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FIRST DIVISION

[G.R. No. 70722. July 3, 1991]

CANUTA PAGKATIPUNAN, FLORA VELASQUEZ, BENJAMIN VELASQUEZ, RODOLFO VELASQUEZ, ALFREDO VELASQUEZ, NAPOLEON VELASQUEZ, MANUEL VELASQUEZ, JULIO VELASQUEZ, VICTORIA VELASQUEZ, CARLOS VELASQUEZ, LEONOR VELASQUEZ, ELENA VELASQUEZ, PATROCINIO VELASQUEZ, PATRICIA VELASQUEZ, SANTIAGO ZAPANTA, HERMINIGILDO SISON, ALFREDO AGAPITO, MOISES SANTOS, MAGDALENA PAGKATIPUNAN, AGAPITO MANALO, MIGUEL ANGELES, MATIAS ALVAREZ, PATRICIO LAYSA, TEOFILO DE LUNA, ISIDRO ANINAO, APOLINAR CASAL, MOISES GALLARDO, BONIFACIO PEREZ, DELFIN LAYBA, and HERMOGENES FLORES, *petitioners, vs.* **HON. INTERMEDIATE APPELLATE COURT, JOSE R. VELASQUEZ, JR., LOURDES VELASQUEZ, EDGARDO VELASQUEZ, LOLITA VELASQUEZ, MINERVA VELASQUEZ, CYNTHIA VELASQUEZ, CESAR GONZALES, ADOLFO GONZALES, EVELYN GONZALES, AMELITA GONZALES, RUBEN GONZALES, and CARMENCITA GONZALES,** *respondents.*

SYLLABUS

1. **CIVIL LAW; SUCCESSION; LIQUIDATION OF CONJUGAL PARTNERSHIPS; FAILURE TO COLLATE AND CONSIDER DONATIONS MADE DURING THE LIFETIME OF DONOR; DISTRIBUTION AMONG THE HEIRS CONSIDERED DEFECTIVE. —** It is a basic rule that before any conclusion about the legal share due to the heirs may be reached, it is necessary that certain steps be taken first. The trial court failed to consider among others, Articles 908 and 1061 of the Civil

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Code . It is undeniable that numerous donations *inter vivos* were made by Jose Velasquez, Sr. in favor of some of his compulsory heirs. Likewise, no collation of the donations he executed during his lifetime was undertaken by the trial court. With the avowed specific provisions of the laws respecting collation, which are ruled controlling even in intestate succession, this Court finds that the lower court's ruling adjudicating the remaining portion of the conjugal estate to the private respondents is purely speculative and conjectural.

2. ID.; LAND REGISTRATION; LAND FRAUDULENTLY REGISTERED, HELD AS MERE TRUSTEE BY THE PERSON IN WHOSE NAME THE SAME IS REGISTERED. — The fact that they had succeeded in securing title over the said parcels of land does not warrant the reversal of the trial court's ruling that the sales and assignments were sham and fictitious. A Torrens title does not furnish a shield for fraud notwithstanding the long-standing rule that registration is a constructive notice of title binding upon the whole world. The legal principle is that if the registration of the land is fraudulent and the person in whose name the land is registered thus holds it as a mere trustee, the real owner is entitled to file an action for reconveyance of the property within a period of ten years. Since petitioners asserted claims of exclusive ownership over the said parcels of land but acted in fraud of the private respondents, the former may be held to act as trustees for the benefit of the latter, pursuant to the provision of Article 1456 of the Civil Code:

3. ID.; ID.; ID.; RECONVEYANCE IN FAVOR OF ONE OF THE PARTIES TO THE CASE; NOT POSSIBLE UNTIL WHO AMONG THE HEIRS ARE DETERMINED ENTITLED THERETO. — But while the trial court has the authority to order the reconveyance of the questioned titles, We cannot agree that the reconveyance should be made in favor of the private respondents. The reason is that it is still unproven whether or not the private respondents are the only ones entitled to the conjugal properties of Jose Velasquez, Sr. and Victorina Real. It is to be noted that as the lawful heirs of Jose Velasquez, Sr. the herein petitioners are also entitled to participate with his conjugal share. To reconvey said property in favor of the private respondents alone would not only be improper but will also make the situation more complicated. There are still things to

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be done before the legal share of all the heirs can be properly adjudicated.

4. ID.; SUCCESSION; STEPS NECESSARY TO DETERMINE LEGAL SHARE DUE THE COMPULSORY HEIRS. — No conclusion as to the legal share due to the compulsory heirs can be reached in this case without (1) determining first the net value of the estate of Jose Velasquez, Sr.; (2) collating all the donations inter vivos in favor of some of the heirs; and (3) ascertaining the legitime of the compulsory heirs.

APPEARANCES OF COUNSEL

Bengzon, Zarraga, Narciso, Cudala, Pecson, Ascuna & Bengson for petitioners.

Tomas P. Añonuevo for private respondents.

D E C I S I O N

MEDIALDEA, *J.*:

This petition for *certiorari* seeks to nullify the decision of the Intermediate Appellate Court (now Court of Appeals) in AC-G.R. CV No. 68431 dated February 7, 1986, affirming the decision of the Court of First Instance (now Regional Trial Court) of Laguna, Branch II, Santa Cruz, Laguna, in Civil Case No. SC-894, the dispositive portion of which reads:

"WHEREFORE, the appealed decision of the lower court is affirmed, with the following modification:

"The entire house and lot on West Avenue, Quezon City, shall be divided as follows:

"One-half value of said house and lot to defendant-appellant Canuta Pagkatipunan and her 13 co-defendants-appellants children (now petitioners) to the extent of their respective proportional contributions as stated above; and

"The other one-half value of the said house and lot goes to the second conjugal partnership of the deceased husband and his second spouse Canuta Pagkatipunan to be partitioned one-fourth to Canuta

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Pagkatipunan and the other one-fourth appertaining to the deceased Jose Velasquez, Sr. to be divided equally among his 18 heirs as follows:

1/18 undivided portion to Canuta Pagkatipunan;

1/18 undivided portion to the plaintiff-appellee Lourdes Velasquez;

1/18 undivided portion to the plaintiffs-appellees Edgardo, Lolita, Minerva, Cynthia, and Jennifer, all surnamed Velasquez;

1/18 undivided portion to the plaintiffs-appellee Teresa Magtibay and her children, Ricardo, Lourdes, Celia and Aida, all surnamed Velasquez;

1/18 undivided portion to the plaintiffs-appellees Cesar, Adolfo, Evelyn, Angelita, Ruben, and Carmencita, all surnamed Gonzales;

1/18 undivided portion to *each* of the 13 defendants-appellants Flora, Leonor, Patrocinio, Benjamin, Rodolfo, Alfredo, Napoleon, Manuel, Julio, Elena, Patricia, Victoria, and Carlos, all surnamed Velasquez.

"SO ORDERED." (p. 55, *Rollo*)

The facts from the records are as follows:

The principal litigants in this case are the successors-in-interest of Jose Velasquez, Sr. who died intestate on February 24, 1961. Petitioner Canuta Pagkatipunan is the surviving spouse of Jose Velasquez, Sr. and the other 13 petitioners are their children namely: Flora, Leonor, Patrocinio, Julio, Benjamin, Rodolfo, Alfredo, Napoleon, Manuel, Elena, Patricia, Victoria and Carlos. On the other hand, the private respondents are the descendants of Jose Velasquez, Sr. with his first wife Victorina Real who died in 1920 at Santa Cruz, Laguna. Private respondents Jose Velasquez, Jr. (substituted after his death during the pendency of this suit by his surviving spouse Teresa Magtibay and their children Ricardo, Lourdes, Celia and Aida), and Lourdes Velasquez are two of the five children of Jose Velasquez, Sr. and Victorina Real. The other three, Amelia, Guillermo and Lutgarda, all surnamed Velasquez, all died before the commencement of this case. Amelia Velasquez died without any issue. Guillermo Velasquez was survived by private

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respondents Edgardo, Lolita, Minerva, Cynthia and Jennifer, all surnamed Velasquez, his children, forced heirs and lawful successors-in-interest. Lutgarda Velasquez was survived by private respondents Cesar, Adolfo, Evelyn, Amelita, Ruben and Carmencita, all surnamed Gonzales, likewise her children, forced heirs and successors-in-interest.

This case was judicially instituted by the private respondents against the petitioners in 1969 in a complaint entitled "*accion reivindicatoria*, annulment of deeds of sale, partition and damages." However, both the trial and the appellate courts considered that the real controversy in this case is the liquidation of the conjugal partnership properties acquired by the deceased Jose Velasquez, Sr. in his two marriages, one with Victorina Real, who predeceased him, and the other with Canuta Pagkatipunan, as well as the partition of the estate of said Jose Velasquez, Sr. among his heirs.

It appears that after the death of Victorina Real in 1920, no dissolution of the first conjugal property has been made. Consequently, Jose Velasquez, Sr. enjoyed full possession, use, usufruct and administration of the whole conjugal property of the first marriage.

In 1930, Jose Velasquez, Sr. took Canuta Pagkatipunan as his second wife although they cohabited as early as 1921, when she was 16, soon after his first wife's death. From this marriage, the other 13 co-petitioners were born. Neither had there been any liquidation of the second conjugal partnership after the death of Jose Velasquez, Sr. in 1961. This situation gave rise to the controversies in the instant case spawned by the parties' conflicting claims from both sides of the two marriages.

The trial court appointed two sets of commissioners - one on January 31, 1975, for the purpose of making an inventory of the estate of Jose Velasquez, Sr., and the other on November 15, 1976, to determine which of the parcels of land listed in such inventory submitted by the first set of commissioners belong to the conjugal partnership of the first marriage or to the conjugal partnership of the second marriage.

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Based on the Report and Inventory submitted on May 29, 1975, the commissioners listed the following properties as acquired by the late Jose Velasquez, Sr. during his marriage with Victorina Real:

1. Tax Declaration No. 2718. A riceland, located in Luya and with an area of 93,662 square meters;

2. Tax Declaration No. 3125. A Secano land located in Luya and with an area of 12,540 square meters;

3. Tax Declaration No. 2623. A Cocal and Forestal, situated in Salang-Bato (Macasipac) and with an area of 500,000 square meters;

4. Tax Declaration No. 2096. A riceland, situated in Islang Munti and with an area of 40,328 square meters;

5. A Cocal and Forestal land situated in Bankang Bato containing an area of 240,000 square meters;

6. Tax Declaration No. 4251. A Cocal, Secano and Cogonal land situated in Cambuja and containing an area of 163,121 square meters;

7. Tax Declaration No. 1342. A parcel of land situated in Bagumbayan and containing an area of 80,258 square meters;

8. Tax Declaration No. 3541. A Cocal and Secano land, situated in Bagumbayan and containing an area of 20 hectares;

(Total area as surveyed is 392,503 square meters. This includes the area of the land stated in Item 7 of the Inventory).

9. Tax Declaration No. 82. A Cogonal land situated in Tungkod (Ikalong Tuwid), containing an area of 385,324 square meters;

10. Tax Declaration No. 1500. A riceland, situated in Pague, containing an area of 9,228 square meters;

11. Tax Declaration No. 5688

a) A parcel of land situated in NAPSE (Masinao), containing an area of 24,725 square meters;

b) A parcel of land situated in NAPSE (Masinao), containing an area of 25,000 square meters;

12. Tax Declaration No. 543. A parcel of land situated in Gomez Street, containing an area of 755 square meters;

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13. Tax Declaration No. 4139. A parcel of land situated in Caboan containing an area of 367.2 square meters;

14. Tax Declaration No. 4139. A parcel of land situated in Caboan, containing an area of 367.2 square meters.

15. Tax Declaration No. 4139. A parcel of land situated in Caboan, containing an area of 367.2 square meters.

16. Tax Declaration No. 4139. A parcel of land situated in Caboan, containing an area of 367.2 square meters.

17. Tax Declaration No. 4139. A parcel of land situated in Caboan, containing an area of 1,275 square meters.

18. Tax Declaration No. 804-A. Three parcels of land situated in Salang Bato, containing an area of 450,000 square meters;

19. Tax Declaration No. 2560. A parcel of land situated in Salang Bato which area is included in item no. 18.

20. A parcel of land situated in Burgos St. (Papers cannot be located but subject lot is known to both parties).

21. A parcel of land situated in Burgos St., containing an area of 5,000 square meters. (Papers cannot be located but subject lot is known to both parties).

22. A parcel of land situated in Gomez St., containing an area of 300 square meters. (Papers cannot be located but subject lot is known to both parties).

23. A parcel of land situated in Gomez St., containing an area of 1,050 square meters. (Papers cannot be located but subject lot is known to both parties).

24. A parcel of land situated in Gomez St. (Papers cannot be located but subject lot is known to both parties).

25. A parcel of land situated in Zamora St., containing an area of 3,605. (Papers cannot be located but subject lot is known to both parties).

26. Tax Declaration No. 2412: A parcel of land situated in Caboan, containing an area of 12,867 square meters;

27. A parcel of land situated in Dra. Amelia St."

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On the other hand, the commissioners listed the following properties as acquired by Jose Velasquez, Sr. on February 11, 1921 or after the death of Victorina Real:

28. Tax Declaration No. 2547. A parcel of land situated in Barandilla, containing an area of 21,566 square meters;

29. A parcel of land situated in Barandilla, containing an area of 93.191 square meters. (Commissioner's Inventory, *Rollo*, pp. 355-360).

Worth noting are the following findings of the commissioners:

"3) That among the properties acquired by the late Jose Velasquez, Sr. during his lifetime, only the one mentioned in Item 7 of the Inventory (Annex "A") is still intact. It is situated in Bagumbayan, Sta. Maria, Laguna, and is containing an area of 80,258 square meters, more or less;

"4) That Item 8 of the Inventory is only 200,000 square meters, more or less in Tax Declaration No. 3541, but as per Survey caused by the defendants (which is not yet approved) it contains an area of 330,345 square meters. That the Tax Declaration of said parcel of land is under the name of Canuta Pagkatipunan, but plaintiff Jose Velasquez, Jr. is the one in possession of said property. That the area as contained in the Survey includes the area of the land mentioned in Item 7 of the Inventory (80,258 sq. m.);

"5) That the other properties of the late Jose Velasquez Sr. were disposed of by the said decedent during his lifetime and some were sold and or disposed of by the parties and heirs of the late Jose Velasquez, Sr.;

"6) That the Barandilla properties, as evidenced by the *Venta* Absoluta dated February 11, 1921 executed by Pedro Villanueva in favor of Jose Velasquez Sr., were disposed of portion by portion. It was sold by the late Jose Velasquez who disposed of some portions and the rest by either the plaintiffs or defendants. An area of 11,200 square meters more or less was DONATED (*donacion propter Nupcias*) in favor of Canuta Pagkatipunan by the decedent Jose Velasquez, Sr. as evidenced by Kasulatan ng Pambagong Documento Donacion Propter Nupcias notarized under Inst. 135; Page 47; Book I; Series of 1947 of Notary Public Bonifacio de Ramos;

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"7) That the parcels of land appearing in Items 5 and 6 of the Inventory (Annex "A") were DONATED by the late Jose Velasquez Sr. to Guillermo Velasquez;

"8) That parcels of land mentioned in Items 18 and 19 of the Inventory (Annex "A") were DONATED by the late Jose Velasquez, Sr. to Jose Velasquez, Jr. Said properties were sold by the Donee to Sps. Santiago Recio and Filomena Dimaculangan;

"9) The property mentioned in Item 27, page 3 of the Inventory was given by the late Jose Velasquez, Sr. to one of his daughters, Dra. Amelia Velasquez while she was still living and now owned by her heirs;

"10) A residential lot at 7 West Avenue, Quezon City, titled in the name of Canuta Pagkatipunan, was acquired from the PHHC (People's Homesite and Housing Corporation, now National Housing Authority) and presently occupied by the defendants." (*Rollo*, pp. 351-353)

There is divergence of findings and opinion among the three members of the second set of commissioners with respect to the properties covered by Items 7 and 8 and the property in the unnumbered item relating to Lot 2-A West Avenue, Quezon City and the house thereon of the Inventory submitted by the first set of commissioners. They refuse to make findings as to the nature of the properties because the petitioners had caused the issuance of titles covering said properties. However, all the commissioners were in agreement that all the other properties listed in the Inventory belonged to the conjugal partnership of the first marriage.

The records before Us will show that the properties covered by items 7 and 8 were originally declared for taxation purposes in the names of the spouses Real and Velasquez. This has been admitted by Canuta Pagkatipunan during the hearing before the Commissioner and is duly supported by documentary evidence.

After the death of Jose Velasquez, Sr. the full possession of said property was acquired by Canuta Pagkatipunan. On March 4, 1967, she sold the same property to the spouses Moises

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Santos and Magdalena Pagkatipunan, her brother-in-law and sister, respectively (they were previously impleaded in the trial court as party-defendants). Subsequently, Tax Declaration No. 4843 was issued in the names of the said spouses who later resold the same property to Canuta Pagkatipunan. Thereafter, tax declaration covering said property was issued in her name. During the pendency of this suit, this property was subdivided and assigned by Canuta Pagkatipunan in favor of her thirteen children. The latter caused the issuance of separate free patent titles in their favor covering the subdivided lots conveyed to them by their mother. Original Certificates of Title Nos. P-2000 to P-2012 were accordingly issued in their names.

With regard to the West Avenue property it is not disputed that said residential lot was purchased on installments from People's Homesite and Housing Corporation (now National Housing Authority) by the spouses Jose Velasquez Sr. and Canuta Pagkatipunan. The installments were paid by the said spouses until Jose Velasquez, Sr. died on February 24, 1961. Canuta Pagkatipunan, with the help of some of her children, shouldered the payment of the remaining installments until said property was fully paid in 1965. On February 23, 1968, the PHHC executed a deed of absolute sale conveying the said house and lot to Canuta Pagkatipunan.

On August 11, 1980, a judgment was rendered by the trial court:

"1) Declaring the properties listed in the Inventory submitted by the Commissioners on May 9, 1975, as belonging to the estate of the conjugal partnership of the deceased spouses Jose Velasquez, Sr. and Victorina Real;

"2) Confirming all the conveyances, either by way of sale or donation, executed by Jose Velasquez, Sr. during his lifetime;

"3) Declaring null and void, sham and fictitious, the following sales, transfers, assignments or conveyances: (a) the sale executed by Canuta Pagkatipunan in favor of her sister Magdalena Pagkatipunan in favor of Canuta Pagkatipunan (sic); (b) the deeds of assignments executed by Canuta Pagkatipunan in favor of her children, covering the properties listed in Items 7 and 8 of the Inventory; and ordering

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defendants (petitioners) to reconvey in favor of the plaintiffs (private respondents) the parcels of land covered by Patent Titles Nos. P-2000 to P-2012;

"4) Declaring as null, fictitious and fraudulent the sales by Canuta Pagkatipunan in favor of her children and her sister Magdalena Pagkatipunan and brother-in-law Moises Santos, listed in paragraph 13 of the Amended Complaint; declaring the plaintiffs owners of the said properties; and ordering the defendant Canuta Pagkatipunan and her children-defendants to deliver possession of said properties to the plaintiffs;

"5) Ordering the partition of the house and lot in West Avenue, Quezon City in the following manner:

> "(a) One-half undivided portion to defendant Canuta Pagkatipunan; and the other half appertaining to Jose Velasquez, Sr. to be divided among his heirs, to wit:
>
> 1/18 undivided portion to Canuta Pagkatipunan;
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> 1/18 undivided portion to Lourdes Velasquez;
>
> 1/18 undivided portion to the plaintiffs Edgardo, Lolita, Minerva, Cynthia and Jennifer, all surnamed Velasquez;
>
> 1/18 undivided portion to the plaintiffs Teresa Magtibay and her children Ricardo, Lourdes, Celia and Aida, all surnamed Velasquez;
>
> 1/18 undivided portion to the plaintiffs Cesar, Adolfo, Evelyn, Angelita, Ruben and Carmencita, all surnamed Gonzales;
>
> 1/18 undivided portion to each of the defendants Flora, Leonor, Patrocinio, Benjamin, Rodolfo, Alfredo, Napoleon, Manuel, Julio, Elena, Patricia, Victoria and Carlos, all surnamed Velasquez;

"6) Ordering the defendant Canuta Pagkatipunan and her children-defendants to pay to the plaintiffs the sum of ₱5,000.00, as reimbursement for attorney's fees;

"7) The defendant Canuta Pagkatipunan and her children-defendants are likewise ordered to pay the costs of this suit;

"8) The case against the other defendants, other than Canuta Pagkatipunan and her children and the spouses Moises Santos and Magdalena Pagkatipunan, is ordered dismissed." (pp. 614-617, *Rollo*)

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Petitioners appealed to the respondent Intermediate Appellate Court.

On February 7, 1985, the Intermediate Appellate Court, Third Civil Cases Division promulgated a decision, affirming the decision of the trial court, with the modification that the entire house and lot in West Avenue, Quezon City be divided into two: one-half value to the petitioners Canuta Pagkatipunan and her 13 children to the extent of their respective proportional contributions and the other half value, to the second conjugal partnership of Jose Velasquez, Sr. and Canuta Pagkatipunan to be partitioned one-fourth to the wife and the other one-fourth appertaining to the deceased Jose Velasquez, Sr. to be divided equally among his heirs.

Hence, this instant petition for review pointing out the following four (4) assignments of error, to wit:

I

"THE TRIAL COURT ERRED IN HOLDING THAT THE ENTIRE ESTATE LISTED IN THE INVENTORY SUBMITTED BY THE COMMISSIONERS ON MAY 9, 1975 AS BELONGING TO THE DECEASED SPOUSES JOSE VELASQUEZ, SR. AND VICTORINA REAL.

II

"THAT THE LOWER COURT ERRED IN CONFIRMING ALL THE CONVEYANCES EITHER BY WAY OF SALE OR DONATION EXECUTED BY JOSE VELASQUEZ, SR. DURING HIS LIFETIME.

III

"THAT THE LOWER COURT ERRED IN DECLARING NULL AND VOID, SHAM AND FICTITIOUS THE FOLLOWING SALES: a) THE SALE EXECUTED BY CANUTA PAGKATIPUNAN IN FAVOR OF HER SISTER MAGDALENA PAGKATIPUNAN AND BROTHER-IN-LAW MOISES SANTOS; b) THE RESALE EXECUTED BY MOISES SANTOS AND MAGDALENA PAGKATIPUNAN IN FAVOR OF CANUTA PAGKATIPUNAN c) THE DEEDS OF ASSIGNMENT EXECUTED BY CANUTA PAGKATIPUNAN IN FAVOR OF HER CHILDREN: COVERING THE PROPERTIES LISTED IN ITEMS 7 AND 8 OF THE INVENTORY; AND ORDERING DEFENDANT-APPELLANT

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CANUTA PAGKATIPUNAN AND HER CHILDREN DEFENDANTS-APPELLANTS TO RECONVEY IN FAVOR OF THE PLAINTIFFS-APPELLEES THE PARCELS OF LAND COVERED BY PATENT TITLES NOS. P-2000 TO P-2012.

IV

"THAT THE TRIAL COURT ERRED IN ORDERING THE PARTITION OF THE HOUSE AND LOT IN WEST AVENUE, QUEZON CITY, ONE-HALF UNDIVIDED PORTION TO DEFENDANT-APPELLANT CANUTA PAGKATIPUNAN AND THE OTHER HALF TO JOSE VELASQUEZ, SR." (pp. 21-22, *Rollo*)

After a careful review of the records and the arguments presented by both parties, the Court finds that both the trial court and the respondent Intermediate Appellate Court failed to consider some basic principles observed in the law on succession. Such an oversight renders the appealed decision defective and hard to sustain.

It is a basic rule that before any conclusion about the legal share due to the heirs may be reached, it is necessary that certain steps be taken first. In the assailed decision, the respondent court affirmed the trial court's ruling, that Jose Velasquez, Sr. had already disposed of and exhausted his corresponding share in the conjugal partnership owned by him and Victorina Real, so that his heirs have nothing more to inherit from him, and that accordingly, whatever remaining portion of the conjugal property must necessarily appertain only to the private respondents as heirs of the deceased Victorina Real. Clearly, the trial court failed to consider among others, the following provisions of the Civil Code:

"ART. 908. To determine the legitime, the value of the property left at the death of the testator shall be considered, deducting all debts and charges, which shall not include those imposed in the will.

"To the net value of the hereditary estate, shall be added the value of all donations by the testator that are subject to collation, at the time he made them."

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"ART. 1061. Every compulsory heir, who succeeds with other compulsory heirs, must bring into the mass of the estate any property or right which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order that it may be computed in the determination of the legitime of each heir, and in the account of the partition."

It is undeniable that numerous donations *inter vivos* were made by Jose Velasquez, Sr. in favor of some of his compulsory heirs. They include among others, the donation made in favor of Guillermo Velasquez on February 26, 1953, consisting of 403,000 square meters (Items 5 and 6); the donation made in 1926 in favor of Jose Velasquez, Jr., consisting of 450,000 square meters (Item No. 18); the donation in favor of Amelia Velasquez (Item No. 27), and the donation in favor of Canuta Pagkatipunan, consisting of 11,000 square meters (part of Item No. 29) (Commissioner's Report, *Rollo*, pp. 355-360).

It appears that there was no determination whatsoever of the gross value of the conjugal properties of Jose Velasquez, Sr. and Victorina Real. Obviously it is impossible to determine the conjugal share of Jose Velasquez, Sr. from the said property relationship. Likewise, no collation of the donations he executed during his lifetime was undertaken by the trial court. Thus, it would be extremely difficult to ascertain whether or not such donations trenched on the heirs' legitime so that the same may be considered subject to reduction for being inofficious.

Article 909 of the Civil Code provides:

"Art. 909. Donations given to children shall be charged to their legitime.

"Donations made to strangers shall be charged to that part of the estate of which the testator could have disposed by his last will.

"Insofar as they may be inofficious or may exceed the disposable portion, they shall be reduced according to the rules established by this Code."

With the avowed specific provisions of the aforesaid laws respecting collation, which are ruled controlling even in intestate

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succession, this Court finds that the lower court's ruling adjudicating the remaining portion of the conjugal estate to the private respondents is purely speculative and conjectural.

Relative to the sale executed by Canuta Pagkatipunan to the spouses Magdalena Pagkatipunan and Moises Santos; the resale of the same property to her; and the subsequent deeds of assignment she executed in favor of her children, the trial court had clearly established that Canuta Pagkatipunan employed fraudulent acts to acquire title over the said properties. Hence, the trial court, as well as the respondent court are correct in ruling that the said sales and assignments are null and void, sham and fictitious.

The pertinent portion of the trial court's decision reads as follows:

"From the evidence adduced by the parties during the hearing before this Court and before the Commissioners, these properties were acquired on November 19, 1918 by the spouses Jose Velasquez, Sr. and Victoria Real from Estanislao Balasoto (Exh. H-5, Commissioner). Said property was originally declared for taxation purposes in the names of said spouses. (Exh. H-Commissioner). On March 4, 1967, defendant Canuta Pagkatipunan sold the same property to the spouses Moises Santos and Magdalena Pagkatipunan (Exh. H-1-Commissioner). The vendee Magdalena Pagkatipunan is the sister of the defendant Canuta Pagkatipunan. Subsequently, Tax Declaration No. 4843 (Exh. H-2-Commissioner) was issued in the names of the spouses Moises Santos and Magdalena Pagkatipunan resold (sic) the same property to Canuta Pagkatipunan (Exh. H-3-Commissioner). Thereafter, tax declaration covering said property was issued in the name of Canuta Pagkatipunan (Exhibit H-4-Commissioner). During the pendency of this suit, this property was subdivided and assigned by Canuta Pagkatipunan in favor of her children, the defendants Flora, Leonor, Patrocinio, Benjamin, Rodolfo, Alfredo, Napoleon, Manuel, Elena, Patricia, Julio, Victoria and Carlos, all surnamed Velasquez. Said defendants-children of Canuta Pagkatipunan caused the issuance of free patent titles in their favor covering the subdivided lots conveyed to them respectively by their mother (Exhs. 2, 2-A to 2-L).

"It is evident that the parcels of land under Items 7 and 8 of the Inventory belonged to the conjugal partnership of the spouses Jose

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Velasquez, Sr. and Victorina Real. Canuta Pagkatipunan had no right to alienate the same. Her conveyance of the same property to her brother-in-law and sister is fictitious or simulated. Ten (10) days after she executed her sale, the same property was resold to her by the vendees. She utilized said conveyance and reconveyance only for the purpose of securing a tax declaration in her name over said property. Her subsequent subdivision of said lot and transfer of the subdivided lots to each of their children further show her fraudulent intent to deprive the plaintiffs of their rightful shares in the disputed property." (*Rollo*, pp. 606-607)

Despite the several pleadings filed by the petitioners in this Court, they did not rebut the foregoing findings of the trial court but merely held on to their argument that since Free Patent Titles Nos. P-2000 to P-2012 were already issued in their names, their title thereto is indefeasible and incontrovertible. This is a misplaced argument.

The fact that they had succeeded in securing title over the said parcels of land does not warrant the reversal of the trial court's ruling that the above mentioned sales and assignments were sham and fictitious. A Torrens title does not furnish a shield for fraud notwithstanding the long-standing rule that registration is a constructive notice of title binding upon the whole world. The legal principle is that if the registration of the land is fraudulent and the person in whose name the land is registered thus holds it as a mere trustee, the real owner is entitled to file an action for reconveyance of the property within a period of ten years (*Pajarillo v. Intermediate Appellate Court*, G.R. No. 72908, August 11, 1969, 176 SCRA 340).

Since petitioners asserted claims of exclusive ownership over the said parcels of land but acted in fraud of the private respondents, the former may be held to act as trustees for the benefit of the latter, pursuant to the provision of Article 1456 of the Civil Code:

"ART. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes."

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But while the trial court has the authority to order the reconveyance of the questioned titles, We cannot agree that the reconveyance should be made in favor of the private respondents. The reason is that it is still unproven whether or not the private respondents are the only ones entitled to the conjugal properties of Jose Velasquez, Sr. and Victoria Real. It is to be noted that as the lawful heirs of Jose Velasquez, Sr. the herein petitioners are also entitled to participate in his conjugal share. To reconvey said property in favor of the private respondents alone would not only be improper but will also make the situation more complicated. There are still things to be done before the legal share of all the heirs can be properly adjudicated.

Relative to the last assignment of error, We find the ruling made by the respondent appellate court proper and in accord with law insofar as it adjudicated the one-half (½) portion of the house and lot situated at West Avenue, Quezon City, as belonging to the petitioners to the extent of their respective proportional contributions, and the other half to the conjugal partnership of Jose Velasquez, Sr. and Canuta Pagkatipunan. We must modify it, however, as it readily partitioned the conjugal share of Jose Velasquez, Sr. (½ of the conjugal property or ¼ of the entire house and lot) to his 18 heirs.

As already said, no conclusion as to the legal share due to the compulsory heirs can be reached in this case without (1) determining first the net value of the estate of Jose Velasquez, Sr.; (2) collating all the donations inter vivos in favor of some of the heirs; and (3) ascertaining the legitime of the compulsory heirs.

ACCORDINGLY, the decision of the trial court as modified by the respondent appellate court is hereby SET ASIDE except insofar as it:

(a) declared the properties listed in the Inventory submitted by the commissioners on May 9, 1975 as belonging to the estate of the conjugal partnership of the spouses Jose Velasquez, Sr. and Victorina Real;

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b) declared null and void, sham and fictitious, the following sales, transfers, assignments or conveyances:

1) the sale executed by Canuta Pagkatipunan in favor of her sister Magdalena Pagkatipunan; 2) the resale of the same property executed in favor of Canuta Pagkatipunan; and 3) the deeds of assignments executed by Canuta Pagkatipunan in favor of her 13 children; covering the properties listed in Items 7 and 8;

c) declared as null and void all the other conveyances made by Canuta Pagkatipunan with respect to Item No. 13 of the inventory; and

d) dismissed the case against the other defendants except Canuta Pagkatipunan and her children and the spouses Moises Santos and Magdalena Pagkatipunan.

Civil Case No. SC-894 is hereby remanded to the Regional Trial Court of Laguna, for further proceedings and the same Court is directed to:

a) follow the procedure for partition herein prescribed;

b) expand the scope of the trial to cover other possible illegal dispositions of the first conjugal partnership properties not only by Canuta Pagkatipunan but also by the other heirs as can be shown in the records;

c) include the one-fourth (¼) share of Jose Velasquez, Sr. in the residential house in Quezon City with his conjugal share under his first marriage, if any, to determine his net estate at the time of his death.

The trial court's pronouncement as to cost and damages is hereby deleted.

SO ORDERED.

Narvasa (Chairman), Cruz, and *Griño-Aquino, JJ.*, concur.

Gancayco, J., on leave.