



Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Laptan*  
WILFREDO V. LAPATAN  
Division Clerk of Court  
Third Division

AUG 15 2018

THIRD DIVISION

FORTUNATO ANZURES,  
Petitioner,

G.R. No. 222297

Present:

- versus -

VELASCO, JR., J., *Chairperson*,  
BERSAMIN,  
LEONEN,\*  
MARTIRES, and  
GESMUNDO, JJ.

SPOUSES ERLINDA  
VENTANILLA and  
ARTURO VENTANILLA,  
Respondents.

Promulgated:

July 9, 2018

*Wilfredo V. Laptan*

X ----- X

DECISION

GESMUNDO, J.:

This is an appeal by *certiorari* seeking to reverse and set aside the July 24, 2015 Decision<sup>1</sup> and the December 18, 2015 Resolution<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 136514. The CA affirmed the decision of the Regional Trial Court, Branch 83, Malolos City (RTC) rendered in favor of the Spouses Erlinda Ventanilla (*Erlinda*) and Arturo Ventanilla (*collectively, respondents*), in an action for unlawful detainer.

\* On official business.

<sup>1</sup> *Rollo*, pp. 256-263; penned by Associate Justice Japar B. Dimaampao, with Associate Justices Franchito N. Diamante and Socorro B. Inting, concurring.

<sup>2</sup> *Id.* at 273-274.

*Agd*

*The Antecedents*

On October 12, 2012, respondents filed a Complaint for Unlawful Detainer<sup>3</sup> before the Municipal Trial Court of Bulacan (*MTC*) against Fortunato Anzures (*petitioner*). In their complaint, respondents alleged, among others, that they were the owners of a residential house situated in Barangay Sta. Ines, Bulakan, Bulacan; that the house had been declared for taxation purposes in their names for the year 2012;<sup>4</sup> that the property stands on a 289 square meters parcel of land under OCT No. 2011000008 and registered in the names of petitioner and his wife Carolina Anzures (*Carolina*); that later, by virtue of a Deed of Donation,<sup>5</sup> dated March 21, 2011, petitioner and his wife Carolina donated 144 square meters portion of the land in favor of respondents; that Erlinda Ventanilla “indicated to partition the said property,”<sup>6</sup> but the house situated on said property constitutes a stumbling block on the partition of the said property; that being the owners of the property, respondents merely tolerated the occupation of the property by petitioner; that they demanded he vacate the house to give way to the subdivision and partition of the property but to no avail; and that respondents filed a complaint with the office of the Barangay but no amicable settlement was effected.

In his Answer with Counterclaim,<sup>7</sup> petitioner sought the dismissal of the complaint for lack of cause of action. He averred that he and his late spouse Carolina were the owners of the residential house; that he was also the registered owner of the 289 square meters parcel of land, having bought the same from Erlinda Ventanilla for ₱150,000.00 as evidenced by the *Pagpapamana sa Labas ng Hukuman na may Pagtalikod sa Bahagi ng Lupa at Bilihang Tuluyan sa Lupa*,<sup>8</sup> dated August 2, 2000; that his possession and ownership of the land was evidenced by Original Certificate of Title (*OCT*) No. 2011000008; that he was the rightful owner of the residential house as shown by the tax receipts confirming the religious payments he made from 1998 to 2011.<sup>9</sup>

Petitioner also denied the genuineness and authenticity of the March 21, 2011 deed of donation because at that time, Carolina was mentally and

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<sup>3</sup> Id. at 52-55.

<sup>4</sup> Id. at 52.

<sup>5</sup> Id. at 60.

<sup>6</sup> Id. at 53.

<sup>7</sup> Id. at 65-71.

<sup>8</sup> Id. at 144-145.

<sup>9</sup> Id. at 67.

physically incompetent to execute the same. He contended that he had no knowledge of the deed and he never affixed his signature thereon.<sup>10</sup>

*The MTC Ruling*

On August 16, 2013, the MTC ruled in favor of respondents and granted their complaint for unlawful detainer against petitioner. It rendered judgment as follows:

WHEREFORE, judgment is hereby rendered in favor of plaintiffs and against defendant ordering the latter and all persons claiming rights under him –

1. To vacate the residential house consisting of 144 square meters standing on the lot embraced in OCT No. 2911000008 (sic) situated in Sta. Ines, Bulakan, Bulacan and surrender possession thereof to plaintiffs;
2. To pay plaintiffs the sum of ₱1,000.00 a month as reasonable compensation for the use and occupation of the subject property from filing of the complaint (October 19, 2012), until the same is vacated or the possession thereof is surrendered to plaintiffs;
3. To pay plaintiffs the sum of ₱5,000.00 as attorney's fees, aside from the costs.

SO ORDERED.<sup>11</sup>

Unconvinced, petitioner appealed to the RTC.

*The RTC Ruling*

On June 30, 2014, the RTC affirmed *in toto* the judgment of the MTC. It held that respondents have a better right over the subject property than petitioner. The RTC also affirmed that respondents merely tolerated the possession of petitioner. The dispositive portion of the RTC ruling reads:

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<sup>10</sup> Id. at 68.

<sup>11</sup> Id. at 232.



**WHEREFORE**, premises considered, the Decision rendered by the Municipal Trial Court of Bulakan, Bulacan, dated August 16, 2013 is **AFFIRMED IN TOTO**.

**SO ORDERED.**<sup>12</sup>

Aggrieved, petitioner sought relief before the CA arguing that the RTC committed grave error in affirming the MTC's decision as it is not in accord with law and jurisprudence and, if not corrected, said error will cause injustice and irreparable damage to petitioner.<sup>13</sup>

In his petition for review with the CA, petitioner raised two (2) points: 1] that respondents have no cause of action as they failed to sufficiently aver in their complaint the jurisdictional fact of unlawful withholding of the subject premises - when and how the matter of the entry and dispossession thereof were effected;<sup>14</sup> and 2] the deed of donation was a forged document as his wife Carolina was seriously ill at the time of its alleged execution.<sup>15</sup>

#### *The CA Ruling*

In its decision dated July 24, 2015, the CA denied the petition.

On the issue of lack of cause of action, it concluded that respondents' allegations in their complaint clearly make a case for unlawful detainer. The CA explained that the complaint sufficiently averred the unlawful withholding of the subject residential house by petitioner, constitutive of unlawful detainer, although the exact words "*unlawful withholding*" were not used.<sup>16</sup>

The CA also noted that respondents asserted that petitioner's occupancy was through their tolerance. Thus, it reiterated the ruling that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him. Possession by tolerance is lawful,

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<sup>12</sup> Id. at 249.

<sup>13</sup> Id. at 258.

<sup>14</sup> Id.

<sup>15</sup> Id. at 261.

<sup>16</sup> Id. at 260-261.

but such possession becomes unlawful when the possessor by tolerance refuses to vacate upon demand made by the owner.<sup>17</sup>

With regard to the forgery of the deed of donation, the CA stated that forgery cannot be presumed. It must be proved by clear, positive and convincing evidence.<sup>18</sup> The CA observed that not a modicum of evidence was adduced by petitioner to substantiate his claim of forgery and, thus, such claim was merely self-serving.<sup>19</sup>

Ultimately, the CA reiterated the oft-repeated doctrine that factual findings of the trial courts should be accorded great weight and are generally not disturbed on appeal.<sup>20</sup>

Petitioner filed a motion for reconsideration but it was denied by the CA.

Hence, this petition raising the following:

### ISSUES

#### I

**WHETHER THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE REGIONAL TRIAL COURT'S DECISION AFFIRMING THE MUNICIPAL TRIAL COURT'S DECISION THAT THE RESPONDENT SPOUSES HAVE A CAUSE OF ACTION TO EJECT PETITIONER BASED ON TOLERANCE.**

#### II

**WHETHER THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE VALIDITY OF THE DEED OF DONATION DATED MARCH 21, 2011.**

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<sup>17</sup> Id. at 261.

<sup>18</sup> Id.

<sup>19</sup> Id. at 262.

<sup>20</sup> Id.



The primary issue for resolution is whether or not respondents have a cause of action to eject petitioner from the subject property.

### **The Court's Ruling**

The petition is meritorious.

### ***Petition for Review Under Rule 45***

Under Rule 45 of the Rules of Court, only questions of law should be raised in petitions filed because the Court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are final, binding or conclusive on the parties and upon this court when supported by substantial evidence.<sup>21</sup>

As in every rule, there are exceptions which have been enunciated in a plethora of cases. These are:

- (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) Where there is a grave abuse of discretion;
- (4) When the judgment is based on a misapprehension of facts;
- (5) When the findings of fact are conflicting;
- (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
- (7) The findings of the Court of Appeals are contrary to those of the trial court;
- (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

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<sup>21</sup> *Pascual v. Burgos, et al.*, 776 Phil. 167, 182 (2016).

- (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and
- (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.<sup>22</sup>

This case falls under one of the exceptions as there are certain relevant facts that would warrant a different conclusion if properly considered.

***Recovery of possession  
in general***

There are four (4) remedies available to one who has been deprived of possession of real property. These are: (1) an action for unlawful detainer; (2) a suit for forcible entry; (3) *accion publiciana*; and (4) *accion reivindicatoria*.<sup>23</sup>

Unlawful detainer and forcible entry are summary ejectment suits where the only issue to be determined is who between the contending parties has a better possession of the contested property.<sup>24</sup> On the other hand, an *accion publiciana*, also known as *accion plenaria de posesion*, is a plenary action for recovery of possession in an ordinary civil proceeding in order to determine the better and legal right to possess, independently of title,<sup>25</sup> while an *accion reivindicatoria*, involves not only possession, but ownership of the property.<sup>26</sup>

The present case is one for unlawful detainer, which is “an action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied.”<sup>27</sup> In this case, respondents alleged that petitioner has been occupying their property by tolerance and has refused to vacate it despite their repeated demands.

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<sup>22</sup> Id. at 182-183.

<sup>23</sup> *Bejar v. Caluag*, 544 Phil 774, 779 (2007).

<sup>24</sup> Id. at 779.

<sup>25</sup> Id.

<sup>26</sup> Id. at 780.

<sup>27</sup> *Go v. Looyuko, et al.*, 713 Phil. 125, 131 (2013).



The possession of the defendant in an unlawful detainer case is originally legal but becomes illegal due to the expiration or termination of the right to possess. The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. *When the defendant, however, raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.*<sup>28</sup> (italics supplied)

### ***The Present Controversy***

In this case, both parties claim ownership over the subject property. Each presented documents to support their respective claim, enumerated in their chronological sequence as follows:

DATE	DOCUMENT	DETAILS	PRESENTED BY
May 31, 2000	Waiver of Rights over the Unregistered Parcel of Land	Executed by Filomena Rodriguez Rivera, Enriqueta Rodriguez and Rosalina Rodriguez Sta. Ana in favor of their nieces, Erlinda and Carolina	Respondents
August 2, 2000	Deed of Absolute Sale of Unregistered Land	Executed by Filomena Rodriguez Rivera, Enriqueta Rodriguez and Rosalina Rodriguez Sta. Ana in favor of their nieces, Erlinda and Carolina covering a parcel of land with improvements	-same-
	Pagpapamana sa Labas ng Hukuman na may Pagtalikod sa Bahagi ng Lupa at Bilihang Tuluyan sa Lupa	a) Waiver of rights over parcel of land in favor of Erlinda b) Absolute sale in favor of Carolina	Petitioner
October 31, 2008	Pagkakaloob ng Bahagi ng Lupa na May Kasunduan	a) Emiliano, brother of Erlinda and Carolina, was given 1/3 share of the 289 sqm. land b) All 3 siblings agreed to have the land registered under the name of Carolina	Respondents

<sup>28</sup> Id.



January 19, 2010	Pagwawaksi ng Karapatan sa Pag-aari ng Bahagi ng Lupa	Emiliano waived his share in favor of his 2 siblings	-same-
September 23, 2010	OCT No. 2011000008	Registered in Carolina's name	Petitioner
March 21, 2011	Deed of Donation	Executed by Carolina in favor of Erlinda, with their respective spouses as signatories	Respondents
October 11, 2011	Extrajudicial Settlement of Estate with Waiver of Rights	Executed by Filomena and Rosalina in favor of Erlinda covering a residential house	-same-

As can be gleaned from the records, the preponderance of the evidence shows that the property was originally owned by one Vicenta Galvez, who died intestate on October 6, 1967. After her death, Filomena Rodriguez Rivera, Enriqueta Rodriguez and Rosalina Rodriguez, claiming to be her sole heirs, executed a "Waiver of Rights over the Unregistered Parcel of Land"<sup>29</sup> in favor of their nieces, Erlinda Rodriguez and Carolina Rodriguez on May 31, 2000. The property contains 289 square meters more or less.

To confirm and firm up the waiver and transfer, on August 2, 2000, Filomena Rodriguez Rivera, Enriqueta Rodriguez and Rosalina Rodriguez executed a "Deed of Absolute Sale of Unregistered Land"<sup>30</sup> in favor of Erlinda and Carolina. In said document, the three sold, transferred and conveyed, absolutely and unconditionally, the subject "**parcel of land with improvements**" to the two, "their heirs or assigns, free from all liens and encumbrances."

The waiver of rights over unregistered parcel of land and the deed of absolute sale of unregistered land were both notarized by Atty. Jose S. Tayo on September 22, 2000 and were identified as Document Nos. 231 and 232, respectively, on Page No. 48; Book 31, Series of 2000, of his notarial book.

It appears that on the same day of August 2, 2000, the three heirs of Vicenta Galvez, namely, Filomena Rodriguez Rivera, Enriqueta Rodriguez and Rosalina Rodriguez, executed a "*Pagpapamana sa Labas ng Hukuman na may Pagtalikod sa Bahagi ng Lupa at Bilihang Tuluyan sa Lupa*"<sup>31</sup> embodying a) a waiver of rights over parcel of land in favor of Erlinda; and b) an absolute sale by Erlinda of the said parcel of land in favor of Carolina.

<sup>29</sup> *Rollo*, pp. 107-108.

<sup>30</sup> *Id.* at 109.

<sup>31</sup> *Id.* at 144.

The document was notarized by Atty. Jose S. Tayo, but the date of its notarization is unknown. It was, however, likewise identified as Document No. 231; Page No. 48, Book No. 31, Series of 2000, of his notarial book.

Based on the foregoing, the Court agrees with the MTC that as between the Waiver of Rights over Unregistered Parcel of Land and the Deed of Absolute Sale of Unregistered Land on one hand, and the *Pagpapamana sa Labas ng Hukuman na may Pagtalikod sa Bahagi ng Lupa at Bilihang Tuluyan sa Lupa* on the other, the two former documents prevail because they bore the rubber stamp of the notary public and the signatures appearing thereon were similar with each other.<sup>32</sup>

Further, the *Pagpapamana sa Labas ng Hukuman na may Pagtalikod sa Bahagi ng Lupa at Bilihang Tuluyan sa Lupa*, which shows that the heirs of Vicenta waived their rights over the entire parcel of land in favor of only Erlinda, who in turn sold the same to Carolina, is clearly inconsistent with the intention of the said heirs of Vicenta to absolutely and unconditionally transfer the property to both their nieces, Erlinda and Carolina.

On October 31, 2008, citing as the basis of their right the Deed of Absolute Sale of Unregistered Land,<sup>33</sup> Carolina and Erlinda executed a "*Pagkakaloob ng Bahagi ng Lupa na may Kasunduan*,"<sup>34</sup> whereby the two gave 1/3 of the subject property to their brother, Emiliano; the three siblings agreed to place the property in the name of Carolina; and that they stated that although the property would be registered in her name, the three of them would still be the co-owners of the property.

On January 19, 2010, Emiliano executed a "*Pagwawaksi ng Karapatan sa Pag-aari ng Bahagi ng Lupa*,"<sup>35</sup> whereby he waived his right over 1/3 of the property in favor of Carolina and Erlinda, thus, cementing the co-ownership of the two sisters.

On September 23, 2010, the property was placed under the operation of the Torrens system of land registration with the issuance of the OCT No. 2011000008. Pursuant to their agreement, it was registered in the name of

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<sup>32</sup> Id. at 230.

<sup>33</sup> Id. at 109.

<sup>34</sup> Id. at 128.

<sup>35</sup> Id. at 131.

**“Carolina R. Anzures, Filipino, na may sapat na gulang, kasal kay Fortunato Anzures.”<sup>36</sup>**

On March 21, 2011, Carolina executed a *deed of donation*,<sup>37</sup> which donated 144 square meters of the subject property to Erlinda as an acknowledgement of their co-ownership thereof. The donation does not appear to have been registered, but it is a recognition that they are both co-owners with equal shares.

On October 11, 2011, Filomena and Rosalina executed an “Extrajudicial Settlement of Estate with Waiver of Rights,”<sup>38</sup> whereby they waived their rights over the house in favor of Erlinda.

On the basis of this extrajudicial settlement of estate with waiver of rights, the respondents claim that they are the owners of the house; that the petitioner is occupying the house by virtue of their tolerance; that they have demanded that he vacate the same; and that despite demands, he refused to do so. As petitioner refuses to vacate the premises, respondents claim they were constrained to file an action for unlawful detainer.

***Carolina and Erlinda are  
co-owners of the house  
subject of litigation***

From the documentary records, the property covered by OCT No. 2011000008 is co-owned by Carolina and Erlinda. Being co-owners of the property, they are also the co-owners of the improvement thereon, including the subject house. This is clear from the Deed of Absolute Sale of Unregistered Land<sup>39</sup> dated August 2, 2000, executed in favor of Erlinda and Carolina, whereby the three heirs of Vicenta Galvez, namely, Filomena Rodriguez Rivera, Enriqueta Rodriguez and Rosalina Rodriguez sold, transferred and conveyed, absolutely and unconditionally, the subject “**parcel of land, with improvements**” to the “two,” “their heirs or assigns, free from all liens and encumbrances.”<sup>40</sup>

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<sup>36</sup> Id. at 127.

<sup>37</sup> Id. at 130.

<sup>38</sup> Id. at 114.

<sup>39</sup> Id. at 109.

<sup>40</sup> Id.

Respondents cannot rely on the Extrajudicial Settlement of Estate with Waiver of Rights<sup>41</sup> dated October 11, 2011, whereby Filomena and Rosalina waived their rights over the house in favor of Erlinda. The reason is as clear as daylight. On said date, Filomena and Rosalina no longer had the right to convey the house as they were no longer the owners thereof. As evidenced by the August 2, 2000 deed of sale of unregistered land, they already sold the property together with the improvements to the two sisters, Carolina and Erlinda. In fact, the title has been placed in Carolina's name, pursuant to their agreement, "*Pagkakaloob ng Bahagi ng Lupa na may Kasunduan.*"<sup>42</sup> No one can give what one does not have (*Nemo dat quod non habet*).<sup>43</sup>

***Petitioner cannot claim  
sole ownership either***

Although the Court found that Carolina and Erlinda are co-owners, it must also be determined whether petitioner is the absolute owner of the subject property and the house erected thereon to remove all doubts.

Petitioner insists that the March 21, 2011 deed of donation allegedly executed by his wife, Carolina, in favor of Erlinda, was a forgery.

There is, however, no evidence of forgery. Thus, the Court agrees with the CA that it was a self-serving claim. The CA wrote:

As a rule, forgery cannot be presumed. It must be proved by clear, positive and convincing evidence. Mere allegation of forgery is not evidence and the burden of proof lies on the party alleging it. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it.

Here, not a modicum of evidence was adduced by petitioner to substantiate his claim of forgery. No sufficient and convincing proof was proffered to demonstrate that the signature of his wife Carolina on the Deed of Donation was not hers, and therefore forged. Perceivably, his claim of forgery is merely self-serving.<sup>44</sup>

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<sup>41</sup> Supra note 38.

<sup>42</sup> Supra note 34.

<sup>43</sup> *Mahilum v. Spouses Ilano*, 761 Phil. 334, 348-349 (2015).

<sup>44</sup> *Rollo*, pp. 261-262.

Moreover, petitioner did not assail the genuineness and authenticity of the waiver of rights over the unregistered parcel of land, dated May 31, 2000, as well as the deed of absolute sale of unregistered land, dated August 2, 2000. In fact, he acknowledged that their aunts waived their rights over the parcel of land in favor of the siblings, Erlinda and Carolina, and then sold it to them.

Further, there were two (2) other documents that would disprove his claim. *First*, the *Pagkakaloob ng Bahagi ng Lupa na may Kasunduan*, dated October 31, 2008, executed by the siblings Erlinda and Carolina with their brother, Emiliano, stated the following:

Na kami, ERLINDA R. VENTANILLA kasal kay Arturo C. Ventanilla at CAROLINA R. ANZURES kasal kay Fortunato Anzures, mga Filipino, may mga sapat na gulang at naninirahan sa Brgy. Sta. Ines, Bulakan, Bulacan.

Na sa bisa ng "DEED OF ABSOLUTE SALE OF UNREGISTERED LAND, Doc. No. 232, Page No. 48, Book No. 31, Series of 2000, Jose S. Tayo-NP" ay kami na ang mga lihitimung nagmamay-ari ng isang (1) parsela ng lupa na matatagpuan sa Brgy. Sta. Ines, Bulakan, Bulacan na nakatala sa pangalan ni VICENTA GALVEZ na mas makikilala sa ganitong palatandaan:

Tax Declaration No. 2006-05012-00356

Lot No.: 1020  
Area: 289 sq. m.  
Boundaries: North: Lot 1021 (039) South: Lot 1019 (042)  
East: Rio del Barrio (Sta. Ana River) West: Barrio Road

Na dahil at alang-alang sa pagmamahal namin sa aming kapatid na si **EMILIANO A. RODRIGUEZ** kasal kay Alicia Z. Rodriguez ay aming **PINAGKAKALOOBAN** ng **IKATLONG PARTE o 1/3 SHARE** ng karapatan sa pagmamay-ari sa lupang aming binabanggit si Emiliano A. Rodriguez.

Na kami, **ERLINDA R. VENTANILLA, CAROLINA R. ANZURES** at **EMILIANO A. RODRIGUEZ** ay nagkaruon ng **kasunduan** na ipangalan sa aming kapatid na si **CAROLINA R. ANZURES** ang titulo ng lupa na binabanggit sa kasulatang ito na aming kasalukuyang ina-apply sa Bureau of Lands.

Na, kahit iisang tao lamang ipapangalan ang titulo nito, ang lupang binabanggit sa kasulatang ito ay pag-aari pa rin naming tatlong (3) magkakapatid. [emphases in the original]<sup>45</sup>

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<sup>45</sup> Supra note 34.

*Second*, the *Pagwawaksi ng Karapatan sa Pag-aari ng Bahagi ng Lupa*, dated January 19, 2010, where Emiliano waived his 1/3 share in favor of his two siblings, thereby returning his share to his two sisters. In these documents, petitioner was a signatory.

Evidently, by his participation, petitioner is estopped from questioning them. He cannot be permitted to assail the genuineness of the March 21, 2011 deed of donation because the execution of the said deed by Carolina in favor of Erlinda was merely in keeping with the wishes of Filomena, Enriqueta and Rosalina to transfer the property to both of them.

In sum, the totality of documentary evidence inevitably shows that Carolina and Erlinda are co-owners of the 289 square meters parcel of land with improvement thereon, as originally intended by their predecessors-in-interest, Filomena, Enriqueta and Rosalina.

***Being a co-owner, petitioner  
cannot be ordered to  
vacate the house***

Being a co-owner of the property as heir of Carolina, petitioner cannot be ejected from the subject property. In a co-ownership, the undivided thing or right belong to different persons, with each of them holding the property *pro indiviso* and exercising [his] rights over the whole property. Each co-owner may use and enjoy the property with no other limitation than that he shall not injure the interests of his co-owners. The underlying rationale is that until a division is actually made, the respective share of each cannot be determined, and every co-owner exercises, together with his co-participants, joint ownership of the *pro indiviso* property, in addition to his use and enjoyment of it.<sup>46</sup>

Ultimately, respondents do not have a cause of action to eject petitioner based on tolerance because the latter is also entitled to possess and enjoy the subject property. Corollarily, neither of the parties can assert exclusive ownership and possession of the same prior to any partition. If at all, the action for unlawful detainer only resulted in the recognition of co-ownership between the parties over the residential house.

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<sup>46</sup> *Quijano v. Atty. Amante*, 745 Phil. 40, 49 (2014).

***The remedy of the  
respondents is partition***

The Court notes that respondents have recognized the co-ownership insofar as the parcel of land is concerned when they alleged<sup>47</sup> in their complaint for unlawful detainer their intention to partition the same. They assert, however, exclusive ownership over the residential house standing thereon by virtue of the deed of donation and extrajudicial settlement of estate. The documentary evidence, however, shows that the parties are also co-owners of the residential house.

The parties, being co-owners of both the land and the building, the remedy of the respondents is to file an action for partition. Article 494 of the New Civil Code reads:

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.

**WHEREFORE**, the petition is **GRANTED**. The July 24, 2015 Decision and the December 18, 2015 Resolution of the Court of Appeals, in CA-G.R. SP No. 136514, are **REVERSED** and **SET ASIDE**. The complaint for unlawful detainer is **DISMISSED**, *without prejudice* to the filing of the appropriate action.

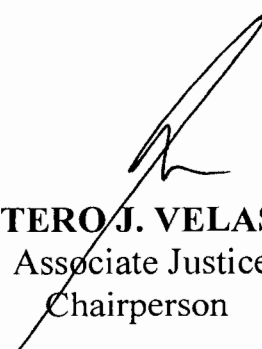
**SO ORDERED.**

  
ALEXANDER G. GESMUNDO  
Associate Justice

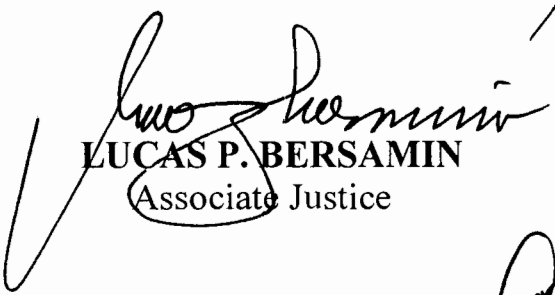
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<sup>47</sup> *Rollo*, p. 53.

**WE CONCUR:**




**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**LUCAS P. BERSAMIN**  
Associate Justice

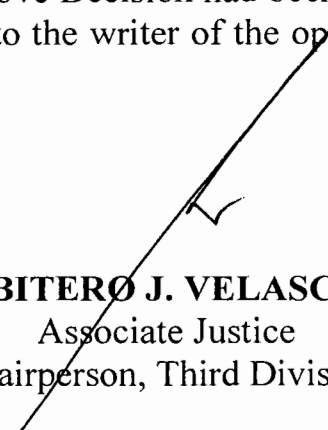
(On official business)  
**MARVIC M.V.F. LEONEN**  
Associate Justice



**SAMUEL R. MARTIRES**  
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.



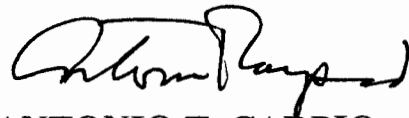
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division





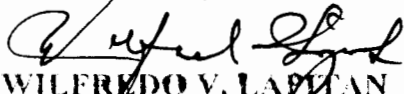
**CERTIFICATION**

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



**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, R.A. 296,  
The Judiciary Act of 1948, as amended)

CERTIFIED TRUE COPY



**WILFREDO V. LAPID**  
Division Clerk of Court  
Third Division

AUG 15 2018

