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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MR. AMOR VELASCO, SPOUSES
GEORGE VELASCO, MRS. NOLFE
VELASCO, [HEIRS OF
FRANCISCO VELASCO],
SPOUSES ROLANDO SABATIN,
SPOUSES ALEXIS CASTRO,
SPOUSES MELVIN MARON,
SPOUSES REGARDO DUYANIN,
SPOUSES MARCELO IGNACIO,
SPOUSES EDGARDO DUYANIN,
SPOUSES ALFREDO MARON,
SPOUSES JOSE RAQUINO,
SPOUSES ROGEL FELIX,
SPOUSES DANNY SANTOS,
SPOUSES RICARDO MANABAT,
SPOUSES LEONARDO MARTIN,
SPOUSES BENJAMIN
SARMIENTO, SPOUSES
ROLANDO IGNACIO, SPOUSES
SUSTACIO IGNACIO, SPOUSES
RODRIGO CARLOS, SPOUSES
EUSEBIO COLLADO, SPOUSES
EDGARDO RULLAN, SPOUSES
NELSON ORPIANO, SPOUSES
PONCIANO COLLADO, SPOUSES
JOEL COLLADO, SPOUSES
EDWIN ALEGORA, SPOUSES
ELPIDIO PEREZ, SR., SPOUSES
BIGHANI VELASCO, SPOUSES
REGGIE VELASCO AND SPOUSES
ISAGANI IGNACIO, *

G.R. No. 243146

Present:

LEONEN,
CAGUIOA,**
GISMUNDO,
CARANDANG, and
GAERLAN, JJ.

* "Spouses Rolando Sabatin, Spouses Alexis Castro, Spouses Melvin Maron, Spouses Regardo Duyanin, Spouse Marcelo Ignacio, Spouses Edgardo Duyanin, Spouses Alfredo Maron, Spouses Jose Raquino, Spouses Rogel Felix, Spouses Danny Santos, Spouses Ricardo Manabat, Mr. Amor Velasco, Spouses George Velasco, Mrs. Nolfé Velasco, Spouses Leonardo Martin, Spouses Benjamin Sarmiento, Spouses Rolando Ignacio, Spouses Sustacio Ignacio, Spouses Rodrigo Carlos, Spouses Eusebio Collado, Spouses Edgardo Rullan, Spouses Nelson Orpiano, Spouses Ponciano Collado, Spouses Joel Collado, Spouses Edwin Alegora, Spouses Elpidio Perez, Sr.,

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Petitioners,

- versus -

REBECCA MAGPALE, represented Promulgated:
by PILIPINAS MAGPALE-UY,
 Respondent. September 9, 2020

x-----MSPDC Bat-----x

DECISION

CARANDANG, J.:

Before us is a Petition for Review on *Certiorari*¹ seeking to reverse and set aside the Decision² dated August 31, 2018 and the Resolution³ dated November 21, 2018 of the Court of Appeals (CA) in CA-G.R. No. SP No. 151683. The CA denied the petition for review filed by petitioners and affirmed the Decision⁴ dated May 8, 2017 and the Order⁵ dated June 29, 2017 of the Regional Trial Court (RTC) of San Jose City, Nueva Ecija, Branch 38 which ordered petitioners to remove their structures and to vacate the premises of a parcel of land covered by Transfer Certificate of Title (TCT) No. 15102 registered in the name of Rebecca Magpale (respondent).

Petitioners Amor Velasco, Nolve Velasco and George Velasco are children of Francisco Velasco (Francisco), one of the registered owners of the original property covered by TCT No. NT-31597 (11472),⁶ while the other petitioners, spouses Rolando Sabatin, spouses Melvin Maron, spouses Marcelo Ignacio, spouses Alfredo Maron, spouses Rogel Felix, spouses Ricardo Manabat, spouses Leonardo Martin, spouses Rolando Ignacio, spouses Rodrigo Carlos, spouses Edgardo Rullan, spouses Ponciano Collado, spouses Edwin Alegora, spouses Bighani Velasco, spouses Isagani Ignacio, spouses Alexis Castro, spouses Regardo Duyanin, spouse Edgardo Duyanin, spouses Jose Raquino, spouses Danny Santos, spouses Benjamin Sarmiento, spouses Sustacio Ignacio, spouses Eusebio Collado, spouses Nelson Orpiano, spouses Joel Collado, spouses Elpidio Perez, Sr. and spouses Reggie Velasco are tenants and occupants of the 6,595 square meter portion titled in the name of respondent and have built their houses thereon.

Spouses Bighani Velasco, Spouses Reggie Velasco and Spouses Isagani Ignacio” in the Petition for Review on *Certiorari*.

** Designated as additional Member.

¹ *Rollo*, pp. 13-25.

² Penned by Associate Justice Fernanda Lampas Peralta, with the concurrence of Associate Justices Rodil V. Zalameda (now a Member of this Court) and Marie Christine Azcarraga-Jacob; id. at 61-73.

³ Id. at 74-76.

⁴ Id. at 129-133.

⁵ Id. at 138.

⁶ Id. at 130.

They claim ownership and right of possession of the subject property through their predecessor-in-interest, Francisco.⁷

Facts of the Case

Respondent is the registered owner of a 6,595 square-meter parcel of land located at Barrio Galilea, San Jose City, Nueva Ecija, a portion of Lot 3360-A-2-C of the subdivision plan (LRC) Psd-138355, and covered by TCT No. 15102.⁸ Said TCT No. 15102 also covered two parcels of land containing an area of 6,595 square meters registered in the names of Gavino Velasco and Demetria Velasco, respectively.⁹

Before the entire property was subdivided, it was previously covered by TCT No. NT-31597 (11472)¹⁰ denominated as Lot 3360-A-2 of the subdivision plan (LRC) Psd-9098, being a portion of Lot 3360-A described on plan Psd-19224, LRC (GLRO) Cad. Record No. 270 situated in the Barrio of Galilea, Municipality of San Jose, Province of Nueva Ecija, with a total area of 59,355 square meters. The title was issued in the names of Leoncia Velasco (Leoncia) married to Benigno Magpale (Benigno); Gavino Velasco, married to Felicisima Ordon; Demetria Velasco; Narcisa Velasco and minors Almario Velasco and Arceli Velasco who are represented by their mother, Esperanza Velasco; Hermogenes Velasco; Francisco; Bridario Velasco; Eugenio Arenas; Felicidad Velasco; Esperanza Arenas; Bonifacio Arenas; and Julian Arenas, who are co-owners thereof, pro indiviso. The title was issued after spouses Leoncia and Benigno together with Leoncia's brothers and sisters, Gavino, Demetria, Narcisa, Almario and Arceli had purchased one-third share of the aforementioned property. Thereafter, Narcisa died single and without any debts and issues while Almario and Arceli, together with their mother, Esperanza Velasco, died in a vehicular accident.¹¹

On April 9, 1992, an Extra Judicial Partition with Subdivision Agreement and Waiver of Rights¹² was executed by respondent, Clemencia Magpale, Benigno, Romeo Magpale, Filipinas Magpale, Gavino Velasco, Demetria Velasco, Hermogenes Velasco, Francisco, Bridario Velasco, Felicidad Velasco, Eugenio Arenas, Esperanza Arenas, Bonifacio Arenas, and Julian Arenas, wherein they agreed to subdivide the entire property covered by TCT No. NT-31597(11472), into three lots, to wit: (1) Lot-**3360-A-2-A** or one-third portion with an area of **19,785** square meters was assigned to Eugenio, Esperanza, Bonifacio and Julian, all surnamed Arenas; (2) Lot-**3360-A-2-B** with an area of **19,785** square meters was assigned to Hermogenes, Francisco, Bridario and Felicidad, all surnamed Velasco, and (3) Lot-**3360-A-2-C** with an area of **19,785** square meters was assigned to the children of Leoncia and Benigno, namely Clemencia, Benigno, Jr.,

⁷ Id. at 63.

⁸ Records, p. 7.

⁹ Id.

¹⁰ Id. at 252-253.

¹¹ Id.

¹² Id. at 136-139.

Romeo, Filipinas and herein respondent, together with their co-owners, Gavino and Demetria. The third lot, Lot-3360-A-2-C was further subdivided into three equal portions containing an area of 6,595 square meters each. The northern portion of the lot was assigned to Gavino Velasco; the middle part was given to Demetria Velasco while the southeastern portion part was allotted to the heirs of Leoncia and Benigno who in turn executed a waiver of rights of their respective shares in favor of their sister, herein respondent. The Extra Judicial Partition executed by respondent, *et al.*, was annotated on TCT No. (NT-31597) 11472 as Entry No. 35019/11472 on April 23, 1992. As a result, TCT No. (NT-31597) 11472 was cancelled and TCT Nos. 15102, 15103 and 15260 were issued. The herein subject certificate of title, TCT No. 15102 was registered in the names of respondent, Demetria Velasco, and Gavino Velasco on September 23, 1992.¹³

We illustrate as follows:

TCT (NT-31597) 11474 Total Area 59,355 square meters (original property) Registered in the names of Leoncia, Gavino, Demetria, Almario (10yrs), Arceli (8yrs) represented by their mother Esperanza, Francisco, Bridario, Hermogenes, Eugenio, Felicidad (Velascos), Esperanza, Bonifacio and Julian (Arenas)

EXTRAJUDICIAL PARTITION with Subdivision Agreement and Waiver of Rights executed on April 9, 1992 (Annotated as Entry No. 35019/11472 on TCT (NT-31597) 11474 on April 23, 1992)

<u>Lot-3360-A-2-A</u> 19785 sq. m.	Lot-3360-A-2-B 19785 sq. m.	Lot-3360-A-2-C 19785 sq. m. (TCT No. 5102)
Eugenio	Hermogenes	Gavino 6,595 (northern)
Esperanza	Francisco (petitioners)	Demetria 6,595 (middle)
Bonifacio	Bridario	Rebecca 6,595 (south) formerly Leoncia's share)-disputed portion
Julian	Felicidad ¹⁴	

On July 16, 2010, respondent filed a Complaint¹⁵ for Recovery of Possession before the Municipal Trial Court in Cities (MTCC) of San Jose City, Nueva Ecija, against petitioners, spouses Rolando Sabatin, et al., docketed as Civil Case No. (10) 3885. In her complaint, respondent alleged, *inter alia*, that: (1) she is the owner of the 6,595-square meter southern

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 2-4.

portion of the land covered by TCT No. 15102; (2) that the entire parcel of land was the subject of Civil Case No. 2681 for unlawful detainer entitled "*Rebecca Magpale v. Guillermo Duyanin, et al.*," which was decided in favor of respondent and possession of the parcel of land was restored to her in September 2007; (3) that not long after the said restoration of possession, petitioners invaded the same portion and constructed their houses thereon without her knowledge and consent; (4) that respondent sent formal demands for petitioners to remove their structures on her property and vacate it but they refused to do so; and (5) that the market value of the property was ₱18,200.00 with an assessed value of ₱7,280.00. Respondent prayed that petitioners or any person acting on their behalf be ordered to remove their structures and vacate the property and pay respondent rentals from the time of the filing of the complaint until possession of the property had been restored to respondent.¹⁶

In their Answer,¹⁷ petitioners denied all the allegations of the respondent and alleged that as early as in the 80's, petitioners have been in actual possession of the area they occupied. They averred that petitioners Nolve, George, Milagros, Amor and Merlita, all surnamed Velasco, are the co-owners of the subject property as they are the children of the late Francisco, a co-owner of the property covered by TCT No. (NT-31597) 11472. After Francisco's death in 1982, respondent caused the execution of an Extra-Judicial Partition with Subdivision Agreement and Waiver of Rights in 1992,¹⁸ making it appear that Francisco participated therein, to the prejudice of his children. Petitioners presented the Death Certificate¹⁹ of Francisco showing that he died on March 9, 1982. Francisco, during his lifetime was allowed to construct his house by the other co-owners and thereafter his children, on the area assigned to him as his share in the co-ownership. The other petitioners are either tenants of the children of Francisco and the rest were allowed to construct their houses by the children of Francisco upon the assurance that they will buy the areas occupied by them.

As Compulsory Counterclaim,²⁰ petitioners Velasco, *et al.* assail the validity and issuance of TCT No. 15102 in the name of respondent. They alleged that:

x x x x

16. Defendants Nolve, George, Milagros, Amor, and Merlita, all surnamed Velasco, hereby replead by reference the allegations of the foregoing Answer, Special, Affirmative and Alternative defenses, and in addition thereto, hereby alleges that:

¹⁶ Id.

¹⁷ Id. at 22-31.

¹⁸ Id. at 136-139. Exh. "11".

¹⁹ Id. at 194, Exh. "7".

²⁰ Id. at 26.

17. They are directly attacking the validity and issuance of T.C.T. No. 15102 in the name of the plaintiff, as it was issued upon, and by virtue of, a falsified document the execution of which was engineered, conceived and made by plaintiff, by making Francisco Velasco to have participated thereon as alive, when in truth and in fact he died long ago on March 9, 1982, which is 10 years after Francisco Velasco died on March 9, 1982;

x x x x²¹

Petitioners prayed in their Answer that respondent be ordered to reconvey title to petitioners Nolfe, George, Milagros, Amor and Merlita Velasco, and that the complaint for recovery of possession filed respondent be dismissed. In the alternative, petitioners pray that respondent be ordered to sell the portion of the parcel of land occupied by the other petitioners.²²

Respondent died on April 1, 2011.²³ She was substituted by her children, Arthur M. Nidoy, Benjamin M. Nidoy, and Cecille Nidoy-Guarino. The aforesaid children executed a Special Power of Attorney dated April 11, 2011 and appointed Pilipinas Magpale-Uy, their mother's sister, as their Attorney-in-fact.²⁴

Initially, the MTCC of San Jose City, Branch 1 issued a Decision²⁵ dated May 18, 2015 dismissing the case for recovery of possession against petitioners for lack of jurisdiction.²⁶ It held that that the allegation of petitioners that respondent's title is void cannot be validly adjudged in the case for recovery of possession as it can only be raised in a direct action with the main objective of attacking the validity of respondent's title.²⁷

On appeal, the RTC San Jose City, Nueva Ecija, Branch 39 issued a Decision²⁸ dated May 31, 2016 setting aside the Decision of the MTCC and held that the MTCC has jurisdiction over the case. The RTC remanded the case to the court *a quo* for further disposition.²⁹

In a Decision³⁰ dated November 7, 2016, the MTCC of San Jose City, Branch 1, ruled in favor of respondent and ordered petitioners to remove their structures and vacate the subject premises.³¹ The trial court held that TCT No. 15102 registered in the name of respondent and two others, Demetria and Gavino, is conclusive evidence of respondent's ownership of the land and being one of the registered owners, respondent has the right to

²¹ Id.

²² Id. at 26-27.

²³ See Death Certificate; id. at 108.

²⁴ See Motion for Substitution; id. at 113.

²⁵ Penned by Judge Analie C. Aldea-Arocena; id. at 313-324.

²⁶ Id. at 324.

²⁷ Id. at 323.

²⁸ Penned by Presiding Judge Cynthia Martinez-Florendo; records, Vol. 3, pp. 351-359.

²⁹ Id. at 358-359.

³⁰ Id. at 366-375.

³¹ Id. at 375.



enjoy and to recover it from its possessors, herein petitioners.³² The trial court further held that petitioners' allegation that respondent's title is void cannot be validly adjudged in this case for recovery of possession and can only be raised in a direct action with the main objective of attacking the validity of respondent's title. The MTCC ordered petitioners to pay rentals of ₱200.00 monthly from the filing of the complaint on July 16, 2010 until possession has been restored to respondent. The MTCC held that respondent had the better right to possess the property because she is the registered owner of the lot under TCT No. 15102, the validity of which cannot be collaterally attacked.³³ The dispositive portion of the decision states:

WHEREFORE, premises considered, judgment is rendered in favor of the plaintiff and against the defendants as follows:

1. Ordering the defendants and any other person acting in their behalves to remove their structures and vacate the premises of the 6,595, sq. m. lot covered by TCT No. 15102 which is registered in the name of the plaintiff;
2. Ordering the defendants to pay rentals of Php200.00 monthly from the filing of the complaint on 16 July 2010 until possession of the premises has been restored to the plaintiff.

SO ORDERED.³⁴

Petitioners appealed the Decision of the MTCC to the RTC. In a Decision³⁵ dated May 8, 2017, the RTC of San Jose City, Branch 38 affirmed the Decision of the MTCC. The RTC agreed with the MTCC that respondent had a better right to possess the property because she is the registered owner.³⁶ The RTC held that the allegation of petitioners that the title of respondent is void for being issued based on a falsified extra-judicial partition is a collateral attack on TCT No. 15102 which it cannot pass upon and may be made in a direct proceeding for cancellation of title. The RTC then ruled that as the lawful owner, respondent has the right to eject the defendants.³⁷ Petitioners filed a motion for reconsideration of the said decision but the RTC denied the same in an Order³⁸ dated June 29, 2017.

Thereafter, petitioners elevated their case to the CA. They asserted that their compulsory counterclaim is considered a direct attack on respondent's title and that the MTCC and the RTC both erred in ordering them to remove their structures and vacate the subject property since

³² Id. at 373.

³³ Id. at 373-374.

³⁴ Id. at 375.

³⁵ CA rollo, pp. 73-77.

³⁶ Id. at 75.

³⁷ Id. at 75-76.

³⁸ Id. at 82.

respondent failed to establish her cause of action as there was no demand sent to petitioners.³⁹

In the assailed Decision⁴⁰ dated August 31, 2018, the CA likewise denied petitioners' appeal and affirmed the RTC's Decision ordering petitioners to remove their structures and vacate the subject property.⁴¹ The CA cited Section 48 of Presidential Decree No. 1529 which provides that a certificate of title shall not be subject to collateral attack. The appellate court held that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears. The CA then held that respondent being the registered owner of the subject property is entitled to all the attributes of ownership, including possession. The CA added that even granting that petitioners' counterclaim in their answer may be considered a permissible direct attack to the validity of TCT No. 15102, there would still be no basis to reverse the ruling of the MTCC and the RTC.⁴² The CA noted that petitioner's counterclaim failed to allege the assessed value of the property, which is indispensable to show that the counterclaim is within the jurisdiction of the MTCC. Moreover, the CA noted that in the proceedings before the MTCC, the judicial affidavits of petitioners George Velasco, Milagros Velasco Maron, Nolfie Velasco and Merlita Velasco Alegora do not suffice to prove falsification.⁴³

Petitioner filed a motion for reconsideration of the said Decision but it was denied by the CA in a Resolution⁴⁴ dated November 21, 2018.

Hence, petitioners filed the present petition asserting that the CA erred in denying their petition and affirming the Decision of the RTC granting the complaint for recovery of possession of respondent despite petitioners' claim that TCT No. 15102 was issued based on a falsified deed of partition. They insist that their compulsory counterclaim is considered as direct attack on the validity of the title of respondent.⁴⁵ They pointed out that the document "Extra-Judicial Partition with Subdivision Agreement and Waiver of Rights" was signed 10 years after Francisco died. The falsification of the said document was clandestinely or surreptitiously made, with a deceased person included as having participated in violation of the law, justice and equity. Furthermore, petitioners argued that there is no evidence to support respondent's cause of action for recovery of possession because there was no proof of demand before the complaint was filed.⁴⁶

Respondent filed a Comment⁴⁷ maintaining that the compulsory counterclaim of petitioners contained in their answer to the complaint was a

³⁹ Id. at 24-26.
⁴⁰ Supra note 2.
⁴¹ CA *rollo*, p. 73.
⁴² Id. at 69-70.
⁴³ Id. at 71-72.
⁴⁴ Id. at 74-76.
⁴⁵ Id. at 21.
⁴⁶ Id. at 23-24.
⁴⁷ Id. at 142-143.



collateral attack and could not be considered as direct attack to the title of respondent.⁴⁸

The issues to be resolved in this petition are: (1) whether petitioners' counterclaim assailing the certificate of title issued to respondent may be considered a direct attack on the title of respondent which may be resolved in the case for recovery of possession filed by respondent; and (2) whether the CA erred in affirming the ruling of the MTCC and the RTC that respondent has proven her cause of action to recover possession of the disputed property from petitioners.

Ruling of the Court

The petition has merit.

Before proceeding to the merits of the case, this Court deems it necessary to emphasize that a petition for review under Rule 45 is limited only to questions of law. Factual questions are not property subject of an appeal by *certiorari*. This Court will not review facts, as it is not our function to analyse or weigh all over again evidence already considered in the proceedings below. However, this rule is subject to certain exceptions.⁴⁹ Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*,⁵⁰ to wit: (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 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; (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 CA is premised on the supposed absence of evidence and is contradicted by the evidence on record.⁵¹

Here, We deem it proper to review the factual findings of the CA and the trial courts since there was misapprehension of facts and CA's ruling overlooked and misappreciated certain facts and was premised on the supposed absence of evidence but is contradicted by the evidence on record.

In the present case, there is no dispute that respondent is one of the registered owners of the parcel of land covered by TCT No. 15102. As such, the MTCC, the RTC, and the CA ruled that respondent's title gives her the

⁴⁸ Id.

⁴⁹ *Gatan v. Vinarao*, 820 Phil. 257 (2017).

⁵⁰ 269 Phil. 225, 232 (1990).

⁵¹ Id.

better right to possess the disputed portion occupied by petitioners. However, petitioners have consistently assailed the validity of respondent's title for having been issued based on a document of partition purportedly signed by petitioners' predecessor-in-interest, Francisco, who had already died at the time of the execution of the document. The appellate court and the trial courts ruled that petitioners' attack on the validity of respondent's title is a collateral attack on the title which the court cannot entertain since TCT No. 15102 is conclusive evidence of respondent's ownership of the land. They further ruled that the allegation that respondent's title is void cannot be validly adjudged in the case for recovery of possession as it can only be raised in a direct action with a main objective of attacking the validity of respondent's title.

We do not agree. First, we emphasize that this Court is not unmindful of the principle of indefeasibility of a Torrens title and Section 48 of Presidential Decree No. 1529,⁵² which provides that a certificate of title shall not be subject to collateral attack.⁵³ A Torrens title cannot be altered, modified or cancelled except in a direct proceeding in accordance with law.⁵⁴ An action is an attack on a title when the object of the action is to nullify the title, and thus challenge the judgment or proceeding pursuant to which the title was decreed. The attack is direct when the object of an action is to annul or set aside such judgment, or enjoin its enforcement. On the other hand, the attack is indirect or collateral when, in an action to obtain a different relief, an attack on the judgment or proceedings is nevertheless made as an incident thereof.⁵⁵

However, jurisprudence is replete with cases where this Court held that a counterclaim can be treated as a direct attack against a title where the nullity of such title is raised as a defense. Thus, in the case of *Heirs of Santiago v. Heirs of Santiago*,⁵⁶ this Court stated that while the original complaint filed by the petitioners was for recovery of possession, or *accion publiciana*, and the nullity of the title was raised merely as respondents' defense, we can rule on the validity of the title because of the counterclaim filed by respondents. Also in the case of *Development Bank of the Philippines v. Court of Appeals*,⁵⁷ this Court ruled on the validity of a certificate of title despite the fact that the nullity thereof was raised only as a counterclaim. It was held that a counterclaim is considered a complaint, only this time, it is the original defendant who becomes the plaintiff. Similarly, in the recent case of *Heirs of Cascayan v. Sps. Gumallaoi*,⁵⁸ this Court held that when a complaint for recovery of possession is filed against a person in possession of a parcel of land under claim of ownership, he or she may validly raise nullity of title as a defense and, by way of counterclaim, seek its cancellation. Applying the foregoing rulings to the

⁵² Amending and Codifying the Laws Relative to Registration of Property and for other Purposes.

⁵³ *Hortizuela v. Tagufa*, 754 Phil. 499, 504 (2015).

⁵⁴ *Wee v. Mardo*, 735 Phil. 420, 431 (2014).

⁵⁵ *Berboso v. Cabral*, 813 Phil. 405, 422 (2017)

⁵⁶ 452 Phil. 238, 253 (2003).

⁵⁷ 387 Phil. 283, 300 (2000).

⁵⁸ 812 Phil. 108, 127 (2017).

present case, We deem that petitioners' counterclaim assailing the validity of respondent's title for having been issued based on a deed of partition where Francisco Velasco's signature was falsified or forged, is a direct attack on respondent's title which should have been passed upon by the trial courts and the appellate court.

As gleaned from the averments of the petitioners, Francisco, and thereafter, his children, petitioners Nolfe, George, Milagros, Amor and Merlita Velasco, constructed their houses on the disputed property which was designated by the other co-owners as their father's share in the property. Respondent sought to recover possession of the property occupied by petitioners, asserting that she is now the registered owner of the said property. Petitioners, however, assert that respondent's title, TCT No. 15102, is void since it is based on falsified Extra-Judicial Partition with Subdivision and Waiver of Rights.

We find merit in petitioners' claim.

Indeed, this Court cannot close its eyes to the glaring fact that there appears a signature of Francisco in the Extrajudicial Partition with Subdivision Agreement and Waiver of Rights executed in 1992, which could not have been his genuine signature since he already died on March 9, 1982 or 10 years before the execution of the questionable document. This significant fact had been overlooked and brushed aside by the trial courts and the appellate court. It is settled that the death of a person terminates contractual capacity. Clearly, Francisco could not have given his consent and acquiescence to the extrajudicial partition, and his undivided right to the property has already been transferred to his heirs, herein petitioners, Nolfe, George, Amor, Merlita, and Milagros Velasco who should have been included in the execution of the partition agreement. If one party to a supposed contract was already dead at the time of its execution, such contract is undoubtedly simulated and false and, therefore null and void by reason of its having been made after the death of the party who appears as one of the contracting parties therein.⁵⁹

In the case of *Roman Catholic Bishop of Tuguegarao v. Prudencio*⁶⁰ this Court explained the effect when one of the co-owners of a property was not included in the partition agreement. This Court ruled in this wise:

Considering that respondents-appellees have neither knowledge nor participation in the Extra-Judicial Partition, the same is a total nullity. It is not binding upon them. Thus, in the *Heirs of Neri vs. Heirs of Hadji Yusop Uy*, which involves facts analogous to the present case, we ruled that:

x x x [I]n the execution of the Extra Judicial Settlement of the Estate with Absolute Deed of Sale in favor of spouses

⁵⁹ See *Heirs of Arao v. Heirs of Eclipse*, G.R. No. 211425, November 19, 2018.

⁶⁰ G.R. No. 187942, September 7, 2016.

Uy, all the heirs of Anunciacion should have participated. Considering that Eutropia and Victorio were admittedly excluded and that then minors Rosa and Douglas were not properly represented therein, the settlement was not valid and binding upon them and consequently, a total nullity.

x x x x

It is clear that Section 1 of Rule 74 does not apply to the partition in question which was null and void, as far as the plaintiffs were concerned. The rule covers only valid partitions. **The partition in the present case was invalid because it excluded six of the nine heirs who were entitled to equal shares in the partitioned property. x x x [A]s the partition was a total nullity and did not affect the excluded heirs, it was not correct for the trial court to hold that their right to challenge the partition had prescribed after two years from its execution.**⁶¹ (Emphasis supplied)

In the assailed partition agreement, the entire property was divided into three lots, Lot No. 3360-A-2-A, Lot No. 3360-A-2-B and Lot No. A-2-C, each containing an area of 19,785 square meters. The share allotted to Francisco, was included in Lot No. 3360-A-2-B, but petitioners and his heirs claim that they have been in possession of the property allotted to respondent situated in that portion denominated as Lot 3360-A-2-C and that they have not given their consent to the subdivision agreement allotting the disputed portion to respondent. In the case of *Pedrosa v. Court of Appeals*,⁶² it was held that a deed of extrajudicial partition executed without including some of the heirs, who had no knowledge of and consent to the same, is fraudulent and vicious. Upon Francisco's death, his right to the property was already transferred to his heirs, herein petitioners, Nolfe, George, Amor, Merlita, and Milagros Velasco who should have been included in the execution of the deed of partition. Considering that the heirs of Francisco have neither knowledge nor participation in the extrajudicial partition, the same is not binding upon them and could not be enforced against them. Hence, respondent does not have the right to recover possession of the disputed property from the heirs of Francisco and the other petitioners who derived their right of possession from the heirs of Francisco.

The extra-judicial partition with subdivision agreement which contains a forged or falsified signature of Francisco, one of the registered co-owners, is unenforceable against his heirs and is only binding upon the other co-owners who participated in the execution of the deed of partition. Clearly, TCT No. 15102, the certificate of title issued to respondent pursuant to the assailed fraudulent partition agreement, may not be enforced against the heirs of Francisco who have not participated and consented to the partition agreement. Thus, TCT No. 15102, being issued based on falsified extra-

⁶¹ Id.

⁶² 406 Phil. 167, 176-177 (2001).

judicial partition is void and cannot be the basis for respondent to recover possession. Consequently, respondent's action to recover possession against petitioners based on the assailed certificate of title over the disputed property must fail.

Here, there is no doubt that the heirs of Francisco and respondent are recognized co-owners of their respective shares of the original property covered by TCT No. (NT-31597) 11472. The only controversy between petitioners and respondent lies in the determination of the specific portion of the property designated as the share of the heirs and children of Francisco *vis-à-vis* the portion of the property allotted to respondent. We note that when respondent's predecessor-in-interest, Leoncia and her brothers and sisters, purchased the disputed property, there was no specific identification of the portion acquired by them but only that they acquired one-third share of a parcel of land, denominated as Lot 3360-A-2. Hence, their respective shares can only be ascertained through the proper partition of the subject property with the participation of all the indispensable parties in this case.

Generally, an action for partition may be seen to simultaneously present two issues: *first*, there is the issue of whether the plaintiff is indeed a co-owner of the property sought to be partitioned; and *second*, assuming that the plaintiff successfully hurdles the first issue, there is the secondary issue of what portion should go which co-owner.⁶³ In this case, a proper partition should be conducted with the participation and consent of the heirs of Francisco, to determine the agreed specific portion of the property pertaining to them and that which is acquired by respondent. The right of possession of the other petitioners who are tenants of the children of Francisco or were allowed by them to occupy the subject lots will only be determined after the portion pertaining to the heirs of Francisco has been ascertained in a partition. For sure, this determination of the specific portions assigned to petitioners and respondent involves a factual issue which must be determined by the trial court. Thus, this Court deems it proper to remand the case to the trial court in order to conduct a partition and to determine the specific portion of the property pertaining to the respective parties. Upon remand, the RTC should comply with the express terms of Section 2, Rule 69 of the Rules of Court, which provides:

Section 2. Order for partition, and partition by agreement thereunder. – If after the trial the court finds that the plaintiff has the right thereto, it shall order the partition of the real estate among the parties in interest. Thereupon the parties may, if they are able to agree, make the partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by the parties, and such partition together with the order of the court confirming the same, shall be recorded in the registry of deeds of the place in which the property is situated.

X X X X

⁶³ Heirs of Morales vs. Agustin, G.R. No. 224849, June 6, 2018.

Section 3. Commissioners to make partition when parties fail to agree. – If the parties are unable to agree upon the partition, the court shall appoint not more than three (3) competent and disinterested persons as commissioners to make the partition, commanding them to set off to the plaintiff and to each party in interest such part and proportion of the property as the court shall direct.

Thus, in order to completely settle the issue, and considering that the portion allotted to Francisco's share in Lot 3360-A-2-B, by way of partition was done without the participation of petitioners, notwithstanding their occupation of a part of Lot 3360-A-2-C, allotted to respondent, We deem it proper to order the partition of the property involving the two lots, Lot 3360-A-2-B and Lot 3360-A-2-C, to arrive at a just and proper adjudication of their respective shares with the consent and acquiescence of all the parties involved.


WHEREFORE, in view of the foregoing, the Decision dated August 31, 2018 and the Resolution dated November 21, 2018 of the Court of Appeals in CA-G.R. No. 151683 are hereby **SET ASIDE**. Transfer Certificate of Title No. 15102 is hereby declared **NULL** and **VOID** for having been issued pursuant to a falsified extrajudicial deed of partition. Accordingly, Civil Case No. (10) 3885, respondent's complaint for recovery of possession against petitioners is hereby **DISMISSED** for lack of merit.

This case is **REMANDED** to the Regional Trial Court of San Jose City, Nueva Ecija, Branch 38 and said court is **DIRECTED** to order the conduct of partition of Lot No. 3360-A-2-B and Lot No. 3360-A-2-C of the original lot covered by Transfer Certificate of Title No. NT-31597 (11472) and determine the portion pertaining to the share of the heirs of Francisco Velasco, namely Nolfe, George, Milagros, Amor, and Merlita, all surnamed Velasco, in the disputed property *vis-a-vis* the portion acquired by respondent Rebecca Magpale. For this purpose, the said court shall appoint Commissioners and proceed in accordance with Sections 2 to 13 of Rule 69 of the Rules of Civil Procedure.

SO ORDERED.


ROSMARI D. CARANDANG
Associate Justice

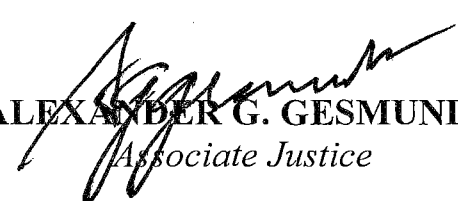
WE CONCUR:




MARVIC MARIO VICTOR F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



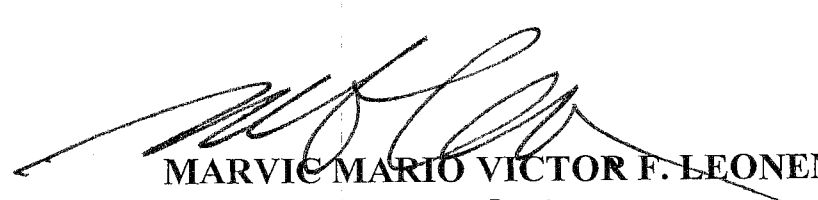
ALEXANDER G. GESMUNDO
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

ATTESTATION

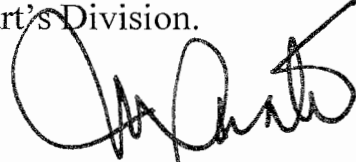
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC MARIO VICTOR F. LEONEN
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.



DIOSDADO M. PERALTA
Chief Justice