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SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio Morales, Callejo, Sr. and *Azcuna, JJ.*, concur.

Ynares-Santiago and *Corona, JJ.*, on leave.

THIRD DIVISION

[G.R. No. 127827. March 5, 2003]

ELEUTERIO, ANATALIA, JOSELITO, ROGELIO, EVANGELINE, NOEL, GUILLERMO, LORENZO, DOMINGO, AMADO, and VICTORIA, all surnamed LOPEZ, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, and spouses MARCELINO and CRISTINA S. LOPEZ, FELISA LOPEZ and RAMON CORTEZ, ZOILO LOPEZ, LEONARDO LOPEZ and LEONILA LOPEZ and spouses ROGELIO M. AMURAO and NOAMI T. AMURAO,** *respondents.*

SYNOPSIS

On May 31, 1985, petitioners, heirs of Nazario and Juan Lopez, instituted an action against the respondents, heirs of Hermogenes Lopez, praying that they be declared co-owners of a parcel of land situated in Makatubong, Barrio De la Paz, Antipolo, Rizal, and that respondents be ordered to reconvey to them 3/5 thereof as its co-owners, or in the alternative, to pay its value. Respondents opposed the complaint alleging that they are the absolute owners of the contested land on the basis of the homestead grant to their predecessor-in-interest,

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Hermogenes Lopez. On March 30, 1993, the Regional Trial Court of Antipolo, Rizal ruled for the respondents, dismissed the complaint and declared Hermogenes Lopez as the exclusive owner of the property in question. On appeal, the Court of Appeals affirmed with modification the decision of the trial court. Hence, petitioners elevated the matter before the Supreme Court.

Finding no cogent reason to reverse the impugned Decision of the Court of Appeals, the Court denied the petition for lack of merit. It held that Act No. 2874 requires that for an application for a homestead to be valid, it must be approved by the Director of Lands. The Director of Lands is tasked to satisfy himself that, among others, the application papers meet the requirements of the law, the land is a disposable public land, and the land is not subject of a previous valid application. Only when he finds the application sufficient in form and substance should he favorably act on it. Otherwise, he should deny it. In this case, the application of Fermin Lopez unfortunately remained unacted upon up to the time of his death. It was neither approved nor denied by the Director of Lands, as the Bureau failed to process it. Hence, a valid application is sadly lacking in his case. This circumstance, therefore, prevented him from acquiring any vested right over the land and fully owning it at the time of his death. Conformably, his heirs did not inherit any property right from him. Consequently, at the time Hermogenes Lopez applied for a homestead grant over the disputed property, it was still part of alienable public land. As he applied for it in his own name, his application inures to his sole benefit. After complying with the cultivation and residency requirements, he became a grantee of a homestead patent over it, thereby making him its absolute and exclusive owner.

SYLLABUS

1. **REMEDIAL LAW; RULES OF PROCEDURE; USED ONLY TO HELP SECURE AND NOT OVERRIDE SUBSTANTIAL JUSTICE; CASE AT BAR.**— We find that respondents were deprived of their right to a hearing due to accident. In the October 17, 1986 hearing, their counsel was absent due to

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asthma, which disabled him and made it difficult for him to talk. Similarly, when petitioners presented their evidence *ex-parte* on December 5, 1986, the counsel for the respondents again failed to appear as he experienced another severe asthma attack. On both occasions, his absence is clearly excusable. Nor is there any doubt that respondents were able to show that they have a good and substantial defense. They attached to their affidavit of merit the following documents: the decision of the Court of First Instance of Pasig in Civil Case No. 5957 entitled "*Hermogenes Lopez v. Fernando Gorospe, et al.*"; the decision also of the Pasig CFI, in Civil Case No. 24873, entitled "*Ambrocio Aguilar v. Fernando Gorospe*"; the decisions of the lower and appellate courts in the case of *Marcelino Lopez, et al. v. Ambrocio Aguilar*"; the decision of the Municipal Trial Court of Antipolo in the case of "*Ambrocio Aguilar v. Santos*"; and the Deed of Sale executed by and between Hermogenes and his brothers — petitioner Eleuterio, Nazario and Juan. The ruling in the foregoing cases recognized the absolute ownership and possession of respondents' predecessor-in-interest, Hermogenes Lopez. The deed showed that petitioner Eleuterio, Juan and Nazario sold their rights and interests in the contested lot to their brother Hermogenes. Time and again, we have stressed that the rules of procedure are not to be applied in a very strict and technical sense. The rules of procedure are used only to help secure and not override substantial justice. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.

2. **CIVIL LAW; LAND TITLES AND DEEDS; ACT NO. 2874; APPLICATION FOR A HOMESTEAD PATENT; HOMESTEAD SETTLEMENT; PURPOSE.**— Homestead settlement is one of the modes by which public lands suitable for agricultural purposes are disposed of. Its object is to provide a home for each citizen of the state, where his family may shelter and live beyond the reach of financial misfortune, and to inculcate in individuals those feelings of independence which are essential to the maintenance of free institutions.

3. **ID.; ID.; ID.; ID.; CULTIVATION AND RESIDENCY REQUIREMENTS.**— A person who is legally qualified has to file his application for a homestead patent with the Bureau

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of Lands. If in order, the application shall be approved by the Director. The applicant will be authorized to enter the land upon payment of an entry fee of five pesos. Within six months after approval of the application, the applicant has to improve and cultivate the land. He must cultivate at least one-fifth of the land for a period of not less than two years nor more than five years from the date of approval of the application. He must also continuously reside in the same municipality where the homestead is located, or in an adjacent municipality, for at least one year. He must finally present his final proof to the Bureau of Lands that he has complied with the cultivation and residency requirements.

4. **ID.; ID.; ID.; ID.; MUST BE APPROVED BY THE DIRECTOR OF LANDS TO BE VALID; A HOMESTEAD APPLICANT COULD NOT ACQUIRE ANY VESTED RIGHTS OVER THE PROPERTY WHERE HIS APPLICATION WAS NEVER ACTED UPON BY THE DIRECTOR OF LANDS; CASE AT BAR.**— It bears emphasis that Act No. 2874 requires that for an application to be valid, it must be approved by the Director of Lands. This is expressly mandated by Section 13 of the law, *viz*: x x x. This provision gives the Director of Lands discretion to approve or deny an application. He is not a mere automaton who must perfunctorily approve an application upon its filing. He is tasked to satisfy himself that, among others, the application papers meet the requirements of the law, the land is a disposable public land, and the land is not subject of a previous valid application. Only when he finds the application sufficient in form and substance should he favorably act on it. Otherwise, he should deny it. The application of Fermin unfortunately remained unacted upon up to the time of his death. It was neither approved nor denied by the Director, as the Bureau failed to process it. *Hence, he could not have acquired any vested rights as a homestead applicant over the property because his application was never acted upon.*

5. **ID.; ID.; ID.; ID.; ID.; HEIRS OF HOMESTEAD APPLICANT DO NOT INHERIT ANY RIGHTS FROM HIM WITH RESPECT TO THE LAND APPLIED FOR WHERE BUREAU OF LANDS FAILED TO ACT ON HIS APPLICATION UP TO THE TIME OF HIS DEATH; CASE AT BAR.**— Reliance on the cases of *Davao Grains, Inc. v.*

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IAC and *Balboa v. Farrales* by the petitioners is misplaced. Those two had different factual backdrops. In both *Davao Grains, Inc.* and *Balboa*, the disputed lots were subject of valid applications for public land grants. The valid applications became our bases for ruling that once an applicant has complied with the cultivation, residency and other requirements of Act No. 2874, which entitle him to a patent for a particular tract of land, "he is deemed to have already acquired by operation of law not only a right to a grant, but a grant of the government for it is not necessary that a certificate of title be issued in order that said grant may be sanctioned by the courts — an application therefor being sufficient under the provisions of Section 47 of Act No. 2874." A valid application is sadly lacking in the case of Fermin. This circumstance prevented him from acquiring any vested right over the land and fully owning it at the time of his death. *Conformably, his heirs did not inherit any property right from him.* Had the application of Fermin been duly approved, his heirs would have succeeded him in his rights and obligations with respect to the land he has applied for. Sec. 103 of Act No. 2874 covers such a contingency, thus: x x x. The failure of the Bureau of Lands to act on the application of Fermin up to the time of his death, however, prevented his heirs to be subrogated in all his rights and obligations with respect to the land applied for. Perforce, at the time Hermogenes applied for a homestead grant over the disputed property, it was still part of alienable public land. As he applied for it in his own name, his application inures to his sole benefit. After complying with the cultivation and residency requirements, he became a grantee of a homestead patent over it, thereby making him its absolute and exclusive owner.

6. **ID.; ID.; ID.; ID.; APPLICANT MUST PERSONALLY COMPLY WITH THE RESIDENCY AND CULTIVATION REQUIREMENTS.**— The claim of the petitioners that Hermogenes filed the application in behalf of all the heirs of Fermin pursuant to a previous agreement does not hold water. There is paucity of evidence in support of this allegation. Aside from the uncorroborated testimony of petitioner Eleuterio, petitioners were not able to present other proof of the agreement. Besides, we cannot easily give credence to such a claim considering that under Act No. 2874, an applicant must

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personally comply with the legal requirements for a homestead grant. He must possess the necessary qualifications. He must cultivate the land and reside on it himself. It would be a circumvention of the law if an individual were permitted to apply "in behalf of another," as the latter may be disqualified or might not comply with the residency and cultivation requirements.

7. **ID.; ESTOPPEL BY DEED; EXPLAINED.**— Estoppel by deed is a bar which precludes one party from asserting as against the other party and his privies any right or title in derogation of the deed, or from denying the truth of any material facts asserted in it. The principle is that when a man has entered into a solemn engagement by deed, he shall not be permitted to deny any matter which he has asserted therein, for a deed is a solemn act to any part of which the law gives effect as the deliberate admission of the maker. It promotes the judicious policy of making certain formal documents final and conclusive of their contents.

8. **ID.; ID.; DOES NOT OPERATE TO CONFER PROPERTY RIGHTS WHERE THERE ARE NONE; A VOID DEED MAY NOT BE THE BASIS OF AN ESTOPPEL; CASE AT BAR.**— A void deed, however, will not work, and may not be the basis of, an estoppel. Covenants do not work an estoppel unless the deed in which they are contained is itself a valid instrument. In the case at bar, the deed and instruments at issue were void. The extra-judicial partition and the special power of attorney to sell did not have an object certain, which is the subject matter of the deed. The disputed land cannot be their object because petitioners do not have any right or interest over it. They are not its co-owners as it is owned absolutely by Hermogenes. Well to note, the two instruments were executed on the mistaken assumption that Hermogenes and his brothers inherited the property from Fermin. Moreover, at the time the documents were made, Hermogenes was unaware that he was granted a homestead patent. As correctly ruled by the appellate court, estoppel does not operate to confer property rights where there are none. Apropos the letter dated January 16, 1984, suffice it to state that we agree with the trial court's pronouncement that respondent Marcelino Lopez signed it merely "to gain the favors of his uncle Eleuterio Lopez and in no way does it constitute an admission that the plaintiffs (petitioners herein)

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are co-owners of the property." Under these circumstances, respondents cannot be held guilty of estoppel by deed.

9. **ID.; PROPERTY; CO-OWNERSHIP; A PARTY WHO IS NOT A CO-OWNER OF THE PROPERTY CANNOT DEMAND ITS PARTITION; CASE AT BAR.**— In respect of the fourth assigned error, we find that petitioners' attack on the authenticity and validity of the Deed of Absolute Sale dated September 12, 1958, where petitioner Eleuterio, Juan, and Nazario allegedly sold their share in the disputed property to Hermogenes, bereft of merit. It did not change the fact that no co-ownership existed among Hermogenes and his brothers. Hermogenes is the absolute owner of the disputed property just as his brothers do not own any share in it. Hence, they cannot validly sell anything to Hermogenes by virtue of the deed. Prescinding from the lack of co-ownership, petitioners' argument that they are entitled to have the land partition must be rejected. Partition, in general, is the separation, division and assignment of a thing held in common among those to whom it may belong. The purpose of partition is to put an end to co-ownership. It seeks a severance of the individual interests of each co-owner, vesting in each a sole estate in specific property and giving to each one a right to enjoy his estate without supervision or interference from the other. Not being co-owners of the disputed lot, petitioners cannot demand its partition. They do not have any interest or share in the property upon which they can base their demand to have it divided.

10. **REMEDIAL LAW; LACHES; EXPLAINED; NO DELAY IN ASSERTING A RIGHT WHERE THE RIGHT DOES NOT EXIST.**— Petitioners' last argument that they are not guilty of laches in enforcing their rights to the property is irrelevant. Laches is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it has abandoned it or declined to assert it. It does not involve mere lapse or passage of time, but is principally an impediment to the assertion or enforcement of a right, which has become under the circumstances inequitable or unfair to permit. Petitioners' insistence that they are not negligent in asserting their right over the property proceeds from the wrong premise that they have a right to enforce over the disputed property as co-owners. There can be no delay in asserting a right where the right does not exist.

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APPEARANCES OF COUNSEL

Salonga Hernandez and *Mendoza* for petitioners.
Angeles & Associates for private respondents.

D E C I S I O N

PUNO, *J.*:

Before us is a petition for review on *certiorari* of the Decision[1] dated September 30, 1996 of the Court of Appeals in C.A.-G.R. CV No. 43837, which affirmed with modification the Decision dated March 30, 1993 of the Regional Trial Court of Antipolo, Rizal, Branch 71, in Civil Case No. 677-A.

The evidence shows that in 1920, Fermin Lopez occupied, possessed, and declared for taxation purposes a parcel of public land containing an area of 19 hectares, 48 *ares*, 88 *centares*, more or less, situated in Makatubong, Barrio De la Paz, Antipolo, Rizal. He filed a homestead application over the land, but his application was not acted upon until his death in 1934. When he died, he was survived by the following: (1) Hermogenes Lopez, now deceased, leaving his children, respondents Marcelino, Felisa, Zoilo, and Leonardo, all surnamed Lopez, as his heirs; (2) petitioner Eleuterio Lopez; (3) Juan Lopez, now deceased, leaving his children, Guillermo, Lorenzo, Domingo, Amado, and Victoria, all surnamed Lopez, as his heirs;[2] and (4) Nazario, now deceased, leaving his wife, petitioner Anatalia, and children, petitioners Joselito, Rogelio, Evangeline and Noel, all surnamed Lopez, as his heirs.

Following Fermin's death, Hermogenes, being the eldest child, worked and introduced additional improvements on the land. In 1936, he inquired from the Bureau of Lands the status of his

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[1] Per *JJ.* Vasquez, Jr., Buena and Sandoval-Gutierrez.

[2] Juan's heirs were originally plaintiffs in this case but they later executed with the respondent Lopezes a compromise agreement, on the basis of which the trial court rendered a Partial Decision.

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late father's application for a homestead grant. An official[3] of the bureau informed him that the application remained unacted upon and suggested that he file a new application. Following the suggestion, Hermogenes filed a homestead application in his own name, which was docketed as No. 138612. After ascertaining that the land was free from claim of any private person, the Bureau approved his application. In 1939, Hermogenes submitted his final proof of compliance with the residency and cultivation requirements of the law. The land was surveyed and a resulting plan, H-138612, was approved by the Director of Lands, who thereafter ordered the issuance of the homestead patent. The patent was later transmitted to the Register of Deeds of Rizal for transcription and issuance of the corresponding certificate of title in his name.

Unaware that he has been awarded a homestead patent, Hermogenes executed on February 11, 1956 an Extra-judicial Partition of the disputed land with his brothers — petitioner Eleuterio, Juan, and Nazario. On September 12, 1958, however, the three executed a Deed of Absolute Sale of their share in the land in favor of Hermogenes. The succeeding year, Hermogenes applied with the Land Registration Commission for the registration of the property in his name. This was docketed as LRC Case No. 2531. To his surprise, he found that the land has been registered in the names of Fernando Gorospe, Salvador de Tagle, Rosario de Tagle, Beatriz de Suzuarrequi and Eduardo Santos, who collectively opposed his application.

In December 1959, Hermogenes filed a complaint for the annulment of the free patent and title against these persons before the Court of First Instance of Rizal,[4] docketed as Civil Case No. 5957. Some of the defendants moved for its dismissal alleging that Hermogenes was not a real party in interest since he previously sold his right to the land to one Ambrocio Aguilar on July 31, 1959.

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[3] Mr. Teodoro Cajumban, then Public Land Investigator at Land District No. VII, Bureau of Lands, Manila.

[4] Branch 1.

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The case was dismissed.

Aguilar instituted on November 18, 1976 a new civil action before the CFI of Rizal,[5] docketed as Civil Case No. 24873. It was similar to Civil Case No. 5957 except for the change in plaintiff and the addition of the Bureau of Lands as co-defendant. On April 15, 1982, the lower court declared Aguilar as the absolute owner of the land and OCT No. 537 and all subsequent certificates of title emanating therefrom as void *ab initio*. This decision was affirmed *in toto* by the Court of Appeals. In G.R. No. 90380, we affirmed the decision of the appellate court in a decision promulgated on September 13, 1990.[6]

After the April 15, 1982 decision of the CFI, and while the case was on appeal, respondent Lopezes, as heirs of Hermogenes (who died on August 20, 1982), filed a complaint against Aguilar before the RTC of Antipolo, Rizal. The July 14, 1984 complaint was for the cancellation of the deed of sale executed by Hermogenes in favor of Aguilar dated July 31, 1959 and/or reconveyance. It was docketed as Civil Case No. 463-A. On February 5, 1985, the lower court declared the deed of absolute sale null and void *ab initio* and the respondents as the true and absolute owner of the disputed land. Aguilar sought relief with the Court of Appeals, which affirmed *in toto* the decision of the RTC in a Decision promulgated on August 18, 1987.[7] In G.R. No. 81092, we denied Aguilar's petition for review in a resolution dated April 6, 1998 for having been filed late.

On April 25, 1985, after the RTC of Antipolo rendered its February 5, 1987 decision in Civil Case No. 463-A and pending its appeal, respondent Lopezes sold a large portion of the disputed property to respondent spouses Amurao.

On May 31, 1985, petitioners Eleuterio, Anatalia, Joselito, Rogelio, Evangeline and Noel, all heirs of Nazario Lopez, along with Guillermo, Lorenzo, Domingo, Amado, and Victoria, all

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[5] Branch 22.

[6] *Santos v. CA*, 189 SCRA 550 (1990).

[7] CA-GR CV No. 06242.

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heirs of Juan Lopez, instituted the present action against the respondents before the RTC of Antipolo, Rizal, Branch 71, docketed as Civil Case No. 677-A. They prayed, among others, that they be declared co-owners of the property subject matter hereof and that private respondents be ordered to reconvey to them 3/5 thereof as its co-owners, or in the alternative, to pay its value. On June 26, 1985, respondents filed their Answer with Compulsory Counterclaim alleging that they are the absolute owners of the contested land on the basis of the homestead grant to their predecessor-in-interest, Hermogenes.

After the pre-trial on November 27, 1987, trial ensued. In the August 28, 1986 hearing petitioners' counsel failed to appear, causing the case to be dismissed. The dismissal, however, was reconsidered upon motion of petitioners' counsel, and the case was again set for hearing. In the scheduled hearing of October 17, 1986, counsel for respondent was absent. Upon proper motion, petitioners were allowed to present their evidence *ex-parte* on December 5, 1986. Following the presentation of *ex-parte* evidence, the case was deemed submitted for resolution.

On June 25, 1987, the court *a quo* rendered a decision in favor of the petitioners ordering the division of the disputed lot in equal portions among the four children of Fermin or their heirs. Respondents failed to appeal the decision but on September 10, 1987, they filed a petition for relief from judgment, alleging that accident/excusable negligence prevented them from attending the trial and that they have a good, substantial and meritorious defense. On December 28, 1989, the court *a quo* set aside its decision dated June 25, 1987 and ordered a pre-trial conference.

On January 30, 1990, respondents filed a Motion to Admit Amended Answer alleging for the first time that petitioners have already sold to Hermogenes their shares in the contested property: Petitioners opposed the motion on the ground that the amendments constituted substantial alteration of the theory of the defense. On February 13, 1990, the court *a quo* allowed respondents to amend the answer. When their motion for reconsideration was denied, petitioners elevated the issue directly to this court *via*

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a Petition for *Certiorari*. On April 25, 1990, we denied the petition for failure to comply with the requirements of Circular 1-88, with a further pronouncement that, "besides, even if the petition were admitted, the same would still be dismissed as the Court finds that no grave abuse of discretion was committed by public respondent." Trial on the merits once more proceeded in the court *a quo*.

While the case was on trial, complainants therein Guillermo, Lorenzo, Domingo, Amado and Victoria, all children of Juan Lopez, entered into a compromise agreement with the respondent Lopezes, heirs of Hermogenes, recognizing the latter's ownership and possession of the property subject of the case. They confirmed the sale made by their father Juan to Hermogenes. On July 20, 1992, the court *a quo* rendered a partial decision approving the compromise agreement.[8]

On March 30, 1993, the court *a quo* rendered a Decision dismissing the complaint, the dispositive portion of which states:

"WHEREFORE, judgment is hereby rendered:

1. Ordering the dismissal of the case;

2. Declaring Hermogenes Lopez as the exclusive owner of the property in question;

3. Ordering the plaintiffs to pay the defendants the amount of ₱20,000.00 as attorney's fees; and

4. Ordering plaintiffs to pay the costs.

SO ORDERED."[9]

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[8] The dispositive portion of the Partial Decision states:

"Finding the foregoing compromise agreement not to be contrary to law, morals and public policy, the same is APPROVED and judgment is hereby rendered in accordance therewith.

The parties are enjoined to strictly comply and abide with the terms and conditions therein set forth.

SO ORDERED."

[9] Decision, Civil Case No. 677-A, p. 13; *Rollo*, p. 97.

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Feeling aggrieved, petitioners appealed to the Court of Appeals, which affirmed with modification the above Decision, thus:

"Finally, We have to delete and disallow the award of attorney's fees for want of factual and legal premise in the text of the appealed Decision.

IN VIEW OF ALL THE FOREGOING, the decision appealed from is *AFFIRMED* with a *modification* that the award of attorney's fees is deleted. Costs against the appellants."[10]

Hence, the present course of action where petitioners contend:

"I. The Honorable Court of Appeals in ruling that the propriety of the grant of respondents' petition for relief from judgment has been rendered moot is not in accord with the decisions of this Honorable Supreme Court.

II. The Court of Appeals' ruling that Fermin Lopez, the common predecessor-in-interest, was not entitled to the grant of the homestead patent, hence petitioners are not co-owners of the disputed property is not in accord with the evidence and the decisions of this Honorable Supreme Court.

III. The Court of Appeals' ruling that the statement or declarations in the extra-judicial partition (Exh. N); the special power of attorney (Exh. O); and the letter dated January 11, 1984 (Exh. Q) were based on a wrong assumption that the property is owned by their common predecessor-in-interest — is not in accord with the evidence and decisions of this Honorable Supreme Court.

IV. The Court of Appeals committed reversible error in ruling that the forged absolute deed of sale dated September 12, 1958 has no bearing on the respondents' claim over the disputed property.

V. The Court of Appeals in not ruling that the remedy of partition is available to the petitioners is not in accord with law.

VI. The Court of Appeals' ruling that laches applies to the herein (*sic*) who are close relatives is not in accord with the decisions of this Honorable Supreme Court."[11]

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[10] Decision, CA-G.R. CV No. 43837, p. 7; *Rollo* p. 67.

[11] Petition, pp. 17–18; *Rollo*, pp. 25–26.

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First, the procedural issue. Petitioners contend that the grant of relief from judgment is erroneous as the respondents did not substantiate their allegation of fraud, accident, mistake, or excusable negligence which unjustly deprived them of a hearing. They add that while respondents had ample opportunity to avail of other remedies, such as a motion for reconsideration or an appeal, from the time they received a copy of the decision on July 10, 1987, yet they did not do so.

Rule 38 of the 1997 Rules of Civil Procedure governs the petition for relief from judgment. Sections 2 and 3 of the Rules provide:

"Section 2. *Petition for relief from judgment, order or other proceedings.* — When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside."[12]

"Section 3. *Time for filing petition; contents and verification.* — A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, final order or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting the petitioners' good and substantial cause of action or defense, as the case may be."[13]

We find that respondents were deprived of their right to a hearing due to accident. In the October 17, 1986 hearing, their counsel was absent due to asthma, which disabled him and made it difficult for him to talk. Similarly, when petitioners presented their evidence *ex-parte* on December 5, 1986, the counsel for the respondents again failed to appear as he experienced

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[12] 1997 Rules on Civil Procedure.

[13] *Ibid.*

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another severe asthma attack. On both occasions, his absence is clearly excusable.

Nor is there any doubt that respondents were able to show that they have a good and substantial defense. They attached to their affidavit of merit the following documents: [14] the decision of the Court of First Instance of Pasig in Civil Case No. 5957 entitled "*Hermogenes Lopez v. Fernando Gorospe, et al.*"; the decision also of the Pasig CFI, in Civil Case No. 24873, entitled "*Ambrocio Aguilar v. Fernando Gorospe*"; the decisions of the lower and appellate courts in the case of *Marcelino Lopez, et al. v. Ambrocio Aguilar*"; the decision of the Municipal Trial Court of Antipolo in the case of "*Ambrocio Aguilar v. Santos*"; and the Deed of Sale executed by and between Hermogenes and his brothers — petitioner Eleuterio, Nazario and Juan. The ruling in the foregoing cases recognized the absolute ownership and possession of respondents' predecessor-in-interest, Hermogenes Lopez. The deed showed that petitioner Eleuterio, Juan and Nazario sold their rights and interests in the contested lot to their brother Hermogenes.

Time and again, we have stressed that the rules of procedure are not to be applied in a very strict and technical sense. The rules of procedure are used only to help secure and not override substantial justice.[15] If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.[16]

We now address the substantive issues. The most pivotal is the petitioners' contention that the appellate court erred in holding that they are not co-owners of the disputed property. They argue that Fermin, their predecessor-in-interest, has complied with all the requirements of the Public Land Act pertaining to a homestead grant, and is therefore entitled to a patent as a matter of right. They claim that Fermin filed a homestead application over the land, cultivated at least one-fifth of it, and

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[14] These documents were presented in the hearing of the petition.

[15] *Samoso v. CA*, 178 SCRA 654 (1989).

[16] *Basco v. CA*, 326 SCRA 768 (2000).

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resided on it for at least one year. Upon his death, they argue that they became its co-owners through succession.

We do not agree. Homestead settlement is one of the modes by which public lands suitable for agricultural purposes are disposed of.[17] Its object is to provide a home for each citizen of the state, where his family may shelter and live beyond the reach of financial misfortune, and to inculcate in individuals those feelings of independence which are essential to the maintenance of free institutions.[18]

The record is bereft of any evidence as to when Fermin exactly filed his homestead application over the lot in controversy, but it must have been filed after 1920, the year he first occupied and possessed the land, and before 1934, the year he died. During this period, Act No. 2874 was the governing law.[19] Section 12 thereof provides:

"Sec. 12. Any citizen of the Philippine Islands or of the United States, over the age of eighteen years, or the head of a family, who does not own more than twenty-four hectares of land in said Islands or has not had any benefit of any gratuitous allotment of more than twenty-four hectares of land since the occupation of the Philippine

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[17] Sec. 11 of Act No. 2874 provides:

"Sec. 11. Public lands suitable for agricultural purposes can be disposed of only as follows:

1. For homestead settlement;
2. By sale;
3. By lease;
4. By confirmation of imperfect or incomplete titles:
   (a) By judicial legalization;
   (b) By administrative legalization (free patent)."

[18] *Rural Bank of Davao City, Inc. v. CA*, 217 SCRA 554 (1993), citing *Jocson v. Soriano*, 45 Phil. 375 (1923).

[19] The homestead system was introduced in the country through Act No. 926, passed by the Philippine Commission on October 7, 1903 [Noblejas and Noblejas, *Registration of Land Titles and Deeds* (1986), p. 347]. Act No. 2874, which took effect on November 29, 1919, superseded Act No 926.

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Islands by the United States, may enter a homestead of not exceeding twenty-four hectares of agricultural land of the public domain."[20]

A person who is legally qualified has to file his application for a homestead patent with the Bureau of Lands. If in order, the application shall be approved by the Director. The applicant will be authorized to enter the land upon payment of an entry fee of five pesos.[21] Within six months after approval of the application, the applicant has to improve and cultivate the land.[22] He must cultivate at least one-fifth of the land for a period of not less than two years nor more than five years from the date of approval of the application.[23] He must also continuously reside in the same municipality where the homestead is located, or in an adjacent municipality, for at least one year.[24] He must finally present his final proof to the Bureau of Lands that he has complied with the cultivation and residency requirements.[25]

It bears emphasis that Act No. 2874 requires that for an application to be valid, it must be approved by the Director of Lands. This is expressly mandated by Section 13 of the law, *viz*:

"Sec. 13. Upon filing of an application for a homestead, the Director of Lands, *if he finds that the application should be approved, shall do so* and authorize the applicant to take possession of the land upon the payment of ten pesos, Philippine currency, as

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The new law was more comprehensive in scope and modified the requirements for homestead grants [Peña, *Philippine Law on Natural Resources* (1997), p. 18]. Finally, on November 7, 1936, Commonwealth Act No. 141 was passed by the National Assembly. It took effect on December 1, 1936 and remains effective until today. It is a mere re-enactment of Act No. 2874 with slight revision to conform with the nationalistic provisions of the 1936 Constitution [Noblejas and Noblejas, *supra*, p. 347].

[20] Sec. 12.

[21] Sec. 13.

[22] *Ibid.*

[23] Sec. 14.

[24] *Ibid.*

[25] *Ibid.*

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entry fee. Within six months from and after the date of the approval of the application, the applicant shall begin to work the homestead, otherwise he shall lose his prior right to the land."[26] (italics supplied)

This provision gives the Director of Lands discretion to approve or deny an application. He is not a mere automaton who must perfunctorily approve an application upon its filing. He is tasked to satisfy himself that, among others, the application papers meet the requirements of the law, the land is a disposable public land, and the land is not subject of a previous valid application.[27] Only when he finds the application sufficient in form and substance should he favorably act on it. Otherwise, he should deny it.

The application of Fermin unfortunately remained unacted upon up to the time of his death. It was neither approved nor denied by the Director, as the Bureau failed to process it. *Hence, he could not have acquired any vested rights as a homestead applicant over the property because his application was never acted upon.*

Reliance on the cases of *Davao Grains, Inc. v. IAC*[28] and *Balboa v. Farrales*[29] by the petitioners is misplaced. Those two had different factual backdrops. In both *Davao Grains, Inc.* and *Balboa*, the disputed lots were subject of valid applications for public land grants. The valid applications became our bases for ruling that once an applicant has complied with the cultivation, residency and other requirements of Act No. 2874, which entitle him to a patent for a particular tract of land, "he is deemed to have already acquired by operation of law not only a right to a grant, but a grant of the government for it is not necessary that a certificate of title be issued in order that said grant may be sanctioned by the courts — an application therefor being sufficient under the provisions of Section 47 of Act No. 2874."[30]

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[26] Sec. 13.

[27] See Secs. 87–90.

[28] 171 SCRA 612 (1989).

[29] 51 Phil. 498 (1928).

[30] *Davao Gains, Inc. v. IAC, supra*, citing *Susi v. Razon, et al.*, 48 Phil. 424 (1926).

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A valid application is sadly lacking in the case of Fermin. This circumstance prevented him from acquiring any vested right over the land and fully owning it at the time of his death. *Conformably, his heirs did not inherit any property right from him.*[31]

Had the application of Fermin been duly approved, his heirs would have succeeded him in his rights and obligations with respect to the land he has applied for. Sec. 103 of Act No. 2874 covers such a contingency, thus:

"Sec. 103. If at any time the applicant or grantee shall die before the issuance of the patent or the final grant of the land, or during the life of the lease, or while the applicant or grantee still has obligations pending towards the Government, in accordance with this Act, he shall be succeeded in his rights and obligations with respect to the land applied for or granted or leased under this Act by his widow, who shall be entitled to have issued to her the patent or final concession if she shows that she has complied with the requirement therefore, or in case he has left no widow or the widow refuses the succession, he shall be succeeded by the person or persons who are his heirs by law and who shall be subrogated in all his rights and obligations for the purposes of this Act."[32]

The failure of the Bureau of Lands to act on the application of Fermin up to the time of his death, however, prevented his heirs to be subrogated in all his rights and obligations with respect to the land applied for.

Perforce, at the time Hermogenes applied for a homestead grant over the disputed property, it was still part of alienable public land. As he applied for it in his own name, his application inures to his sole benefit. After complying with the cultivation and residency requirements, he became a grantee of a homestead patent over it, thereby making him its absolute and exclusive owner.[33]

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[31] See Arts. 774 and 776, Civil Code of the Philippines.

[32] Sec. 103.

[33] See *Santos v. CA, supra* note 6.

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Petitioners, however, claim that Hermogenes and his heirs, respondent Lopezes, recognized their rights as co-owners of the disputed property, as shown by the following documents: an Extra-judicial Partition of the real property executed by Hermogenes and his brothers — petitioner Eleuterio, Nazario, and Juan;[34] a Special Power of Attorney to sell the lot in question executed by petitioner Eleuterio, Nazario and Juan in favor of Hermogenes;[35] and a letter dated January 16, 1984, which contains the statement that petitioners are co-heirs of the property, and which respondent Marcelino Lopez signed.[36] Petitioners argue that respondents are precluded from denying the contents of these documents based on the principle of estoppel by deed. They add that while only Hermogenes applied for a homestead grant, nonetheless, there was an agreement among the brothers that his application was for and in behalf of all them.

These arguments fail to impress. Estoppel by deed is a bar which precludes one party from asserting as against the other party and his privies any right or title in derogation of the deed, or from denying the truth of any material facts asserted in it.[37] The principle is that when a man has entered into a solemn engagement by deed, he shall not be permitted to deny any matter which he has asserted therein, for a deed is a solemn act to any part of which the law gives effect as the deliberate admission of the maker.[38] It promotes the judicious policy of making certain formal documents final and conclusive of their contents.[39]

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[34] Exhibit "N".

[35] Exhibit "M".

[36] Exhibits "Q" and "Q–1".

[37] IV Tolentino, *Civil Code of the Philippines*, p. 666.

[38] See *Hilco Property Services, Inc. v. U.S.*, 929 F. Supp. 526 (1996), cited in 28 Am. Jur. 2d Sec 4.

[39] See *Mc Laughlin v. Lambourn*, 359 N.W. 2d 370 (1985), cited in 28 Am. Jur 2d Sec 4.

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A void deed, however, will not work, and may not be the basis of, an estoppel.[40] Covenants do not work an estoppel unless the deed in which they are contained is itself a valid instrument.[41] In the case at bar, the deed and instruments at issue were void. The extra-judicial partition and the special power of attorney to sell did not have an object certain, which is the subject matter of the deed. The disputed land cannot be their object because petitioners do not have any right or interest over it. They are not its co-owners as it is owned absolutely by Hermogenes. Well to note, the two instruments were executed on the mistaken assumption that Hermogenes and his brothers inherited the property from Fermin. Moreover, at the time the documents were made, Hermogenes was unaware that he was granted a homestead patent. As correctly ruled by the appellate court, estoppel does not operate to confer property rights where there are none.[42]

Apropos the letter dated January 16, 1984,[43] suffice it to state that we agree with the trial court's pronouncement that respondent Marcelino Lopez signed it merely "to gain the favors of his uncle Eleuterio Lopez and in no way does it constitute an admission that the plaintiffs (petitioners herein) are co-owners of the property."[44] Under these circumstances, respondents cannot be held guilty of estoppel by deed.

The claim of the petitioners that Hermogenes filed the application in behalf of all the heirs of Fermin pursuant to a previous agreement does not hold water. There is paucity of evidence in support of this allegation. Aside from the uncorroborated testimony of petitioner Eleuterio, petitioners were not able to present other proof of the agreement. Besides, we cannot easily give credence to such a claim considering that

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[40] See *Curthis v. Steele* 131 S.E. 2d 344 (1963).

[41] See *Alt v. Banholzer*, 40 N.W. 830 (1888).

[42] Decision, p. 6; *Rollo*, p. 66.

[43] *Supra,* note 36.

[44] Decision, p. 11; *Rollo*, p. 95.

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under Act No. 2874, an applicant must personally comply with the legal requirements for a homestead grant. He must possess the necessary qualifications. He must cultivate the land and reside on it himself. It would be a circumvention of the law if an individual were permitted to apply "in behalf of another," as the latter may be disqualified or might not comply with the residency and cultivation requirements.

In respect of the fourth assigned error, we find that petitioners' attack on the authenticity and validity of the Deed of Absolute Sale dated September 12, 1958, where petitioner Eleuterio, Juan, and Nazario allegedly sold their share in the disputed property to Hermogenes, bereft of merit. It did not change the fact that no co-ownership existed among Hermogenes and his brothers. Hermogenes is the absolute owner of the disputed property just as his brothers do not own any share in it. Hence, they cannot validly sell anything to Hermogenes by virtue of the deed.

Prescinding from the lack of co-ownership, petitioners' argument that they are entitled to have the land partition must be rejected. Partition, in general, is the separation, division and assignment of a thing held in common among those to whom it may belong.[45] The purpose of partition is to put an end to co-ownership.[46] It seeks a severance of the individual interests of each co-owner, vesting in each a sole estate in specific property and giving to each one a right to enjoy his estate without supervision or interference from the other.[47] Not being co-owners of the disputed lot, petitioners cannot demand its partition. They do not have any interest or share in the property upon which they can base their demand to have it divided.

Petitioners' last argument that they are not guilty of laches in enforcing their rights to the property is irrelevant. Laches is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert

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[45] Art. 1079, Civil Code of the Philippines.

[46] *Noceda v. Court of Appeals*, 313 SCRA 514 (1999).

[47] *Villamor v. Court of Appeals*, 162 SCRA 574 (1988).

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it has abandoned it or declined to assert it.[48] It does not involve mere lapse or passage of time, but is principally an impediment to the assertion or enforcement of a right, which has become under the circumstances inequitable or unfair to permit.[49] Petitioners' insistence that they are not negligent in asserting their right over the property proceeds from the wrong premise that they have a right to enforce over the disputed property as co-owners. There can be no delay in asserting a right where the right does not exist.

IN VIEW WHEREOF, finding no cogent reason to reverse the impugned Decision of the Court of Appeals, the petition is *DENIED* for lack of merit.

SO ORDERED.

Panganiban, and *Carpio Morales, JJ.*, concur.

Sandoval-Gutierrez, J., took no part.

Corona, J., on official leave.

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[48] *Ignacio v. Basilio*, G.R. No. 122824, September 26, 2001.

[49] *Philippine Bank of Communications v. Court of Appeals*, 289 SCRA 178 (1998).