

The Court in *Suntay* evaluated the witnesses' testimonies presented to prove the lost will to determine their credibility and sufficiency. In its discussion, the Court meticulously considered the witnesses' circumstances at the time when he/she allegedly witnessed the execution of the will, whether the witnesses actually saw the testator draft, read, and sign the will, and complied with all the legal formalities, whether they read all the provisions of the will or only parts of it, or whether they read the provisions of the will from its original copy or from a mere copy. These considerations are significant and necessary to establish the witnesses' credibility and determine if the degree of proof required has been met.

It should also be stressed that the Court in *Bonilla v. Aranza*[30] held that a lost holographic will, unlike a notarial will, cannot be proven by secondary evidence because it would be impossible to prove the validity and due execution of the Will without verifying the testator's handwriting:

> The only question here is whether a holographic will which was lost or cannot be found can be proved by means of a photostatic copy. Pursuant to Article 811 of the Civil Code, probate of holographic wills is the allowance of the will by the court after its due execution has been proved. The probate may be uncontested or not. If uncontested, at least one Identifying witness is required and, if no witness is available, experts may be resorted to. If contested, at least three Identifying witnesses are required. **However, if the holographic will has been lost or destroyed and no other copy is available, the will cannot be probated because the best and only evidence is the handwriting of the testator in said will. It is necessary that there be a comparison between sample handwritten statements of the testator and the handwritten will.** But, a photostatic copy or xerox copy of the holographic will may be allowed because comparison can be made with the standard writings of the testator. In the case of Gam vs. Yap, 104 PHIL. 509, the Court ruled that "the execution and the contents of a lost or destroyed holographic will may not be proved by the bare testimony of witnesses who have seen and/or read such will. The will itself must be presented; otherwise, it shall produce no effect. The law regards the document itself as material proof of authenticity." But, in Footnote 8 of said decision, it says that "Perhaps it may be proved by a photographic or photostatic copy. Even a mimeographed or carbon copy; or by other similar means, if any, whereby the authenticity of the handwriting of the deceased may be exhibited and tested before the probate court," Evidently, the photostatic or xerox copy of the lost or destroyed holographic will may be admitted because then the authenticity of the handwriting of the deceased can be determined by the probate court.[31] (Emphasis and underscoring supplied)

30 204 Phil. 402 (1982).
31 Id. at 405-407.

In this case, petitioners failed to present sufficient proof that Restituto Sr. executed a valid will bequeathing the subject properties to Augusto.

Firstly, there was no original or even a copy of Restituto Sr.'s alleged Will presented. There was no proof that such alleged Will underwent probate and was allowed in court. Petitioners therefore cannot use this alleged Will as basis to prove Augusto's ownership over the subject properties he donated to them. It is explicit under Article 838 of the Civil Code and Section 1, Rule 75 of the ROC, that no will shall pass any personal or real property unless it is probated.

Secondly, the only evidence presented by petitioners to attempt to prove the alleged will was the joint affidavit.[32] This joint affidavit was excluded in evidence and thus cannot be used in the determination of this case.

It must be emphasized that the exclusion of this joint affidavit from the defense evidence was the subject of separate contentious proceedings. Petitioners filed a motion for reconsideration of the RTC Order of its exclusion, and thereafter a petition for *certiorari* under Rule 65 of the Rules of Court with the CA which was eventually docketed as CA-G.R. SP No. 01623. In both instances, the RTC and CA, through its Decision dated July 11, 2008,[33] sustained the exclusion of the joint affidavit. The Court finds no compelling reason to reverse such findings in the resolution of this case.

Thirdly, there are other permissible evidence under Section 6, Rule 75 of the ROC to prove the lost will aside from the joint affidavit. This evidence may include testimonies of credible witnesses, subject to the guidelines in *Suntay*. Petitioners failed to present any such additional evidence to prove Restituto Sr.'s alleged will and thus cannot rely on it.

Fourthly, even assuming that the joint affidavit was admitted in evidence, it would still be insufficient to prove Restituto Sr.'s alleged will. Section 6, Rule 75 of the ROC requires the following to be proved: (1) the execution and validity of the will, (2) the existence of the will at the time of the death of the testator, or that it has been fraudulently or accidentally destroyed in the lifetime of the testator without his/her knowledge, and (3) that its provisions are clearly and distinctly proved by at least two credible witnesses. The Joint Affidavit by itself is obviously insufficient to prove these matters required by the ROC.

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32 *Rollo*, p. 150.

33 Id. at 247-257; penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Edgardo A. Camello and Edgardo T. Lloren, concurring.

The pertinent text of the joint affidavits quoted below:

> That are [sic] the brother and sister, respectively, of RESTITUTO MERCADO, Jr., of Balingoan, Misamis Oriental.
>
> That our late father, Restituto Mercado[,] Sr., who died during the second World War, gave and willed to said Restituto Mercado[,] Jr., a big residential house at Balingoan, Misamis Oriental, as his share in the inheritance.
>
> That this act of our father to give the house to Restituto Mercado[,] Jr. is contained in a will or testament which we personally know to be legal and true, in fact our father told [sic] was that the house was given to our brother, Restituto Mercado[,] Jr.
>
> That we [do not] question nor interpose any objection because we know that it was the will and wish of our father that the ancestral house of our father should be given to Restituto Mercado[,] Jr.
>
> That the house and lot on which the house is standing is bounded on this:
>
> NORTH, seashore
> EAST, Raymundo Panulaya
> SOUTH, National Highway
> WEST, Miguela M. Corrales
> Tax Dec. No. 0076-B
> House and Lot.
>
> That we execute this joint affidavit to make clear the ownership of the house and the land it [sic] stands, and for record purposes.[34]

The text of the joint affidavit cannot prove the validity and due execution of Restituto Sr.'s alleged will. It cannot even be concluded from the text that the affiants were able to read the original of the alleged will or personally witnessed its execution by the testator. It thus cannot be determined whether the formal requisites of a will were duly complied with.

The text of the joint affidavit also fails to prove the actual text of the alleged Will. It merely mentions an alleged provision of the will pertaining to the ancestral house. This evidently fails to prove the provisions of the will clearly and distinctly by at least two credible witnesses. There is no basis for the court to determine whether the substantive provisions of the will were valid, legal, and could be given effect. It cannot be clearer from the foregoing that even if the joint

34 Id. at 150.

affidavit was admitted in evidence, it would still be insufficient to satisfy the degree of proof required under the ROC to establish a lost will.

Lastly, there is nothing in the records which clarifies whether Restituto Sr.'s alleged Will was a notarial or holographic will. This distinction is material in view of the doctrine in *Bonilla* that a holographic generally cannot be proven by secondary evidence. In this case, if Restituto Sr.'s alleged will was holographic, the joint affidavit would have been rendered immaterial from the beginning since there could be no way to verify his handwriting. Petitioners' failure to establish this fact makes it impossible for the court to consider and evaluate secondary evidence submitted.

Having established that Augusto did not inherit the subject properties through Restituto Sr.'s alleged will, he did not own the subject properties and could not have legally donated these to petitioners. It is fundamental that a donor cannot lawfully convey what is not his property and any donation of such property shall be void.[35] The Court thus affirms the CA ruling that the Deed of Donation executed by Augusto in favor of petitioners is null and void.

Petitioners Did Not Acquire Ownership Over the Real Properties by Prescription.

Article 494 of the Civil Code 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."

It was held in *Salvador v. CA*[36] that a co-owner's possession of the property, including the payment of land taxes, shall be deemed for the benefit of all co-owners. This co-owner shall be considered a trustee of the property and his/her possession cannot be deemed adverse absent clear and convincing evidence of a repudiation of the trust:

> This Court has held that the possession of a co-owner is like that of a trustee and shall not be regarded as adverse to the other co-owners but in fact as beneficial to all of them. Acts which may be considered adverse to strangers may not be considered adverse insofar as co-owners are concerned. A mere silent possession by a co-owner, his receipt of rents, fruits or profits from the property, the erection of buildings and fences and the planting of trees thereon, and the payment of land taxes, cannot serve as proof of exclusive ownership,

35 *Rev./Atty. Tayoto v. Heirs of Cabalo Kusop*, 263 Phil. 269, 280 (1990).
36 313 Phil. 36 (1995).

> if it is not borne out by clear and convincing evidence that he exercised acts of possession which unequivocably constituted an ouster or deprivation of the rights of the other co-owners.
>
> Thus, in order that a co-owner's possession may be deemed adverse to the cestui que trust or the other co-owners, the following elements must concur: (1) that he has performed unequivocal acts of repudiation amounting to an ouster of the cestui que trust or the other co-owners; (2) that such positive acts of repudiation have been made known to the cestui que trust or the other co-owners; and (3) that the evidence thereon must be clear and convincing.[37]

In this case, the CA committed no reversible error in ruling that petitioners did not perform any act amounting to a repudiation of the co-ownership over the subject properties.[38] This is consistent with the ruling in *Salvador* that mere possession of the subject properties, erection of improvements, and payment of land taxes, are not necessarily sufficient to show a repudiation of the trust. This is likewise a factual matter already ruled upon by the RTC and CA which this Court will not re-examine for being outside the purview of a petition for review on *certiorari* under Rule 45 of the ROC.[39]

Based on all the foregoing, the cancellation of the Deed of Donation over the subject properties, and the consequent nullification of the tax declarations and/or titles arising therefrom, results in the reversion of the property to a state of co-ownership. The CA thus correctly affirmed the RTC order to partition the properties described in paragraphs 4(a) and 4(b) of respondents' Complaint pursuant to their rights as co-heirs and co-owners.[40]

WHEREFORE, the petition for review on *certiorari* is **DENIED** for lack of merit. The Decision dated February 27, 2014 and the Resolution dated October 23, 2014 of the Court of Appeals in CA-G.R. CV No. 01994-MIN are **AFFIRMED**.

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37 Id. at 56-57.
38 *Rollo*, pp. 52-53.
39 *Gatan v. Vinarao*, 820 Phil. 257, 266 (2017).
40 CIVIL CODE OF THE PHILIPPINES, Article 494.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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The Hon. Presiding Judge
Regional Trial Court, Branch 26
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(Civil Case No. 1087-M[05])

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