



Republic of the Philippines
 SUPREME COURT
 Manila

THIRD DIVISION

**RUPERTA CANO VDA. DE VIRAY
 and JESUS CARLO GERARD
 VIRAY,**

Petitioners,

- versus -

**SPOUSES JOSE USI and AMELITA
 USI,**

Respondents.

G.R. No. 192486

Present:

VELASCO, JR., J., Chairperson,
 BERSAMIN,*
 ABAD,[†]
 PEREZ,** and
 MENDOZA, JJ.

Promulgated:

21 November 2012

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DECISION

VELASCO, JR., J.:

The Case

Petitioners have availed of Rule 45 to assail and nullify the Decision¹ dated July 24, 2009, as effectively reiterated in a Resolution² of June 2, 2010, both rendered by the Court of Appeals (CA) in CA-G.R. CV No. 90344, setting aside the Decision³ dated June 21, 2007 of the Regional Trial Court (RTC), Branch 55 in Macabebe, Pampanga, in Civil Case No. 01-1118(M), an *accion publiciana/reivindicatoria*, which respondents commenced with, but eventually dismissed by, that court.

* Acting member per Special Order No. 1352-A dated November 7, 2012.

** Additional member per Special Order No. 1299 dated August 28, 2012.

¹ *Rollo*, pp. 29-47. Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court) and concurred in by Associate Justices Monina Arevalo-Zeñarosa (now retired) and Priscilla J. Baltazar-Padilla.

² *Id.* at 17-18.

³ Records, pp. 593-602. Penned by Judge Ma. Josephine M. Rosario-Mercado.

The Facts

At the core of the present controversy are several parcels of land which form part of what was once Lot No. 733, Cad-305-D, Masantol Cadastre (Lot 733 hereinafter), registered in the name of Ellen P. Mendoza (Mendoza), married to Moses Mendoza, under Transfer Certificate of Title No. (TCT) 141-RP of the Registry of Deeds of Pampanga. With an area of 9,137 square meters, more or less, Lot 733 is located in Brgy. Bebe Anac, Masantol, Pampanga.

On April 28, 1986, Geodetic Engineer Abdon G. Fajardo prepared a subdivision plan⁴ (Fajardo Plan, for short) for Lot 733, in which Lot 733 was divided into six (6) smaller parcels of differing size dimensions, designated as: Lot 733-A, Lot 733-B, Lot 733-C, Lot 733-D, Lot 733-E, and Lot 733-F consisting of 336, 465, 3,445, 683, 677 and 3,501 square meters, respectively.

The following day, April 29, 1986, Mendoza executed two separate deeds of absolute sale, the first, transferring Lot 733-F to Jesus Carlo Gerard Viray (Jesus Viray),⁵ and the second deed conveying Lot 733-A to spouses Avelino Viray and Margarita Masangcay (Sps. Viray).⁶ The names McDwight Mendoza, Mendoza's son, and one Ernesto Bustos appear in both notarized deeds as instrumental witnesses. As of that time, the Fajardo Plan has not been officially approved by the Land Management Bureau (LMB), formerly the Bureau of Lands. And at no time in the course of the controversy did the spouses Viray and Jesus Viray, as purchasers of Lots 733-A and 733-F, respectively, cause the annotations of the conveying deeds of sale on TCT 141-RP.

Herein petitioner, Ruperta Cano Vda. de Viray (Vda. de Viray), is the surviving spouse of Jesus Viray, who died in April 1992.

⁴ Id. at 553.

⁵ Id. at 234.

⁶ Id. at 93.

As of April 29, 1986, the dispositions made on and/or the ownership profile of the subdivided lots appearing under the Fajardo Plan are as follows:

Lot No.	Area	Conveyances by Mendoza
Lot 733-A	366 square meters	Sold to Sps. Avelino and Margarita Viray
Lot 733-B	465 square meters	Unsold
Lot 733-C	3,445 square meters	Unsold
Lot 733-D	683 square meters	Proposed Road
Lot 733-E	677 square meters	Unsold
Lot 733-F	3,501 square meters	Sold to Jesus Viray

The aforementioned conveyances notwithstanding, Mendoza, Emerenciana M. Vda. de Mallari (Vda. de Mallari) and respondent spouses Jose Usi and Amelita T. Usi (Sps. Usi or the Usis), as purported co-owners of Lot 733, executed on August 20, 1990 a Subdivision Agreement,⁷ or the 1st subdivision agreement (1st SA). Pursuant to this agreement which adopted, as base of reference, the LMB-approved subdivision plan prepared by Geodetic Engineer Alfeo S. Galang (Galang Plan), Lot 733 was subdivided into three lots, i.e., Lots A to C, with the following area coverage: Lots 733-A, 465 square meters, 733-B, 494 square meters, and 733-C, 6,838 square meters. In its pertinent parts, the 1st SA reads:

That the above-parties are the **sole and exclusive owners** of a certain parcel of land situated in the Bo. of Bebe Anac, Masantol, Pampanga, which is known as Lot No. 733 under TCT No. 141 R.P. of the Registry of Deeds of Pampanga, under Psd-No. 03-10-025242;

That for the convenience of the parties hereto that the existing community of the said Lot be terminated and their **respective share be determined** by proper adjudication;

That the parties hereto agreed to subdivided (sic) the above-mentioned property by Geodetic Engineer Alfeo S. Galang, as per tracing cloth and blue print copy of plan Psd-03-025242 and technical description

⁷ Id. at 235.

duly approved by the Bureau of Lands, hereto Attached and made internal part of this instrument in the followin[g] manner:

Lot 733-A - - - - - To Emerencia M. Vda. Mallari;

Lot 733-B - - - - - To Sps. Jose B. Usi and Amelita B. Usi;

Lot 733-C - - - - - To Ellen P. Mendoza⁸ (Emphasis added.)

TCT 141-RP would eventually be canceled and, in lieu thereof, three derivative titles were issued to the following, as indicated: TCT 1584-RP for Lot 733-A to Mallari; TCT 1585-RP⁹ for Lot 733-B to Sps. Usi; and TCT 1586-RP for Lot 733-C to Mendoza.

On April 5, 1991, Mendoza, McDwight P. Mendoza, Bismark P. Mendoza, Beverly P. Mendoza, Georgenia P. Mendoza, Sps. Alejandro Lacap and Juanita U. Lacap, Sps. Nestor Coronel and Herminia Balingit, Sps. Bacani and Martha Balingit, Sps. Ruperto and Josefina Jordan, and Sps. Jose and Amelita Usi executed another Subdivision Agreement¹⁰ (2nd SA) covering and under which the 8,148-sq. m. Lot 733-C was further subdivided into 13 smaller lots (Lot 733-C-1 to Lot 733-C-13 inclusive). The subdivision plan¹¹ for Lot 733-C, as likewise prepared by Engr. Galang on October 13, 1990, was officially approved by the LMB on March 1, 1991.

The 2nd SA partly reads:

1. That we are the **sole and exclusive undivided co-owners** of a parcel of land situated at Barrio Putat and Arabia, Bebe Anac, Masantol, Pampanga, identified as Lot No. 733-C of Psd-No. 03-041669, containing an area of 8,148 sq. meters and covered by T.C.T. No. 1586 R.P. of the Register of Deeds of Pampanga;

2. That it is for the benefit and best interest of the parties herein that the [sic] their co-ownership relation over the above-mentioned parcel of land be terminated and their respective share over the co-ownership be allotted [sic] to them;

⁸ Id.

⁹ Id. at 9.

¹⁰ Id. at 236.

¹¹ Id. at 480.

Wherefore, by virtue of the foregoing premises, we have agreed, as we hereby agree to subdivide our said parcel of land x x x.¹² (Emphasis added.)

Consequent to the subdivision of Lot 733-C in line with the Galang Plan and its subsequent partition and distribution to the respective allottees pursuant to the 2nd SA, the following individuals appeared as owners of the subdivided units as indicated in the table below:

Lot No.	Land area	Partitioned to:
Lot 733-C-1	200 square meters	Sps. Jose and Amelita Usi
Lot 733-C-2	1,000 square meters	Sps. Alejandro & Juanita Lacap
Lot 733-C-3	300 square meters	Sps. Nestor & Herminia Coronel
Lot 733-C-4	500 square meters	Sps. Nestor & Herminia Coronel and Sps. Bacani & Martha Balingit
Lot 733-C-5	400 square meters	Sps. Ruperto & Josefina Jordan
Lot 733-C-6	500 square meters	Ellen, McDwight, Bismark, Beverly and Georgenia Mendoza
Lot 733-C-7	220 square meters	Ellen, McDwight, Bismark, Beverly and Georgenia Mendoza
Lot 733-C-8	1,000 square meters	Ellen, McDwight, Bismark, Beverly and Georgenia Mendoza
Lot 733-C-9	500 square meters	Ellen, McDwight, Bismark, Beverly and Georgenia Mendoza
Lot 733-C-10	1,000 square meters	Sps. Jose and Amelita Usi
Lot 733-C-11	668 square meters	Ellen, McDwight, Bismark, Beverly and Georgenia Mendoza
Lot 733-C-12	550 square meters	Ellen, McDwight, Bismark, Beverly and Georgenia Mendoza
[Lot 733-C-13]	[1,310 square meters]	[Allotted for a proposed road]

¹² Id.

In net effect, the two subdivision agreements paved the way for the issuance, under the Sps. Usi's name, of TCT Nos. 1585-RP,¹³ 2092-RP,¹⁴ and 2101-RP,¹⁵ covering Lots 733-B, 733-C-1 and 733-C-10, respectively.

On the other hand, the subdivision of Lot 733, per the Galang Plan, and the two subdivision agreements concluded based on that plan, virtually resulted in the loss of the identity of what under the Fajardo Plan were Lot 733-A and Lot 733-F. The Sps. Viray and the late Jesus Viray, to recall, purchased Lot 733-A and Lot 733-F, respectively, from Mendoza.

Then came the ocular inspection and survey¹⁶ conducted on Lot 733, as an undivided whole, by Geodetic Engr. Angelito Nicdao of the LMB. Some highlights of his findings:

(a) Lot 733-A of the Fajardo Plan with an area of 336 square meters that Sps. Viray bought is within Lot 733-B (Galang Plan) allotted under 1st SA to Sps. Jose and Amelita Usi; and

(b) Lot 733-F of the Fajardo Plan with an area of 3,501 square meters is almost identical to the combined area of Lots 733-C-8 to 733-C-12 awarded to Ellen Mendoza and her children—McDwight, Bismark, Beverly and Georgenia, and a portion (1,000 square meters) of Lot 733-C-10 of the Galang Plan awarded to Sps. Jose and Amelita Usi.

¹³ Id. at 9.

¹⁴ Id. at 11a.

¹⁵ Id. at 23.

¹⁶ Id. at 238-239; Survey Report dated June 28, 1999. A Sketch Plan was likewise done, id. at 557. The Survey Report presents the following findings:

1. That Lot 733-A with an area of 336 SQ. M. as appearing in the plan marked annex "B" presented by the plaintiff [Vda. de Viray] is within Lot 733-B, Psd-03-025242 with an area of 494 SQ. M. and covered by TCT No. 1585-R.P. in the name of SPS. Jose B. Usi and Amelita T. Usi.

2. That Lot 733-F with an area of 3,501 SQ. M. also appearing in the plan marked annex "B" presented by the plaintiff is almost identical to Lot 733-C-8 to Lot 733-C-12 Psd 03-041699 which is presented by the defendant [Sps. Usi] and portion of Lot 733-C-10 with an area of 1,000 SQ. M. and covered by TCT No. 2101-R.P. is within Lot 733-F. (Attached sketch plan and approved plan.)

3. And Lot 733-C-1 Psd-03-041699 covered by TCT No. 2092-R.P. is the residential area of SPS. Jose B. Usi and Amelita T. Usi, as well as Lot 733-B Psd-03-024242, covered by TCT No. 1585-R.P. is the area for commercial purposes and Lot 733-C-10 Psd-03-041699 covered by TCT No. 2101-R.P. used for hollow blocks making.

As to be expected, the foregoing overlapping transactions involving the same property or portions thereof spawned several suits and counter-suits featuring, in particular, herein petitioners and respondents, viz:

(a) A suit for *Annulment of Deed of Absolute Sale* filed before the RTC, Branch 55 in Macabebe, Pampanga, docketed as Civil Case No. 88-0265-M, in which the Usis and Mendoza, as plaintiffs, assailed the validity and sought the annulment of the deed of absolute sale executed by Mendoza on April 29, 1986 conveying Lot 733-A (Fajardo Plan) to defendants Sps. Viray.

(b) A similar suit for *Annulment of Deed of Absolute Sale* commenced by Mendoza against Jesus Viray before RTC-Br. 55 in Macabebe, Pampanga, docketed as Civil Case No. 88-0283-M, entitled *Ellen P. Mendoza v. Jesus Carlo Gerard Viray*, also seeking to nullify the April 29, 1986 Deed of Absolute Sale conveying Lot 733-F (Fajardo Plan) to Jesus Viray and to declare the plaintiff as entitled to its possession.

The adverted Civil Case Nos. 88-0265-M and 88-0283-M were jointly tried by RTC-Br. 55, which, on August 1, 1989, rendered a Joint Decision¹⁷ finding for the Sps. Viray and Jesus Viray, as defendants, and accordingly dismissing the separate complaints to annul the deeds of sale subject of the joint cases.

On appeal, the CA, in CA-G.R. CV Nos. 24981-82, and later this Court, in its Decision of December 11, 1995, in **G.R. No. 122287** in effect affirmed *in toto* the RTC dismissal decision.¹⁸ The Court, via its Resolution of April 17, 1998, would eventually deny with finality¹⁹ Mendoza and the Usis' motion for reconsideration of the aforesaid December 11, 1995 Decision.

¹⁷ Id. at 158-173. Penned by Judge Reynaldo V. Roura.

¹⁸ Id. at 174-182. Penned by Associate Justice Buenaventura J. Guerrero and concurred in by Associate Justices Cesar D. Francisco and Bernardo Ll. Salas.

¹⁹ Id. at 183.

(c) A forcible entry case filed on November 19, 1991 by the late Jesus Viray against the Sps. Usi before the Municipal Circuit Trial Court (MCTC) in Macabebe, Pampanga, docketed as Civil Case No. 91 (13), entitled *Jesus Carlo Gerard Viray v. Spouses Jose Usi and Emelita Tolentino*, to eject the Usis from Lot 733-F (Fajardo Plan).

On July 29, 1998, the MCTC rendered a Decision²⁰ in favor of Jesus Viray, the dispositive portion of which pertinently reads:

WHEREFORE, premises considered, judgment is hereby rendered for the plaintiff [the late petitioner Jesus Viray], and accordingly, the defendants [Sps. Usi] and any other persons claiming under them are hereby ordered to vacate the subject premises, Lot 733-F embraced in T.C.T. No. 141-R.P., Register of Deeds Pampanga, and Lot 733-A, both situated at Bebe Anac, Masantol, Pampanga and to remove at their own expense, all structures or improvements they built and introduced thereon.

Defendants are likewise sentenced to pay plaintiff the amount of THREE HUNDRED (P300.00) PESOS per month from November 19, 1991, until they vacate the premises, as reasonable compensation for the use and occupation thereof x x x.

x x x x

SO ORDERED.²¹

The Decision eventually became final and executory, the Usis having opted not to appeal it.

(d) A *Petition for Annulment of the MCTC's [July 29, 1998] Decision* filed by the Sps. Usi before the RTC, docketed as Civil Case No. 99-0914M, entitled *Sps. Jose & Amelita Usi v. Hon. Pres. Judge MCTC, Macabebe, Pampanga, the Court Sheriff, MCTC, Macabebe, Pampanga and Ruperta Cano Vda. de Viray*, which decision placed Jesus Viray's widow, Ruperta, in possession of Lot 733-F of the Fajardo Plan.

As may be noted, the spouses Usi, instead of appealing from the July 29, 1998 MCTC Decision in Civil Case No. 91 (13), sought, after its finality,

²⁰ Id. at 17-23. Penned by Judge Valentino B. Nogoy.

²¹ Id. at 23.

its annulment before the RTC. By Decision²² dated June 29, 2000, the RTC dismissed the petition to annul. The Usis' appeal to the CA, docketed as CA-G.R. CV No. 67945, merited the same dismissal action.²³ And finally, in **G.R. No. 154538** (*Spouses Jose and Amelita Usi v. Ruperta Cano Vda. de Viray*), the Court denied, on February 12, 2003, Sps. Usi's petition for review of the CA's Decision. The denial became final on April 8, 2003 and an Entry of Judgment²⁴ issued in due course.

(e) A *Petition for Accion Publiciana/ Reivindicatoria*²⁵ instituted on December 12, 2001 by Sps. Usi against the late Jesus Viray, as substituted by Vda. de Viray, et al., before the RTC in Macabebe, Pampanga, docketed as Civil Case No. 01-1118(M), involving Lots 733-B, 733-C-1 and 733-C-10 (Galang Plan) covered by TCT Nos. 1585-RP, 2092-RP and 2101-RP.

The execution of the July 29, 1998 MCTC Decision in Civil Case No. 91 (13), as the Sps. Usi asserted in their petition, would oust them from their own in fee simple lots even though the dispositive portion of said forcible entry Decision mentioned Lots 733-A and 733-F (Fajardo Plan) and not Lots 733-B, 733-C-1 and 733-C-10 (Galang Plan) which are registered in their names per TCT Nos. 1585-RP, 2092-RP and 2101-RP.

In time, Vda. de Viray moved for the dismissal²⁶ of these *publiciana/ reivindicatoria* actions on grounds, among others, of *litis pendentia* and *res judicata*, on account of (1) the Sps. Usi's appeal, then pending before the CA, from the dismissal by the RTC of Civil Case No. 99-0914M;²⁷ and (2) the August 1, 1989 RTC Decision in Civil Case Nos. 88-0265-M and 88-0283-M, as effectively affirmed by the CA, and finally by the Court in **G.R.**

²² Id. at 282-284. Penned by Judge Reynaldo V. Roura.

²³ Id. at 285-290. Penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Eubulo G. Verzola and Bernardo P. Abesamis.

²⁴ *Rollo*, pp. 49-50.

²⁵ Id. at 2-8, dated December 1, 2001.

²⁶ Records, pp. 36-41, dated January 3, 2002.

²⁷ The petition instituted by the Usis before the RTC to annul the decision of the MCTC's in Civil Case No. 91 (13), a suit for forcible entry.

No. 122287. This motion to dismiss would, however, be denied by the RTC through an Order²⁸ of March 8, 2002, compelling Vda. de Viray to file an answer,²⁹ again invoking in defense the doctrine of *res judicata*. Sps. Usi's Reply to Answer³⁰ contained an averment that their titles over the subject lots are the best evidence of their ownership.

(f) An action for *Cancellation of Titles or Surrender of Original Titles with Damages*³¹ commenced by Vda. de Viray, et al., against the Sps. Usi, Mendoza and eight others before the RTC, Branch 54 in Macabebe, Pampanga, docketed as Civil Case No. (02)-1164(M), seeking the cancellation of TCT Nos. 3614-R.P., 2099-R.P., 2101-R.P., 7502-R.P. and 2103-R.P. covering Lots 733-C-8 to 733-C-12 as subdivided under the 2nd SA of April 5, 1991 which taken together is basically identical to Lot 733-F (Fajardo Plan) sold to Jesus Viray.

To recap, the six (6) cases thus filed involving portions of Lot 733 and their status are:

Civil Case No.	The Parties	Action/Suit for	Subject Lot(s)	Disposition
88-0265-M	Sps. Usi v. Sps. Viray	Annulment of Deed of Absolute Sale	733-A (Fajardo Plan)	Decision in favor of Sps. Viray. Decision is now final.
88-0283-M	Mendoza v. Jesus Viray	Annulment of Deed of Absolute Sale	733-F (Fajardo Plan)	Decision in favor of Sps. Viray. Subject of CA-G.R. CV Nos. 24981-82 – denied. Subject of G.R. No. 122287 – petition denied.
91 (13)	Jesus Viray v. Sps. Usi	Forcible Entry	733-F (Fajardo Plan)	Judgment in favor of Viray. No appeal.
99-0914M	Sps. Usi v. Vda. de Viray	Petition for Annulment of	733-F (Fajardo Plan)	RTC dismissed petition.

²⁸ Records, pp. 69-70.

²⁹ Id. at 143-151, dated March 29, 2003.

³⁰ Id. at 308-311, dated May 5, 2003.

³¹ Id. at 266-274, dated July 1, 2002.

		MCTC Decision in CC No. 91(13)		CA-G.R. CV No. 67945 – appeal dismissed. G.R. No. 154538 – petition denied.
(02)-1164(M)	Vda. de Viray v. Mendoza, et al.	Cancellation of Titles before RTC, Br. 55, Pampanga	Lots 733-C-8 to 733-C-12 (Lot 733-F (Fajardo Plan)	Pending before the RTC.
01-1118(M)	Sps. Usi v. Vda. de Viray	Petition for <i>Accion Publiciana</i> and <i>Reivindicatoria</i> before RTC, Br. 55, Pampanga	733-B, 733-C- 1 and 733-C- 10 (Galang Plan)	Petition dismissed. CA-G.R. CV No. 90344 – reversed RTC Decision. Subject of instant case, G.R. No. 192486

In sum, of the six (6) cases referred to above, the first four (4) have been terminated and the main issue/s therein peremptorily resolved. To a precise point, the matter of the validity of the April 29, 1986 deeds of absolute sale conveying Lots 733-A and 733-F under the Fajardo Plan to Sps. Viray and Vda. de Viray (vice Jesus Viray), respectively, is no longer a contentious issue by force of the Court's Decision in **G.R. No. 122287** effectively upholding the dismissal of the twin complaints to nullify the deeds aforementioned. Likewise, the issue of who has the better possessory right independent of title over the disputed lots has been resolved in favor of Vda. de Viray and the Sps. Viray and against the Usis and veritably put to rest by virtue of the Court's final, affirmatory Decision in **G.R. No. 154538**.

Only two cases of the original six revolving around Lot 733 remained unresolved. The first refers to the petition for review of the decision of the CA in CA-G.R. CV No. 90344 which, in turn, is an appeal from the decision of the RTC in Civil Case No. 01-1118(M), a *Petition for Accion Publiciana/ Reivindicatoria and Damages*, and the second is Civil Case No. (02)-1164(M) for *Cancellation of Titles or Surrender of Original Titles with Damages*. The first case is subject of the present recourse, while the second

is, per records, still pending before the RTC, Branch 54 in Macabebe, Pampanga, its resolution doubtless on hold in light of the instant petition.

In the meantime, the Sps. Usi have remained in possession of what in the Galang Plan are designated as Lots 733-B, 733-C-1 and 733-C-10.

The Ruling of the RTC in Civil Case No. 01-1118(M)

As may be recalled, on June 21, 2007 in Civil Case No. 01-1118(M), the Macabebe, Pampanga RTC rendered judgment dismissing the petition of the Sps. Usi³² for *Accion Publiciana/Reivindicatoria*. In its dismissal action, the RTC held that the Sps. Usi failed to establish by preponderance of evidence to support their claim of title, possession and ownership over the lots subject of their petition.

Following the denial of their motion for reconsideration per the RTC's Order³³ of September 25, 2007, the Sps. Usi interposed an appeal before the CA, docketed as CA-G.R. CV No. 90344.

The Ruling of the CA

On July 24, 2009, the CA rendered the assailed decision, reversing and setting aside the appealed June 21, 2007 RTC decision. The *fallo* of the CA decision reads:

WHEREFORE, the instant appeal is GRANTED and the assailed Decision of the Regional Trial Court, REVERSED and SET ASIDE. Judgment is hereby rendered declaring as legal and valid, the right of ownership of petitioner-appellant [respondents herein] spouses Jose Usi and Amelita T. Usi over Lot Nos. 733-B, 733-C-1 and 733-C-10 covered by TCT Nos. 1585-R.P., 2092-R.P, and 2101-R.P., respectively. Consequently, respondents-appellees [herein petitioners] are hereby ordered to cease and desist from further committing acts of dispossession or from disturbing possession and ownership of petitioners-appellants of the said property as herein described and specified. Claims for damages, however, are hereby denied x x x.

³² Id. at 602.

³³ Id. at 631-634.

SO ORDERED.

The CA predicated its ruling on the interplay of the following premises and findings: (a) the validity of the two (2) duly notarized subdivision agreements, or the 1st SA and 2nd SA, which the LMB later approved; (b) the subdivisions of Lot 733 on the basis of the Galang Plan actually partook the nature of the partition of the shares of its co-owners; (c) what Mendoza conveyed through the April 29, 1986 deeds of absolute sale is only her ideal, abstract or *pro-indiviso* share of Lot 733 of which she had full ownership, the conveyance or sale subject to the eventual delineation and partition of her share; (d) Vda. de Viray has not shown that fraud surrounded the execution of the partition of Lot 733 through the subdivision agreements of August 20, 1990 and April 5, 1991; (e) the certificates of title of the Sps. Usi constitute indefeasible proof of their ownership of Lots 733-B, 733-C-1 and 733-C-10; (f) said certificate entitled the Sps. Usi to take possession thereof, the right to possess being merely an attribute of ownership; (g) Vda. de Viray can only go after the partitioned shares of Mendoza in Lot 733; and (h) the issue of possessory right has been mooted by the judgment of ownership in favor of the Sps. Usi over Lots 733-B, 733-C-1 and 733-C-10.

Vda. de Viray sought but was denied reconsideration per the assailed June 2, 2010 CA Resolution.

Hence, We have this petition.

The Issue

WHETHER OR NOT THE COURT A QUO GRAVELY AND SERIOUSLY ERRED IN REVERSING AND SETTING ASIDE THE DECISION OF THE [RTC] DISMISSING RESPONDENTS' PETITION.³⁴

³⁴ *Rollo*, p. 8.

The Court's Ruling

In the main, the issue tendered in this proceeding boils down to the question of whether the two (2) subdivision agreements dated August 20, 1990 and April 5, 1991, respectively, partake of a *bona fide* and legally binding partition contracts or arrangements among co-owners that validly effectuated the transfer of the subject lots to respondent spouses Usi. Intertwined with the main issue is the correlative question bearing on the validity of the deeds of absolute sale upon which the petitioners hinged their claim of ownership and right of possession over said lots.

The Court rules in favor of petitioners.

Petitioners contend first off that the CA erred in its holding that the partitions of Lot 733 and later of the divided unit Lot 733-C following the Galang Plan were actually the partitions of the *pro-indiviso* shares of its co-owners effectively conveying to them their respective specific shares in the property.

We agree with petitioners.

First, the CA's holding aforestated is neither supported by, nor deducible from, the evidentiary facts on record. He who alleges must prove it. Respondents have the burden to substantiate the *factum probandum* of their complaint or the ultimate fact which is their claimed ownership over the lots in question. They were, however, unsuccessful in adducing the *factum probans* or the evidentiary facts by which the *factum probandum* or ultimate fact can be established. As shall be discussed shortly, facts and circumstances obtain arguing against the claimed co-ownership over Lot 733.

Second, the earlier sale of Lot 733-A and Lot 733-F (Fajardo Plan) on April 29, 1986 was valid and effective conveyances of said portions of Lot

733. The subsequent transfers to the Sps. Usi of substantially the same portions of Lot 733 accomplished through the subdivision agreements constitute in effect double sales of those portions. This aberration was brought to light by the results of the adverted survey conducted sometime in June 22, 1999 of Engr. Nicdao of the LMB.

Third, even granting *arguendo* that the subject subdivision agreements were in fact but partitions of the *pro-indiviso* shares of co-owners, said agreements would still be infirm, for the Sps. Viray and Vda. de Viray (vice Jesus Viray) were excluded from the transaction. Like Vda. de Mallari, Sps. Viray and Jesus Viray had validly acquired and, hence, owned portions of Lot 733 and are themselves co-owners of Lot 733.

And *last*, over and above the foregoing considerations, the instant petition must be resolved in favor of petitioners, the underlying reivindicatory and possessory actions in Civil Case No. 01-1118 (M) being barred by the application of the *res judicata* principle. What is more, the issue of superior possessory rights of petitioner Vda. de Viray over Lot 733-F (Fajardo Plan) has been laid to rest with finality in Civil Case No. 91 (13). Besides, Sps. Usi's action to assail the final and executory July 29, 1998 MCTC Decision in Civil Case No. 91 (13) has been denied with finality in **G.R. No. 154538**.

The subdivision agreements not partition of co-owners

Partition, in general, is the separation, division, and assignment of a thing held in common by those to whom it may belong.³⁵

Contrary to the finding of the CA, the subdivision agreements forged by Mendoza and her alleged co-owners were not for the partition of *pro-indiviso* shares of co-owners of Lot 733 but were actually

³⁵ *Heirs of Cesar Marasigan v. Marasigan*, G.R. No. 15678, March 14, 2008, 548 SCRA 409, 445; citing *Noceda v. Court of Appeals*, G.R. No. 119730, September 2, 1999, 313 SCRA 504, 517 and *Cruz v. Court of Appeals*, G.R. No. 122904, April 15, 2005, 456 SCRA 165, 171.

conveyances, disguised as partitions, of portions of Lot 733 specifically Lots 733-A and 733-B, and portions of the subsequent subdivision of Lot 733-C.

Notably, after a full-blown trial in Civil Case No. 01-1118 (M) wherein the spouses Usi merged an *accion publiciana* with an *accion reivindicatoria* in one petition, the RTC held that Sps. Usi failed to prove their case. However, in CA G.R. CV No. 90344, an appeal from said RTC decision, the CA, while acknowledging the existence of the April 29, 1986 deeds of absolute sale, nonetheless accorded validity to the August 20, 1990 and April 5, 1991 subdivision agreements. This is incorrect. The CA held that the two (2) subdivision agreements, as notarized, enjoy the presumption of regularity and effectuated the property transfers covered thereby, obviously glossing over the *mala fides* attendant the execution of the two subdivision agreements. It cannot be overemphasized enough that the two (2) deeds of absolute sale over portions of substantially the same parcel of land antedated the subdivision agreements in question and their execution acknowledged too before a notary public.

The appellate court found and so declared the subdivision agreements valid without so much as explaining, let alone substantiating, its determination. The CA never elucidated how the Sps. Usi became, in the first place co-owners, with Mendoza over Lot 733. On its face, TCT 141-RP covering Lot 733 was in the name of spouses Ellen and Moses Mendoza only. Then too, the CA did not explain how under the 2nd SA the Sps. Usi, the Sps. Lacap, the Sps. Balingit and the Sps. Jordan became co-owners with Mendoza over Lot 733-C, when Mendoza, under the 1st SA, virtually represented herself as the sole owner of Lot 733-C.

A scrutiny of the records with a fine-tooth comb likewise fails to substantially show a partition of Lot 733 by its co-owners. While the 1st and 2nd SAs purport to be deeds of partition by and among co-owners of the lot/s

covered thereby, partition as a fact is belied by the evidence extant on record. Consider:

It is undisputed that TCT 141 RP covering Lot 733 was originally in the name of Ellen P. Mendoza and husband, Moses.³⁶ The joint decision of the RTC in Civil Case Nos. 88-0265 and 88-0283-M narrated how the couple came to own Lot 733, thus: “Lot 733 was acquired by Spouses Moses Mendoza and Ellen Mendoza and Spouses Pacifico Bustos and Maria Roman from Donato Lacap for P5,000.00 (Exh. “1”) in 1977. After two years, Spouses Pacifico Bustos and Maria Roman sold one-half pro-indiviso portion of Lot 733 to spouses Moses Mendoza and Ellen Mendoza for P6,000.00 (Exh. “2”) and the acquisition cost of the whole lot is only P8,500.00 and x x x.”³⁷

Mendoza and the Sps. Usi, in their separate complaints for annulment of deeds of sale, docketed as Civil Case Nos. 88-0265 and 88-0283-M of the Macabebe, Pampanga RTC, alleged that Moses Mendoza authorized Atty. Venancio Viray to sell the subject lot for at least PhP 200 per square meter, and that after his (Moses’) death on April 5, 1986, Lot 733 was included in the proceedings for the settlement of his estate docketed as Sp. Proc. Case No. 86-0040-M of the RTC, Branch 55 in Macabebe, Pampanga, The events thus alleged by Mendoza and the Usis can be gleaned from the final and executory joint decision in Civil Case Nos. 88-0265-M and 88-0283-M which petitioner Vda. de Viray attached as Annex “5” in her Answer with Counterclaim³⁸ to the Usis’ petition for *accion publicana/reivindicatoria*. Said Joint Decision amply shows, in gist, the allegations³⁹ of both the Sps.

³⁶ Records, p. 165. The August 1, 1989 Joint Decision (Civil Case Nos. 88-0265-M and 88-0283-M), p. 8 reads:

x x x. That Lot 733, Cad 305-D registered and described under TCT No. 141-R (Exhibit “E”) is **admitted by both parties as a conjugal property of Spouses Moses G. Mendoza and Ellen Mendoza** (Exhs. “C” and “D” – plaintiffs, “1” and “2” – defendants) and the land described in the Deeds of Absolute Sale (Exhs. “A” and “B”) are portions of Lot 733. x x x (Emphasis supplied.)

³⁷ Id. at 166.

³⁸ Id. at 143-151, dated March 29, 2003.

³⁹ Id. at 158-162. The August 1, 1989 Joint Decision in Civil Case Nos. 88-0265-M and 88-0283-M shows:

JOINT DECISION

These are actions for Annulment of Deed of Sale with Damages filed by plaintiffs spouses Jose and Amelita Usi and Ellen P. Mendoza against the Spouses Avelino Viray and Margarita Masangcay in

Civil Case No. 88-0265-M, and for Annulment of Deed of Sale, Recovery of Possession with Damages filed by Ellen P. Mendoza against Jesus Carlo Gerard Viray and spouses Venancio Viray and Cecilia Viray in Civil Case No. 88-0283-M.

The plaintiffs in Civil Case No. 88-0265-M [Sps. Usi and Mendoza] claim that on April 29, 1986, the defendants made it appear that plaintiff, Ellen P. Mendoza sold to them (defendants), a parcel of land, Lot No. 733-A being a portion of Lot 733, Cad-305-D, situated in Bebe Anac, Masantol, Pampanga, in consideration of the sum of SIX THOUSAND (P6,000.00) PESOS by way of Deed of Absolute Sale executed before Notary Public Venancio Viray of Masantol, Pampanga and registered in his Notarial Book as Doc. No. 269; Page No. 54; Book No. I; series of 1986. Plaintiff Ellen Mendoza further alleged that she has no knowledge or information whatsoever about the due execution of the Deed of Sale aforementioned and does not remember having executed any contract with the defendants nor seen them; that the signature appearing in the document is a forged and falsified signature and if ever that is her signature it was placed there thru fraud, trick and other device, but certainly not intended for the transfer or sale of her conjugal share in the estate of her late husband Moses Mendoza for the reason that the estate has not been settled and partitioned by her co-heirs, the settlement of which is still pending before this Court; that said Deed of Sale is now being made as basis for the possession in an Unlawful Detainer in the Municipal Circuit Trial Court of Macabebe-Masantol, Pampanga; that Atty. Venancio Viray before whom the alleged Deed of Absolute Sale was executed and notarized is related to the defendants in the first degree and that prior to the death of Moses Mendoza, (previous owner of the lot in question), Atty. Viray was their family lawyer and was appointed by the deceased Moses Mendoza as an exclusive agent to sell the property described as Lot No. 733 Cad-305-D of which the land in question is a portion, for a price not less than P200.00 per square meter; that to give more proofs of deception and forgery committed by defendants and Notary Public Atty. Venancio Viray at the time when he was still the family lawyer, the Res. Cert. No. 113574 issued on April 28, 1986 at Masantol, Pampanga allegedly exhibited by plaintiff Ellen P. Mendoza is likewise a forgery and a falsified residence certificate because the real and true residence certificate of Ellen Mendoza was taken in San Fernando, Pampanga; that plaintiff spouses Jose Usi and Amelita Usi and Atty. Venancio Viray executed and entered into a temporary deed of sale respecting a portion of said lot in question on March 25, 1984, when Atty. Venancio Viray representing himself to the spouses Jose Usi and Amelita Usi to be with power and authority to sell said lot from said owner Moses Mendoza, accepted by way of down payment from said plaintiffs-spouses the sum of P30,000.00 at P500.00 per square meter of that said portion of the said parcel of land with an area of 308 square meters and from the time when the owner Moses Mendoza died on April 5, 1986 up to the present, the corresponding Deed of Sale in favor of the plaintiffs have [sic] not been executed by Atty. Venancio Viray nor returned the down payment of P30,000.00; that after the execution of the temporary deed (Annex "B"), plaintiffs constructed their hardware store on the said lot subject of the deed; on November 28, 1985, Atty. Venancio Viray filed an Unlawful Detainer case before the MCTC of Macabebe-Masantol against plaintiffs-spouses Jose Usi and Amelita Usi which case was dismissed by Hon. Nicanor D. Guevara, Presiding Judge of said Court on October 22, 1986; that plaintiff Ellen Mendoza has executed a Deed of Absolute Sale in favor of plaintiff spouses Jose and Amelita Usi pertaining to the lot in question and confirmation of the said deed of sale is still pending approval by this Court.

The plaintiff [sic] prayed that the subject Deed of Absolute Sale be declared null and void and the defendants be ordered to pay them P20,000.00 as moral damages and P10,000.00 as exemplary damages, plus P10,000.00 attorney's fees and to pay the costs of this suit.

x x x x

The plaintiff in Civil Case No. 88-0283-M [Mendoza] alleges that defendant Jesus Gerard Carlo Viray is a minor and is being named defendant in said complaint through his parents Vanancio M. Viray and Cecilia N. Viray, husband and wife, Filipinos and residents of Poblacion, Masantol, Pampanga; that one of the claims filed against the estate of Moses Mendoza in Sp. Proc. Case No. 86-0040(M), is the claim of defendants by virtue of a Deed of Absolute Sale allegedly executed by the plaintiff on April 29, 1986 at Masantol, Pampanga, in favor of the defendant Jesus Carlo Gerard N. Viray for the sum of Twenty-Five Thousand (P25,000.00) Pesos over a parcel of land being a portion of Lot No. 733, Cad-305-D, situated in Bebe Anac, Masantol, Pampanga, which is a portion of her conjugal share in said lot and executed before Notary Public Venancio Viray (his natural father); that plaintiff has no knowledge whatsoever about the execution of the deed of sale aforementioned and does not remember having executed any contract of sale with the defendant for the sale of the said parcel of land, which belongs to the intestate estate of her deceased husband, Moses Mendoza, the settlement of which is still pending; that the signature of Ellen Mendoza on the alleged deed of sale is a forgery and falsified signature and if ever that is the signature of plaintiff it was never intended for a deed of absolute sale of the lot described in the document or was placed in said document thru fraud, trick and other device, but certainly not intended for the transfer or sale of her conjugal share in the estate; that Atty. Venancio Viray before whom the alleged deed of absolute sale was executed and notarized is the natural father of the alleged vendee and prior to the death of Moses G. Mendoza previous owner of the lot allegedly sold, Atty. Viray was their family lawyer and was appointed by the deceased Moses Mendoza as exclusive agent to sell Lot No. 733 for a price not less than P200.00 per square meter and the over price shall be his commission; that the alleged consideration of P25,000.00 is simulated and fictitious and without any consideration, for the vendee-defendant never paid plaintiff-vendor any amount; that the residence certificate allegedly exhibited by plaintiff before Notary Public Atty. Venancio Viray, who at the time it was allegedly executed was their family lawyer, is likewise a forgery

Usi and Mendoza in Civil Case Nos. 88-0265-M and 88-0283-M asserting said facts. And these assertions, made in their complaints, are judicial admissions under Sec. 4,⁴⁰ Rule 129 of the Rules of Court.

Unlike Vda. de Mallari who, per Vda. de Viray's own admission, purchased the 416-square meter portion of Lot 733 on February 14, 1984, thus constituting her (Vda. de Mallari) as co-owner of Mendoza to the extent of said area purchased,⁴¹ **the Sps. Usi have not been shown to be co-owners with Mendoza.** There is simply nothing in the records to demonstrate how the Sps. Usi became co-owners of Lot 733 before or after the death of Moses Mendoza. Elsewise put, no evidence had been adduced to show how the alleged interest of the Sps. Usi, as co-owner, came about, except for the bare assertions in the 1st and 2nd SAs that they co-owned Lot 733 and Lot 733-C (Galang Plan).

It is fairly clear that Lot 733, even from the fact alone of its being registered under the name of the late Moses Mendoza and Ellen Mendoza, formed part of the couple's conjugal property at the time Moses' demise on April 5, 1986. Equally clear, too, is that Vda. de Mallari became a co-owner

and a fictitious residence certificate because her (plaintiff's) true residence certificate for 1986 was taken by her in San Fernando, Pampanga which was duly executed and signed by her, not the residence certificate No. 11305754 issued on April 28, 1986 at Masantol, Pampanga which is not signed and incomplete; that the forgery and deception was perpetrated by Atty. Viray as a father and Notary Public who notarized the deed of sale by making it appear that his son-vendee is of legal age when in truth he is still a minor and, therefore, cannot yet give consent to a contract of sale which is a bilateral contract, therefore, there being no consent on both the vendee and the vendor, the deed of absolute sale allegedly executed by the plaintiff and defendant Jesus Carlo Gerard Nunga Viray is null and void from the beginning; that when the deed of absolute sale was allegedly executed on April 29, 1986, the estate of Moses G. Mendoza has not yet been settled and still pending settlement before this Court; that notwithstanding repeated demands, the defendants failed and refused and still fail and refuse to return the possession of the land subject of the complaint x x x.

The plaintiff prayed that the subject Deed of Absolute Sale dated April 29, 1986 be declared null and void and the defendants be ordered to vacate the land in question and declare possession thereof to the plaintiff, and to pay the plaintiff such unpaid rental for the use and occupation of the subject land in the amount of P1,500.00 per month, plus actual damage incurred by virtue of the excavation of the land in the amount of P10,000.00; P20,000.00 as moral damages; P5,000.00 as exemplary damages and P10,000.00 as attorney's fees.

⁴⁰ SEC. 4. *Judicial admissions.* — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

⁴¹ Records, p. 166. The August 1, 1989 Joint Decision (Civil Case Nos. 88-0265-M and 88-0283-M), p. 9 reads:

x x x Subsequently, on February 14, 1984, spouses Moses Mendoza and Ellen Mendoza sold a portion (416 square meters) to Emerencia M. Vda. de Mallari and the corresponding Deed of Sale was registered with the Office of the Register of Deeds of Pampanga and annotated at the face of the title (TCT

of Lot 733 by virtue of the purchase of its 416-square meter portion on February 14, 1984, during the lifetime of Moses. Be that as it may and given that the Sps. Usi have not been shown to be co-owners of Mendoza and Vda. de Mallari prior to the sale by Mendoza on April 29, 1986 of Lots 733-A and 733-F (Fajardo Plan) to the Sps. Viray and Jesus Viray, respectively, then the execution of the 1st SA on August 20, 1990 could not have been a partition by co-owners of Lot 733. The same could be said of the 2nd SA of April 5, 1991 vis-à-vis Lot 733-C, for the records are similarly completely bereft of any evidence to show on how the purported participating co-owners, namely Sps. Usi, the Sps. Lacap, the Sps. Balingit and the Sps. Jordan became co-owners with Mendoza and her children, i.e., McDwight, Bismark, Beverly and Georzenia.

**The April 29, 1986 Deeds of Absolute Sale
of Lot 733-A and Lot 733-F are Valid**

It must be noted that the RTC, in its decision in Civil Case Nos. 88-0265-M and 88-0283-M, upheld the validity of the separate April 29, 1986 deeds of absolute sale of Lots 733-A and 733-F (Fajardo Plan). The combined area of Lot 733-A (366 sq. m.) and Lot 733-F (3,501) is less than one half of the total area coverage of Lot 733 (9,137). The sale of one-half portion of the conjugal property is valid as a sale. It cannot be gainsaid then that the deeds, executed as they were by the property owner, were sufficient to transfer title and ownership over the portions covered thereby. And the aforesaid RTC decision had become final and executory as far back as December 11, 1995 when the Court, in **G.R. No. 122287**, in effect, affirmed the RTC decision. Likewise, the MCTC's decision in Civil Case No. 91 (13) for forcible entry, declaring Vda. de Viray, as successor-in-interest of Jesus Viray, as entitled to the physical possession, or possession *de facto*, of Lot 733-F (Fajardo Plan), and the RTC's decision in Civil Case No. 99-0914M, disposing of the belated appeal of the MCTC decision in the forcible

No. 141-R). Therefore, Emerencia Vda. de Mallari is a co-owner to the extent of 416 square meters. (Emphasis supplied.)

entry case, have become final and executory on February 12, 2003 under **G.R. No. 154538**.

In light of the convergence of the foregoing disposed-of cases, there can be no question as to the ownership of the Sps. Viray and Vda. de Viray (vice Jesus Viray) over the specified and delineated portions of Lot 733 which they purchased for value from Mendoza. And Mendoza, as vendor, was bound to transfer the ownership of and deliver, as well as warrant, the thing which is the object of the sale.⁴²

In the instant case, the April 29, 1986 deeds of absolute sale indeed included the technical description of that part of Lot 733 subject of the transactions, thus clearly identifying the portions (Lots 733-A and 733-F under the Fajardo Plan) sold by Mendoza to the Sps. Viray and Vda. de Viray (vice Jesus Viray). Hence, there can be no mistaking as to the identity of said lots.

The deeds in question were, to reiterate, not only valid but constitute prior conveyances of the disputed portions of Lot 733. Accordingly, the subsequent conveyances in 1990 and 1991 to the Sps. Usi through transfer contracts, styled as subdivision agreements, resulted, in effect, in a double sale situation involving substantially the same portions of Lot 733.

The survey report of LMB surveyor, Engr. Nicdao, would support a finding of double sale. His report, as earlier indicated, contained the following key findings: (1) Lot 733-A (Fajardo Plan) with an area of 336 square meters thus sold to the Sps. Viray is within Lot 733-B (Galang Plan), the part assigned to Sps. Usi under the division; and (2) Lot 733-F (Fajardo Plan) with an area of 3,501 square meters is almost identical to the combined area of Lots 733-C-8 to 733-C-12 awarded to Ellen Mendoza and her

⁴² *Asset Privatization Trust v. T.J. Enterprises*, G.R. No. 167195, May 8, 2009, 587 SCRA 481, 488; citing CIVIL CODE, Art. 1495.

children, McDwight, Bismark, Beverly and Georgenia, and a portion (1,000 square meters) of Lot 733-C-10 (Galang Plan) adjudicated to Sps. Usi.

A double sale situation, which would call, if necessary, the application of Art. 1544 of the Civil Code, arises when, as jurisprudence teaches, the following requisites concur:

- (a) The two (or more) sales transactions must constitute valid sales;
- (b) The two (or more) sales transactions must pertain to exactly the same subject matter;
- (c) The two (or more) buyers at odds over the rightful ownership of the subject matter must each represent conflicting interests; and
- (d) The two (or more) buyers at odds over the rightful ownership of the subject matter must each have bought from the very same seller.⁴³

From the facts, there is no valid sale from Mendoza to respondents Usi. The parties did not execute a valid deed of sale conveying and transferring the lots in question to respondents. What they rely on are two subdivision agreements which do not explicitly chronicle the transfer of said lots to them. Under the 1st SA, all that can be read is the declaration that respondents, together with others, are the “sole and exclusive owners” of the lots subject of said agreement. Per the 2nd SA, it simply replicates the statement in the 1st SA that respondents are “sole and exclusive undivided co-owners” with the other parties. While respondents may claim that the SAs of 1990 and 1991 are convenient conveying vehicles Mendoza resorted to in disposing portions of Lot 733 under the Galang Plan, the Court finds that said SAs are not valid legal conveyances of the subject lots due to non-existent prestations pursuant to Article 1305 which prescribes “a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service.” The third element of cause of the obligation which is established under Art. 1318 of the Civil Code is likewise visibly absent from the two SAs. The transfer of title to respondents based on said SAs is flawed, irregular, null and void. Thus the two SAs are not “sales transactions” nor “valid sales” under Art. 1544 of the

⁴³ *Mactan-Cebu International Airport Authority v. Tirol*, G.R. No. 171535, June 5, 2009, 588 SCRA 635, 644; citing *Cheng v. Genato*, G.R. No. 129760, December 29, 1998, 300 SCRA 722, 739-740.

Civil Code and, hence, the first essential element under said legal provision was not satisfied.

Given the above perspective, the Sps. Viray and Vda. de Viray (vice Jesus Viray) have, as against the Sps. Usi, superior rights over Lot 733-A and Lot 733-F (Fajardo Plan) or portions thereof.

Res Judicata Applies

Notably, the Sps. Viray and Vda. de Viray, after peremptorily prevailing in their cases supportive of their claim of ownership and possession of Lots 733-A and 733-F (Fajardo Plan), cannot now be deprived of their rights by the expediency of the Sps. Usi maintaining, as here, an *accion publiciana* and/or *accion reivindicatoria*, two of the three kinds of actions to recover possession of real property. The third, *accion interdictal*, comprises two distinct causes of action, namely forcible entry and unlawful detainer,⁴⁴ the issue in both cases being limited to the right to physical possession or possession *de facto*, independently of any claim of ownership that either party may set forth in his or her pleadings,⁴⁵ albeit the court has the competence to delve into and resolve the issue of ownership but only to address the issue of priority of possession.⁴⁶ Both actions must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand to vacate following the expiration of the right to possess, in case of unlawful detainer.⁴⁷

When the dispossession or unlawful deprivation has lasted more than one year, one may avail himself of *accion publiciana* to determine the better right of possession, or possession *de jure*, of realty independently of title.

⁴⁴ *Javier v. Veridiano II*, G.R. No. 48050, October 10, 1994, 237 SCRA 565, 572.

⁴⁵ *Presco v. Court of Appeals*, G.R. No. 82215, December 10, 1990, 192 SCRA 232, 238.

⁴⁶ *De Luna v. Court of Appeals*, G.R. No. 94490, August 6, 1992, 212 SCRA 276, 279.

⁴⁷ *Javier v. Veridiano II*, supra note 44.

On the other hand, *accion reivindicatoria* is an action to recover ownership which necessarily includes recovery of possession.⁴⁸

Now then, it is a hornbook rule that once a judgment becomes final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment.⁴⁹ Any attempt to reopen a close case would offend the principle of *res judicata*.

Res judicata embraces two concepts or principles, the first is designated as “bar by prior judgment” and the other, “conclusiveness of judgment.” *Tiongson v. Court of Appeals*⁵⁰ describes the effects of *res judicata*, as a bar by prior judgment, in the following manner:

There is no question that where as between the first case where the judgment is rendered and the second where such judgment is invoked, there is identity of parties, subject matter and cause of action, the judgment on the merits in the first case constitutes an absolute bar to the subsequent action not only as to every matter which was offered and received to sustain or defeat the claim or demand, but also as to any other admissible matter which might have been offered for that purpose and to all matters that could have been adjudged in that case. x x x

Res judicata operates as bar by prior judgment if the following requisites concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and second action, identity

⁴⁸ *Bokingo v. Court of Appeals*, G.R. No. 161739, May 4, 2006, 489 SCRA 521, 532; citing *Ganila v. Court of Appeals*, G.R. No. 150755, June 28, 2005, 461 SCRA 435, 445.

⁴⁹ *Vios v. Pantangco, Jr.*, G.R. No. 163103, February 6, 2009, 578 SCRA 129, 143-144; citing *Coca-Cola Bottlers Philippines, Inc., Sales Force Union-PTGWO-BALAIS v. Coca-Cola Bottlers Philippines, Inc.*, G.R. No. 155651, July 28, 2005, 464 SCRA 507, 513-514. See also *Dacanay v. Yrastorza, Sr.*, G.R. No. 150664, September 3, 2009, 598 SCRA 20, 25; citing *Ram’s Studio and Photographic Equipment, Inc. v. Court of Appeals*, G.R. No. 134888, December 1, 2000, 346 SCRA 691; and *Obieta v. Cheok*, G.R. No. 170072, September 3, 2009, 598 SCRA 86, 91; citing *Coloso v. Garilao*, G.R. No. 129165, October 30, 2006, 506 SCRA 25, 50.

⁵⁰ No. L-35059, February 27, 1973, 49 SCRA 429, 434-435.

of parties, of subject matter and of causes of action.⁵¹ All the requisites are present in the instant case.

The better right to possess and the right of ownership of Vda. de Viray (vice Jose Viray) and the Sps. Viray over the disputed parcels of land cannot, by force of the *res judicata* doctrine, be re-litigated thru actions to recover possession and vindicate ownership filed by the Sps. Usi. The Court, in **G.R. No. 122287** (*Ellen P. Mendoza and Jose and Amelita Usi v. Spouses Avelino Viray and Margarita Masangcay and Jesus Carlo Gerard Viray*), has in effect determined that the conveyances and necessarily the transfers of ownership made to the Sps. Viray and Vda. de Viray (vice Jose Viray) on April 29, 1986 were valid. This determination operates as a bar to the Usis reivindicatory action to assail the April 29, 1986 conveyances and precludes the relitigation between the same parties of the settled issue of ownership and possession arising from ownership. It may be that the spouses Usi did not directly seek the recovery of title or possession of the property in question in their action for annulment of the deed sale of sale. But it cannot be gainsaid that said action is closely intertwined with the issue of ownership, and affects the title, of the lot covered by the deed. The prevalent doctrine, to borrow from *Fortune Motors, (Phils.), Inc. v. Court of Appeals*,⁵² “is that an action for the annulment or rescission of a sale of real property does not operate to efface the fundamental and prime objective and nature of the case, which is to recover said real property.”

And lest it be overlooked, the Court, in **G.R. No. 154538** (*Spouses Jose and Amelita Usi v. Ruperta Cano Vda. de Viray*), again in effect ruled with finality that petitioner Vda. de Viray has a better possessory right over Lot 733-F (Fajardo Plan). Thus, the Court’s decision in **G.R. No. 122287** juxtaposed with that in **G.R. No. 154538** would suffice to bar the Sps. Usi’s *accion publiciana*, as the spouses had invoked all along their ownership over the disputed Lot 733-F as basis to defeat any claim of the right of

⁵¹ *Agustin v. Delos Santos*, G.R. No. 168139, January 20, 2009, 576 SCRA 576, 586 (citations omitted).

⁵² G.R. No. 76431, October 16, 1989, 178 SCRA 564, 568.


possession. While an *accion reivindicatoria* is not barred by a judgment in an ejectment case, such judgment constitutes a bar to the institution of the *accion publiciana*, because the matter of possession between the same parties has become *res judicata* and cannot be delved into in a new action.⁵³

The doctrine of *res judicata* is a basic postulate to the end that controversies and issues once decided on the merits by a court of competent jurisdiction shall remain in repose. It is simply unfortunate that the RTC, in Civil Case No. 01-1118(M), did not apply the doctrine of *res judicata* to the instant case, despite petitioners, as respondents below, had raised that ground both in their motion to dismiss and answer to the underlying petition.

WHEREFORE, the instant petition is **GRANTED**. The assailed Decision dated July 24, 2009 and Resolution dated June 2, 2010 of the Court of Appeals in CA-G.R. CV No. 90344 are **REVERSED** and **SET ASIDE**. The Decision dated June 21, 2007 in Civil Case No. 01-1118(M) of the RTC, Branch 55 in Macabebe, Pampanga is accordingly **REINSTATED**.

Costs against respondents.

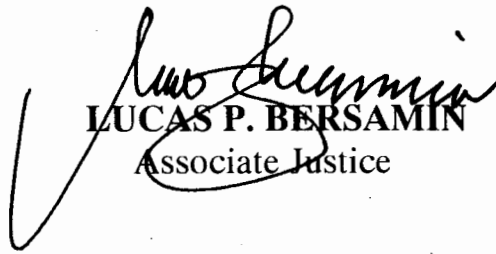
SO ORDERED.




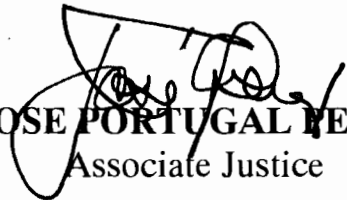
PRESBITERO J. VELASCO, JR.
Associate Justice

⁵³ 2 Tolentino, CIVIL CODE OF THE PHILIPPINES 227; citing *Del Rosario v. Celosia*, 26 Phil. 404 (1913).

WE CONCUR:


LUCAS P. BERSAMIN
 Associate Justice



ROBERTO A. ABAD
 Associate Justice


JOSE PORTUGAL PEREZ
 Associate Justice


JOSE CATRAL MENDOZA
 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

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.


MARIA LOURDES P. A. SERENO
 Chief Justice