



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **July 6, 2022** which reads as follows:*

“G.R. No. 206376 (Genaro Tabar, Gerardo Tabar, and Josephine Tabar v. Tarcela Rago Abella-Abelgas, for herself, Beatriz* Rabadon Guy, representing Cipriana R. Rabadon [Deceased], Eleuteria Cabinatan Palomares and Cristita Cabinatan, representing Natividad Rago Abella-Cabinatan [Deceased], Apolonia A. Luague, Florencia A. Sabella, and Albino A. Alipio, representing Raymunda Alipio [Deceased]).** – Before this Court is a Petition for Review on *Certiorari*¹ assailing the Decision² dated October 19, 2011 and the Resolution³ dated February 5, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 05028 which affirmed the Decision⁴ dated December 8, 2009 and the Order⁵ dated March 23, 2010 of the Regional Trial Court of Cebu City, Branch 16 (RTC) which granted the order of partition of Lot No. 17466.

The case stemmed from the complaint⁶ for partition filed by respondents Tarcela Rago Abella-Abelgas (Tarcela), Beatriz Rabadon Guy, representing Cipriana R. Rabadon (Cipriana [deceased]), Eleuteria Cabinatan Palomares, and Cristita Cabinatan, representing Natividad Rago Abella-Cabinatan (Natividad [deceased]), Apolonia A. Luague, Florencia A. Sabella and Albino A. Alipio, representing Raymunda Rago Alipio (Raymunda

* “Beatiz” in some parts of the *rollo*.

** “Aplonia” in some parts of the *rollo*.

¹ *Rollo*, pp. 5–44.

² *Id.* at 46–67. Penned by Associate Justice Gabriel T. Ingles, with the concurrence of Associate Justices Pampio A. Abarintos and Eduardo B. Peralta, Jr.

³ *Id.* at 69–70. Penned by Associate Justice Gabriel T. Ingles, with the concurrence of Associate Justices Pampio A. Abarintos and Carmelita Salandanan-Manahan.

⁴ *Id.* at 245–251. Penned by Presiding Judge Sylva G. Aguirre Paderanga.

⁵ *Id.* at 291–297.

⁶ *Id.* at 71–76.

[deceased]; collectively, respondents) against petitioners Genaro Tabar⁷ (Genaro), Gerardo Tabar⁸ (Gerardo), and Josephine Tabar (Josephine; collectively, petitioners), as well as Bayol Tabar, Bebot Tabar, and Judith Tabar before the Municipal Trial Court in Cities of the City of Cebu, Branch 5 (MTCC) on August 3, 2007.⁹ Respondents claimed that they were heirs of the late Juana Rago (Juana) who died sometime in 1962. Tarcela was the only surviving child of the late Juana while the other respondents were Juana's grandchildren, representing their deceased parents Cipriana, Natividad, and Raymunda.¹⁰

Juana owned a parcel of land in Buhisan, San Nicolas, Cebu City, consisting of 1,800 square meters (sq. m.) identified as Lot No. 17466 with the total assessed value of ₱1,620.00. As proof of Juana's ownership, respondents presented a Certification¹¹ issued by the Department of Environment and Natural Resources (DENR) Lands Management Services stating that Juana had the parcel of land surveyed. Upon Juana's death sometime in 1962, her children, Tarcela, Cipriana, Natividad, Raymunda, Roman R. Abella (Roman), and Ana R. Abella (Ana) inherited the lot. Tarcela and her siblings were issued Tax Declaration No. 03-01642¹² as the heirs of Juana, then the tax declaration was later replaced by Tax Declaration No. 03-01760¹³ in their names.¹⁴

The children of Roman waived their rights and interests in the property in favor of respondents. Ana died without children. Cipriana, prior to the death of Roman and Ana, donated her share in the property to Segundina R. Tabar (Segundina), the mother of petitioners. Thus, petitioners became co-owners of the parcel of land to the extent of 300 sq.m. where they constructed three houses. Respondents did not want the co-ownership to continue and demanded that the parcel of land be partitioned, but petitioners refused. Respondents thus filed a complaint before the *Lupon ng Tagapamayapa*. They also served petitioners a demand letter¹⁵ through their counsel. When efforts to settle the matter failed, the *Lupon* issued a Certification to File Action.¹⁶ Respondents then filed the complaint¹⁷ for partition before the MTCC.¹⁸

Only petitioners filed an answer and refuted the claims of respondents.¹⁹ They alleged that they were the heirs of Segundina, the owner of Lot No. 17466. Susana Rago (Susana) donated her 1,000 sq. m. property to

⁷ Named Generoso "Gene" Tabar in the complaint.

⁸ Named Randy Tabar in the complaint.

⁹ *Rollo*, pp. 71-75.

¹⁰ *Id.* 71-72.

¹¹ *Id.* at 76.

¹² *Id.* at 79.

¹³ *Id.* at 77-78.

¹⁴ *Id.* at 47, 204-205, and 249.

¹⁵ *Id.* at 80.

¹⁶ *Id.* at 82.

¹⁷ *Id.* at 71-76.

¹⁸ *Id.* at 47-48, 205, and 250.

¹⁹ *Id.* at 83-91.

Segundina by virtue of a Deed of Donation²⁰ dated March 18, 1982. In addition, Tarcela and Cipriana waived their rights and interests over Lot No. 17466 in favor of Segundina.²¹ Petitioners, through their predecessors-in-interest, have been in continuous, public, peaceful, and adverse possession of the parcel of land in the concept of owner since 1981. Petitioners' predecessors-in-interest declared the property for tax purposes beginning 1982 and paid taxes. Petitioners argued that the MTCC had no jurisdiction over the case which seeks to nullify the donations and recover ownership and possession over the property. Also, the complaint states no cause of action as respondents failed to state the basis of their supposed co-ownership with petitioners. They waived their rights and interests over the parcel of land. Assuming they did not, petitioners already acquired the property via acquisitive prescription. Finally, respondents failed to comply with a condition precedent for the filing of the complaint, *i.e.*, the submission of the dispute to a *Pangkat* for mediation, conciliation, or arbitration. Respondents also claimed damages, attorney's fees, and litigation expenses.²²

Ruling of the MTCC

In its Decision²³ dated July 6, 2009, the MTCC ruled that it had jurisdiction over the complaint for partition of Lot No. 17466 with the assessed value of ₱1,620.00. Respondents and petitioners were co-owners of the parcel of land which only had an area of 1,197 sq. m. Respondents inherited the property upon the death of Juana, while petitioners inherited it from Segundina in whose favor Tarcela, Cipriana, and Susana waived their respective shares. The MTCC thus ordered the partition of Lot No. 17466 and directed petitioners to pay respondents attorney's fees and litigation expenses,²⁴ to wit:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered granting the partition and segregation of Lot No. 17466 as follows: Six hundred (600) sq. m., more or less, to [respondents] and Six hundred (600) sq. m., more or less, to [petitioners] to include the portion where their respective houses are located.

Corollary thereto, [petitioners] are hereby ordered to pay, jointly and severally, to [respondents] the sum of [₱]10,000.00 as attorney's fees and [₱]5,000.00 by way of litigation expenses.

SO ORDERED.²⁵

Aggrieved, petitioners appealed to the RTC.²⁶ They argued that the MTCC erred in ruling that: (a) it had jurisdiction over the complaint; (b) the parties were co-owners of Lot No. 17644 and partition was proper; (c)

²⁰ Id. at 185.

²¹ Id. at 104.

²² Id. at 48–49, 84–90, and 205–206.

²³ Id. at 204–209. Penned by Judge Oscar D. Andrino.

²⁴ Id. at 207–209.

²⁵ Id. at 209.

²⁶ See Notice of Appeal dated July 15, 2009: id. at 210–211.

petitioners' counterclaims were without merit; and (d) respondents were entitled to damages.²⁷

Ruling of the RTC

In a Decision²⁸ dated December 8, 2009, the RTC affirmed the ruling of the MTCC with modification. The RTC ruled that based on the allegations in the complaint, the MTCC had jurisdiction. Petitioners are only entitled to 2/6 of the property. Susana was not an heir of Juana; she donated an unknown lot with an area of 1,000 sq. m. to Segundina. The RTC deleted the award of attorney's fees and litigation expenses for want of evidence that petitioners acted in bad faith,²⁹ thus:

WHEREFORE, FOR ALL THE FOREGOING CONSIDERATIONS, this Court hereby **AFFIRMS**, as it is hereby, **AFFIRMED**, the lower court's decision dated July 6, 2009, with the modification, as follows:

- 1) Partition of Lot 17466 with an area of 1,971 square meters shall be made in the following ratio, to wit: 4/6 for [respondents] and 2/6 for [petitioners]; and
- 2) The award of attorney's fees and litigation expenses are deleted.

SO ORDERED.³⁰ (Emphases in the original)

Petitioners moved for reconsideration³¹ but was denied in an Order³² dated March 23, 2010:

WHEREFORE, premises considered, [petitioners'] **MOTION FOR PARTIAL RECONSIDERATION** of this Court's Decision dated December 8, 2009 is hereby **DENIED**, for lack of merit.

Accordingly, the Decision of this Court dated December 8, 2009, particularly in the second paragraph of page 6 and its dispositive portion, is hereby corrected so as to reflect therein the area of 1,197 square meters instead of 1,971 square meters.

SO ORDERED.³³ (Emphases in the original)

Undeterred, petitioners filed a Petition for Review³⁴ before the CA raising the same grounds.

²⁷ Id. at 246-247.

²⁸ Id. at 245-251.

²⁹ Id. at 248-251.

³⁰ Id. at 251.

³¹ See Motion for Partial Reconsideration dated January 29, 2010 (id. at 252-271) and Supplement to Motion for Partial Reconsideration dated February 4, 2010 (id. at 272-273).

³² Id. at 291-297.

³³ Id. at 297.

³⁴ Id. at 298-330.

Ruling of the CA

In a Decision³⁵ dated October 19, 2011, the CA found the petition unmeritorious. The CA ruled that the RTC did not err when it affirmed the findings of the MTCC. The MTCC had jurisdiction over the complaint for partition. The complaint sufficiently alleged that respondents were seeking the partition of Lot No. 17466 due to their co-owner's refusal to heed their demand for partition. The CA further ruled that respondents substantially complied with the condition precedent for filing the complaint by undergoing three conferences before the *Lupon*. Considering that the parties were co-owners, the partition of Lot No. 17466 was proper,³⁶ viz.:

WHEREFORE, premises considered, we hereby **AFFIRM** the decision dated 8 December 2009 and the order dated 23 March 2010 both rendered in Civil Case No. CEB-35887 by Branch 16 of the Regional Trial Court in Cebu City.

SO ORDERED.³⁷ (Emphases in the original)

The CA denied petitioners' motion for reconsideration³⁸ in a Resolution³⁹ dated February 5, 2013.

Now, petitioners filed the instant petition.⁴⁰ They argued that the CA gravely erred in affirming the rulings of the RTC and MTCC. They maintain that the MTCC had no jurisdiction over the complaint since it sought the revocation of the donations made in favor of Segundina. Respondents did not attach evidence to their position paper filed before the MTCC. In any case, the DENR Certification in the name of Juana should not have been admitted in evidence and given weight since it was a mere photocopy. Greater weight should have been given to the pieces of evidence presented by petitioners. If the evidence of the parties is in equipoise, the complaint should have been dismissed since respondents had the burden to prove their claim over Lot No. 17466. Respondents failed to show that they had title to the property.⁴¹

RULING

The petition is unmeritorious.

The MTCC had jurisdiction over the complaint for partition

Petitioners argue that from the moment they filed their answer, they disputed respondents' claim of co-ownership and contended that they were

³⁵ Id. at 46–67.

³⁶ Id. at 54–59.

³⁷ Id. at 66–67.

³⁸ Dated December 1, 2011. Id. at 331–345.

³⁹ Id. at 69–70.

⁴⁰ Id. at 5–44.

⁴¹ Id. at 17–19.

absolute owners of Lot No. 17466 by virtue of donation and inheritance. Consequently, the MTCC should have dismissed the complaint since it became an action for recovery of real property and/or revocation of the donations made in favor of petitioners' predecessor-in-interest — an action incapable of pecuniary estimation — which falls under the jurisdiction of the RTC. This is erroneous. It is elementary that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The averments in the complaint and the character of the relief sought are controlling. Once jurisdiction is vested by the allegations in the complaint, it remains vested regardless of the merits of the claims asserted.⁴²

The relevant allegations in the complaint of respondents are as follows:

x x x x

4. After the death of Juana Rago, her children, one of them still living, Tarcela Rago Abella, inherited said lot number 17466. They were issued Tax Declaration Number 03-01642. A copy of the same is hereto attached as Annex B. This Tax Declaration was cancelled and another was issued, this time Tax Declaration Number 03-01760 and which is now the current one. The assess (sic) value of lot 17466 is [P]1,620.00. Copy of it is hereto attached as Annex C;

5. That the share of Cipriana Rago Abella-Rabadon, one of the children of Juana Rago (mentioned above as Cipriana R. Abella), during her lifetime but before the death of Ana R. Abella and Roman R. Abella, to the extent of THREE HUNDRED (300) square meters, more or less, was donated to herein [petitioners]. Hence, [petitioners] to the extent of 300 square meters, became co-owners with [respondents] over lot 17466. Consequently, herein [petitioners] constructed their houses (three houses) on a portion of lot 17466 they claimed as their share, and resided thereat;

6. That [respondents] do not want the co-ownership to continue, hence, they demanded from [petitioners] a partition. But [petitioners], without any ground, refused. Consequently, [respondents] filed a barangay case before the *Lupon ng Tagapamayapa* to force partition. During the pendency of the barangay case, [respondents] again made a formal demand for partition against [petitioners], but still [petitioners] refused without any legal ground. A copy of the demand letter addressed to [petitioners] dated March 9, 2007 is hereto attached as Annex D. [Petitioners] acknowledged the receipt of the demand of [respondents] through counsel, but they refused partition alleging that proceedings of the *Lupon Ng Tagamayapa* (sic) was still going on. A copy of the letter of [petitioners] addressed to undersigned counsel is hereto attached as Annex E;

x x x x

⁴² *Fajardo v. Odulio*, G.R. No. 235550, November 9, 2020, <<https://sc.judiciary.gov.ph/18011/>>; *Spouses Soller v. Singson*, G.R. No. 215547, February 3, 2020, <<https://sc.judiciary.gov.ph/12810/>>; *Heirs of Spouses Tumang v. National Power Corporation*, G.R. No. 234103 (Notice), January 8, 2018; *Padlan v. Spouses Dinglasan*, 707 Phil. 83, 91 (2013).

WHEREFORE, it is most respectfully prayed unto this Honorable Court, that after notice and hearing, judgment be rendered as follows:

1. Order partition and segregation of lot number 17466 as follows: ONE THOUSAND FIVE HUNDRED (1,500) square meters, more or less, to or for [respondents]; THREE HUNDRED (300) square meters, more or less (where the house[s] of [petitioners] stands), to or for [petitioners.]⁴³ (Underscoring supplied)

A plain reading of the allegations in the complaint and the principal relief sought by respondents shows that they merely sought the partition of Lot No. 17466 with assessed value of ₱1,620.00. Respondents did not pray for the revocation of the donation made by Cipriana to Segundina but the segregation of their respective shares arising from their co-ownership. In *Agarrado v. Librando-Agarrado*,⁴⁴ Cristita and Analou, wife and child of the late Rodrigo, filed a complaint for partition of a 287 sq. m. lot owned by Rodrigo. They impleaded Rodrigo's children from his first marriage as defendants. The RTC ordered the partition of the lot. The CA affirmed the RTC. In their petition before the Court, the defendants argued that the CA erred in not dismissing the complaint for petitioners' failure to allege the market value of the subject property in the complaint. The Court ruled that the CA erred in ruling that the complaint was incapable of pecuniary estimation. "An action for partition of real estate is at once an action for the determination of the co-owners of the subject property and an action for the eventual conveyance of specific portions [of the property] to the co-owners."⁴⁵ While actions for partition are also incapable of pecuniary estimation owing to its two-phased subject matter, the court which has jurisdiction over the action would still depend on the property's assessed value in accordance with the Judiciary Reorganization Act of 1980.⁴⁶

The principal action or remedy sought is the determination of title to or interest in real property and the respective shares of the co-owners. Section 33 (3) of the Judiciary Reorganization Act of 1980, as amended,⁴⁷ the provision applicable at the time of the filing of the complaint, specifically provides that Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall have exclusive original jurisdiction in all civil actions involving title to or possession of real property or any interest therein with assessed value not exceeding ₱20,000.00:

Section 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases.* – Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

⁴³ *Rollo*, pp. 72–74.

⁴⁴ 832 Phil. 513 (2018).

⁴⁵ *Id.* at 515–522. See also *Russell v. Vestil*, 364 Phil. 392, 400–401 (1999).

⁴⁶ See Batas Pambansa Blg. 129, entitled "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES" (August 14, 1981).

⁴⁷ See RA No. 7691, entitled "AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA, BLG. 129, OTHERWISE KNOWN AS THE 'JUDICIARY REORGANIZATION ACT OF 1980'," approved on March 25, 1994.

X X X X

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos ([P]20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos ([P]50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: *Provided*, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.

Consequently, the CA properly affirmed the ruling of the RTC finding that the MTCC had jurisdiction over the complaint for partition.

Insofar as respondents' compliance with the Revised Katarungang Pambarangay Law,⁴⁸ we affirm the findings of the lower courts that they substantially complied with the requirement. As noted by the CA, respondents presented an undated Certification to File Action issued by Pangkat Secretary Iluminada F. Balsamo and attested to by Pangkat Chairman Rustica J. Asid.⁴⁹ Petitioners do not deny that hearings were held before the *Lupon* and that efforts to amicably settle the dispute failed.

The complaint states a cause of action

A cause of action is the act or omission by which a party violates a right of another.⁵⁰ Its elements are as follows: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.⁵¹ Petitioners claim that the complaint of respondents failed to state a cause of action.

In *Philippine National Bank v. Spouses Rivera*,⁵² the Court clarified that there is a difference between lack of cause of action and failure to state a cause of action. Lack of cause of action refers to the insufficiency of the factual basis for the action, while there is failure to state a cause of action when the allegations of the complaint do not state the concurrence of the above elements.⁵³ The test for failure to state a cause of action is whether the complaint alleges facts which, if true, would justify the relief demanded. In other words, may the court render a valid judgment upon the facts alleged in

⁴⁸ See Republic Act No. 7160, entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991," approved on October 10, 1991.

⁴⁹ *Rollo*, pp. 58-59.

⁵⁰ See Section 2, Rule 2 of the Revised Rules of Civil Procedure.

⁵¹ *Heirs of Sadhwani v. Sadhwani*, G.R. No. 217365, August 14, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65628>>.

⁵² 785 Phil. 450 (2016).

⁵³ *Id.* at 457.

the complaint? If the answer is in the affirmative, the complaint states a cause of action. What is material is the sufficiency and not the veracity of the allegations in the complaint.⁵⁴

A review of the previously quoted portion of the complaint shows that it states a cause of action. Respondents, who claimed to be co-owners of Lot No. 17466, are judicially demanding the partition of the parcel of land due to petitioners' refusal to heed their demand for partition. The allegations in the complaint, assuming they are true, justify the relief demanded by respondents. Hence, the lower courts properly dismissed petitioners' claim that the complaint failed to state a cause of action.

The parties are co-owners of Lot No. 17466 and partition is proper

The present petition calls upon the court to review the factual findings of the lower courts and to weigh the sufficiency of the evidence presented by respondents. This we cannot do. A petition for review under Rule 45 is limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari*. It is not the function of the Court to review facts and to analyze or weigh all over again evidence already considered in the proceedings below. While this rule admits of exceptions, such as when the findings of fact are premised on the supposed absence of evidence or contradicted by the evidence on record and when the CA manifestly overlooked certain relevant facts not disputed by the parties which, if properly considered, would justify a different conclusion,⁵⁵ none of such exceptions are present in the case. A review of the findings of fact of the lower courts shows that the same are supported by evidence.

Rule 69 of the Rules of Court lays down two phases of an action for partition: *first*, the trial court determines whether there is co-ownership and if partition is proper. If co-ownership exists and partition is proper, the trial court issues an order for partition; and *second*, the trial court promulgates a decision confirming the sketch and subdivision of the properties submitted by the parties, if the parties reach an agreement, or by the appointed commissioners, if the parties fail to agree.⁵⁶

The lower courts correctly ruled that the parties are co-owners of Lot No. 17466 and that partition of the parcel of land is warranted. Juana owned Lot No. 17466 as established by a DENR Certification that she had Lot No. 17466 surveyed. Upon Juana's demise, her six children inherited the parcel of land. As proof of their ownership, respondents presented Tax Declaration No. 03-01642 in the name of the heirs of Juana issued in 1974 and Tax Declaration No. 03-01760 in the names of Tarcela, Cipriana, Natividad, Raymunda, Roman, and Ana, which replaced Tax Declaration No. 03-01642, issued in

⁵⁴ *Hongkong and Shanghai Banking Corporation Limited v. Catalan*, 483 Phil. 525, 538 (2004).

⁵⁵ *Heirs of Malaque v. Heirs of Malaque*, G.R. No. 208776, November 3, 2020, <<https://sc.judiciary.gov.ph/19074/>>.

⁵⁶ *Silva v. Lo*, G.R. No. 206667, June 23, 2021, <<https://sc.judiciary.gov.ph/21024/>>.

1977. The MTCC properly considered the pieces of evidence submitted by respondents even if the same were not appended to their position paper considering that the same were attached to respondents' complaint.⁵⁷

Petitioners argue that the DENR Certification should not have been admitted in evidence and given probative value because it was a mere photocopy. It should be noted, however, that petitioners did not specifically object to the admissibility thereof during the proceedings before the MTCC. The record of the preliminary conference does not include the admissibility of the certification as an issue. As observed by the CA, petitioners belatedly questioned the DENR Certification upon their appeal to the RTC.⁵⁸ In any case, as observed by the RTC, petitioners hinge their ownership over a portion of Lot No. 17466 on Juana's very ownership of the parcel of land as evinced by the DENR Certification.⁵⁹ Cipriana and Tarcela could not have waived their interests in Lot No. 17466 in favor of Segundina had they not inherited the parcel of land from Juana. Further, the lower courts did not base their finding of co-ownership on the DENR Certification alone. The courts also considered Tax Declaration No. 03-01642 in the name of the heirs of Juana and Tax Declaration No. 03-01760 in the names of Tarcela, Cipriana, Natividad, Raymunda, Roman, and Ana. Respondents were thus able to establish their claim of co-ownership by preponderance of evidence.⁶⁰

The award of 2/6 portion of Lot No. 17466 corresponding to the shares of Tarcela and Cipriana to petitioners is proper. Petitioners were able to prove that Tarcela and Cipriana waived their interests in Lot No. 17466 in favor of Segundina by virtue of the Affidavit-Waiver⁶¹ dated September 7, 1988. The Deed of Donation⁶² executed by Susana in favor of Segundina for a 1,000 sq. m. parcel of land, however, does not identify Lot No. 17466. Even the tax declarations and real estate tax receipts⁶³ in the names of Susana and Segundina do not indicate that they pertain to Lot No. 17466. Petitioners did not explain who Susana was, how she was related to Segundina, and how she supposedly acquired title to Lot No. 17466. Hence, the lower courts properly ruled that petitioners are only entitled to 2/6 portion of Lot No. 17466 representing the shares of Cipriana and Tarcela. The CA did not err in affirming the RTC ruling which affirmed the order of partition of Lot No. 17466.

FOR THESE REASONS, the petition is **DENIED**. The Decision dated October 19, 2011 and the Resolution dated February 5, 2013 of the Court of Appeals in CA-G.R. SP No. 05028 are **AFFIRMED**. The partition and segregation of Lot No. 17466 with an area of 1,197 square meters in accordance with the following ratio: 2/6 to petitioners Genaro Tabar, Gerardo

⁵⁷ *Rollo*, pp. 59-66, 207-209, and 248-250.

⁵⁸ *Id.* at 61.

⁵⁹ *Id.* at 249.

⁶⁰ *Id.* at 59-66, 207-209, and 248-250.

⁶¹ *Id.* at 104.

⁶² *Id.* at 185.

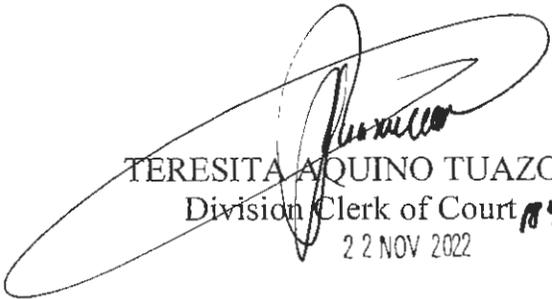
⁶³ *Id.* at 187, 189, and 191-196.

July 6, 2022

Tabar, and Josephine Tabar; and 4/6 to respondents Tarcela Rago Abella-Abelgas, Beatriz Rabadon Guy, representing Cipriana R. Rabadon (deceased), Eleuteria Cabinatan Palomares, and Cristita Cabinatan, representing Natividad Rago Abella-Cabinatan (deceased), Apolonia A. Luague, Florencia A. Sabella, and Albino A. Alipio, representing Raymunda Rago Alipio (deceased) is **ORDERED**.

SO ORDERED.”

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *11/4*
22 NOV 2022

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HON. PRESIDING JUDGE (reg)
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(Civil Case No. CEB-35887)

HON. PRESIDING JUDGE (reg)
Municipal Trial Court in Cities, Branch 5
Cebu City
(Civil Case No. R-53137)

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