Republic of the Philippines
Supreme Court
Manila

**SECOND DIVISION**

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| **HEIRS OF ARTURO E. BANDOY AND HEIRS OF ANGELITA E. BANDOY,**<br>Petitioners,<br><br>- versus -<br><br>**ALEXANDER E. BANDOY,**<br>Respondent. | **G.R. No. 255258**<br><br>Present:<br><br>LEONEN, *J.*, *Chairperson*,<br>LAZARO-JAVIER,<br>LOPEZ, M.,<br>LOPEZ, J., and<br>KHO, *JJ.*<br><br>**Promulgated:**<br>OCT 19 2022 |

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# DECISION

**LOPEZ, J., *J.*:**

This Court resolves a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] and the Resolution[3] of the Court of Appeals in CA-G.R. CV No. 04878-MIN, the pertinent portion of which states:

> ACCORDINGLY, the appeal is hereby GRANTED. The 26 October 2017 Decision rendered by the Regional Trial Court 11th Judicial Region[,] Branch 40, Tandag City in Civil Case No. 1850 is REVERSED.
>
> SO ORDERED.[4]

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1 *Rollo*, pp. 3–23.

2 *Id.* at 45–53. The June 27, 2019 Decision was penned by Associate Justice Florencio M. Mamauag, Jr., and concurred in by Associate Justices Edgardo A. Camello and Walter S. Ong of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

3 *Id.* at 55–56. The October 8, 2020 Resolution was penned by Associate Justice Florencio M. Mamauag, Jr., and concurred in by Associate Justices Edgardo A. Camello and Walter S. Ong of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

4 *Id.* at 52.

## The Antecedents

Spouses Ambrocio Bandoy (*Ambrocio*) and Matilde Estal Bandoy (*Matilde*) begot three children, namely: Arturo Bandoy (*Arturo*), Angelita Bandoy (*Angelita*), and Alexander Bandoy (*Alexander*). Ambrocio and Matilde acquired several properties, including Lot No. 3516, Cad-392-D, located in Tandag City, Surigao del Sur. It contains an area of 14,765 square meters and was originally covered by Original Certificate of Title No. FP-10897 registered in the name of Ambrocio.[5]

After the death of Ambrocio in 1981, Matilde waived her interest in the Estate of Ambrocio in favor of their children.[6] The heirs executed a document captioned as "Extrajudicial Settlement of the Estate of the Deceased Ambrocio Bandoy with Absolute Deed of Sale" (*extrajudicial settlement of the estate with sale*).[7] The document included a sale of 9,329 square meter portion of Lot No. 3516 in favor of Florencio Benitez (*Benitez*). The remainder of the property became Lot No. 3516-B, covered by Tax Declaration No. 08-01-14-01014.[8]

Arturo died on May 27, 1993, and was succeeded by his four children, namely: Alvin, Edwin, Dante, and Robert (*the heirs of Arturo*). On the other hand, Angelita died on September 4, 2014, leaving behind her two children, namely: Joan B. Alcover and Jason B. Albano (the *heirs of Angelita*).[9]

Subsequently, the heirs of Arturo and Angelita asked Alexander to partition the remaining 5,436 square meters of Lot No. 3516-B. However, despite several pleas, the latter refused to partition the remaining portion and claimed sole ownership over it.[10] As a result, they instituted a suit against Alexander for partition.[11]

Based on the records, the following dispositions of portions of Lot No. 3516 were made after the execution of the extrajudicial settlement of the estate with sale:

| Date | Lot Area | Vendor/s | Vendee | Mode of Transfer |
|---|---|---|---|---|
| December 10, 1996 | 600 sqm | Alexander | Lucita F. Elizalde | Sale[12] |
| February 21, | 556 sqm | Alexander | Spouses Joel P. | Sale[13] |

5 *Id.* at 46.
6 *Id.* at 10, 46.
7 *Id.* at 34–36.
8 *Id.*
9 *Id.* at 5.
10 *Id.* at 47.
11 *Id.*
12 *Id.* at 37–38.
13 *Id.* at 39–40.

| | | | | |
|---|---|---|---|---|
| 2012 | | | Hayag and Zyra H. Hayag | |
| June 14, 1992 | 400 sqm | Alexander Arturo | Silverio Bautista | Sale[14] |
| June 2, 1997 | 440 sqm | Alexander | Vicente Bangoy | Sale[15] |

After the enumerated dispositions, the remaining lot area of the property was reduced to 3,440 square meters.

In his answer, Alexander asserted that the remaining 5,436 square meters designated as Lot No. 3516-B were exclusively his. He insisted that while the extrajudicial settlement of the estate with sale indicated that Lot No. 3516 was transferred *pro indiviso* in favor of himself and his siblings, the sale of the 9,329 square meter portion of the property to Benitez only involved the shares of Angelita and Arturo, even if his signature appear therein. Alexander contended that there was a verbal agreement between the siblings that his share would not be included in the sale. In support of this claim, he presented the handwritten note (*handwritten note*)[16] Angelita executed on May 29, 2013 where she declared that it was only her share and that of Arturo's that were sold to Benitez. In her Affidavit[17] dated March 30, 2014, she reiterated the statement she made in her handwritten note,[18] *viz.*:

. . . .

*3. That as one of the heirs, I sold my One-Third (1/3) share of the aforesaid parcel of land (4,921.66, more or less) to spouses Florencio and Victoria Benitez;*

*4. That I know that my brother, Alexander Bandoy has not sold his share of the above-mentioned parcel of land although I was aware that my brother Arturo Bandoy has sold a portion of his share to spouses Benitez;*

. . .[19] (Italics in the original)

On October 26, 2017, Branch 40, Regional Trial Court, Tandag City, Surigao del Sur rendered its Decision,[20] the dispositive portion of which states:

WHEREFORE, premises considered, the Court orders partition of Parcel 1 (Lot No. 3516-B) as follows:

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14 *Id.* at 41–42.
15 *Id.* at 43.
16 *Id.* at 57.
17 *Id.* at 58.
18 *Id.* at 47.
19 *Id.* at 58.
20 *Id.* at 45–46. No copy of Regional Trial Court Decision was attached in the *rollo*.

1. Plaintiff Heirs of Arturo E. Bandoy – Two Thousand Three Hundred Ninety (2,390) square meters.

2. Plaintiff Heirs of Angelita E. Bandoy – Two Thousand Three Hundred Ninety (2,390) square meters.

3. Defendant Alexander E. Bandoy – Six Hundred Fifty Six (656) square meters.

Defendant is hereby ordered to fully and unconditionally deliver the share of his co-heirs and actively participate in the partition of Lot No. 3516-B. Before partition, defendant shall submit a formal accounting of the fruits and proceeds of the subject land to his co-heirs and thereafter remit to them their respective share from the time he took exclusive possession of the parcel of land until the present.

The claim for damages is hereby DENIED.

SO ORDERED.[21]

In the assailed Decision,[22] the Court of Appeals reversed the ruling of the Regional Trial Court.[23] It found that Arturo, Angelita, and Alexander divided the property *via* an oral partition. As a consequence, it also held that the Regional Trial Court should not have disregarded Angelita's handwritten note and affidavit simply on the basis that it was executed after the extrajudicial settlement of the estate with sale. For the Court of Appeals, it was improper for the Regional Trial Court to partition the remainder of Lot No. 3516-B in favor of Alexander, the heirs of Angelita, and the heirs of Arturo as it solely belonged to Alexander.[24]

The Court of Appeals ruled that an oral partition may be considered on the ground of estoppel and by the assertion of acts of ownership by the parties over their respective shares. It noted that Alexander had sold portions of Lot No. 3516-B in 1992, 1996, and 2012 without any protest from Angelita, who died on September 4, 2014, and Arturo, who died on May 27, 1993. For the Court of Appeals, this fact reinforced the conclusion that the siblings have indeed taken ownership over their shares and that what remained of the subject property, after Arturo and Angelita sold their respective shares in favor of Benitez in 1992, solely belongs to Alexander.[25]

In the assailed Resolution,[26] the Court of Appeals denied the motion for reconsideration filed by the heirs of Arturo and Angelita. The Division Clerk of Court was directed to make an Entry of Judgment in due course.[27]

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21 *Id.*
22 *Id.* at 45–53.
23 *Id.* at 52.
24 *Id.* at 50–51.
25 *Id.* at 51–52.
26 *Id.* at 55–56.
27 *Id.* at 56.

In the present Petition,[28] the heirs of Arturo and Angelita argue that: (1) Lot No. 3516-B remained a co-owned property between the heirs of Arturo, the heirs of Angelita, and Alexander;[29] (2) there was no partition, whether written or oral, that the parties agreed upon;[30] (3) when Arturo, Angelita, and Alexander sold portions of Lot No. 3516, they merely sold their aliquot shares in the property and what remained therein is still their co-owned property;[31] (4) even granting that there was oral partition of the subject property, what was left to Alexander was only 656 square meters, and what he sold were merely undivided parts of the property;[32] (5) they are not estopped from claiming ownership over their respective shares in Lot No. 3516-B;[33] (6) Alexander's act of signing the extrajudicial settlement of the estate with sale is conclusive upon him and cannot be denied nor disproved as against the heirs of Arturo and Angelita;[34] (7) the parol evidence rule bars the introduction of the Handwritten Note and Affidavit of Angelita;[35] (8) the handwritten note and affidavit of Angelita are inadmissible for being hearsay evidence;[36] and (9) failure to timely object on the admissibility, genuineness, and due execution of a hearsay evidence does not automatically accord probative value or weight to the same.[37]

Meanwhile, in the Comment[38] filed by Alexander, he maintains that: (1) he and his siblings entered into an oral partition agreement after their father's death;[39] (2) their oral partition was validated and ratified by their subsequent acts of ownership and dominion over their respective shares in the lot;[40] (3) as against the literal interpretation by the heirs of Angelita and Arturo of the extrajudicial settlement of the estate with sale *vis-à-vis* Angelita's handwritten note and affidavit, the latter must be given more weight because Angelita was a party to the document;[41] (4) a party may present evidence to modify, explain, or add to the terms of the written agreement if he puts in issue in his pleading that there was a mistake or failure of the written agreement to express the true intent of the parties;[42] (5) the handwritten note and affidavit of Angelita are declarations against her own interest and that of her heirs—a recognized exception to the hearsay rule;[43] and (6) the parties had waived their right to cross-examine the witnesses of the parties who executed judicial affidavits or any document of such nature because they agreed to resolve the case on the basis of the

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28 *Id.* at 3–25.
29 *Id.* at 10.
30 *Id.* at 12–13.
31 *Id.* at 10–11.
32 *Id.* at 13.
33 *Id.* at 14.
34 *Id.* at 15.
35 *Id.* at 17–18.
36 *Id.* at 18–19.
37 *Id.* at 19–20.
38 *Id.* at 65–76.
39 *Id.* at 65–68.
40 *Id.* at 69.
41 *Id.* at 70.
42 *Id.* at 71.
43 *Id.* at 72, 74–75.

parties' respective position papers and documentary evidence.[44]

**Issues**

I.

Whether an oral partition may be valid;

II.

Whether the Handwritten Note and Affidavit of Angelita may be admitted in evidence to prove the purported oral partition; and

III.

Whether the 9,329 square meter portion of Lot No. 3516 sold in favor of Benitez comprised of the aliquot share of Angelita and Arturo only.

**This Court's Ruling**

The Petition is meritorious.

As a rule, when a person dies and leaves property behind, it "should be judicially administered and the competent court should appoint a qualified administrator in the order established in Section 6, Rule 78 of the Rules of Court, if the deceased left no will, or in case he had left one should he fail to name an executor therein."[45] However, there are recognized exceptions to this rule: (1) Extrajudicial Settlement of Estate under Section 1, Rule 74 of the Rules of Court; and (2) Summary Settlement of Estate of Small Value under Section 2, Rule 74 of the Rules of Court. In the present case, the heirs of Ambrocio resorted to the first exception through the execution of the extrajudicial settlement of the estate with sale.[46]

Section 1, Rule 74 of the Rules of Court provides:

> SECTION 1. *Extrajudicial settlement by agreement between heirs.* — If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds,

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44 *Id.* at 72–73.

45 *Utulo v. Vda. De Garcia*, 66 Phil. 302, 305 (1938) [Per J. Imperial].

46 *Rollo*, pp. 34–36.

> and should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under section 4 of this rule. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.
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> The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof.

Here, the heirs of Ambrocio settled his estate through the execution of the extrajudicial settlement of the estate with sale, adjudicating unto themselves Lot No. 3516 "*pro indiviso.*" Respondent now contends that there was a valid oral partition between him and his siblings. He claims that what was sold to Benitez only involved the respective shares of Angelita and Arturo, and that the remainder of the property solely belongs to him.

*An oral partition may be valid.*

It is settled that an oral partition may be valid and binding upon the heirs. There is no law requiring partition among heirs to be in writing to be valid.[47] Citing the cases of *Hernandez v. Andal*[48] and *Barcelona v. Barcelona*,[49] this Court ruled in *Vda. De Reyes v. Court of Appeals*[50] that:

> [T]his Court, interpreting Section 1 of Rule 74 of the Rules of Court, held that the requirement that a partition be put in a public document and registered has for its purpose the protection of creditors and at the same time the protection of the heirs themselves against tardy claims. The object of registration is to serve as constructive notice to others. It follows then that *the intrinsic validity of partition not executed with the prescribed formalities does not come into play when there are no creditors or the rights of creditors are not affected.* Where no such rights are involved, it is competent for the heirs of an estate to enter into an agreement for

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47 *Vda. de Reyes v. Court of Appeals*, 276 Phil. 706, 721 (1991) [Per J. Davide, Jr., Third Division].
48 78 Phil. 196 (1947) [Per J. Tuazon].
49 100 Phil. 251 (1956) [Per J. Montemayor].
50 *Supra.*

> distribution in a manner and upon a plan different from those provided by law. *There is nothing in said section from which it can be inferred that a writing or other formality is an essential requisite to the validity of the partition.* Accordingly, an oral partition is valid.
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> *Barcelona, et al. vs. Barcelona, et al., supra*, provides the reason why oral partition is valid and why it is not covered by the Statute of Frauds: *partition among heirs or renunciation of an inheritance by some of them is not exactly a conveyance of real property for the reason that it does not involve transfer of property from one to the other, but rather a confirmation or ratification of title or right of property by the heir renouncing in favor of another heir accepting and receiving the inheritance.*[51] (Emphasis supplied)

In *Fajardo v. Cua-Malate*,[52] this Court acknowledged that a Compromise Agreement not signed by one party may be considered as a valid partition agreement entered into by the parties. This Court explained that:

> The written agreement only served to reduce into writing for the convenience of the parties the terms of the agreement already entered into during the mediation conferences.
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> In fact, the Court has likewise previously held that, "independent and in spite of the statute of frauds, **courts of equity have enforced oral partition when it has been completely or partly performed.**"[53] (Emphasis in the original)

Consequently, even if the purported oral partition was not signed by Angelita and Arturo, their respective heirs may be bound by the terms of the agreement if duly proven in court.

Having settled that an oral partition may be valid, this Court shall now resolve whether the purported oral partition entered into by respondent, Angelita, and Arturo, was duly proven by preponderance of evidence. This Court must necessarily address the admissibility of the Handwritten Note and Affidavit of Angelita that respondent presented to substantiate his claim of sole ownership of the remaining portion of Lot No. 3516.

*The handwritten note and affidavit of Angelita may be appreciated only against Angelita's share in Lot No. 3516 as an admission against interest, and not as*

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51 *Id.* at 721.

52 850 Phil. 709 (2019) [Per J. Caguioa, Second Division].

53 *Id.* at 719, citing *Hernandez v. Andal*, 78 Phil. 196, 203 (1947) [Per J. Tuazon].

*an exception to the parol evidence rule.*

It was incumbent upon Alexander to prove his allegation that the terms of the extrajudicial settlement of the estate with sale failed to reflect the true intention of the parties. This is consistent with the principle that each party must prove his or her affirmative allegations.[54] This Court disagrees with the ruling of the Court of Appeals that the handwritten note and affidavit of Angelita may be admitted in evidence as an exception to the parol evidence rule against Angelita and Arturo's respective interest in Lot No. 3516.

The parol evidence rule is found in Section 9, Rule 130 of the Rules of Court[55] which states:

> SECTION 9. *Evidence of written agreements.* — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.
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> However, a party may present evidence to modify, explain or add to the terms of written agreement if he puts an issue in his pleading:
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> (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
> (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
> (c) The validity of the written agreement; or
> (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.
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> The term "agreement" includes wills.

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[54] *Spouses Pamplona v. Spouses Cueto*, 826 Phil. 302, 316 (2018) [Per J. Bersamin, Third Division], citing *G & M (Phils.), Inc. v. Cruz*, 496 Phil. 119, 125 (2004) [Per J. Austria-Martinez, Second Division].

[55] The 2019 Proposed Amendments to the Revised Rules on Evidence took effect on May 1, 2020 and shall cover (i) all cases filed after the said date; and, (ii) all pending proceedings except to the extent that, in the opinion of the court, their application would not be feasible or would work injustice.

Section 10, Rule 130 of the 2019 Amendments states:

SECTION 10. *Evidence of written agreements.* – When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, as between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of the written agreement if he or she puts in issue in a verified pleading:

a. An intrinsic ambiguity, mistake or imperfection in the written agreement;
b. The failure of the written agreement to express the true intent and agreement of the parties thereto;
c. The validity of the written agreement; or
d. The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The term "agreement" includes wills.

Under this rule, when the parties' agreement has been reduced into writing, this written agreement is considered as the "sole repository and memorial of everything" the parties agreed on.[56] This rule considers that "[a]ll their prior and contemporaneous agreements are deemed included in the written document"[57] and prohibit the "addition to or contradiction of the terms of a written agreement by testimony or other evidence purporting to show that different terms were agreed upon by the parties."[58]

There are recognized exceptions to the parol evidence rule. These include: (1) an intrinsic ambiguity, mistake, or imperfection in the written agreement; (2) the failure of the written agreement to express the true intent and agreement of the parties thereto; (3) the validity of the written agreement; or (d) the existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.[59]

While Alexander put in issue in his pleading the purported failure of the extrajudicial settlement of the estate with sale to express the true intent and agreement of the parties, this is hardly enough to defeat the express terms of the document. In *Financial Building Corporation v. Rudlin International Corporation*,[60] this Court held that:

> [S]uch exception obtains *only where "the written contract is so ambiguous or obscure in terms that the contractual intention of the parties cannot be understood from a mere reading of the instrument.* In such a case, extrinsic evidence of the subject matter of the contract, of the relations of the parties to each other, and of the facts and circumstances surrounding them when they entered into the contract may be received to enable the court to make a proper interpretation of the instrument."[61] (Emphasis supplied)

In the present case, it cannot be said that the terms of the extrajudicial settlement of the estate with sale were ambiguous or obscure such that the intention of the parties cannot be ascertained from a plain reading of the document. The pertinent portion of the extrajudicial settlement of the estate with sale states:

> That, the parties hereto being all of legal age, and with full civil capacity to contract hereby by these presents *adjudicate unto themselves the above described real property, pro indiviso among themselves.*
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> That, for and in consideration of the sum of FOURTY FIVE THOUSAND PESOS (₱45,000.00) Philippine Currency, to the above-

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56 *Domato-Togonon v. The Commission on Audit*, G.R. No. 224516, July 6, 2021 [Per J. Leonen, *En Banc*].

57 *Allied Banking Corp. v. Cheng Yong*, 509 Phil. 95, 105 (2005) [Per J. Garcia, Third Division].

58 *Spouses Edrada v. Spouses Ramos*, 505 Phil. 672, 677-678 (2005) [Per J. Tinga, Second Division].

59 RULES OF COURT, rule 130, sec. 9.

60 46 Phil. 327 (2010) [Per J. Villarama, Third Division].

61 *Id.* at 355, citing *Seaoil Petroleum Corporation v. Autocorp Group*, 590 Phil. 410, 420 (2008) [Per J. Nachura, Third Division].

> mentioned parties in hand paid and receipt whereof which is hereby acknowledged and confessed to their complete satisfaction, paid by FLORENCIO N. BENITEZ, of legal age, Filipino, married to VICTORIA M. BENITEZ with residence and postal address at Telaje, Tandag, Surigao del Sur, the said above-stated heirs or parties do hereby SELL, CEDE, TRANSFER AND CONVEY by way of ABSOLUTE DEED OF SALE unto the said FLORENCIO M. BENITEZ, his heirs and assigns, the following portion of the above described agricultural land viz:
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> . . .[62] (Emphasis supplied)

Angelita, Arturo, and Alexander, all identified as heirs of Ambrocio and vendors, and Benitez, the vendee, affixed their respective signatures in the extrajudicial settlement of the estate with sale.[63] There is no ambiguity or obscurity in the agreement of the parties. It is clear from the quoted portion of the extrajudicial settlement of the estate with sale that Angelita, Arturo, and Alexander sold a total of 9,329 square meters of their *pro indiviso* share in the 14,765 square meters property they inherited. This means that the remaining 5,436 square meters after the sale to Benitez should be equally divided by Angelita, Arturo, and Alexander. Following the waiver and death of Matilde, the remaining portion is to be divided equally by Angelita, Arturo, and Alexander with each heir being entitled to an aliquot or *pro indiviso* share of 1,812 square meters each.

Furthermore, the argument of Alexander that Angelita's handwritten note and affidavit are exceptions to the hearsay rule for being declarations against interest is erroneous.[64] It must be pointed out that the statements contained in Angelita's handwritten note and affidavit are not declarations against interest. Instead, these are admissions against interest that may be admitted against the declarant if proven genuine and duly executed. In *Lazaro v. Agustin*,[65] this Court distinguished the two concepts as follows:

> Admissions against interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness. Declarations against interest are those made by a person who is neither a party nor in privity with a party to the suit, are secondary evidence, and constitute an exception to the hearsay rule. They are admissible only when the declarant is unavailable as a witness. In the present case, since Basilisa is respondents' predecessor-in-interest and is, thus, in privity with the latter's legal interest, the former's sworn statement, if proven genuine and duly executed, should be considered as an admission against interest.[66] (Citations omitted)

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62 *Rollo*, p. 35.
63 *Id.*
64 *Id.* at 74.
65 632 Phil. 310 (2010) [Per J. Peralta, Third Division].
66 *Id.* at 320.

Here, it is not disputed that Angelita is the predecessor-in-interest of her heirs who are the petitioners in the present case. Thus, in privity with her heirs' legal interest, Angelita's handwritten note and affidavit may be considered as admissions against interest if proven genuine and duly executed.

To recall, the affidavit of Angelita, which transposed the contents of her handwritten note, stated the following:

> . . . .
>
> *3. That as one of the heirs, I sold my One-Third (1/3) share of the aforesaid parcel of land (4,921.66, more or less) to spouses Florencio and Victoria Benitez;*
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> *4. That I know that my brother, Alexander Bandoy has not sold his share of the above-mentioned parcel of land although I was aware that my brother Arturo Bandoy has sold a portion of his share to spouses Benitez;*
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> . . .[67] (Italics in the original)

The admission against interest of Angelita, based on her handwritten note and affidavit, may only be admitted against her own interest.[68] A careful analysis of the quoted statements reveals that paragraph no. 3 of the affidavit of Angelita constitutes a waiver of any claim she or her successors-in-interest may have over the subject property. In these documents, she recognized that she has no further claim to Lot No. 3516.

Be that as it may, paragraph no. 4, which pertains to Angelita's statement on the share of Arturo in Lot No. 3516, cannot be made binding to his successors-in interest such as the petitioners in this case.

As a rule, the "rights of a party cannot be prejudiced by an act declaration, or omission of another."[69] This is known as the *res inter alios acta* rule and is founded on the principle of "good faith and mutual convenience."[70] The rationale behind this rule is that:

> [A] man's own acts are binding upon [themselves], and are evidence against [them]. So are [their] declarations. Yet, it would not only be

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67 *Rollo*, p. 58.

68 WILLARD B. RIANO, EVIDENCE, p. 116 (2009).

69 The 2019 Proposed Amendments to the Revised Rules on Evidence (2019 Amendments) took effect on May 1, 2020 and shall cover (i) all cases filed after the said date; and, (ii) all pending proceedings except to the extent that, in the opinion of the court, their application would not be feasible or would work injustice.

Section 28, Rule 130 of the Rules of Court, which has been renumbered as Section 29, Rule 130 in the 2019 Amended Rules, states:

SECTION 29. *Admission by third party.* – The rights of party cannot be prejudiced by an act, declaration or omission of another; except as hereinafter provided.

70 *People v. Tena*, 289 Phil. 474, 481 (1992) [Per J. Narvasa, Second Division].

> rightly inconvenient, but also manifestly unjust, that a [they] should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought then acts or conducts be used as evidence against [them].[71]

Among the exceptions to the *res inter alios acta* rule are: (1) admission by co-partners or agent;[72] (2) admission by conspirator;[73] (3) admission by privies;[74] and (4) admission by silence.[75] The enumerated exceptions are not applicable to bind the heirs of Arturo to the extrajudicial statements of Angelita and are considered inadmissible against them.

Furthermore, the subsequent conduct of Alexander convinces this Court to render Angelita's handwritten note and affidavit not binding insofar as the interest of Arturo is concerned. Noticeably, the claim of Alexander that only his share remained after the execution of the extrajudicial settlement of the estate with sale and the disposition of 9,329 square meters in favor of Benitez in February 1992 was belied by his own subsequent conduct.

It must be highlighted that on June 14, 1992, Arturo and Alexander sold a 400-square-meter portion to Silverio B. Bautista. In the deed of absolute sale dated June 14, 1992, Arturo and Alexander were both explicitly identified as co-owners and vendors of the subject property and only the name of Angelita was not mentioned.[76] The fact that Alexander continued to recognize Arturo as a co-owner of the property several months after the extrajudicial settlement of the estate with sale was executed calls into question the veracity of Angelita's purported statement in paragraph no. 4 of her affidavit that Arturo also sold his entire share in the subject property

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71 *Id.*

72 Section 29, Rule 130 of the Rules of Court is now found in Section 30, Rule 130 of the 2019 Amended rules. It states:

SECTION 30. *Admission by co-partner or agent.* The act or declaration of a partner or agent authorized by the party to make a statement concerning the subject, or within the scope of his or her authority[,] and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.

73 Section 30, Rule 130 of the Rules of Court is now found in Section 31, Rule 130 of the 2019 Amended rules. It states:

SECTION 31. *Admission by conspirator.* – The act or declaration of a conspirator in furtherance of the conspiracy and during its existence may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act of declaration.

74 Section 31, Rule 130 of the Rules of Court is now found in Section 32, Rule 130 of the 2019 Amended rules. It states:

SECTION 32. *Admission by privies.* – Where one derives title to property from another, the latter's act, declaration, or omission, in relation to the property, is evidence against the former [if done] while the latter was holding the title.

75 Section 32, Rule 130 of the Rules of Court is now found in Section 33, Rule 130 of the 2019 Amended rules. It states:

SECTION 33. *Admission by silence.* – An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him or her to do so, may be given in evidence against him or her.

76 *Rollo*, pp. 40-41.

to Benitez. If Arturo's entire share had already been sold to Benitez through the extrajudicial settlement of the estate with sale, then there is no more reason for him to be included in the Deed of Absolute Sale entered into with Silverio Bautista. The subsequent conduct of Alexander precludes him from denying the fact that Arturo continued to be a co-owner of the subject property.

It is settled that the admissibility of evidence does not necessarily mean that it may be accorded weight. In *Mancol, Jr. v. Development Bank of the Philippines*,[77] this Court stressed that:

> Admissibility of evidence should not be confounded with its probative value.
>
> "The admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade." The admissibility of a particular item of evidence has to do with whether it meets various tests by which its reliability is to be determined, so as to be considered with other evidence admitted in the case in arriving at a decision as to the truth. The weight of evidence is not determined mathematically by the numerical superiority of the witnesses testifying to a given fact, but depends upon its practical effect in inducing belief on the part of the judge trying the case. "Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue." "Thus, *a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence*."[78] (Citations omitted, emphasis supplied)

Admissibility of evidence cannot be equated with the weight of evidence as these are entirely different concepts.[79] To admit evidence and not to believe it is not incompatible with each other.[80] The weight accorded to it still depends on the evaluation of the court in accordance with the Rules.

In resolving the controversy involving the share of Arturo, this Court is inclined to give greater weight to the extrajudicial settlement of the estate with sale executed in 1992, and declare the handwritten note and affidavit of Angelita, issued approximately two decades after, binding only with respect to the heirs of Angelita. Apart from the clear terms of the extrajudicial settlement of the estate with sale discussed above, it must be emphasized that this document was executed not only by Angelita but also by Alexander, Arturo, Matilde, Benitez, and was even witnessed by Jesusa Perez.[81] The *res*

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77 821 Phil. 323 (2017) [Per J. Tijam, First Division].

78 *Id.* at 335.

79 *Calamba Steel Center, Inc. v. Commissioner of Internal Revenue*, 497 Phil. 23, 38 (2005) [Per J. Panganiban, Third Division].

80 WILLARD B. RIANO, EVIDENCE, p. 70 (2009).

81 *Rollo*, p. 35.

*inter alios acta* rule and the subsequent conduct of Alexander renders the veracity of the statement in paragraph 4 of Angelita's affidavit doubtful. Hence, contrary to the assertion of Alexander, the 9,329-square-meter portion of Lot No. 3516 sold in favor of Benitez comprised of Angelita's entire share equivalent to 4,921 square meters, and the remaining 4,408 square meters should be deducted equally from the *pro indiviso* share of Arturo and respondent, or 2,204 square meters each.

The failure to question the dispositions does not prohibit petitioners from seeking the court's intervention for the partition of the property. Since Alexander and Arturo remain co-owners of Lot No. 3516, they are governed by Article 493 of the Civil Code which states:

> ARTICLE 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But *the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.*[82] (Emphasis supplied)

In *Alejandrino v. Court of Appeals*,[83] it was held that:

> Under a co-ownership, the ownership of an undivided thing or right belongs to different persons. Each co-owner of property which is held *pro indiviso* exercises his rights over the whole property and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co-owners. The underlying rationale is that until a division is made, the respective share of each cannot be determined and every co-owner exercises, together with his co-participants, joint ownership over the *pro indiviso property*, in addition to his use and enjoyment of the same.
>
> Although the right of an heir over the property of the decedent is inchoate as long as the estate has not been fully settled and partitioned, the law allows a co-owner to exercise rights of ownership over such inchoate right.[84] (Citations omitted)

Here, Alexander was well within his right to sell his *pro indiviso* share in Lot No. 3516. Angelita and Arturo were also not forbidden from disposing of their respective shares. The co-owners are not prevented from exercising their right to alienate or dispose of the property but such right is restricted only "to the portion which may be allotted to" each co-owner when the co-ownership is terminated. Thus, they are not barred by estoppel when they failed to object to the dispositions made prior to the partition.

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82 CIVIL CODE, art. 493.
83 356 Phil. 851 (1998) [Per J. Romero, Third Division].
84 *Id.* at 863.

This is not incompatible with their claim to their aliquot share in Lot No. 3516.

While the dispositions enumerated above are in accord with the law, these must be taken into account during the partition of the property to determine how much aliquot share each co-owner is entitled to receive.

*Division of property*

As previously discussed, after the execution of the extrajudicial settlement of the estate with sale, the following dispositions were made:

| Date | Aggregate Lot Area | Vendor/s | Distribution | Vendee | Mode of Transfer |
|---|---|---|---|---|---|
| December 10, 1996 | 600 sqm | Alexander | 600 sqm | Lucita F. Elizalde | Sale[85] |
| February 21, 2012 | 556 sqm | Alexander | 556 sqm | Spouses Joel P. Hayag and Zyra H. Hayag | Sale[86] |
| June 14, 1992 | 400 sqm | Alexander | 200 sqm | Silverio Bautista | Sale[87] |
| | | Arturo | 200 sqm | | |
| June 2, 1997 | 440 sqm | Alexander | 440 sqm | Vicente Bangoy | Sale[88] |

The Court of Appeals erred in not ruling that Alexander's sale of portions of Lot No. 3516 is only valid insofar as his aliquot share in the estate of Ambrocio.

Article 1078 of the Civil Code states:

> ARTICLE 1078. Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased.

The heirs become co-owners of the property before it is partitioned, subject to the payment of the debts of the deceased. It is settled that if an alienation precedes the partition, the co-owner cannot sell a definite portion of the land without consent from his or her co-owners. Without any

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85 *Id.* at 37–38.
86 *Id.* at 39–40.
87 *Id.* at 41–42.
88 *Id* at 43.

settlement of the estate of the deceased, the property remains in the latter's estate and the co-owners only have an inchoate interest in it.[89]

Here, upon the death of Ambrocio, Lot No. 3516 passed to his heirs who then became co-owners of the property. The transfer was documented through the extrajudicial settlement of the estate with sale. However, there was no agreement among the heirs as to the partition of the property. In fact, the extrajudicial settlement of the estate with sale clearly stated that the heirs adjudicated unto themselves the property *pro indiviso*.[90]

Taking into consideration the foregoing disquisitions, this Court finds that the Court of Appeals erred in ruling that Alexander is the sole heir of the remaining portion of Lot No. 3516. Since the aggregate area of the subject property was originally 14,765 square meters, it follows that Alexander, Arturo, and Angelita, each received an aliquot share of 4,921 square meters upon the death of Ambrocio. Upon execution of the extrajudicial settlement of the estate with sale where Arturo, Angelita, and Alexander signed as heirs and vendors, the aggregate area of the property was reduced by 9,329 square meters due to the sale in favor of Benitez. Angelita, through her handwritten note and affidavit, made approximately two decades after the extrajudicial settlement of the estate with sale was executed, acknowledged that she had already sold her entire aliquot share of 4,921 square meters to Benitez. This means that the remaining 4,408 square meters sold to Benitez were taken from the *pro indiviso* share of Arturo and Alexander and should be deducted equally from their aliquot share equivalent to 2,204 square meters each. Accordingly, only 5,436 square meters were left in Lot No. 3516 and this area shall be divided equally by Alexander and Arturo equivalent to 2,718 square meters each.

The dispositions made by Alexander and Arturo should be deducted from the 2,718 square meters of aliquot share each of them is entitled to receive. After deducting the 600 square meters sold to Lucita F. Elizalde, 556 square meters sold to Spouses Hayag, 200 square meters sold to Silverio Bautista, and 440 square meters sold to Vicente Bangoy, the remaining share of Alexander in Lot No. 3516 is 922 square meters.

Likewise, the sale made by Arturo in favor of Silverio Bautista for a portion equivalent to 200 square meters of the subject property should be deducted from the share he is entitled to receive. This disposition leaves him with 2,518 square meters of share in the subject property.

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89 *Spouses Rol v. Racho*, G.R. No. 246096, January 13, 2021 [Per J. Perlas-Bernabe, Second Division].
90 *Rollo*, p. 35.

Article 974 of the Civil Code provides that "[w]henever there is succession by representation, the division of the estate shall be made per stirpes, in such manner that the representative or representatives shall not inherit more than what the person they represent would inherit, if he were living or could inherit." Thus, the heirs of Arturo are entitled to the share Arturo would have inherited and this shall be divided equally between them.

In view of the foregoing discussions, the remainder of Lot No. 3516 shall be divided as follows:

| **Compulsory Heir** | **Division of Lot No. 3516** |
|---|---|
| Heirs of Angelita | ---- |
| Heirs of Arturo | 2,718 square meters less 200 square meters sold to Silverio Bautista, the remaining share of the heirs of Arturo is **2,518** square meters |
| Alexander | 2,718 square meters less 600 square meters sold to Lucita F. Elizalde, 556 square meters sold to Spouses Hayag, 200 square meters sold to Silverio Bautista, and 440 square meters sold to Vicente Bangoy, the remaining share of respondent in Lot No. 3516 is **922** square meters |

To carry out the partition of the subject property, the case must be remanded to the court of origin, which shall proceed to partition the property in accordance with the procedure outlined in Rule 69 of the Rules of Court.

**ACCORDINGLY**, the Decision dated June 27, 2019 and the Resolution dated October 8, 2020 of the Court of Appeals in CA-G.R. CV No. 04878 are **SET ASIDE**.

This Court finds that the heirs of Arturo E. Bandoy are entitled to a **2,518 square meter** portion of Lot No. 3516. His respective heirs shall inherit their corresponding share through a right of representation, in accordance with Article 974 of the Civil Code.

The heirs of Angelita E. Bandoy are not entitled to any share in the subject property.

Taking into consideration the previous dispositions respondent Alexander E. Bandoy made in favor of third persons, he is entitled to receive a 922 square meter portion of the subject property.

The case is **REMANDED** to Branch 40, Regional Trial Court, Tandag City, Surigao del Sur for purposes of partitioning the subject property in accordance with Rule 69 of the Rules of Court.

**SO ORDERED.**

**JHOSEP Y. LOPEZ**
Associate Justice

**WE CONCUR:**

**MARVIC M.V.F. LEONEN**
Senior Associate Justice

**AMY C. LAZARO-JAVIER**
Associate Justice

**MARIO V. LOPEZ**
Associate Justice

**ANTONIO T. KHO, JR.**
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 M.V.F. LEONEN**
Senior Associate Justice
Chairperson, Second Division

## CERTIFICATION

Pursuant to Article VIII, Section 13 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.

**ALEXANDER G. GESMUNDO**
Chief Justice