FIRST DIVISION

[G.R. No. 180683. June 1, 2011]

AURORA L. TECSON, SPOUSES JOSE L. TECSON and LEONILA TECSON, *petitioners, vs.* **MINERVA, MARIA, FRANCISCO, AGUSTINA, JOSE, ROMUALDO, ELIZABETH and VICTOR, all surnamed FAUSTO, and ISABEL *VDA. DE* FAUSTO,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; CO-OWNERSHIP; CIRCUMSTANCES ESTABLISHING CO-OWNERSHIP IN EQUAL SHARES.— We hold that the siblings have equal shares in the said lot. *First*. The mother title of Lot 2189, OCT No. 734, states in no unclear terms that Waldetrudes and Atty. Fausto were co-owners of the subject lot. The inscription in the original title for Lot 2189 carries more than sufficient weight to prove the existence of a co-ownership between Waldetrudes and Atty. Fausto. *Second*. Other than the bare assertion of the petitioners, there is absolutely no proof on record that Waldetrudes was the sole beneficial owner of Lot 2189. Tax Declaration No. 6521 simply cannot prevail over OCT No. 734 as conclusive evidence of the true ownership of Lot 2189. *Third*. During the cadastral proceeding involving Lot 2189, Waldetrudes herself stated that Atty. Fausto was a co-owner of the subject lot. x x x *Fourth*. There was likewise no evidence behind the petitioners' allegation that the registered co-ownership between Waldetrudes and Atty. Fausto was based on their actual occupancy of Lot 2189. On the contrary, OCT No. 734 categorically states that Waldetrudes and Atty. Fausto are co-owners "*in undivided share*" of Lot 2189. The conspicuous silence of OCT No. 734 as to the definite extent of the respective shares of Atty. Fausto and Waldetrudes in Lot 2189 gives rise to a presumption that they are in equal measure. x x x *Fifth*. The equality in terms of share in Lot 2189, was affirmed by Waldetrudes when she testified in open court. x x x Clearly, the evidence preponderates in favor of the position that Waldetrudes and Atty. Fausto were co-owners in equal share of Lot 2189.

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2. ID.; ID.; ID.; LEGAL CONSEQUENCES OF A VOID PARTITION AGREEMENT.— The established facts have several legal consequences: *First*. The Second Plan, having been prepared without the knowledge and consent of any of the co-owners of Lot 2189, have no binding effect on them. *Second*. The Second Partition Agreement is null and void as an absolute simulation, albeit induced by a third party. **The fraud perpetrated by Atty. Tecson did more than to vitiate the consent of Waldetrudes and the respondents. It must be emphasized that Waldetrudes and the respondents never had any intention of entering into a new partition distinct from the First Partition Agreement**. The established facts reveal that Waldetrudes and the respondents assented to the Second Partition Agreement because Atty. Tecson told them that **the instrument was merely required to expedite the sale of Waldetrudes' share**. In other words, **the deceit employed by Atty. Tecson goes into the very nature of the Second Partition Agreement and not merely to its object or principal condition**. Evidently, there is an absence of a genuine intent on the part of the co-owners to be bound under a new partition proposing a new division of Lot 2189. The apparent consent of Waldetrudes and the respondents to the Second Partition Agreement is, in reality, totally wanting. For that reason, the Second Partition Agreement is null and void. *Third*. The Second Partition Agreement being a complete nullity, it cannot be ratified either by the lapse of time or by its approval by the guardianship court. *Fourth*. The First Plan and the First Partition Agreement remain as the valid and binding division of Lot 2189. Hence, pursuant to the First Partition Agreement, Waldetrudes is the absolute owner of Lot 2189-A with an area of only five hundred seven (507) square meters. Atty. Fausto, on the other hand, has dominion over Lot 2189-B with an area of five hundred eight (508) square meters. *Fifth*. Inevitably, Waldetrudes can only sell her lawful share of five hundred seven (507) square meters. The sales in favor of Aurora and, subsequently, Atty. Tecson, are thereby null and void insofar as it exceeded the 507 square meter share of Waldetrudes in Lot 2189. *Nemo dat quod non habet.*

3. ID.; SALES; INNOCENT PURCHASER FOR VALUE, CIRCUMSTANCES NEGATING THE CLAIM OF.— The proven facts indicate that Atty. Tecson knew or, at the very

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least, should have known that Atty. Fausto and Waldetrudes were co-owners in equal share of Lot 2189. We must be reminded of the following circumstances: 1. Atty. Tecson was a long-time friend and neighbor of the Faustos. Atty. Tecson himself testified that he considered Atty. Fausto as a good friend and even admitted that he would sometimes visit the latter in his house to play *mahjong*. By this, Atty. Tecson knew that Atty. Fausto has an actual interest in Lot 2189. 2. Atty. Tecson was the one who presented the Second Partition Agreement to Waldetrudes and the respondents; 3. Waldetrudes and the respondents were not involved in the preparation of the Second Partition Agreement and, at the time they signed the said agreement, had no knowledge of the existence of the Second Plan; and 4. The Second Partition Agreement failed to state the specific areas allotted for each component of Lot 2189 and made no mention of the division proposed by the Second Plan. Being the one behind the execution of the Second Partition Agreement, there is no doubt that Atty. Tecson knew that Lot 2189 was owned in common by Waldetrudes and Atty. Fausto. This, taken together with the instrument's unusual silence as to the definite area allotted for each component lot and the Second Plan, reveals a deliberate attempt on the part of Atty. Tecson to conceal from Waldetrudes and the respondents the unequal division of Lot 2189. The necessity to conceal the disproportionate division of Lot 2189 can only be explained by Atty. Tecson's prior knowledge that such a partition is inherently defective for being contrary to the actual sharing between Waldetrudes and Atty. Fausto. Atty. Tecson is clearly in bad faith. Verily, Atty. Tecson cannot be considered as an innocent purchaser of the excess area of Lot 2189-B. Based on the facts and circumstances prevailing in this case, Atty. Tecson may be charged with actual notice of the defect plaguing the Second Partition Agreement. The respondents may, therefore, recover.

APPEARANCES OF COUNSEL

Andres T. Nacilla for petitioners.
Eltanal Maglinao & Partners for respondents.

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D E C I S I O N

PEREZ, *J.*:

For Review[1] are the Decision[2] dated 12 December 2006 and Resolution[3] dated 2 October 2007 of the Court of Appeals in CA-G.R. CV No. 70303. In the said decision and resolution, the Court of Appeals reversed the Regional Trial Court (RTC), Branch 19 of Pagadian City[4] thereby allowing the respondents to recover four hundred fifty-seven (457) square meters of land from Transfer Certificate of Title (TCT) No. T-4,342 in the name of petitioner Jose Tecson. The decretal portion of the decision of the appellate court reads:[5]

> WHEREFORE, **in the light of the foregoing**, the appeal is hereby **GRANTED**. The assailed decision is hereby **REVERSED and SET ASIDE**.
>
> Defendant-appellee Atty. Jose L. Tecson is entitled only to 507 square meters under Lot 2189-A; he is DIRECTED to reconvey, within thirty (30) days from notice, the excess of 457 square meters thereof to herein plaintiff-appellants in order to restore the latter's original area of 508 square meters under Lot 2189-B pursuant to Exhibit "B" (Subdivision Plan Psd-09-06-000110 dated March 25, 1974) and Exhibit "C" (the Agreement of Partition dated April 15, 1974). Failure on his part to reconvey the aforesaid 457 square meters within the period prescribed thereto, the Clerk of Court of RTC, Branch 19, Pagadian City, is hereby directed to cause the transfer

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[1] *Via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Teresita Dy-Liacco Flores and Mario V. Lopez, concurring. *Rollo*, pp. 109-172.

[3] *Id.* at 93-94.

[4] Decision of the RTC in Civil Case No. 2692. The decision was promulgated on 8 November 2000 and was penned by Presiding Judge Franklyn A. Villegas. *Id.* at 95-108.

[5] *Id.* at 170-171.

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of the same in favor of herein plaintiff-appellants pursuant to Section 10, Rule 39 of the Rules of Court.

Defendant-appellees Aurora L. Tecson and Atty. Jose L. Tecson are directed to pay, jointly and severally, plaintiff-appellants the following:

a.) ₱200,000 as moral damages;
b.) ₱10,000 as exemplary damages; and
c.) ₱20,000 as attorney's fees.

The antecedents of this case are as follows:

Sometime in 1945, Atty. Agustin Fausto (Atty. Fausto) acquired in co-ownership with his sister, Waldetrudes Fausto-Nadela (Waldetrudes), Lot 2189—a one thousand fifteen (1,015) square meter parcel of land situated at Jose Zulueta Street corner National Highway in Pagadian City, Zamboanga Del Sur.[6] In 1953, Atty. Fausto constructed his house on a portion of the said lot.[7]

In 1970, following a cadastral proceeding, Atty. Fausto and Waldetrudes were recognized as co-owners of Lot 2189. Consequently, Original Certificate of Title (OCT) No. 734[8] covering Lot 2189 was issued in the names of:

[I]n undivided shares, Waldetrudes Fausto, married to Leon Nadela; and Agustin Fausto, married to Isabel Pareja, x x x.

Not long after, Atty. Fausto and Waldetrudes decided to partition Lot 2189. For this purpose, Waldetrudes hired one Engr. Ernesto D. Aguilar (Engr. Aguilar) to prepare a subdivision plan for the lot. On 25 March 1974, Engr. Aguilar prepared subdivision plan Psd-09-06-000110 (First Plan)[9] that divided Lot 2189 into two (2) lots, *i.e.*, Lot 2189-A with an area of 507 square meters, and Lot 2189-B with an area of 508 square meters. An illustration of the First Plan shows this division:

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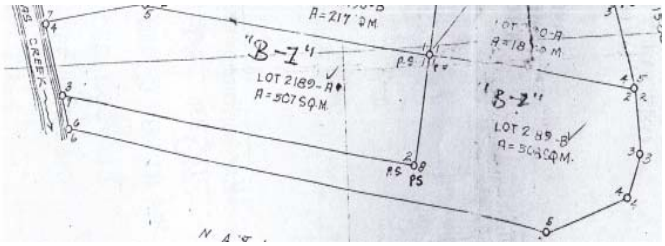
[6] *Id.* at 102.

[7] *Id.* at 111.

[8] Index of Exhibits, p. 1.

[9] *Id.* at 3.

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On 6 April 1974, the Regional Director of the Bureau of Lands approved the First Plan.

On 15 April 1974, Atty. Fausto and Waldetrudes formalized their decision to subdivide Lot 2189 by executing an Agreement of Partition.[10] Under this agreement (First Partition Agreement), Waldetrudes was to be given absolute ownership over Lot 2189-A, while Atty. Fausto was to be conferred separate dominion over Lot 2189-B.[11] The First Partition Agreement, however, was never registered with the Register of Deeds.

On 14 March 1975, Atty. Fausto died. He was survived by herein respondents, who are his wife[12] and children.[13]

On 7 July 1977, however, Waldetrudes entered into a Contract to Sell[14] with herein petitioner Aurora L. Tecson (Aurora). In it, Waldetrudes undertook to sell, among others, her "*ideal share*" in Lot 2189 to Aurora upon full payment of the purchase price.[15]

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[10] *Id.* at 4.

[11] *Id.*

[12] Respondent Isabel *Vda. De* Fausto.

[13] Respondents Minerva, Maria, Francisco, Agustina, Jose, Romualdo, Elizabeth and Victor, all surnamed Fausto.

[14] Index of Exhibits, p. 35

[15] *Id.*

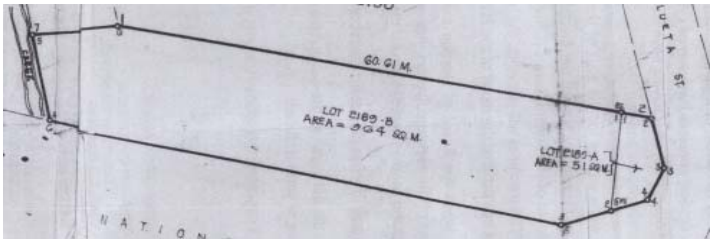
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On 28 July 1977, Engr. Aguilar prepared a second subdivision plan (Second Plan)[16] for Lot 2189. The Second Plan, designated as Psd-268803, drastically altered the division of Lot 2189 under the First Plan.[17] It introduced the following changes:

1. Waldetrudes' Lot 2189-A with an area of 507 square meters under the First Plan was now **Lot 2189-B with an increased area of <u>964 square meters</u>**.[18]

2. Atty. Fausto's Lot 2189-B with an area of 508 square meters under the First Plan was now **Lot 2189-A with a decreased area of <u>51 square meters</u>**.[19]

An illustration of the Second Plan will further highlight these changes:



The Second Plan was approved by the Land Registration Commission on 12 August 1977.

On 28 September 1977, a second partition over Lot 2189 (Second Partition Agreement)[20] was executed between the respondents in their capacity as heirs of Atty. Fausto on one

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[16] *Id.* at 25.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.* at 10-11.

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hand, and Waldetrudes on the other. Presumably with the Second Plan as a new basis, the agreement named Waldetrudes as the owner of Lot 2189-B while the respondents were allocated Lot 2189-A.

On 8 May 1978, Waldetrudes sold Lot 2189-B, with an area of nine hundred sixty-four (964) square meters, to Aurora.[21]

Meanwhile, it would seem that the Register of Deeds had refused registration of the Second Partition Agreement in view of the fact that several of the respondents, namely Jose, Romualdo, Elizabeth and Victor were still minors.[22] Hence, a guardianship proceeding was commenced by respondent Isabel *Vda. De* Fausto (Isabel)—the wife of Atty. Fausto—to secure her appointment as the legal guardian of her minor children in connection with the Second Partition Agreement.[23]

On 28 July 1978, the guardianship court granted Isabel's Petition[24] and, on 17 January 1980, issued an Order approving the Second Partition Agreement.[25]

On 19 February 1980, the following events transpired:

1. The Second Partition Agreement was finally registered with the Register of Deeds. As a consequence, OCT No. 734 covering Lot 2189 was cancelled and, in lieu thereof, were issued the following titles:

    a. Transfer Certificate of Title (TCT) No. T-4,335 covering Lot 2189-A in the name of Atty. Fausto; and

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[21] Thru an instrument entitled "Extrajudicial Settlement and Partition of Estate with Sale." *Id.* at 16.

[22] Jose was then only 20 years old, Romualdo only 19 years old, Elizabeth only 16 years old, and Victor only 14 years old. TSN dated 13 July 1978, p. 2. Index of Exhibits, p. 47. *Id.* at 47.

[23] Docketed as SPL Case No. 1697 and assigned to the Court of First Instance, Branch III of Pagadian City.

[24] *Via* an Order dated 28 July 1978. Index of Exhibits, pp. 20-24.

[25] *Via* an Order dated 17 January 1980. *Id.* at 28-29.

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b. TCT No. T-4,336 for Lot 2189-B in the name of Waldetrudes.[26]

2. The sale of Lot 2189-B in favor of Aurora was likewise registered with the Register of Deeds.[27] Accordingly, the newly issued TCT No. T-4,336 was immediately cancelled and replaced by TCT No. T-4,338[28] in the name of Aurora.

3. Aurora executed a Deed of Absolute Sale,[29] conveying Lot 2189-B to her brother, herein petitioner Atty. Jose L. Tecson (Atty. Tecson).

4. On the very same day, the above deed was registered with the Register of Deeds.[30]

On 20 February 1980, TCT No. T-4,338 was cancelled. In its place, TCT No. T-4,342[31] was issued, this time, in the name of Atty. Tecson.

Seven (7) years after, or on 28 May 1987, the respondents filed a Complaint[32] for the Declaration of Nullity of Documents, Titles, Reconveyance and Damages against Waldetrudes and the petitioners before the Regional Trial Court (RTC) of Pagadian City. In essence, the respondents seek the recovery of four hundred fifty-seven (457) square meters of land from TCT No. T-4,342, which they believe was unlawfully taken from the lawful share of their predecessor-in-interest, Atty. Fausto, in Lot 2189.[33]

The respondents allege that Atty. Fausto and Waldetrudes are, in actual fact, co-owners in equal share of Lot 2189.[34]

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[26] *Rollo*, p. 117.

[27] *Id.*

[28] Index of Exhibits, p. 65.

[29] *Id.* at 34.

[30] *Rollo*, p. 117.

[31] Index of Exhibits, p. 66.

[32] Records, p. 1-3.

[33] *Id.*

[34] Memorandum of the Respondents. *Rollo* pp. 462-492.

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They insist on the First Partition Agreement as the only true, correct and binding division of Lot 2189.[35] Hence, Atty. Fausto is entitled not merely to the meager fifty-one (51) square meter lot actually given to him under the Second Plan and Second Partition Agreement, but to the five hundred eight (508) square meters of land allotted for him under the original partition.[36]

Verily, Waldetrudes could not have sold more than her rightful share of only five hundred seven (507) square meters.[37] The respondents, thus, ask for the nullification of the sale of Lot 2189-B to the petitioners, at least with respect to the excess amounting to four hundred fifty-seven (457) square meters.[38]

In the same vein, the respondents impugn the validity and binding effect of the Second Plan and the ensuing Second Partition Agreement.[39] They denounce the said plan and agreement as mere handiworks of respondent Atty. Tecson himself in a fraudulent scheme to get a lion's share of Lot 2189.[40] More particularly, the respondents claim that:

1. Atty. Tecson was the one who deceived them into signing the Second Partition Agreement.[41] The respondents say that they were not involved in the preparation of the Second Partition Agreement.[42] It was only respondent Atty. Tecson who presented them with the said agreement and who misleadingly told them that it was required to facilitate the sale of Waldetrudes' share.[43] The respondents explain that they believed Atty. Tecson because

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[35] *Id.* at 480-486.

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

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he was their long-time neighbor, a close family friend and, not the least, a respected member of the community being a former governor of the province.[44]

2. The respondents also point out that the Second Partition Agreement did not specify the exact areas allotted for each component lot, and that they were never furnished with copies of the Second Plan.[45]

3. The Second Plan, which supposedly supplants the First Plan and divides Lot 2189 into two (2) vastly unequal portions, was prepared without the respondents' knowledge or consent.[46] For which reason, the Second Plan could not be binding upon them.

4. The guardianship proceeding purportedly initiated in the name of respondent Isabel was actually orchestrated and financed by Atty. Tecson.[47] Atty. Tecson was the one who hired Atty. Fausto M. Lingating, his former legal adviser during his term as governor, to handle the guardianship case for and on behalf of Isabel.[48]

On 20 October 1988, Waldetrudes, who was originally sued by the respondents as a defendant in the RTC, executed an affidavit[49] expressing her intent to join the respondents in their cause. In the mentioned affidavit, Waldetrudes confirmed the allegations of the respondents as follows:

x x x x x x x x x

4. That the truth of the matter is that, my brother the late Agustin Fausto and I are co-owners of a parcel of land covered by Original Certificate of Title No. 734 of Lot 2189, situated at Gatas District,

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[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] Index of Exhibits, pp. 5-6.

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Pagadian City, containing an area of 1,015 square meters, more or less, in equal share *pro indiviso*;

5. That sometimes (sic) in 1974 the late Agustin Fausto and myself agreed to terminate our co-ownership and have the area surveyed and the same was approved and designated as PSD-09-06-000110, of which we have executed an agreement of partition on April 15, 1974 apportioning Lot No. 2189-A with an area of 508 square meters in favor of my late brother Agustin Fausto and Lot No. 2189-B with an area of 507 square meters in my favor;

6. That the aforestated documents were not registered in the Office of the Register of Deeds until the death of my brother Agustin Fausto on March 14, 1975, however, the papers or documents involving Lot No. 2189 was kept by me;

7. That due to financial problem especially I am already very old and sickly, I thought of selling my portion which is Lot 2189-B in favor of Jose L. Tecson, however, in the document the vendee appears to be the sister of Jose L. Tecson in the person of Aurora L. Tecson;

8. That I do not know later on how Jose L. Tecson maneuvered to have the parcel of land again surveyed reducing the area of my brother to only 51 square meters, when in truth and in fact the portion of my late brother has an area of 508 square meters;

9. That while it is true that I sold Jose L. Tecson my portion of Lot 2189-B but the area sold is only 507 square meters and there is no intention on my part to sell to Jose L. Tecson more than that area;

10. That several occasion in the past I was made to sign documents by Jose L. Tecson in relation to the portion sold in his favor, trusting him to be closed (*sic*) to the family, not knowing later on that he maneuvered to change the area of my portion from 507 square meters to 964 square meters encroaching the share of my late brother Atty. Agustin Fausto thereby reducing his area to 51 square meters;

11. That because of the illegal maneuvering which does not reflect to be my true intention in selling my share to Jose L. Tecson, I am informing the Honorable Court that I am joining as party plaintiff in Civil Case No. 2692 in order that the truth will come out and justice will prevail.

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On 18 August 1992, the trial court ordered Waldetrudes to be dropped as a party-defendant from the case and, instead, be impleaded therein as a party-plaintiff.[50]

During the trial, Waldetrudes[51] and respondents Romualdo,[52] Minerva[53] and Isabel[54] were able to testify.

In its decision dated 8 December 2000, the RTC dismissed the complaint of the respondents.[55] The trial court found no merit in the position of the respondents and considered the petitioners to be innocent purchasers for value of Lot 2189-B.[56] The dispositive portion of the ruling of the trial court reads:[57]

> WHEREFORE, judgment is hereby rendered dismissing the case, and placing defendants spouses Jose Tecson and Leonila F. Tecson in physical possession of Lot No. 2189-B, with an area of 964 square meters in accordance with the approved subdivision plan on August 12, 1977 of the then Land Registration Commission; and ordering the plaintiffs to pay defendants:
>
> a. Moral damages in the amount of ₱30,000.00;
>
> b. Attorney's fee in the amount of ₱15,000.00;
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> c. And the cost of litigation expenses in the amount of ₱5,000.00.

As earlier mentioned, the Court of Appeals reversed the ruling of the trial court on appeal.[58] Hence, the present appeal by the petitioners.

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[50] *See* TSN dated 18 August 1992, p. 9.

[51] *Id.*

[52] TSN dated 22 September 1992.

[53] TSN dated 3 November 1992.

[54] TSN dated 6 November 1992.

[55] *Rollo*, p. 108.

[56] *Id.* at 107.

[57] *Id.* at 108.

[58] *Id.* at 170-171.

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The primary issue in this appeal is whether the respondents may recover the four hundred fifty-seven (457) square meters of land from TCT No. T-4,342, registered in the name of petitioner Atty. Tecson.

The petitioners would like this Court to answer in the negative.

The claim of petitioner Atty. Tecson over the entire nine hundred sixty-four (964) square meters of land covered by TCT No. T-4,342 is intricately linked with the validity of the Second Plan and the Second Partition Agreement. As a perusal of the facts reveal, TCT No. T-4,342, along with its precursors TCT Nos. T-4,338 and T-4,336, are but derivates of the division of Lot 2189 fixed by the Second Plan and the Second Partition Agreement.

Understandably, the petitioners argue in favor of the validity of the Second Plan and the Second Partition Agreement.[59] They deny Atty. Tecson's participation in the preparation of the said instruments.[60] The petitioners insist that the Second Plan and the Second Partition Agreement were voluntary and intelligent deeds of Waldetrudes and the respondents themselves.[61]

The petitioners also claim that the Second Plan and the Second Partition Agreement present a more accurate reflection of the true nature of the co-ownership between Atty. Fausto and Waldetrudes. Contrary to what the respondents profess, Waldetrudes and Atty. Fausto were not actually co-owners in equal share of Lot 2189.[62] In truth, the siblings were not even co-owners at all.[63]

According to the petitioners, Lot 2189 was originally the conjugal property of Waldetrudes and her late husband, Leon

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[59] Memorandum of the Petitioners. *Id.* at 360-449.

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] Petition for Review on *Certiorari*. *Id.* at 4-89.

Nadela.[64] At the inception, Atty. Fausto was never a co-owner of Lot 2189.[65] Suitably, it was only Waldetrudes who initially declared Lot 2189 for taxation purposes per Tax Declaration No. 6521.[66]

During the cadastral proceedings in 1970, however, Waldetrudes allowed Lot 2189 to be registered in her name and the name of Atty. Fausto as co-owners.[67] The petitioners claim that Waldetrudes consented to such a registration only because Atty. Fausto had already constructed his house on a portion of Lot 2189.[68] The registered co-ownership between Waldetrudes and Atty. Fausto is, therefore, based merely on the siblings' actual occupancy of Lot 2189.[69]

The petitioners point out that the interest of Atty. Fausto in Lot 2189 was only limited to the house he constructed thereon—which, as it happened, lies evenly on the fifty-one (51) square meter portion eventually assigned to him under the Second Plan and Second Partition Agreement.[70] Hence, the Second Plan and the Second Partition Agreement must be sustained as perfectly valid instruments.

We are not convinced.

Waldetrudes and Atty. Fausto are Co-owners in Equal Share

After reviewing the arguments and evidence presented in this case, We rule that Waldetrudes and Atty. Fausto are, indeed, co-owners of Lot 2189. Moreover, We hold that the siblings have equal shares in the said lot.

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[64] *Id.*

[65] *Id.*

[66] Index of Exhibits, p. 38.

[67] *Rollo*, pp. 4-89.

[68] *Id.*

[69] *Id.*

[70] *Id.*

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First. The mother title of Lot 2189, OCT No. 734, states in no unclear terms that Waldetrudes and Atty. Fausto were co-owners of the subject lot. The inscription in the original title for Lot 2189 carries more than sufficient weight to prove the existence of a co-ownership between Waldetrudes and Atty. Fausto.

Second. Other than the bare assertion of the petitioners, there is absolutely no proof on record that Waldetrudes was the sole beneficial owner of Lot 2189. Tax Declaration No. 6521 simply cannot prevail over OCT No. 734 as conclusive evidence of the true ownership of Lot 2189.[71]

Third. During the cadastral proceeding involving Lot 2189, Waldetrudes herself stated that Atty. Fausto was a co-owner of the subject lot. The transcript taken from the proceeding shows:[72]

Commissioner: What is your relation with Waldetrudes Fausto who is the claimant of Lot No. 2189 (portion) of a parcel of land located at Pagadian City and more particularly bounded as follows: On the North by Lot No. 2190, on the East by Zulueta St., on the South by National Highway and on the West by Gatas Creek with an area of 1015 sq. meters and a house as a permanent improvement.

A: I am the very one sir.

Q: How did you acquire the said land?

A: I purchase (*sic*) it from Sofia *Vda*. Claro in the year 1945 but a copy of the document was lost.

x x x x x x x x x

Q: Who is your co-owner of this land?

A: My co-owner is my brother Atty. Agustin Fausto.

Fourth. There was likewise no evidence behind the petitioners' allegation that the registered co-ownership between Waldetrudes and Atty. Fausto was based on their actual occupancy of

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[71] *Heirs of Leopoldo Vencilao, Sr. v. Court of Appeals*, G.R. No. 123713, 1 April 1998, 288 SCRA 574, 581-582.

[72] Index of Exhibits, pp. 36-37.

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Lot 2189. On the contrary, OCT No. 734 categorically states that Waldetrudes and Atty. Fausto are co-owners "*in undivided share*" of Lot 2189. The conspicuous silence of OCT No. 734 as to the definite extent of the respective shares of Atty. Fausto and Waldetrudes in Lot 2189 gives rise to a presumption that they are in equal measure. We are at once reminded of Article 485 of the Civil Code,[73] to wit:

Article 485. x x x.

The portions belonging to the co-owners in the co-ownership shall be presumed equal, unless the contrary is proved.

Fifth. The equality in terms of share in Lot 2189, was affirmed by Waldetrudes when she testified in open court, to wit:[74]

DIRECT EXAMINATION

ATTY. PERALTA

Q: Now considering that you are, you owned that parcel of land jointly with your younger brother Atty. Agustin Fausto, what is the extent of your ownership?

A: We have co-equal shares sir.

Clearly, the evidence preponderates in favor of the position that Waldetrudes and Atty. Fausto were co-owners in equal share of Lot 2189.

Second Plan and Second Partition Agreement is Invalid

Having settled the existence and extent of the co-ownership between Waldetrudes and Atty. Fausto, We next inquire into the validity of the Second Plan and Second Partition Agreement.

We find the Second Plan and Second Partition Agreement to be invalid.

We agree with the findings of the Court of Appeals that Atty. Tecson was behind the execution of the Second Partition

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[73] Republic Act No. 386.

[74] TSN dated 18 August 1992, p. 13.

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Agreement.[75] It was Atty. Tecson who misled Waldetrudes and the respondents into signing the Second Partition Agreement without giving them notice of the existence of a Second Plan.[76] As a consequence, Waldetrudes and the respondents were misinformed as to the true nature of the Second Partition Agreement. These factual findings are adequately supported by the positive testimonies of respondents Romualdo Fausto,[77] Minerva Fausto[78] and Isabel,[79] to wit:

ROMUALDO'S DIRECT EXAMINATION

ATTY. PERALTA:

Q: Will you please go over if this is the machine copy of the Deed of partition which was brought to you by Atty. Tecson and requested you to sign the same?

A: Yes sir that is the one.

x x x x x x x x x

Q: When was that Deed of Partition marked as Exhibit "G" presented to you by Atty. Tecson?

A: Early part of 1977. I was already connected with the Provincial Assessor that was the time I have seen so many Deed of Sale and the area is specified so before I signed I asked Atty. Tecson where is the area and he told me never mind the area it will be surveyed and I did not insist because I trusted him very much.

Q: By the time this was presented to you by Atty. Tecson there was no survey of 2189?

A: There was no survey.

x x x x x x x x x

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[75] *Rollo*, pp. 148-152.

[76] *Id.*

[77] TSN dated 22 September 1992, pp. 27, 29 and pp. 31-33.

[78] TSN dated 3 November 1992, pp. 5-8, 10 and 12.

[79] TSN dated 6 November 1992, pp. 13-14 and pp. 16-17.

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COURT:

This document which you said you were present during the signing of your brothers and sisters but you cannot remember whether you were present for the others where did you sign this document?

A: At our house.

COURT:

Who delivered this document to you[r] house?

A: Atty. Tecson.

COURT:

You want to impress this court that when you affixed your signatures in your house Atty. Tecson was present?

A: Yes sir.

COURT:

After signing what was done to this document?

A: We are not aware of that but we just waited for the survey because Atty. Tecson told us that the survey follows later.

COURT:

Who kept this document?

A: My Auntie Waldetrudes Nadela.

COURT:

It is clear now that this document was signed in your house and it was kept by your Auntie?

A: Yes, sir.

x x x x x x x x x

ATTY. PERALTA:

Q: When Atty. Tecson went your house to request you to sign how did he tell you?

A: He told us just to sign the document and the survey will just follow we just sign the document without the area and he told us that the area will just follow later.

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Q: When you signed the document with your mother, brothers and sisters Atty. Tecson brought the documents?

A: Yes, sir.

MINERVA FAUSTO'S DIRECT EXAMINATION

ATTY. PERALTA:

Q: Why, at the time when – who brought this deed of partition for signature?

A: Jose L. Tecson.

Q: You are referring to one of the defendants, Jose L. Tecson?

A: Yes, sir.

Q: Now, when this was brought by Jose L. Tecson, the defendant Jose L. Tecson, where did he

COURT: For a moment.

Q: You said that defendant Jose L. Tecson brought that deed of partition. Were you there when defendant Jose L. Tecson brought that deed of partition?

A: Yes, your Honor.

Q: Where was it brought?

A: In the house.

COURT: Proceed.

ATTY. PERALTA:

Q: Who were present in your house when this was brought by defendant Jose L. Tecson?

A: Myself, Neneth or Agustin, Romualdo and Jose Fausto. There were four (4) of us when that deed of partition was brought to the house, myself, my sister Agustina, my brothers Romualdo and Jose.

Q: Do you want to convey to the Court that when this was brought to you Francisco Fausto, Victor Fausto and your sister Elizabeth, Maria Fausto were not around when this was brought by Jose L. Tecson for signature in your house?

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A: Yes, sir.

x x x x x x x x x

Q: Why did you sign above the typewritten name of Francisco Fausto knowing that he was not around?

A: Because defendant Jose L. Tecson told me to affix the signature of Francisco Fausto because this deed of partition is just to facilitate the transferring (sic) of the title of the land.

x x x x x x x x x

Q: Who signed for her, for and behalf of Maria Lilia Fausto?

A: I signed myself.

Q: Why did you sign for Maria Lilia Fausto?

A: Because Jose L. Tecson told me to sign the document in order that the deed of partition could be accomplished.

x x x x x x x x x

Q: Now, how about the residence certificates appearing after the name of Agustina Fausto, with her own residence certificate 3976584 to have been issued January 6, 1977, Pagadian City, and the Residence Certificate of Jose Fausto which has the same number 3976584 issued on January 6, 1977, Pagadian City, who placed this residence certificate?

A: All of us sir never exhibited our residence certificates. It was the Tecsons who supplied the residence certificate numbers.

ISABEL'S DIRECT EXAMINATION

ATTY. PERALTA:

Q: Do you remember having signed a Deed of Partition together with some of your children?

A: Yes sir[.] I can remember.

Q: Who brought that Deed of Partition for signature together with some of your children?

A: Governor Tecson.

Q: Were you able to sign the Deed of Partition?

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A: I signed that Deed of Partition because according to him "just sign this for purposes of subdividing the property."

x x x x x x x x x

Q: Do you recall if you have filed guardianship proceeding?

A: I have not remembered having filed a guardianship proceeding.

Q: Have you heard that there was guardianship proceeding?

A: All I can remember about that guardianship proceeding was that when Gov. Tecson let me sign a guardianship because some of my children were not around.

Q: Do you want to convey to this court that personally you have not filed guardianship proceeding but it was Governor Tecson who let you sign some documents regarding guardianship?

A: It was Governor Tecson who explained to me to sign that guardianship proceeding because according to him it will facilitate and I thought that guardianship was only for purposes of being guardian to my children as a mother.

Indeed, the lack of a plausible explanation why a co-owner would gratuitously cede a very substantial portion of his rightful share to another co-owner in partition renders the foregoing testimonies more credible as against the plain general denial of Atty. Tecson. On this point, We find no reversible error on the part of the Court of Appeals.

The established facts have several legal consequences:

First. The Second Plan, having been prepared without the knowledge and consent of any of the co-owners of Lot 2189, have no binding effect on them.

Second. The Second Partition Agreement is null and void as an absolute simulation,[80] albeit induced by a third party. **The**

[80] Under Article 1346 of the Civil Code, which provides:

***Article 1346*. An absolutely simulated or fictitious contract is void**. A relative simulation, when it does not prejudice a third person and is not

fraud perpetrated by Atty. Tecson did more than to vitiate the consent of Waldetrudes and the respondents. It must be emphasized that Waldetrudes and the respondents never had any intention of entering into a new partition distinct from the First Partition Agreement. The established facts reveal that Waldetrudes and the respondents assented to the Second Partition Agreement because Atty. Tecson told them that **the instrument was merely required to expedite the sale of Waldetrudes' share**.[81]

In other words, **the deceit employed by Atty. Tecson goes into the very nature of the Second Partition Agreement and not merely to its object or principal condition**. Evidently, there is an absence of a genuine intent on the part of the co-owners to be bound under a new partition proposing a new division of Lot 2189. The apparent consent of Waldetrudes and the respondents to the Second Partition Agreement is, in reality, totally wanting. For that reason, the Second Partition Agreement is null and void.

Third. The Second Partition Agreement being a complete nullity, it cannot be ratified either by the lapse of time or by its approval by the guardianship court.[82]

Fourth. The First Plan and the First Partition Agreement remain as the valid and binding division of Lot 2189. Hence, pursuant to the First Partition Agreement, Waldetrudes is the absolute owner of Lot 2189-A with an area of only five hundred seven (507) square meters. Atty. Fausto, on the other hand, has dominion over Lot 2189-B with an area of five hundred eight (508) square meters.

Fifth. Inevitably, Waldetrudes can only sell her lawful share of five hundred seven (507) square meters. The sales in favor of Aurora and, subsequently, Atty. Tecson, are thereby null

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intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement. (Emphasis supplied.)

[81] TSN dated 3 November 1992, p. 8.

[82] *Rollo,* p. 137.

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and void insofar as it exceeded the 507 square meter share of Waldetrudes in Lot 2189. *Nemo dat quod non habet*.[83]

Atty. Tecson is not an innocent purchaser for value

The remaining bar to the recovery by the respondents of the excess area held by Atty. Tecson is the principle of an innocent purchaser for value of land under the Torrens System of Registration.

The petitioners claim that they are *bona fide* purchasers of the entire nine hundred sixty-four (964) square meters of land covered by Lot 2189-B—with Aurora merely relying on the strength of TCT No. T-4,336 in the name of Waldetrudes, while Atty. Tecson placing confidence in TCT No. T-4,338 in the name of Aurora. Both TCT Nos. T-4,336 and T-4,338 define the area of Lot 2189-B as nine hundred sixty-four (964) square meters.[84] The petitioners allege that at the time they made their respective purchase, they did not know of the existing partition of Lot 2189 *per* the First Plan and the First Partition Agreement.[85]

We disagree. The proven facts indicate that Atty. Tecson knew or, at the very least, should have known that Atty. Fausto and Waldetrudes were co-owners in equal share of Lot 2189. We must be reminded of the following circumstances:

1. Atty. Tecson was a long-time friend and neighbor of the Faustos.[86] Atty. Tecson himself testified that he considered Atty. Fausto as a good friend and even admitted that he would sometimes visit the latter in his house to play *mahjong*.[87] By this, Atty. Tecson knew that Atty. Fausto has an actual interest in Lot 2189.

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[83] Literally, "*one cannot give what one does not have*." *See* Art. 1459, New Civil Code.

[84] *Rollo*, pp. 391-404.

[85] *Id*.

[86] TSN dated 12 April 1993, pp. 15-17.

[87] *Id*.

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2. Atty. Tecson was the one who presented the Second Partition Agreement to Waldetrudes and the respondents;[88]

3. Waldetrudes and the respondents were not involved in the preparation of the Second Partition Agreement and, at the time they signed the said agreement, had no knowledge of the existence of the Second Plan;[89] and

4. The Second Partition Agreement failed to state the specific areas allotted for each component of Lot 2189 and made no mention of the division proposed by the Second Plan.[90]

Being the one behind the execution of the Second Partition Agreement, there is no doubt that Atty. Tecson knew that Lot 2189 was owned in common by Waldetrudes and Atty. Fausto. This, taken together with the instrument's unusual silence as to the definite area allotted for each component lot and the Second Plan, reveals a deliberate attempt on the part of Atty. Tecson to conceal from Waldetrudes and the respondents the unequal division of Lot 2189.

The necessity to conceal the disproportionate division of Lot 2189 can only be explained by Atty. Tecson's prior knowledge that such a partition is inherently defective for being contrary to the actual sharing between Waldetrudes and Atty. Fausto. Atty. Tecson is clearly in bad faith.

Verily, Atty. Tecson cannot be considered as an innocent purchaser of the excess area of Lot 2189-B. Based on the facts and circumstances prevailing in this case, Atty. Tecson may be charged with actual notice of the defect plaguing the Second Partition Agreement. The respondents may, therefore, recover.

WHEREFORE, the petition is hereby *DENIED*. Accordingly, the appealed Court of Appeals decision in CA-G.R. CV No. 70303 dated 12 December 2006 is hereby *AFFIRMED*.

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[88] TSN dated 22 September 1992, pp. 27, 29, and pp. 31-33.

[89] *Id*.

[90] *Id*.

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Costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Peralta,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 183849. June 1, 2011]

DOMINGO M. ULEP, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S FINDINGS ARE GENERALLY ACCORDED FINALITY BY APPELLATE COURTS BUT NOT WHEN SUCH FINDINGS ARE EVIDENTLY FLAWED; CASE AT BAR.— Appellate courts generally accord finality to the trial court's findings but not when, as in this case, such findings are evidently flawed. Tuzon said that a police asset directly tipped him that Ulep was about to buy *shabu* from a source; Labutong said, however, that it was the Chief Police Inspector who told them that Ulep had just bought *shabu* from the source. Labutong said that the police had been watching Ulep as a user for a month before the incident; Tuzon said they only came to know Ulep after they apprehended and brought him to the police station. Also, Tuzon said that he and Labutong went to *Barangay* 13 on board a tricycle that he drove; Labutong was sure, on the other hand, that they came in

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[*] Per Special Order No. 994, Associate Justice Diosdado M. Peralta is designated as Additional Member of the First Division in place of Associate Justice Mariano C. Del Castillo who is on official leave.