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THIRD DIVISION

[G.R. No. L-41508. June 27, 1988]

CANDELARIO VILLAMOR, PILAR DE LA SERNA, BARTOLOME VILLAMOR, RAFAELA RETUYA, SOFRONIO VILLAMOR, PILAR SEMBLANTE, ELEUTERIO VILLAMOR, CARIDAD GORECHO, MARCOS VILLAMOR and GUADALUPE CEDEÑO, *petitioners, vs.* **HON. COURT OF APPEALS and DANIELA CENIZA UROT, in her capacity as administratrix of the estate of Fr. Nicanor Cortes, under Sp. Proc. No. 3062-R,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; COURT OF APPEALS; FINDINGS OF FACTS; GENERALLY BINDING ON THE SUPREME COURT; EXCEPTION THERETO APPLIED IN CASE AT BAR.—** This case is an exception to the general rule that only questions of law may be reviewed in an appeal by certiorari and that factual findings of the Court of Appeals are binding on this Court, if supported by substantial evidence. Thus, while it is settled that the jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law imputed to the latter, its findings of fact being conclusive, it is also settled that findings of fact of the Court of Appeals may be set aside: [1] when the conclusion is a finding grounded entirely on speculation, surmise and conjectures; [2] the inference made is manifestly mistaken; [3] there is grave abuse of discretion; [4] the judgment is based on misapprehension of facts; [5] the Court of Appeals went beyond the issues of the case and its findings are contrary to the admission of both appellant and appellee; [6] the findings of fact of the Court of Appeals are contrary to those of the trial court; [7] said findings of facts are conclusions without citation or specific evidence on which they are based; [8] the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and [9] when the finding of fact of the Court of Appeals is premised on the absence of evidence and is

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contradicted by evidence on record. We cannot sustain the findings of the courts that Fr. Nicanor Cortes had **no personal knowledge** of Special Proceedings Nos. 262 and 343 for the evidence on record is **abundant** to **contradict** such findings.

2. **ID.; SPECIAL CIVIL ACTIONS; PARTITION; NATURE THEREOF, DISCUSSED.—** Partition is defined as a division between two or more persons of real or personal property which they own as copartners, joint tenants or tenants in common, effected by the setting apart of such interests so that they may enjoy and possess it in severalty. The purpose of partition is to put an end to the common tenancy of the land or co-ownership. It seeks a severance of the individual interest of each joint owner vesting in each a sole estate in specific property and giving to each one the right to enjoy his estate without supervision or interference from the other. And a partition by deed is a recognized method of effectuating a separation of interest in property held in common. It is clear therefore that a partition presupposes that the thing to be divided is owned in common. It is immaterial in whose name the properties were declared for taxation purposes for it is presumed before hand that the parties to the partition admit the fact of co-ownership and now want to effect a separation of interest.

3. **ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE; THE COURT MAY APPOINT ANY PERSON AS ADMINISTRATORS.—** We do not consider as "intriguing" the observation of the lower court and concurred in by the Court of Appeals that in both Special Proceedings in question, the administrators appointed were complete strangers to the decedents. There is nothing repulsive in this nor is this an indicium of fraud and collusion as found by the courts. Section 642 of the Code of Civil Procedure enumerates the persons who can act as executors and administrators. It provides that in case the persons who have the preferential right to be appointed are not competent or are unwilling to serve, administration may be granted to such other person as the court may appoint.

4. **CIVIL LAW; PRESCRIPTION; PERIOD; ACTION FOR RECONVEYANCE OF PROPERTY RESULTING FROM FRAUD MUST BE FILED WITHIN FOUR YEARS FROM DISCOVERY OF FRAUD.—** An action for reconveyance of real property resulting from fraud may be barred by the statute of limitations, which requires that the action shall be filed

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within four [4] years from the discovery of fraud. From what time should fraud be deemed to have been discovered in the case at bar.

5. **ID.; ID.; ID.; ID.; WHAT CONSTITUTES "A DISCOVERY OF THE FACTS CONSTITUTING THE FRAUD," EXPLAINED.—** To ascertain what constitutes "a discovery of the facts constituting the fraud," reference must be had to the principles of equity. In actions in equity, the rule is that the means of knowledge are equivalent to actual knowledge; that is, that a knowledge of facts which would have put an ordinarily prudent man upon inquiry which, if followed up, would have resulted in a discovery of the fraud, was equivalent to actual discovery.

6. **ID.; ID.; ID.; ID.; ID.; DOCTRINE APPLIED IN CASE AT BAR.—** In the instant case, the discovery must be deemed to have taken place **at the latest**, on August 18, 1955, when Judge Clementino Diez, in Special Proceedings No. 364-R declared Fr. Nicanor Cortes as the only and universal heir of Sixta Ceniza and granted letters of administration to Fr. Diosdado Camomot, the person constituted by Fr. Nicanor Cortes as his attorney-in-fact in said proceedings. From that time, the law imputes to Fr. Cortes knowledge of special Proceedings Nos. 262 and 343, the project of partition, and such facts and circumstances as would have him, by the exercise of due diligence, to knowledge of the fraud. During the time that Special Proceedings No. 364-R had been pending circumstances existed which should have aroused Fr. Nicanor Cortes' suspicion or put him on inquiry considering that the inventory submitted therein specifically made mention of Special Proceedings Nos. 262 and 343 and the project of partition. The period of prescription commenced to run from August 18, 1955. However, from said date up to his death on August 28, 1969, Fr. Nicanor Cortes remained silent and failed to assert his right. He even conveyed at least three lands which were among those apportioned to Sixta Ceniza in the Project of Partition to several persons. Her predecessor-in-interest, Fr. Nicanor Cortes, not having filed any action for reconveyance within the prescriptive period provided by law, neither could private respondent do so now, for her right cannot rise higher than its source.

7. **ID.; LACHES; DOCTRINE APPLICABLE.—** It is well-settled that the negligence or omission to assert a right within a

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reasonable time warrants not only a presumption that the party entitled to assert it, either had abandoned it or declined to assert it, but also casts doubt on the validity of the claim of ownership. Such neglect to assert a right taken in conjunction with the lapse of time, more or less great, and other circumstances causing prejudice to the adverse party, operates as a bar in a court of equity.

APPEARANCES OF COUNSEL

Belo Abiera & Associates and *Napoleon G. Rama* for petitioners.

Gregorio A. Pizarro for private respondent.

DECISION

BIDIN, *J.*:

This petition for review on *certiorari* seeks to annul and set aside the decision of the Court of Appeals which affirmed that of the then Court of First Instance of Cebu, Branch XL declaring null and void [1] the Project of Partition in Special Proceedings Nos. 262-C and 343-C executed on December 7, 1946, [2] the "Order" of April 14, 1948 which approved said Project of Partition, [3] the "Auto" of November 25, 1953 which closed and terminated the two (2) administration proceedings and which authorized the delivery of seven (7) parcels of land to Ireneo Villamor and Paula Villamor, and [4] the extra-judicial settlement and partition executed by the petitioners herein on July 28, 1969.

Spouses Victor Cortes and Maria Castañeda had eight (8) children, namely: Rufino, Barbara, Florencio, Casimira, Brigida, Braulia, Margarita and Eugenia. Of the eight children, six died single and without issue. Barbara Cortes begot a son by the name of Eustaquio Cortes. Rufino Cortes, who died on June 12, 1909 left two alleged legitimate children, Ireneo Cortes Villamor and Paula Cortes Villamor. The last to die of the Cortes children was Eugenia Cortes. She died on January 8, 1931.

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Eustaquio Cortes, son of Barbara, married one Sixta Ceniza. Born to them were five children, namely: Dionisio, Bartolome, Nicanor, Agapita and Amancia, all surnamed Cortes. All five remained unmarried and died without will nor forced heirs. Dionisio, Amancia and Agapita predeceased their father Eustaquio. Eustaquio died on October 20, 1932, survived by his spouse and two sons, Bartolome and Nicanor. Bartolome who was a Catholic priest, died on November 14, 1937. Nicanor Cortes, also known as Father Gabriel Maria Cortes, died as a monk of the Carthusian Order in Barcelona, Spain on August 28, 1969. He was the last of the direct descendants of the Barbara Cortes line.

On the other hand, Paula Villamor, alleged daughter of Rufino Cortes, died single on January 29, 1967 and without issue. Ireneo Villamor married one Bersabela Perez. Said marriage was blessed with five children, namely: Candelario, Bartolome, Sofronio, Eleuterio and Marcos, all surnamed Villamor, the petitioners, herein. Ireneo Villamor died on April 21, 1966.

It appears that shortly after the death of Bartolome Cortes, Special Proceedings No. 227 was instituted for the settlement of his estate. Fr. Diosdado Camomot, a close friend of Bartolome, was named administrator.

Sometime between 1937 and 1938, Special Proceedings No. 262-C, which relates to the intestate estates of Eugenia, Casimira, Florencio, Braulia, Margarita and Barbara, all surnamed Cortes was filed. This proceeding evidently did not include a brother, Rufino Cortes. Atty. Primitivo Sato was appointed administrator.

On September 27, 1938, Paula Cortes Villamor and Ireneo Cortes Villamor, claiming to be the legitimate children of Rufino Cortes, filed a petition for the administration of the estate of Rufino Cortes, under Special Proceedings No. 343-C, to protect their rights and counteract the effects of Special Proceedings No. 262-C. Notice of the hearing of the petition was published in the "Nasud," a newspaper of general circulation on October 13, 20 and 27, 1938. Appointed administrator in this proceeding was one Moises Mendoza, who thereafter submitted an inventory of the properties allegedly belonging to the estate of Rufino

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Cortes. The properties enumerated in the inventory were the very same properties subject of Special Proceedings Nos. 227 and 262-C.

A scramble over the control and possession of the properties ensued between the heirs of Barbara Cortes, represented by Sixta Ceniza with the help of Fr. Camomot, and the Rufino Cortes line represented by Ireneo and Paula Cortes Villamor. On May 20, 1946, Ireneo and Paula Cortes Villamor and Father Camomot filed a joint motion in Special Proceedings No. 262-C and Special Proceedings No. 343-C, wherein they manifested that "the heirs have arrived at an agreement to settle the matter amicably between themselves by partitioning the estate among them."[1] Thus, after six months of negotiation, or on December 7, 1946, a Project of Partition was executed by Sixta Ceniza and Father Camomot, in his capacity as administrator of the Estate of Bartolome Cortes, assisted by their counsel, Attys. Hipolito Alo and Fermin Yap, on one hand, and Ireneo and Paula Cortes Villamor, assisted by Atty. Gaudencio Juezan, on the other. The Project of Partition was thumbmarked by Sixta Ceniza at the house of a relative, Fortunata *vda. de* Ceniza, where Sixta Ceniza lived at that time. In said Project of Partition, seven parcels of land were apportioned and delivered to Ireneo and Paula Cortes Villamor. The said Project of Partition is reproduced as follows:

"REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF CEBU

IN RE ESTATE OF BARBARA CORTES, FLORENCIO CORTES, RUFINO CORTES, CASIMIRA CORTES, BRIGIDA CORTES, BRAULIA CORTES, MARIA CORTES and EUGENIA CORTES, Deceased.	Sp. Proc. Nos. 262 & 343

[1] Exhs. 58 & 6, pp. 145 and 92, respectively, Folder of Documentary Exhibits for Defendants.

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PROJECT OF PARTITION

Come now Sixta Ceniza and Rev. Diosdado Camomot, the latter as administrator of the estate of Bartolome Cortes in Sp. Proc. No. 227 of this Court assisted by their Attorneys Hipolito Alo and Fermin Yap, to be known hereinafter as the First Party; Ireneo Cortes Villamor, assisted by their Attorney Gaudencio R. Juezan, to be referred hereinafter as the Second Party, to this Hon. Court respectfully state:

That Sixta Ceniza above referred to is the sole heir of Bartolome Cortes now deceased, being the legitimate mother of the latter;

That Rev. Diosdado Camomot is the legal administrator of the estate of said Bartolome Cortes in the Sp. Proc. No. 227 of this Court;

That Barbara, Florencio, Rufino, Casimira, Brigida, Braulia, Maria and Eugenia, all surnamed Cortes, were brothers and sisters. They died without leaving any parent nor children except Rufino and Barbara Cortes;

That Barbara Cortes left Bartolome Cortes as a nephew and the latter left his mother Sixta Ceniza as his heir;

That Rufino Cortes left Ireneo and Paula Cortes as his heirs, being his legitimate children;

That Sixta Ceniza, Ireneo Cortes Villamor and Paula Cortes Villamor are all Filipinos by birth and of legal ages and residents of Mandaue, Cebu, Philippines;

That the deceased Eugenia Cortes and Rufino Cortes, left no debt, nor will;

That the first and the second Parties hereby acknowledge that all the estate appearing in the inventories submitted under administration Sp. Proc. Nos. 262 and 343 in this Court, belong to the deceased Eugenia Cortes and Rufino Cortes, being the real owners thereof, of which Eustaquio and Bartolome Cortes were extra judicial administrators;

That said Sixta Ceniza, Ireneo Cortes Villamor and Paula Cortes Villamor do hereby declare themselves as the only heirs of said Eugenia and Rufino Cortes and adjudicate to themselves the above-described properties and amicably partition same among themselves

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in the manner, form and share hereinbelow shown;

That the First and Second Parties have agreed, as they do hereby agree, to partition, as they do hereby partition, the properties above referred to, amicably between them, in the form, manner, and share, to wit:

To Sixta Ceniza through Rev. Diosdado Camomot, the latter in his capacity as administrator of the estate of Bartolome Cortes, the following parcels of land with improvements thereon, are hereby apportioned and delivered:

1. A parcel of agricultural land with all improvements thereon located in Alang-Alang, Mandaue, Cebu, bounded as follows:

North, Eustaquio Cortes
East, Geronimo Lambo
South, Conrado Jayme
West, Serafina Mendoza
Area, 47 Ares, 37 Centares
Declared in the name of Bartolome
Cortes as per Tax Dec. No. 31520

2. A parcel of agricultural land with all improvements thereon located in Centro, Mandaue, Cebu, bounded as follows:

North, Calle Gral. Ricarte
East, Riachuelo
South, Mariano del Castillo
West, Juana Mayol
Area, 18 Ares
Declared in the name of Eustaquio
Cortes as per Tax Dec. No. 31531

3. A parcel of agricultural land with all improvements thereon located in Centro, Mandaue, Cebu, bounded as follows:

North, Hrs. of Fermin Cortes
East, Riachuelo
South, Hrs. of Pio Mendoza and Juana Mendoza
West, Severino Cabajug and Ceferino Mendoza
Area, 16 Ares and 80 Centares
Declared in the name of Eustaquio
Cortes as per Tax Dec. No. 31529

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4. A parcel of agricultural land with all improvements thereon located in Centro, Mandaue, Cebu, bounded as follows:

North, Rita Alilin and Ambrocio Cabahug
South, Rita Alilin
West, Ceferino Mendoza
Area, 13 Ares & 40 Centares
Declared in the name of Eustaquio Cortes
as per Tax Dec No. 31528

5. A parcel of agricultural land with all improvements thereon located in Pagsubungan, Mandaue, Cebu, bounded as follows:

North, Hrs. of Tomas Osmeña and Victor Perez
East, Fernando Atamosa
South, Rio de Butuanon and Hrs. of Tomas Osmeña
West, Private Ceniza and Phil. Railway Co.
Declared in the name of Eustaquio Cortes
as per Tax Dec. No. 31523

6. A parcel of agricultural land with all improvements thereon located in Pagsabungan, Mandaue, Cebu, bounded as follows:

North, Hipolito Pareja
East, Francisca Estrera
South, Enrique Diano and Catalina Pareja
West, Blas Retuerto
Area 1 Ha. 38 Ares, 21 Centares
Declared in the name of Eugenia Cortes
as per Tax Dec. No. 31536

7. A parcel of agricultural land with all improvements thereon located in Kanduman, Mandaue, Cebu, bounded as follows:

North, Jacinto Mayol
East, Sergio Suyco
South, Martin Seno
West, Mariano Alivio
Area, 1 Ha. 03 Ares, 24 Centares
Declared in the name of the heirs of
Casimira Cortes as per Tax Dec. No. 31514

8. A parcel of agricultural land with all improvements thereon located in Kanduman, Mandaue, Cebu, bounded as follows:

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North, Jacinto Mayol and Policarpio and Josefa Cortes
East, Claudia Osmeña and Camino Vecinal
South, Camino Vecinal and Hrs. of Tomas Osmeña
West, Jacinto Mayol
Area, 2 Has, 45 Ares - 07 Centares
Declared in the name of the heirs of
Casimira Cortes as per Tax Dec. No. 31515

9. A parcel of agricultural land with all improvements thereon located in Opao, Mandaue, Cebu, bounded as follows:

North, Brook
East, Hrs. of Cesario Mendoza and Benito
Ceniza and Juan Trox
South, Hermenegildo Alivio
West, Basilia Cabahug and Prudencia Cabahug
Area, 4 Has. 96 Ares, 05 Centares
Declared in the name of heirs of
Casimira Cortes as per Tax Dec. No. 31516

10. A parcel of land [rural] with all improvements thereon located in Magikay, Mandaue, Cebu, bounded on the North by Ireneo Villamor; East, Ireneo Villamor; South, Marcelo Cortes and Ireneo Villamor; West, Callejon, with an area of one Ha., 27 Ares and 99 Centares, covered by Tax Dec. No. 31518;

11. A parcel of land with all improvement thereon located in Centro, Mandaue, Cebu, bounded as follows:

North, Calle Ricarte
East, Riachuelo
South, Riachuelo
West, Mariano del Castillo
Area, 11 Ares
Declared in the name of Bartolome
Cortes as per Tax Dec. No. 31521

12. A mango tree located in the name of Apolonio Soco as per Tax Dec No. 31527 declared in the name of Eustaquio Cortes.

*14. A parcel of land [rural] with all improvements thereon located in Magikay, Mandaue, Cebu, bounded on the North by Florentino Perez; East, Pablo Perez; South, Ireneo Villamor; West, Romualdo

* There is no No. 13.

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Omo, with an area of one Hectare, 39 Ares and 06 Centares, covered by Tax Dec. No. 31317; This is known as Lot No. 560-A of the plan called 'Hacienda de Mandaue.'

15. A parcel of land [rural] with all improvements thereon located in Magikay, Mandaue, Cebu, bounded on the north by Susana Cortes and others; East, by Susana Cortes and others; South Ireneo Villamor and Hermana; and West, Ireneo Villamor and Hermana; with an area of one Hectare, 26 Ares and 99 Centares, covered by Tax Dec. No. 31519.

To Ireneo Cortes Villamor and Paula Cortes Villamor the following are hereby apportioned and delivered:

1. A parcel of agricultural land with all improvements thereon located in Centro, Mandaue, Cebu, bounded as follows:

North, Paula Perez
East, Car. Prov. and Pelagia Pintor
South, Rafaela Judilla and D. Mendoza
West, Riachuelo
Area, 1 Ha. 46 Ares and 30 Centares
Declared in the name of Eustaquio
Cortes as per Tax Dec. No. 31533

2. A parcel of residential land with all improvements thereon Centro, Mandaue, Cebu, bounded as follows:

North, Calle A. del Rosario
East, Fidel Jayme
South, Bartolome Cortes and Martina Soco
West, Carr. Provincial
Area, 5,390 square meters
Declared in the name of Bartolome and
Eustaquio Cortes as per Tax Dec. No. 31522

3. A parcel of agricultural land with all improvements thereon located in Kanzaga, Consolacion, Cebu, bounded as follows:

North, Ignacio Niez
East, Saturnino Quipo *y* Sixto Ermac
South, Alejandro del Rosario *y* Doroteo Bolbot
West, Apolinario Palang
Area, 22 Ares and 36 Centares
Declared in the name of Eustaquio Cortes
as per Tax Dec. No. 17031

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4. A parcel of agricultural land with all improvements thereon located in Centro, Mandaue, Cebu, bounded as follows:

North, Cammo Vecinal
East, Andres Cabahug
South, Julio Bars and Ciriaco Cortes
West, Eusebio Soco and Phil. Railway Co.
Area 53 Ares and 92 Centares
Declared in the name of Eustaquio Cortes
as per Tax Declaration No. 31534

5. A parcel of agricultural land with all improvements thereon located in Centro, Mandaue, Cebu, bounded as follows:

North, Severina Cabajug and others
East, Simon Cortes
South, Callejon
West, Calle Gral. del Pilar
Area, 72 Ares & 96 Centares
Declared in the name of Eustaquio Cortes
as per Tax Dec. No. 31532

6. A parcel of agricultural land located in Alang-Alang, Mandaue, Cebu, with all improvements thereon, bounded as follows:

North, Callejon and Marciano Cuison
East, Calle Plaridel and Enrique Capirol
South, Calle P. Burgos and Bernardo A. Flores
West, Eusebio Soco
Area, 4 Has. 53 Ares, 47 Centares
Declared in the name of Eustaquio Cortes
as per Tax Dec. No. 31530

7. A parcel of agricultural land with all improvements thereon located in Centro, Mandaue, Cebu, bounded as follows:

North, Benito Ceniza, Filomena Pans, Benito Ceniza
East, Emiliano Cuson
South, Calle A. del Rosario
West, Carr. Prov. Rita Alilin and others
Area, 3 Has. 08 Ares, 32 Centares
Declared in the name of Eustaquio Cortes
as per Tax Dec. No. 31524

The parties hereto do hereby give their respective conformity to the foregoing partition and do hereby accept and receive the properties respectively apportioned to them as indicated above.

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That the parties hereto shall take immediate possession and enjoyment of their respective shares subject to the payment of the honorary fees of administrators Primitivo N. Sato and Moises Mendoza whose claims for such honorary, are still pending determination by the Court, if the personal properties would not be sufficient to cover such fees.

That the parties hereto shall take immediate possession and enjoyment of their respective shares subject to the payment of the honorary fees of administrators Primitivo N. Sato and Moises Mendoza whose claims for such honorary, are still pending determination by the Court, if the personal properties would not be sufficient to cover such fees.

That the Second Party hereby assume the responsibility to pay Atty. Gaudencio R. Juezan, the honorary fees of the latter.

City of Cebu, Philippines, December 7, 1946.

[Thumbmark]
SIXTA CENIZA [(SGD.) IRENEO CORTES VILLAMOR]

Heirs of Bartolome Cortes Heirs of Eugenia & Rufino Cortes, *et al.*

[(SGD.) PAULA CORTES VILLAMOR]

[SGD.] GAUDENCIO R. JUEZAN

Atty. for Ireneo Cortes Villamor and Paula Cortes Villamor

[SGD.] DIOSDADO CAMOMOT
Administrator of the of the estate of Bartolome Cortes in Sp. Proc. No. 227

HIPOLITO ALO &
FERMIN YAP

By:
[SGD.] FERMIN YAP
Attys. for Sixta Ceniza & Administrator Diosdado Camomot of the estate of Bartolome Cortes in Sp. Proc. No. 227.

PRIMITIVO N. SATO
In his own behalf and that of Moises Mendoza, as administrators in Sp. Proc. Nos. 262 and 343.

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REPUBLIC OF THE PHILIPPINES
MANDAUE, CEBU

We, Sixta Ceniza, Rev. Diosdado Camomot, Ireneo Cortes Villamor and Paula Cortes Villamor, after being first duly sworn to, do hereby depose and say: That we are the parties referred to in the foregoing Project of Partition, which we have voluntarily made and that the contents thereof are true and correct.

[Thumbmark]
SIXTA CENIZA [SGD.] REV. DIOSDADO CAMOMOT

[SGD.] PAULA CORTESVILLAMOR [SGD.] IRENEO CORTES VILLAMOR

MOISES MENDOZA
Ad. in Sp. Proc. No. 343

Subscribed and sworn to before me this 7th day of December, 1946, at the municipality of Mandaue, Cebu, Philippines; Affiants exhibited to me their respective Residence Certificates:

Rev. Diosdado Camomot - Res. Cert. No. *A-1236398* issued on *March 11, 1946* at San Fernando, Cebu; Sixta Ceniza — Res. Cert. No. *A-149873* issued on *Dec. 10, 1946* at Mandaue, Cebu; Ireneo Cortes Villamor — Res. Cert. No. *A-419863* issued on *Dec. 5, 1946* at Mandaue, Cebu; Paula Cortes Villamor — Res. Cert. No. *A-419786* issued on *Nov. 7, 1946* at Mandaue, Cebu.

[SGD.] EERMIN YAP

Notary Public
Until December 31, 1946

Doc. No. 53
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Series of 1946.

APPROVED:

Cebu City, Feb. 1, 1947.

[SGD.] EDMUNDO S. PICCIO
Judge."[2]

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[2] Exh. B, p. 2, Folder of Documentary Evidence for Plaintiff; Exh. 7, p. 93, Folder of Documentary Evidence for Defendants.

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On April 14, 1948, Judge S. C. Moscoso approved the project of partition, and on September 30, 1948, the administrators delivered the seven parcels of land to Ireneo and Paula Villamor. Special Proceedings Nos. 262 and 343 were ordered closed and terminated by Judge Florentino Saguin on November 25, 1953. Entry of judgment was made on March 18, 1954.

On November 23, 1960, Ireneo and Paula Villamor sold the parcel of land described in the Project of Partition as parcel 5 to Claudia Labos and Gregoria Suico, and on September 23, 1966, Ireneo Villamor obtained free patent titles over parcels 1, 2, 4, 6 and 7. Only parcel no. 3 remained unregistered.

After Ireneo's death, his children, now petitioners, executed an extra-judicial partition, dividing the remaining 6 parcels of land among themselves.

Meanwhile, upon the death of Sixta Ceniza on July 28, 1948, one Cristina Ceniza, sister of respondent Daniela Ceraza Urot, instituted Special Proceedings No. 364-R for the administration of the estate of Sixta Ceniza. One Escolastico Ceniza, brother of respondent, was appointed special administrator. The latter's appointment, however, was revoked on February 20, 1954 upon petition of Fr. Nicanor Cortes through his counsel, Atty. Fermin Yap on January 14, 1954, and in his stead, Victorio Perez was appointed the special administrator. In this proceedings, the nephews and nieces of Sixta Ceniza, including herein respondent, prayed that they be declared the sole and only forced heirs of Sixta Ceniza, although at the time, Fr. Nicanor Cortes, the only surviving child of Sixta Ceniza, was still alive.

On October 21, 1954, Fr. Cortes executed a power of attorney before the Vice-Consul of the Republic of the Philippines in Madrid, Spain, constituting and appointing Fr. Diosdado Camomot as his attorney-in-fact and giving him the power to "appear for me and in my behalf in Special Proceedings No. 364-R of the Court of First Instance of Cebu, with authority to designate and employ the services of an attorney or attorneys for the protection of my rights."[3]

[3] Exh. 20, p. 108, Folder of Documentary Evidence for Defendants.

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On January 13, 1955, Victorio Perez submitted an inventory which specifically identified the properties which came from the Project of Partition and the corresponding number of such property or parcel of land in said Project of Partition.

On August 18, 1955, the court, through Judge Clementino Diez, denied the motion of the nephews and nieces of Sixta Ceniza to be declared her heirs and declared Fr. Nicanor Cortes as the only and universal heir of Sixta Ceniza.

On May 16, 1962, Fr. Nicanor Cortes executed a Deed of Conveyance in favor of several persons wherein he conveyed ten parcels of land which included those received by his mother under the Project of Partition.

On August 28, 1969, Fr. Nicanor Cortes died in Barcelona, Spain. Special Proceedings No. 3062-R of the Court of First Instance of Cebu was thereafter instituted for the settlement of his estate. Appointed administratrix was respondent Daniela Ceniza Urot, who, on June 4, 1970 filed Civil Case No. 11726 against petitioners, successors-in-interest of Ireneo Villamor and Paula Villamor, for recovery of the seven parcels of land received in the Project of Partition, accounting and receivership.

In the complaint, respondent alleged **inter alia** that upon learning of the death of Fr. Nicanor Cortes, some of his nearest of kin who are his surviving first cousins, the Cenizas [all from the side of Sixta Ceniza] initiated Special Proceedings No. 3062-R for the settlement of the estate of the deceased monk; that prior to and in the course of initiating said proceedings, the surviving first cousins came upon documents showing that Fr. Cortes during his absence from the Philippines to pursue a monastic life was deprived of his inheritance by fraud, stealth and strategem perpetrated by Paula and Ireneo Villamor; that shortly after the last world war and after the death of Fr. Bartolome Cortes and his sister Agapita, while Fr. Nicanor Cortes was in the monastery and his mother sick, aging, deaf and blind, Ireneo and Paula Villamor, who were domestics and protegees in the household of the Cortes family, initiated Special Proceedings 343-C whereby they fraudulently and falsely represented under oath, without notice to Fr. Nicanor Cortes or his legal

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representative, that Rufino Cortes died leaving two legitimate children, namely Paula Cortes Villamor and Ireneo Cortes Villamor; that Paula and Ireneo Cortes Villamor are not the legitimate children of Rufino who remained unmarried all his life; that Moises Mendoza, the administrator in Special Proceedings No. 343 submitted an inventory which falsely and fraudulently enumerated properties as belonging to Rufino Cortes when the truth is that Rufino Cortes neither had any property during his lifetime nor inherited any from his wealthy sisters, Casimira and Eugenia whom said Rufino predeceased; that said properties belonged to Eustaquio Cortes, Casimira and Eugenia Cortes, Bartolome Cortes, Sixta Cortes and/or Nicanor Cortes; that under the same false and fraudulent representations without notice to Fr. Cortes or his legal representative, Ireneo and Paula Villamor prepared a Project of Partition and adjudicated to themselves the seven parcels of land whereas the rest was apportioned to Sixta Ceniza through Fr. Camomot, as administrator of the estate of Bartolome Cortes; that on April 14, 1948, Ireneo and Paula Villamor, in collusion with the administrators in both proceedings, had the project of partition approved by the court; that Ireneo and Paula Villamor, without benefit of a motion for declaration of heirs, much less a hearing thereon with proper notice to Fr. Nicanor Cortes or his legal representative, took delivery and possession of a substantial part of the properties and had the two administration proceedings closed on November 25, 1953; and that on July 28, 1969, defendants herein petitioners, as heirs of Ireneo and Paula Villamor, executed an extra-judicial settlement and partition of the lands in question. It was prayed that judgment be rendered declaring as null and void the project of partition, the orders of April 14, 1948 and November 25, 1953 and the extra-judicial settlement and partition executed on July 28, 1969; that the defendants [petitioners herein] be ordered to reconvey the parcels of land in question to the administratrix in Special Proceedings No. 3062-R and to render a true and correct accounting of the income and produce thereof as far back in time as may be legally feasible and that during the pendency of the case, that the properties be placed under receivership.

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Petitioners, instead of filing an answer, filed a motion to dismiss, alleging that the cause of action is barred by prior judgment and by the statute of limitations. On July 27, 1970, the Court denied the motion to dismiss. When petitioners' motion for reconsideration was denied on August 19, 1970, petitioners came to this Court by means of *certiorari* on August 31, 1970, but the same was denied on September 15, 1970 for "being premature." On October 9, 1970, petitioners filed their answer and alleged as special defenses that aside from the fact that Special Proceedings No. 343-C was a proceeding **in rem** and all the requirements to obtain jurisdiction over the person of anybody have been complied with, Fr. Nicanor Cortes had personal knowledge of Special Proceedings No. 343-C; that the question of legitimacy of Ireneo and Paula Villamor had been duly pleaded and raised as the principal issue in Special Proceedings No. 343-C; that the question of declaration of heirship of the two Villamors had already been resolved by the court in said proceedings and have long become final, entry of judgment having been made on March 18, 1954; that with the age, respectability and social standing of Sixta Ceniza, no court could have tolerated the alleged acts of Ireneo and Paula Villamor committed against Sixta Ceniza; that Sixta Ceniza had the best legal advice and ample protection from her counsels, a legal luminary at the time and a dean of the University of Visayas and Fr. Diosdado Camomot, then the secretary to the Archbishop of Cebu, and after the death of Sixta Ceniza, Fr. Nicanor Cortes appeared through counsel in Special Proceedings No. 363 where Escolastico Ceniza applied as administrator but was denied by the court in favor of Fr. Camomot upon the recommendation of Fr. Nicanor Cortes; and that all these times, Fr. Nicanor Cortes never complained nor raised any objection to the inventory of Special Proceedings No. 364 which was taken as a part of the inventories in Special Proceedings 262-C and 343-C. As affirmative defenses, the petitioners alleged that the court has no jurisdiction over the nature of the action, intrinsic fraud being the basis of the complaint; that the cause of action is barred by prior judgment and by the statute of limitations; and, that the complaint states no valid cause of action.

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On May 13, 1971, a receiver was appointed by the court in the person of Atty. Andres Taneo, Branch Clerk of Court. After trial, on January 21, 1972, the court rendered judgment against the petitioners holding that Ireneo and Paula Villamor took advantage of the helplessness of Sixta Ceniza when they had the Project of Partition thumbmarked by her; that Ireneo and Paula Villamor resorted to false and fraudulent representations in Special Proceedings Nos. 262 and 343 in that they misrepresented that they were the legitimate children of Rufino Cortes, when in truth, they were merely natural children of Rufino Cortes and that the properties described in the inventory pertained to Rufino Cortes when in fact, said properties belonged to Eugenia Cortes and after her death, the same passed to Eustaquio Cortes; that Fr. Nicanor Cortes had no knowledge of the fraudulent proceedings as well as the Project of Partition; that Ireneo and Paula Villamor, in collusion with the administrator Moises Mendoza and with the support and encouragement of Fr. Camomot who enjoyed the implicit trust of Fr. Nicanor Cortes, misled the probate court into authorizing the delivery of the parcels of land to them; that when the probate court approved the project of partition, there was no hearing for the purpose of determining the parties lawfully entitled to the estate nor was there an opportunity given to Fr. Nicanor Cortes to intervene or oppose; that under the circumstances, the fraud committed by Ireneo and Paula Villamor was extrinsic or collateral; and that the fraud was discovered for the first time by Atty. Ramon Ceniza, son of Jose Ceniza, one of the heirs at law of Fr. Cortes only in March 1970.

On appeal, the Ninth Division of the Court of Appeals, as adverted to above, affirmed the judgment of the trial court, hence, the present recourse.

Petitioners maintain that the Court of Appeals, like the trial court, totally ignored the letters of Fr. Nicanor Cortes disclaiming ownership and acknowledging the fact that petitioners and/or their predecessors-in-interest are the owners and possessors of the lands in question, which exhibits could have decided outright all the issues that Fr. Cortes had personal knowledge of Special Proceedings Nos. 262-C and 343-C and that the predecessors-

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in-interest of petitioners did not commit fraud against him. Petitioners insist that the helplessness of Sixta Ceniza could not have vitiated the project of partition for although she had become blind and could not walk by herself at the time she affixed her thumbmark on the project of partition, her mental faculty was very clear. It is further argued that all the fraud alleged by private respondent were within the line of deliberation of the probate court or intrinsic fraud and could not have been extrinsic or collateral fraud; and therefore the cause of action of private respondent had long prescribed, considering that from September 1948 or some 22 years since petitioners' predecessors-in-interest came to possess the lands, petitioners have been in peaceful, notorious, public, actual and continuous possession, adversely against the whole world in ***concepto de dueño*** until they were disturbed in June 1970 when they received copies of the complaint in Civil Case No. R-11726.

On the other hand, private respondent contends that the issues raised in the petition largely dwell as challenging the findings of fact of the trial court and/or the Court of Appeals, which cannot be done in a petition for review on certiorari.

We find for the petitioners.

After a careful consideration of the facts and circumstances of the case, we agree that the courts below forced their conclusions against the evidence adduced during the trial which error justifies a review of said evidence. This case is an exception to the general rule that only questions of law may be reviewed in an appeal by *certiorari* and that factual findings of the Court of Appeals are binding on this Court, if supported by substantial evidence.

Thus, while it is settled that the jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law imputed to the latter, its findings of fact being conclusive,[4] it is also settled that findings of fact of the Court of Appeals may be set aside: [1] when the conclusion is a finding grounded entirely on speculation,

[4] *Chan vs. CA*, 33 SCRA 737.

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surmise and conjectures; [2] the inference made is manifestly mistaken; [3] there is grave abuse of discretion; [4] the judgment is based on misapprehension of facts; [5] the Court of Appeals went beyond the issues of the case and its findings are contrary to the admission of both appellant and appellee; [6] the findings of fact of the Court of Appeals are contrary to those of the trial court; [7] said findings of facts are conclusions without citation or specific evidence on which they are based; [8] the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and [9] when the finding of fact of the Court of Appeals is premised on the absence of evidence and is contradicted by evidence on record.[5]

We cannot sustain the findings of the courts that Fr. Nicanor Cortes had **no personal knowledge** of Special Proceedings Nos. 262 and 343 for the evidence on record is **abundant** to **contradict** such findings.

In his testimony, Fr. Diosdado Camomot declared categorically that he informed Fr. Nicanor Cortes about Special Proceedings No. 343[6] and that he sent him a copy of the project of partition.[7] He explained that as administrator of the estate of Fr. Bartolome Cortes, he encountered trouble with the administrator in Sp. Proc. No. 343, Moises Mendoza, who claimed that the properties under his [Camomot's] administration belonged to Rufino Cortes; that when informed of said problem, Sixta Ceniza advised him to write Fr. Nicanor Cortes about it, which he did; that in reply to his letter, Fr. Nicanor Cortes recommended that he settle the case amicably; and that after a long process of negotiation, the project of partition in question was executed and approved by the court, a copy of which he sent to Fr. Nicanor Cortes.

Highly significant is the fact that among the witnesses who testified before the trial court, it was only Fr. Camomot who had personal knowledge of the events leading to the execution of the project of partition. Notwithstanding, the trial court, instead

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[5] *Tolentino v. de Jesus*, 56 SCRA 167.

[6] p. 22, tsn, June 24, 1971.

[7] p. 129, *Ibid.*

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of according great weight to his testimony, summarily brushed it aside and even reached the unwarranted conclusion that he was in collusion with Ireneo and Paula Villamor. The testimony of Fr. Diosdado Camomot, however, is too detailed and straightforward to be a mere product of concoction or fabrication or a device to cover-up the collusion imputed to him by the trial court. Furthermore, said testimony is corroborated by other evidence on record that sustains its veracity. That he communicated with Fr. Nicanor Cortes was corroborated by Roure Ceniza-Sanchez, a witness for therein plaintiff-administratrix Daniela Ceniza Urot. She testified that being the administrator, it was Fr. Camomot who informed Fr. Nicanor Cortes about the properties of his parents.[8] That the petition in Special Proceedings No. 343 was among the matters brought to the attention of Fr. Nicanor Cortes by Fr. Camomot can be deduced from the letter of Fr. Nicanor Cortes dated August 20, 1948, addressed to Pesing [Dra. Felicisima Cortes-Veloso]. The pertinent portion of the letter reads:

"As for the administration of Nanay's properties, I received from Atty. Primitivo Sato a letter asking my consent to the appointment of my cousin Escolastico Ceniza as Administrator. Apparently, a new court trouble is brewing before the old one is completely settled. I cannot meddle on the matter for I am too far away. You discuss the matter among you [Poure, Lucio, Father Camomot and the lawyers.] You had better select your administrator, whom you could trust implicitly, and submit his name to Father Camomot. And to avoid ill feeling among the other cousins, make it known that Father Camomot has taken charge of Nanay's affair, with my consent, about ten years now and I personally keep my hands off, being in the impossibility of knowing what is going on."[9]

If it were not true that Fr. Camomot had informed Fr. Nicanor Cortes about Special Proceedings Nos. 262 and 343 there would be no basis for Fr. Cortes to observe or comment that "apparently, a new court trouble is brewing before the old one is completely settled." At that time, the only court proceedings in progress

[8] p. 4, January 21, 1971.

[9] Exhibit 13-A, p. 99-A, Folder of Documentary Evidence for the Defendants.

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were Special Proceedings Nos. 262, 343 and 227. The "old one" adverted to by Fr. Nicanor Cortes could not refer exclusively to Special Proceedings No. 227 as surmised by Roure Ceniza-Sanchez, as the only trouble being encountered by Fr. Camomot as administrator of the estate of Fr. Bartolome Cortes in Special Proceedings No. 227 was the claim of Moises Mendoza as administrator in Special Proceedings No. 343 over the properties under Fr. Camomot's administration. The trial court's conclusion that the "old one" could not refer to Special Proceedings Nos. 262 and 343 for the reason that the project of partition had been executed as early as December 7, 1946, is erroneous. While it may be true that said project of partition had already been executed, there still remained some loose ends that needed tieing up, so that it was not until November 25, 1953 that both proceedings were ordered closed and terminated.[10] The phrase "before the old one is *completely* settled" used by Fr. Cortes is thus apropos.

The other evidence on record from which knowledge by Fr. Nicanor Cortes of both Special Proceedings Nos. 262 and 343 and the project of partition could be inferred are his letters dated April 6, 1967, May 11, 1967, November 29, 1962 and December 1, 1967, addressed to Ipyon [Concepcion Rosal], Mrs. Dulce Rallos Gitgano, Awang [Paula Villamor] and Mr. and Mrs. Candelario Villamor, respectively, and the Deed of Conveyance dated May 9, 1962.

The letter addressed to Ipyon [Concepcion Rosal] reads in part:

"Great is my desire to help there. It would be my pleasure to attend to your needs, especially about the land where you could build your house.

"But now, I have nothing to do with those lands there in our place. It is those who are in possession of it who can decide.

"Did you not try to talk with Awang and Candelario regarding your old rights and the promises of those dead as to the place where

[10] Exh. D, pp. 4-4-A, Folder of Documentary Evidence for Plaintiff.

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you had built your house. It is better if you try, perhaps they at Ibabao will respect on your being an old neighbor."[11]

The pertinent portion of the letter addressed to Mrs. Dulce Rallos Gitgano, on the other hand, states:

"In reply to your letter of last month, I wish to say that I have no longer anything to do with any property, including the lot on which you have built your house. As a monk, I have made the vow of poverty and have therefore renounced to all property rights.

"I regret to say that I am not in position to help you.

"Have you not tried to ask Candelario to reduce the rent of the lot to an amount more proportionate to your limited earnings? You may submit also to him your desire to buy the lot by monthly installments."[12]

In his testimony, Candelario Villamor identified the land where Concepcion Rosal wanted to build her house as parcel "No. 1 on page five of the complaint."[13] He further identified the land which Mrs. Dulce Rallos Gitgano wanted to buy as "from the land which is the share of Ireneo Cortes Villamor and Paula Cortes Villamor and found in the project of partition on page four of said project of partition and boundary number two."[14]

The records show that when Fr. Nicanor Cortes left the Philippines to become a monk, he was already 44 years old. He must have known then who the owners of the lands referred to were and certainly at that time neither Awang [Paula Villamor] nor Candelario was in possession thereof. Yet, in his replies to the letters of Mesdames Rosal and Gitgano, he stated by name and with certainty the persons whom the latter should approach and who could properly exercise the right of disposition over said lands. In the absence of any showing that Awang and Candelario were designated as representatives or administrators

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[11] Exh. 16-A-Translation, p. 103, Folder of Documentary Evidence for Defendants.

[12] Exh. 17 & 17-A, p. 104, *Ibid.*

[13] p. 57, tsn, July 22, 1971.

[14] pp. 62-63, tsn, July 22, 1971.

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of Fr. Cortes' properties, the only logical conclusion reached is that Fr. Nicanor Cortes knew the circumstances under which Awang and Candelario acquired ownership and possession of the lands in question and that he recognized such ownership and possession, otherwise he would not have given the advice or suggestions found in his letters.

Fr. Nicanor Cortes' letter of November 29, 1962 to Awang reads:

"*Regarding the land.* — The share of my late Mother [Nanay] Sixta was divided among those who served her and those to whom gratitude were due, by means of documents signed on October of 1947 before Notary Fermin Yap. Those documents were sent to me by Father Camomot with a letter where he stated that those were the true and voluntary will of my late Mother [Nanay]. Because I was unable to answer his letter he wrote me again, once or twice reiterating that those documents were the true and voluntary will of Mother [Nanay]."[15]

His letter to Mr. and Mrs. Candelario Villamor states:

"I have noticed that you have now a poultry farm which must be giving you, together with the lands, quite an income."[16]

In the Deed of Conveyance dated May 9, 1962 executed by Fr. Nicanor Cortes before the Consul General of the Republic of the Philippines, Madrid, Spain, wherein he ceded and transferred ten [10] parcels of land in favor of several persons for and in consideration of One Peso, Philippine currency and other valuable considerations, he declared:

"All parcels of land described above are my exclusive property having acquired the same by succession from the previous owners, namely: Eustaquio Cortes, Casimira Cortes, Eugenia Cortes, Bartolome Cortes, Sixta Ceniza de Cortes, as shown in the order of the Honorable Court of First Instance of Cebu in Special Proceedings No. 364-R, dated August 18, 1955."[17]

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[15] Exh. 77 (Trans.), p. 162, *Ibid.*

[16] Exh. 78, p. 163, *Ibid.*

[17] Exh. 26, p. 114-B, *Ibid.*

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The above-quoted portions of Fr. Cortes' letters and Deed of Conveyance show beyond any iota of doubt that he was kept posted on the developments in the Philippines. He knew that his mother received some lands as "share" and that Candelario had acquired lands. He also knew the succession of ownership of the lands to which he succeeded as sole heir of his mother in Special Proceedings No. 364-R. From these statements, it would not be unreasonable or far-fetched to draw the conclusion that he knew about Special Proceedings Nos. 262 and 343 as well as the project of partition which were the root and origin of the "share" of his mother, the lands acquired by Candelario, as well as the lands inherited by him.

Moreover, stress must be laid on the fact that Fr. Nicanor Cortes intervened in Special Proceedings No. 364-R, the proceedings for the settlement of the estate of his mother, Sixta Ceniza. In the inventory submitted by the administrator thereof, the origin of some parcels of land included in the estate of his mother were specified thus:

"1. A parcel of land situated in Alang-Alang, Mandaue, Cebu - Tax Declaration No. 09343 — with an area of .4737 more or less; and assessed at ₱70.00. Bounded on the North by Gaudencio R. Juezan; on the East by Jacinto Engracial; on the South by Roberto Archo and Cristina Cuizon; on the West by Filemon Pono.

In the Project of Partition in Sp. Proc. Nos. 262 & 343, the said parcel is designated as parcel No. 1.

"2. A parcel of land situated in Centro, Mandaue, Cebu - Tax Declaration No. 09347 — with an area of .1347 more or less and assessed at ₱50.00. Bounded on the North by Rita Alilin; on the East by Jose Mendoza; on the south by Rita Alilin; and on the West by Domingo Ybasitas [Ceferino Mendoza].

In the Project of Partition in Sp. Proc. Nos. 262 & 343, said parcel is designated as parcel No. 4.

"3. A parcel of land situated in Pagsabungan, Mandaue, Cebu, Tax Declaration No. 09346 — with an area of .2246 more or less; and assessed at ₱70.00. Bounded on the North by Prevato Ceniza; on the East by Fernando Hatamosa; on the South by Butuanon River and Prevato Ceniza; and on the West by Prevato Ceniza and Philippine Railway.

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In the Project of Partition in Sp. Proc. 262 & 343, said parcel is designated as parcel No. 5.

"4. A parcel of land situated in Pagsabunga, Mandaue, Cebu, Tax Declaration No. 02232 — with an area of 1.0351 more or less; and assessed at ₱370.00. Bounded on the North by Hipolito Pareja; on the East by Cesario Congeon; on the South by Hrs. of Remigio Judilla; on the West by Sotero Judilla.

In the Project of Partition in Sp. Proc. Nos. 262 & 343, said parcel is designated as parcel No. 6.

"5. A parcel of land, situated in Kanduman, Mandaue, Cebu, Tax Declaration No. 09345 — with an area of 1.0324 more or less and assessed at ₱410.00. Bounded on the North by Jacinto Mayol; on the East by Sergio Suyco; on the south by Martin Seno; and the West by Mariano Alivio.

In the Project of Partition in Sp. Proc. Nos. 262 & 343, said parcel is designated as parcel No. 7.

"6. A parcel of land situted in Kanduman, Mandaue, Cebu, Tax Declaration No. 09344 — with an area of 2.4507 more or less; assessed at ₱980.00. Bounded on the North by Jacinto Mayol, Policarpio and Josefa Cortes; on the East by Claudio Osmeña and Camino Vecinal; on the South by Camino Vecinal and Hrs. of Tomas Osmeña; and on the West by Jacinto Mayol;

In the Project of Partition in Sp. Proc. Nos. 262 & 343, said parcel is designated as parcel No. 8.

"7. A parcel of land situated in Maguicay, Mandaue, Cebu, Tax Declaration No. 09348 — with an area of .2799 more or less; assessed at ₱320.00. Bounded on the North by Ireneo Villamor; on the East by Ireneo Villamor; on the South by Marcelo Cortes and Ireneo Villamor; and on the West by Callejon.

In the Project of Partition in Sp. Proc. Nos. 262 & 343, said parcel is designated as parcel No. 10.

"8. A parcel of land situated in Maguicay, Mandaue, Cebu, Tax Declaration No. 09347 — with an area of 1.2996; assessed at ₱520.00. Bounded on the North by Lucas Perez and Sebastian Fajardo; on the East by Juan Cortes; on the South by Paula Villamor; and on the West by Paula Villamor.

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In the Project of Partition in Sp. Proc. Nos. 262 & 343, said parcel is designated as parcel No. 13.

"9. A parcel of land situated in Maguicay, Mandaue, Cebu, Tax Declaration No. 09350 — with an area of 1.2699 — assessed at ₱320.00. Bounded on the North by Juan Cortes; on the East by Eutiquiano Mendoza; on the South by Simon Cortes and Ambrosio Cortes; and on the West by Juan Cortes.

In the Project of Partition in Sp. Proc. Nos. 262 & 343, said parcel is designated as parcel No. 14.

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"II. A parcel of land situated in Paknaan, Mandaue, Cebu, with an area of 1.000 more or less; assessed at ₱260.00. Bounded on the North by Hrs. of Roberto Ceniza and Escolastico Ceniza; on the East by Raymundo Ceniza; on the South by Eugenia Lumapas, Constancio Ceniza and Butuanon River; and on the West by Constancio Ceniza and Eugenia Lumapas.

This parcel is not included in the Project of Partition in Sp. Proc. Nos. 262 & 343.

"[REMARKS: Parcel No. 2 in the Project of Partition in Sp. Proc. Nos. 262 & 343 — Centro, Mandaue, Cebu — Bounded on the North by Calle Gral. Ricarte; East Riachuelo; South, Mariano del Castillo; West, Juana Mayol — is claimed by Atanasio Marababol who is said to have it declared in his name.

"Parcel No. 9 of the Project of Partition in Sp. Proc. Nos. 262 and 343 could not also be taken possession of as according to reliable information it is under contract of lease with the Bureau of Forestry in favor of someone.

"Parcel No. 11 of the Project of Partition in Sp. Proc. Nos. 262 & 343 is the same parcel No. 2 of said Project of Partition."[18]

By reason of this circumstance, Fr. Nicanor Cortes is charged with knowledge of Special Proceedings Nos. 262 and 343 as well as the Project of Partition.

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[18] Exh. 21, pp. 109-109-B, Folder of Documentary Evidence for the Defendants.

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The trial court relied heavily on the certification issued by the Clerk of the Court of First Instance of Cebu Esperanza T. Garcia, that:

"x x x there appears to be:

1. No individual notice to one Fr. Nicanor Cortes or his legal representative nor any intervention on his part has been recorded";[19]

But, as observed by counsel for petitioners, no probative value could be assigned to said certification, in view of another certification issued by the same Clerk of Court that "the prewar records of Sp. Proc. No. 262-C of the Court of First Instance of Cebu were lost and/or destroyed during World War II, and that presently, the records available in this office on said Special Proceedings only begins with a motion, dated May 22, 1946, filed by Attys. Hipolito Alo and Fermin Yap as attorneys for Rev. D. Camomot as Administrator in Sp. Proc. No. 227, and Atty. Gaudencio Juezan as attorney for the administrators Primitivo Sato and Moises Mendoza and heirs of the deceased mentioned in Sp. Proc. Nos. 262-C and 343-C, respectively."[20]

The loss and/or destruction of the pre-war records in Special Proceedings No. 262-C renders the determination of whether or not Fr. Nicanor Cortes was duly notified thereof an impossibility. However, the probability of his having been notified cannot be totally discounted. On the other hand, no personal notice was due Fr. Nicanor Cortes in Special Proceedings No. 343-C, not being the presumptive heir of Rufino Cortes. Thus; if it were true that Fr. Nicanor Cortes had no notice of Special Proceedings Nos. 262 and 343, the failure to give such notice must be attributed to whoever instituted Special Proceedings No. 262 wherein Fr. Cortes was a presumptive heir, and not to Ireneo and Paula Villamor, the petitioners in Special Proceedings No. 343, wherein Fr. Cortes was not a presumptive heir and where the publication of the petition as required by law was sufficient to give notice to the whole world including Fr. Cortes.

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[19] Exh. E, p. 5, Folder of Documentary Evidence for the Plaintiff.

[20] Exh. 31, p. 119, Folder of Documentary Evidence for the Defendants.

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The lower courts portrayed Sixta Ceniza as an old woman, who because of her "helplessness," became an easy prey to unscrupulous individuals like the predecessors-in-interest of the petitioners. The petitioners, however, contend that although it is true that Sixta Ceniza was blind and could not walk without somebody escorting her, her helplessness only affected her physical condition for according to Roure Ceniza-Sanchez, a granddaughter with whom said Sixta Ceniza lived at that time, Sixta Ceniza's mental faculty was "very clear."[21]

We find this contention tenable. Just because a person is blind or of poor memory, it does not follow that she is of unsound mind. This Court has ruled that where the mind of the testator is in perfectly sound condition, neither old age, nor ill health nor the fact that somebody had to guide his hand in order that he might sign, is sufficient to invalidate his will.[22]

If Sixta Ceniza were really "helpless," in the sense understood by the courts, when she affixed her thumbmark in the project of partition, on December 7, 1946, how was she able to validly donate lands to "those who served her and those to whom gratitude were due by means of documents signed on October of 1947 before Notary Fermin Yap" as Fr. Nicanor Cortes himself communicated to "Awang"?[23]

The lower courts likewise relied on the alleged absence of evidence showing that Rufino Cortes had at any time been declared an owner of the lands in question for taxation purposes.

The records show, however, that before the project of partition was executed on December 7, 1946, the contending parties in Special Proceedings Nos. 262 and 343 had been fighting for eight years since 1938 because the properties listed in the inventories submitted by the administrators were identical. To settle their differences amicably, the parties who all claim to be

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[21] pp. 20-22, tsn, January 20, 1971.

[22] *Neyra v. Neyra*, 76 Phil. 297 citing *Amata v. Tablizo*, 48 Phil. 485.

[23] Exh. 77-Trans., *supra*.

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the heirs of decedents, all children of Victor Cortes and Maria Castañeda, decided to partition the properties.

Partition is defined as a division between two or more persons of real or personal property which they own as copartners, joint tenants or tenants in common, effected by the setting apart of such interests so that they may enjoy and possess it in severalty.[24] The purpose of partition is to put an end to the common tenancy of the land or co-ownership. It seeks a severance of the individual interest of each joint owner vesting in each a sole estate in specific property and giving to each one the right to enjoy his estate without supervision or interference from the other.[25] And a partition by deed is a recognized method of effectuating a separation of interest in property held in common.[26]

It is clear therefore that a partition presupposes that the thing to be divided is owned in common. It is immaterial in whose name the properties were declared for taxation purposes for it is presumed before hand that the parties to the partition admit the fact of co-ownership and now want to effect a separation of interest.

We do not consider as "intriguing" the observation of the lower court and concurred in by the Court of Appeals that in both Special Proceedings in question, the administrators appointed were complete strangers to the decedents. There is nothing repulsive in this nor is this an indicium of fraud and collusion as found by the courts. Section 642 of the Code of Civil Procedure enumerates the persons who can act as executors and administrators. It provides that in case the persons who have the preferential right to be appointed are not competent or are unwilling to serve, administration may be granted to such other person as the court may appoint.

What is intriguing is the fact that although Fr. Nicanor Cortes had a number of surviving first cousins, he chose and preferred

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[24] *La. Bickham v. Pitts*, 171 So. 80, 185, La. 930.

[25] *Confesor v. Pelayo*, 111 Phil. 416.

[26] *N.C. Moore v. Baker*, S.E. 2d. 526, 224 N.C 498.

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a stranger, Fr. Diosdado Camomot as his attorney-in-fact to take charge of his and his Nanay's affairs. And even more intriguing is the fact that in the proceedings for the settlement of the estate of his mother, he took steps to have the appointment of Escolastico Ceniza, brother of private respondent, who was appointed as Special Administrator, revoked[27] and in which he succeeded.

Another point. Special Proceedings Nos. 262 and 343 lasted for about sixteen years before entry of judgment was made on March 18, 1954, and during that period, not one but three judges had the occasion to reflect on the propriety and merits of both proceedings as well as the project of partition. In the last page of the project of partition appears the signature of Judge Edmundo S. Piccio approving the same on February 1, 1947. On April 14, 1948, Judge S.C. Moscoso likewise approved the project of partition.[28] On November 25, 1953, both proceedings were ordered closed by Judge Florentino Saguin, and entry of judgment was made on March 18, 1954. Against this factual backdrop, it is highly improbable that any irregularity that might have attended said proceedings could not have been seasonably unravelled.

The courts also held that the fraud committed by Ireneo and Paula Cortes Villamor in collusion with Administrator Moises Mendoza, their lawyer Gaudencio Juezan and Fr. Diosdado Camomot was extrinsic for it has been shown that when the probate court approved the project of partition, there was no hearing or trial in the Court of First Instance for the purpose of determining the parties lawfully entitled to the estate in the hands of the administrators; neither was there an opportunity given to Fr. Nicanor Cortes by giving him prior notice to intervene or oppose, much less present his evidence, nor was there a declaration of heirs.

Assuming *arguendo* that extrinsic fraud had been committed by Ireneo and Paula Cortes Villamor, has the action prescribed?

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[27] Exh. 19, p. 107, Documentary Evidence for the Defendants.

[28] Exh. C, pp. 3-3A, Folder of Documentary Evidence for the Plaintiff.

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The courts held that the action has not prescribed for the preponderance of evidence shows that the fraud was discovered for the first time by Atty. Ramon B. Ceniza, son of Jose C. Ceniza, one of the heirs of Fr. Nicanor Cortes, only in March, 1970. Since the action was commenced on June 4, 1970, it was filed well within the four year period fixed by law.

We disagree. Prescription has set in. An action for reconveyance of real property resulting from fraud may be barred by the statute of limitations, which requires that the action shall be filed within four [4] years from the discovery of fraud.[29] From what time should fraud be deemed to have been discovered in the case at bar.

To ascertain what constitutes "a discovery of the facts constituting the fraud," reference must be had to the principles of equity. In actions in equity, the rule is that the means of knowledge are equivalent to actual knowledge; that is, that a knowledge of facts which would have put an ordinarily prudent man upon inquiry which, if followed up, would have resulted in a discovery of the fraud, was equivalent to actual discovery.[30]

In the instant case, the discovery must be deemed to have taken place, **at the latest**, on August 18, 1955, when Judge Clementino Diez, in Special Proceedings No. 364-R declared Fr. Nicanor Cortes as the only and universal heir of Sixta Ceniza and granted letters of administration to Fr. Diosdado Camomot, the person constituted by Fr. Nicanor Cortes as his attorney-in-fact in said proceedings. From that time, the law imputes to Fr. Cortes knowledge of Special Proceedings Nos. 262 and 343, the project of partition, and such facts and circumstances as would have him, by the exercise of due diligence, to knowledge of the fraud. During the time that Special Proceedings No. 364-R had been pending circumstances existed which should have aroused Fr. Nicanor Cortes' suspicion or put him on inquiry considering that the inventory submitted therein specifically made

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[29] *Balbin v. Medalla*, 108 SCRA 666; *Medina v. Court of Appeals*, 109 SCRA 437.

[30] *Smith v. Edwards*, 17P [2d] 264, 270.

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mention of Special Proceedings Nos. 262 and 343 and the project of partition.

The period of prescription commenced to run from August 18, 1955. However, from said date up to his death on August 28, 1969, Fr. Nicanor Cortes remained silent and failed to assert his right. He even conveyed at least three lands which were among those apportioned to Sixta Ceniza in the Project of Partition to several persons. Her predecessor-in-interest, Fr. Nicanor Cortes, not having filed any action for reconveyance within the prescriptive period provided by law, neither could private respondent do so now, for her right cannot rise higher than its source.

Finally, it is well-settled that the negligence or omission to assert a right within a reasonable time warrants not only a presumption that the party entitled to assert it, either had abandoned it or declined to assert it, but also casts doubt on the validity of the claim of ownership. Such neglect to assert a right taken in conjunction with the lapse of time, more or less great, and other circumstances causing prejudice to the adverse party, operates as a bar in a court of equity.[31]

WHEREFORE, the petition is hereby *GRANTED*. The judgment appealed from is set aside, and another entered dismissing the complaint in Civil Case No. R-11726 of the then Court of First Instance of Cebu. No costs.

SO ORDERED.

Feliciano and *Cortes, JJ.*, concur.

Fernan, J. (*Chairman*), no part. Having dealt with one of the petitioners regarding the lease of a property involved in this case.

Gutierrez, Jr., J., on leave.

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[31] *Guerrero v. CA*, 126 SCRA 109, citing *Heirs of Pedro Guminpin v. CA*, 120 SCRA 687; *Masagandanga v. Argamora*, 109 SCRA 53.