Supreme Court E-Library



**WHEREFORE,** the appealed decision of the Regional Trial Court of Malabon, Branch 170, in Criminal Case No. 16199-MN and Criminal Case No. 16200-MN, is hereby affirmed *in toto*.

Costs *de oficio*.

**SO ORDERED.**

*Puno, Kapunan, Pardo,* and *Ynares-Santiago, JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. 128102. March 7, 2000]

**AZNAR BROTHERS REALTY COMPANY,** *petitioner, vs.* **COURT OF APPEALS, LUIS AYING, DEMETRIO SIDA, FELOMINO AUGUSTO, FEDERICO ABING, and ROMEO AUGUSTO,** *respondents.*

**SYNOPSIS**

Petitioner Aznar Brothers Realty Co. (AZNAR) acquired a lot located at Brgy. Mactan, Lapu-Lapu City, from the heirs of a certain Crisanta Maloloy-on by virtue of an Extrajudicial Partition of Real Estate with Deed of Absolute Sale. Said deed was registered with the Register of Deeds of Lapu-Lapu City. On the other hand, the private respondents alleged that they are the successors and descendants of the eight children of the late Crisanta Maloloy-on, whose names appeared as the registered owners in the Original Certificate of Title No. RC-2856. They also alleged that they had been residing and occupying the subject portion of the land in the concept of

Supreme Court E-Library



owner since the time of their parents and grandparents. Herein private respondents were allegedly allowed by AZNAR to occupy portions of the subject lot by mere tolerance provided that they leave the land in the event that the company would use the property for its purposes. Later, AZNAR entered into a joint venture with Sta. Lucia Realty Development Corporation for the development of the subject lot into a multi-million peso housing subdivision and beach resort. When its demands for the private respondents to vacate the land failed, AZNAR filed with the Municipal Trial Court (MTCC) of Lapu-Lapu City a case for unlawful detainer and damages. The MTCC rendered a decision ordering the private respondents to (a) vacate the land upon the finality of the judgment; and (b) pay ₱8,000 as attorney's fees and ₱2,000 as litigation expenses, plus costs. Aggrieved by the decision private respondents appealed to the Regional Trial Court (RTC). The RTC affirmed the decision of the MTCC and ordered the issuance of a writ of demolition directing the sheriff to demolish private respondents' houses and other improvements which might be found on the subject premises. On appeal by the private respondents, the Court of Appeals reversed and set aside the decision of the RTC; declared the private respondents as the rightful possessors de facto of the land in question; and permanently enjoined the Sheriff from effectuating the demolition of the houses of the private respondents. The Court of Appeals noted that at the time AZNAR entered the property, the private respondents had already been in possession thereof peacefully, continuously, adversely and notoriously since time immemorial. There was no evidence that petitioner was ever in possession of the property. Its claim of ownership was based only on an Extrajudicia l Partition with Deed of Absolute Sale, which private respondents, however, claimed to be null and void for being simulated and fraudulently obtained. Petitioner elevated the case to the Court, via the present petition for review on *certiorari*.

The Supreme Court reversed and set aside the decision of the Court of Appeals. The Court ruled that, contrary to the ruling of the Court of Appeals, prior physical possession by the plaintiff of the subject property is not an indispensable requirement in unlawful detainer cases, although it is

Supreme Court E-Library



indispensable in an action for forcible entry. The lack of prior physical possession on the part of AZNAR is, therefore, of no moment, as its cause of action in the unlawful detainer case is precisely to terminate private respondents' possession of the property in question. On the issue of validity of the Extrajudicial Partition with Deed of Absolute Sale, the Court ruled that the same is a notarized document and as such, it has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution. The Court also stressed that whoever alleges forgery has the burden of proving the same. Forgery cannot be presumed but should be proved by clear and convincing evidence. Private respondents failed to discharge this burden of proof; hence, the presumption in favor of the questioned deed stands.

## SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; STAY OF IMMEDIATE EXECUTION OF JUDGMENT, REQUIREMENTS; FILING OF *SUPERSEDEAS* BOND TO STAY IMMEDIATE EXECUTION, GENERALLY MANDATORY; EXCEPTION IS WHERE THE JUDGMENT DOES NOT CONTAIN ANY AWARD OF RENTALS IN ARREARS OR DAMAGES; CASE AT BAR.** — Under the former Section 8, Rule 70 of the Rules of Court, if the judgment of the municipal trial court in an ejectment case is adverse to the defendant, execution shall issue immediately. To stay the immediate execution of the judgment, the defendant must (1) perfect his appeal; (2) file a supersedeas bond to answer for the rents, damages, and costs accruing down to the time of the judgment appealed from; and (3) periodically deposit the rentals falling due during the pendency of the appeal. As a rule, the filing of a supersedeas bond is mandatory and if not filed, the plaintiff is entitled as a matter of right to the immediate execution of the judgment. An exception is where the trial court did not make any findings with respect to any amount in arrears, damages or costs against the defendant, in which case no bond is necessary to stay the execution of the judgment. Thus, in *Once v. Gonzales*, this Court ruled that the order of

Supreme Court E-Library



execution premised on the failure to file a *supersedeas* bond was groundless and void because no such bond was necessary there being no back rentals adjudged in the appealed judgment. Similarly, in the instant case, there was no need for the private respondents to file a *supersedeas* bond because the judgment of the MTCC did not award rentals in arrears or damages. The attorney's fees of ₱8,000 and the litigation expenses of ₱2,000 awarded in favor of the petitioner need not be covered by a bond, as these are not the damages contemplated in Section 8 of Rule 70 of the Rules of Court. The damages referred to therein are the reasonable compensation for the use and occupation of the property which are generally measured by its fair rental value and cannot refer to other damages which are foreign to the enjoyment or material possession of the property. Neither were the private respondents obliged to deposit the rentals falling due during the pendency of the appeal in order to secure a stay of execution because the appealed judgment did not fix the reasonable rental or compensation for the use of the premises. Hence, it was error for the RTC to order the execution of the judgment of the MTCC.

2. **REMEDIAL LAW; REVISED RULES ON SUMMARY PROCEDURE; SUMMARY PROCEDURE; THE RTC DECISION AFFIRMING THE COURT *A QUO'S* DECISION IN AN EJECTMENT CASE IS IMMEDIATELY EXECUTORY; WRIT OF DEMOLITION CONSTITUTED WRIT OF EXECUTION.** — At any rate, pursuant to Section 21 of the Revised Rules of Summary Procedure, the decision of the RTC affirming the decision of the MTCC has become immediately executory, without prejudice to the appeal before the Court of Appeals. The said Section repealed Section 10 of the Rules of Court allowing during the pendency of the appeal with the Court of Appeals a stay of execution of the RTC judgment with respect to the restoration of possession where the defendant makes a periodic deposit of rentals. Thus, immediate execution of the judgment becomes a ministerial duty of the court. No new writ of execution was, however, issued. Nevertheless, the writ of demolition thereafter issued was sufficient to constitute a writ of execution, as it substantially complied with the form and contents of a writ of execution as provided for under Section 8 of Rule 39 of the Rules of Court.

Supreme Court E-Library



3. **ID.; PRELIMINARY INJUNCTION; INJUNCTION DOES NOT LIE WHEN THE ACT SOUGHT TO BE ENJOINED HAD ALREADY BECOME A *FAIT ACCOMPLI*.** — In the instant case, private respondents' petition for review with prayer for the immediate issuance of a temporary restraining order (TRO) or preliminary injunction was mailed on 2 August 1994 but was received by the Court of Appeals only on 30 August 1994. Meanwhile, on 3 August 1994, the writ of demolition was implemented, resulting in the demolition of private respondents' houses. Hence, any relevant issue arising from the issuance or enforcement of the writ had been rendered moot and academic. Injunction would not lie anymore, as the acts sought to have been enjoined had already become a *fait accompli* or an accomplished or consummated act.

4. **ID.; UNLAWFUL DETAINER CASES; PRIOR PHYSICAL POSSESION IS NOT AN INDISPENSABLE REQUIREMENT.** — Now on the applicability to unlawful detainer cases of the requirement of prior physical possession of the disputed property. Contrary to the ruling of the Court of Appeals, prior physical possession by the plaintiff of the subject property is not an indispensable requirement in unlawful detainer cases, although it is indispensable in an action for forcible entry. The lack of prior physical possession on the part of AZNAR is therefore of no moment, as its cause of action in the unlawful detainer case is precisely to terminate private respondents' possession of the property in question.

5. **ID.; ID.; QUESTION OF TITLE MAY BE DECIDED SOLELY FOR THE PURPOSE OF DETERMINING THE ISSUE OF POSSESSION.**— In an action for ejectment, the only issue involved is possession *de facto*. However, when the issue of possession cannot be decided without resolving the issue of ownership, the court may receive evidence upon the question of title to the property but solely for the purpose of determining the issue of possession.

6. **CIVIL LAW; EXTRAJUDICIAL PARTITION; PRETERITION OF HEIRS; PARTICIPATION OF NON-HEIRS DOES NOT RENDER THE PARTITION VOID IN ITS ENTIRETY BUT ONLY TO THE EXTENT CORRESPONDING TO THEM.**— Private respondents claim that not all the known heirs of Crisanta

Supreme Court E-Library



Maloloy-on participated in the extrajudicial partition, and that two persons who participated and were made parties thereto were not heirs of Crisanta. This claim, even if true, would not warrant rescission of the deed. Under Article 1104 of the Civil Code, "[a] partition made with preterition of any of the compulsory heirs shall not be rescinded, unless it be proved that there was bad faith or fraud on the part of the persons interested; but the latter shall be proportionately obliged to pay to the person omitted the share which belongs to him." In the present case, no evidence of bad faith or fraud is extant from the records. As to the two parties to the deed who were allegedly not heirs, Article 1105 is in point; it provides: "A partition which includes a person believed to be an heir, but who is not, shall be void only with respect to such person." In other words, the participation of non-heirs does not render the partition void in its entirety but only to the extent corresponding to them.

7. **REMEDIAL LAW; EVIDENCE; NOTARIZATION OF DOCUMENTS, EFFECTS OF; PROOF OF FORGERY; A NOTARIZED DOCUMENT ENJOYS THE PRESUMPTION OF REGULARITY.** — It is worthy to note that the Extrajudicial Partition with Deed of Absolute Sale is a notarized document. As such, it has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution. It is admissible in evidence without further proof of authenticity and is entitled to full faith and credit upon its face. He who denies its due execution has the burden of proving that contrary to the recital in the Acknowledgment he never appeared before the notary public and acknowledged the deed to be his voluntary act. It must also be stressed that whoever alleges forgery has the burden of proving the same. Forgery cannot be presumed but should be proved by clear and convincing evidence. Private respondents failed to discharge this burden of proof; hence, the presumption in favor of the questioned deed stands.

8. **NOTARIAL LAW; NOTARIAL DISQUALIFICATION; A REPRESENTATIVE OF A PERSON IN WHOSE FAVOR A CONTRACT WAS EXECUTED IS NOT DISQUALIFIED TO NOTARIZE THE SUBJECT DOCUMENT.** — Private respondents contend that there was violation of the Notarial

Supreme Court E-Library



Law because the lawyer who prepared and notarized the document was AZNAR's representative in the execution of the said document. Under Section 22 of the Spanish Notarial Law of 1889, a notary public could not authenticate a contract which contained provisions in his favor or to which any of the parties interested is a relative of his within the fourth civil degree or second degree of affinity; otherwise, pursuant to Section 28 thereof, the document would not have any effect. This rule on notarial disqualification no longer holds true with the enactment of Act No. 496, which repealed the Spanish Notarial Law. Under the Notarial Law in force at the time of the notarization of the questioned deed, Chapter 11 of the Revised Administrative Code, only those who had been convicted of any crime involving moral turpitude were disqualified to notarize documents. Thus, a representative of a person in whose favor a contract was executed was not necessarily so disqualified. Besides, there is no proof that Atty. Ramon Igaña was a representative of petitioner in 1964; what appears on record is that he was the Chief of the petitioner's Legal Department in 1993. Additionally, this alleged violation of the Notarial Law was raised only now.

9. **LAND REGISTRATION; CONVEYANCE OF PROPERTY VALID AND BINDING WHEN NO RIGHT OF INNOCENT THIRD PERSON OR SUBSEQUENT TRANSFEREES IS INVOLVED; PURPOSE OF REGISTRATION; NON-REGISTRATION OF A DEED DOES NOT RELIEVE THE PARTIES THERETO OF THEIR OBLIGATIONS.**— Anent the non-annotation of the Extrajudicial Partition with Deed of Absolute Sale in the reconstituted Original Certificate of Title No. RO-2856, the same does not render the deed legally defective. It must be borne in mind that the act of registering a document is never necessary to give the conveyance legal effect as between the parties and the vendor's heirs. As between the parties to a sale, registration is not indispensable to make it valid and effective. The peculiar force of a title is exhibited only when the purchaser has sold to innocent third parties the land described in the conveyance. The purpose of registration is merely to notify and protect the interests of strangers to a given transaction, who may be ignorant thereof, and the non-registration of the deed evidencing said transaction does not

Supreme Court E-Library



relieve the parties thereto of their obligations thereunder. Here, no right of innocent third persons or subsequent transferees of the subject lot is involved; thus, the conveyance executed in favor of AZNAR by private respondents and their predecessors is valid and binding upon them, and is equally binding and effective against their heirs. The principle that registration is the operative act that gives validity to the transfer or creates a lien upon the land "refers to cases involving conflicting rights over registered property and those of innocent transferees who relied on the clean title of the properties." This principle has no bearing on the present case, as no subsequent transfer of the subject lot to other persons has been made either by private respondents or their predecessors-in-interest.

**APPEARANCES OF COUNSEL**

*Rolando A. Navarro* for petitioner.

*Fernandez Carillo Ponce Seguerra Osano Law Forum* and *Santos Pilapil & Associates* for private respondents.

**D E C I S I O N**

**DAVIDE, JR., *C.J.*:**

This is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court seeking to reverse and set aside the 26 March 1996 Decision[1] of the Court of Appeals declaring the private respondents the rightful *possessors de facto* of the subject lot and permanently enjoining Sheriff Juan Gato or his representative from effecting the demolition of private respondents' houses.

Culled from the evidence proffered by petitioner Aznar Brothers Realty Co. (hereafter AZNAR), it appears that Lot No. 4399 containing an area of 34,325 square meters located

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[1] *Rollo*, 41. Per Ibay-Somera, *C., J.*, with Benipayo, A. and Lipana-Reyes, C., *JJ.*, concurring.

Supreme Court E-Library



at Brgy. Mactan, Lapu-Lapu City, was acquired by AZNAR from the heirs of Crisanta Maloloy-on by virtue of an Extrajudicial Partition of Real Estate with Deed of Absolute Sale dated 3 March 1964. This deed was registered with the Register of Deeds of Lapu-Lapu City on 6 March 1964 as shown on the face thereof. After the sale, petitioner AZNAR declared this property under its name for taxation purposes and regularly paid the taxes thereon. Herein private respondents were allegedly allowed to occupy portions of Lot No. 4399 by mere tolerance provided that they leave the land in the event that the company would use the property for its purposes. Later, AZNAR entered into a joint venture with Sta. Lucia Realty Development Corporation for the development of the subject lot into a multi-million peso housing subdivision and beach resort. When its demands for the private respondents to vacate the land failed, AZNAR filed with the Municipal Trial Court (MTCC) of Lapu-Lapu City a case for unlawful detainer and damages, which was docketed as Civil Case No. R-1027.

On the other hand, the private respondents alleged that they are the successors and descendants of the eight children of the late Crisanta Maloloy-on, whose names appear as the registered owners in the Original Certificate of Title No. RC-2856. They had been residing and occupying the subject portion of the land in the concept of owner since the time of their parents and grandparents, except for Teodorica Andales who was not a resident in said premises. Private respondents claimed that the Extrajudicial Partition of Real Estate with Deed of Absolute Sale is *void ab initio* for being simulated and fraudulent, and they came to know of the fraud only when AZNAR entered into the land in the last quarter of 1991 and destroyed its vegetation. They then filed with the Regional Trial Court (RTC) of Lapu-Lapu City a complaint seeking to declare the subject document null and void. This case was docketed as Civil Case No. 2930-L.

On 1 February 1994, the MTCC rendered a decision ordering the private respondents to (a) vacate the land in question upon

Supreme Court E-Library



the finality of the judgment; and (b) pay ₱8,000 as attorney's fees and ₱2,000 as litigation expenses, plus costs.[2]

The MTCC delved into the issue of ownership in order to resolve the issue of possession. It found that petitioner AZNAR acquired ownership of Lot No. 4399 by virtue of the Extrajudicial Partition of Real Estate with Deed of Absolute Sale executed by the Heirs of Crisanta Maloloy-on on 3 March 1964, which was registered with the Register of Deeds of Lapu-Lapu City on 6 March 1964 as appearing on the face thereof. Private respondents' allegation that two of the signatories were not heirs of the registered owners; that some of the signatories were already dead at the date of the execution of the deed; and that many heirs were not parties to the extrajudicial partition is a form of a negative pregnant, which had the effect of admitting that the vendors, except those mentioned in the specific denial, were heirs and had the legal right to sell the subject land to petitioner. The fact that some or most heirs had not signed the deed did not make the document null and void *ab initio* but only annullable, unless the action had already prescribed. Since the private respondents occupied the land merely by tolerance, they could be judicially ejected therefrom. That the Deed has not been annotated on OCT RO-2856 is of no moment, since said title was reconstituted only on 25 August 1988, while the subject Deed was executed on 3 March 1964. Lastly, the reconstituted title has not as yet been transferred to a purchaser for value.

Aggrieved by the decision of the MTCC, private respondents appealed to the RTC.

During the pendency of the appeal, or on 8 March 1994, the RTC, upon Aznar's *ex parte* motion, issued an order granting the issuance of a writ of execution pursuant to Section 8, Rule 70 of the Revised Rules of Court in view of the failure of private respondents to put up a *supersedeas* bond. A week later, a writ of execution was issued. The sheriff then served upon

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[2] *Rollo*, 17. Per Judge Alfredo B. Perez, Jr.

Supreme Court E-Library



private respondents the said writ of execution together with a notice to vacate. On 11 April 1994, the sheriff padlocked their houses, but later in the day, private respondents re-entered their houses. Thus, on 6 May 1994, AZNAR filed an omnibus motion for the issuance of a writ of demolition, which private respondents opposed. This motion was set for hearing three times, but the parties opted to submit a consolidated memorandum and agreed to submit the same for resolution.[3]

On 22 July 1994, the RTC affirmed the decision of the MTCC and ordered the issuance of a writ of demolition directing the sheriff to demolish private respondents' houses and other improvements which might be found on the subject premises.[4]

On 29 July 1994, a writ of demolition was issued, and notices of demolition were served upon private respondents. Per Sheriff's Report,[5] private respondents' houses were demolished on 3 August 1994, except for two houses which were moved outside the premises in question upon the plea of the owners thereof.

On appeal by the private respondents, the Court of Appeals reversed and set aside the decision of the RTC; declared the private respondents as the rightful possessors *de facto* of the land in question; and permanently enjoined Sheriff Juan Gato or whoever was acting in his stead from effectuating the demolition of the houses of the private respondents.

In arriving at its challenged decision, the Court of Appeals noted that at the time AZNAR entered the property, the private respondents had already been in possession thereof peacefully, continuously, adversely and notoriously since time immemorial. There was no evidence that petitioner was ever in possession of the property. Its claim of ownership was based only on an Extrajudicial Partition with Deed of Absolute Sale, which private respondents, however, claimed to be null and void for being

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[3] RTC Decision, 8-9; *Rollo*, 31-32.

[4] *Rollo*, 24-33. Per Judge Teodoro K. Risos.

[5] CA *Rollo*, 141.

Supreme Court E-Library



simulated and fraudulently obtained. The Court of Appeals further held that where not all the known heirs had participated in the extrajudicial agreement of partition, the instrument would be null and void and therefore could not be registered.[6] Moreover, AZNAR was estopped to assert ownership of the property in question, since it had admitted in a pleading in the reconstitution proceedings that the property had never been conveyed by the decreed owners. Additionally, from 1988 up to the filing of the ejectment case on 4 August 1993, AZNAR never registered the extrajudicial partition despite opportunities to do so. Its allegation that private respondents occupied the property by mere tolerance was not proved. Pursuant to the ruling *in Vda. de Legazpi v. Avendano,*[7] the fact that the right of the private respondents was so seriously placed in issue and the execution of the decision in the ejectment case would have meant demolition of private respondents' houses constituted an equitable reason to suspend the enforcement of the writ of execution and order of demolition.

AZNAR then elevated the case to this Court, via this petition for review on *certiorari*, contending that respondent Court of Appeals erred in

1. ... reversing the judgments of the Municipal Trial Court and the Regional Trial Court of Lapu-Lapu City despite the finality of the judgments and the full implementation thereof;

2. ... invoking lack of prior physical possession over the land in question by the petitioner as one ground in its Decision sought to be reviewed;

3. ... holding that the Extrajudicial Partition with Deed of Absolute Sale was null and void;

4. ...holding that petitioner was in estoppel *in pais* when it made the allegation that the property was not sold or encumbered in its petition for reconstitution of title;

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[6] Citing NARCISO PEÑA, *ET AL., REGISTRATION OF LAND TITLES AND DEEDS* 627 (1994) (hereafter PEÑA).

[7] 79 SCRA 135 [1977].

Supreme Court E-Library



5. ... applying the ruling in the case *of Vda. de Legazpi vs. Avendano* (79 SCRA 135 [1977]).

We shall jointly discuss the first and fifth assigned errors for being interrelated with each other.

In its first assigned error, petitioner argues that the decision of the MTCC of Lapu-Lapu City had become final and immediately executory in view of the undisputed failure of the private respondents to post a *supersedeas* bond as required by Section 8, Rule 70 of the Revised Rules of Court.

We do not agree. Since the private respondents had seasonably filed an appeal with the RTC of Lapu-Lapu City, the judgment of the MTCC of Lapu-Lapu City did not become final. And for reasons hereunder stated, the perfection of the appeal was enough to stay the execution of the MTCC decision.

Under the former Section 8, Rule 70 of the Rules of Court,[8] if the judgment of the municipal trial court in an ejectment case is adverse to the defendant, execution shall issue immediately. To stay the immediate execution of the judgment, the defendant must (1) perfect his appeal; (2) file a *supersedeas* bond to answer for the rents, damages, and costs accruing down to the time of the judgment appealed from; and (3) periodically deposit the rentals falling due during the pendency of the appeal.[9]

As a rule, the filing of a *supersedeas* bond is mandatory and if not filed, the plaintiff is entitled as a matter of right to the immediate execution of the judgment. An exception is where the trial court did not make any findings with respect to any amount in arrears, damages or costs against the defendant,[10] in which case no bond is necessary to stay the execution of

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[8] Now Section 19, Rule 70 of the 1997 Rules of Civil Procedure.

[9] *Chua v. Court of Appeals*, 286 SCRA 437, 444 [1998]; *Fernandez v. Español,* 289 SCRA 1, 5-6 [1998].

[10] 1 FLORENZ D. REGALADO, REMEDIAL LAW COMPENDIUM 797 (1997).

Supreme Court E-Library



the judgment. Thus, in *Once v. Gonzales*,[11] this Court ruled that the order of execution premised on the failure to file a *supersedeas* bond was groundless and void because no such bond was necessary there being no back rentals adjudged in the appealed judgment.

Similarly, in the instant case, there was no need for the private respondents to file a *supersedeas* bond because the judgment of the MTCC did not award rentals in arrears or damages. The attorney's fees of ₱8,000 and the litigation expenses of ₱2,000 awarded in favor of the petitioner need not be covered by a bond, as these are not the damages contemplated in Section 8 of Rule 70 of the Rules of Court. The damages referred to therein are the reasonable compensation for the use and occupation of the property which are generally measured by its fair rental value and cannot refer to other damages which are foreign to the enjoyment or material possession of the property.[12] Neither were the private respondents obliged to deposit the rentals falling due during the pendency of the appeal in order to secure a stay of execution because the appealed judgment did not fix the reasonable rental or compensation for the use of the premises.[13] Hence, it was error for the RTC to order the execution of the judgment of the MTCC.

At any rate, pursuant to Section 21 of the Revised Rules of Summary Procedure, the decision of the RTC affirming the decision of the MTCC has become immediately executory, without prejudice to the appeal before the Court of Appeals. The said Section repealed Section 10 of the Rules of Court allowing during the pendency of the appeal with the Court of Appeals a stay of execution of the RTC judgment with respect to the restoration of possession where the defendant makes a periodic deposit of rentals. Thus, immediate execution of the judgment becomes a ministerial duty of the court. No new writ of execution was, however, issued. Nevertheless, the writ

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[11] 76 SCRA 258, 261 [1977].

[12] *See De Laureano v. Adil*, 72 SCRA 148, 155 [1976].

[13] *Lunsod v. Ortega*, 46 Phil. 664, 674 [1921].

Supreme Court E-Library



of demolition thereafter issued was sufficient to constitute a writ of execution, as it substantially complied with the form and contents of a writ of execution as provided for under Section 8 of Rule 39 of the Rules of Court. Moreover, private respondents were duly notified and heard on the omnibus motion for the issuance of the writ of demolition and were given five days to remove their houses.[14]

Invoking *Legaspi v. Avendaño*,[15] the Court of Appeals held that there was an equitable reason to suspend the enforcement of the writ of execution and order of demolition until after the final determination of the civil case for the nullification of the Extrajudicial Partition with Deed of Absolute Sale.

In *Legaspi*, this Court held:

> Where the action ... is one of illegal detainer ... and the right of the plaintiff to recover the premises is seriously placed in issue in a proper judicial proceeding, it is more equitable and just and less productive of confusion and disturbance of physical possession, with all its concomitant inconvenience and expense [f]or the court in which the issue of legal possession, whether involving ownership or not, is brought to restrain, *should a petition for preliminary injunction be filed with it*, the effects of any order or decision in the unlawful detainer case in order to await the final judgment in the more substantive case involving legal possession or ownership.

In the instant case, private respondents' petition for review with prayer for the immediate issuance of a temporary restraining order (TRO) or preliminary injunction was mailed on 2 August 1994 but was received by the Court of Appeals only on 30 August 1994. Meanwhile, on 3 August 1994, the writ of demolition was implemented, resulting in the demolition of private respondents' houses. Hence, any relevant issue arising from the issuance or enforcement of the writ had been rendered moot and academic. Injunction would not lie anymore, as the

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[14] *Rubio v. MTCC, Branch 4, Cagayan de Oro City*, 252 SCRA 172, 181-182 [1996].

[15] *Supra* note 7.

Supreme Court E-Library



acts sought to have been enjoined had already become a *fait accompli* or an accomplished or consummated act.

Now on the applicability to unlawful detainer cases of the requirement of prior physical possession of the disputed property. Contrary to the ruling of the Court of Appeals, prior physical possession by the plaintiff of the subject property is not an indispensable requirement in unlawful detainer cases, although it is indispensable in an action for forcible entry.[16] The lack of prior physical possession on the part of AZNAR is therefore of no moment, as its cause of action in the unlawful detainer case is precisely to terminate private respondents' possession of the property in question.[17]

We now come to the issue of the validity of the Extrajudicial Partition with Deed of Absolute Sale.

In an action for ejectment, the only issue involved is possession *de facto*. However, when the issue of possession cannot be decided without resolving the issue of ownership, the court may receive evidence upon the question of title to the property but solely for the purpose of determining the issue of possession.[18]

In the instant case, private respondents have set up the defense of ownership and questioned the title of AZNAR to the subject lot, alleging that the Extrajudicial Partition with Deed of Absolute Sale upon which petitioner bases its title is null and void for being simulated and fraudulently made.

First, private respondents claim that not all the known heirs of Crisanta Maloloy-on participated in the extrajudicial partition, and that two persons who participated and were made parties

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[16] *Aguilar v Cabrera,* 74 Phil. 658, 666 [1944]; *Pangilinan v. Aguilar,* 43 SCRA 136, 144 [1972]; *Sumulong v. Court of Appeals,* 232 SCRA 372, 383 [1994]; *Javelosa v. Court of Appeals,* 265 SCRA 493, 502 [1996].

[17] *Orellano v. Alvestir,* 76 SCRA 536, 541 [1977].

[18] Former Section 4, Rule 70, Rules of Court; *Consing v. Jamandre,* 64 SCRA 1, 8 [1975]; *Wilmon Auto Supply Corp. v. Court of Appeals,* 208 SCRA 108, 121 [1992].

Supreme Court E-Library



thereto were not heirs of Crisanta. This claim, even if true, would not warrant rescission of the deed. Under Article 1104 of the Civil Code, "[a] partition made with preterition of any of the compulsory heirs shall not be rescinded, unless it be proved that there was bad faith or fraud on the part of the persons interested; but the latter shall be proportionately obliged to pay to the person omitted the share which belongs to him." In the present case, no evidence of bad faith or fraud is extant from the records. As to the two parties to the deed who were allegedly not heirs, Article 1105 is in point; it provides: "A partition which includes a person believed to be an heir, but who is not, shall be void only with respect to such person." In other words, the participation of non-heirs does not render the partition void in its entirety but only to the extent corresponding to them.

Private respondents also allege that some of the persons who were made parties to the deed were already dead, while others were still minors. Moreover, the names of some parties thereto were misspelled, and others who knew how to read and write their names were made to appear to have affixed only their thumbmark in the questioned document. Likewise, the signatures of those who were made parties were forged.

The foregoing are bare allegations with no leg to stand on. No birth or death certificates were presented before the MTCC to support the allegations that some of the parties to the deed were minors and others were already dead at the time of the execution of the deed. What private respondents adduced as evidence was merely a family tree, which was at most self-serving. It was only when the case was on appeal with the RTC that the private respondents presented as Annex "B" of their Memorandum and Appeal Brief a photocopy of the certificate of death of Francisco Aying,[19] son of Crisanta Maloloy-on, who reportedly died on 7 March 1963. This certificate was allegedly issued on 17 January 1992 by the Parish Priest of Virgen de Regla Parish, Lapu-Lapu City. The fact remains,

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[19] OR, 185.

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however, that this photocopy was not certified to be a true copy.

It is worthy to note that the Extrajudicial Partition with Deed of Absolute Sale is a notarized document. As such, it has in its favor the presumption of regularity, and it carries the evidentiary weight conferred upon it with respect to its due execution.[20] It is admissible in evidence without further proof of authenticity[21] and is entitled to full faith and credit upon its face.[22] He who denies its due execution has the burden of proving that contrary to the recital in the Acknowledgment he never appeared before the notary public and acknowledged the deed to be his voluntary act.[23] It must also be stressed that whoever alleges forgery has the burden of proving the same. Forgery cannot be presumed but should be proved by clear and convincing evidence.[24] Private respondents failed to discharge this burden of proof; hence, the presumption in favor of the questioned deed stands.

Private respondents contend that there was violation of the Notarial Law because the lawyer who prepared and notarized the document was AZNAR's representative in the execution of the said document. Under Section 22 of the Spanish Notarial Law of 1889, a notary public could not authenticate a contract which contained provisions in his favor or to which any of the parties interested is a relative of his within the fourth civil degree or second degree of affinity; otherwise, pursuant to Section 28 thereof, the document would not have any effect. This rule on notarial disqualification no longer holds true with the enactment of Act No. 496, which repealed the Spanish Notarial Law.[25]

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[20] *See Garrido v. Court of Appeals*, 236 SCRA 450, 457 [1994].

[21] *Nadayag v. Grageda*, 237 SCRA 202, 206 [1994]; *Lao v. Villones-Lao*, G.R. No. 126777, 29 April 1999.

[22] *Arrieta v. Llosa*, 282 SCRA 248 [1997].

[23] *Daroy v. Abecia*, 298 SCRA 239, 251 [1998].

[24] *Veloso v. Court of Appeals*, 260 SCRA 593, 602 [1996].

[25] *Kapunan v. Casilan*, 109 Phil. 889, 892 [1960].

Supreme Court E-Library



Under the Notarial Law in force at the time of the notarization of the questioned deed, Chapter 11 of the Revised Administrative Code, only those who had been convicted of any crime involving moral turpitude were disqualified to notarize documents. Thus, a representative of a person in whose favor a contract was executed was not necessarily so disqualified. Besides, there is no proof that Atty. Ramon Igaña was a representative of petitioner in 1964; what appears on record is that he was the Chief of the petitioner's Legal Department in 1993. Additionally, this alleged violation of the Notarial Law was raised only now.

Anent the non- annotation of the Extrajudicial Partition with Deed of Absolute Sale in the reconstituted Original Certificate of Title No. RO-2856, the same does not render the deed legally defective. It must be borne in mind that the act of registering a document is never necessary to give the conveyance legal effect as between the parties[26] and the vendor's heirs. As between the parties to a sale, registration is not indispensable to make it valid and effective. The peculiar force of a title is exhibited only when the purchaser has sold to innocent third parties the land described in the conveyance. The purpose of registration is merely to notify and protect the interests of strangers to a given transaction, who may be ignorant thereof, and the non-registration of the deed evidencing said transaction does not relieve the parties thereto of their obligations thereunder.[27] Here, no right of innocent third persons or subsequent transferees of the subject lot is involved; thus, the conveyance executed in favor of AZNAR by private respondents and their predecessors is valid and binding upon them, and is equally binding and effective against their heirs.[28]

The principle that registration is the operative act that gives validity to the transfer or creates a lien upon the land "refers to cases involving conflicting rights over registered property and those of innocent transferees who relied on the clean title

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[26] PEÑA, 9.

[27] *Sapto v. Fabiana*, 103 Phil. 683, 685 [1958 ].

[28] *Supra* note 27.

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of the properties."[29] This principle has no bearing on the present case, as no subsequent transfer of the subject lot to other persons has been made either by private respondents or their predecessors-in-interest.[30]

By and large, it appears on the face of the Extrajudicial Partition with Deed of Absolute Sale that the same was registered on 6 March 1964. The registration was under Act No. 3344 on unregistered lands allegedly because at the time, no title was existing in the files of the Register of Deeds of Lapu-Lapu City, as it was allegedly lost during the last world war. It was only on 8 August 1988 that the title was reconstituted at the instance of the petitioner.

As to the fourth assigned error, we do not agree with the Court of Appeals and the private respondents that petitioner is in estoppel to assert ownership over the subject property because of petitioner's own allegation in the petition for reconstitution, to wit:

> That certificates of title were issued thereto but were lost during the last world war. That the same were not conveyed much less offered as a collateral for any debt contracted or delivered for the security of payment of any obligation in favor of any person or lending institution.

The words "the same" in the second sentence of the aforequoted paragraph clearly refers to the certificates of title. This means that the certificates of title, not necessarily the subject lot, were not conveyed or offered as a collateral but were lost during the last world war. Indeed, as petitioner contends, it would be very absurd and self-defeating construction if we were to interpret the above-quoted allegation in the manner that the Court of Appeals and the private respondents did, for how could petitioner, who is claiming ownership over the subject property, logically allege that the property was not sold to it?

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[29] *Supra* note 27, at 686.

[30] *See Id.*

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It bears repeating that petitioner's claim of possession over the subject lot is anchored on its claim of ownership on the basis of the Extrajudicial Partition with Deed of Absolute Sale. Our ruling on the issue of the validity of the questioned deed is solely for the purpose of resolving the issue of possession and is to be regarded merely as provisional, without prejudice, however, to the final determination of the issue in the other case for the annulment or cancellation of the Extrajudicial Partition with Deed of Absolute Sale.

**WHEREFORE,** the petition is *GRANTED*. The challenged decision of public respondent Court of Appeals in CA-G.R. SP No. 35060 is hereby *REVERSED*, and. the decision of the Regional Trial Court, Branch 27, Lapu-Lapu City, is *REINSTATED*.

No pronouncement as to costs.

**SO ORDERED.**

*Puno, Kapunan, Pardo,* and *Ynares-Santiago, JJ.*, concur.