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FIRST DIVISION

[G.R. No. 136773. June 25, 2003]

MILAGROS MANONGSONG, joined by her husband, CARLITO MANONGSONG, *petitioners, vs.* **FELOMENA JUMAQUIO ESTIMO, EMILIANA JUMAQUIO, NARCISO ORTIZ, CELESTINO ORTIZ, RODOLFO ORTIZ, ERLINDA O. OCAMPO, PASTOR ORTIZ, JR., ROMEO ORTIZ BENJAMIN DELA CRUZ, SR., BENJAMIN DELA CRUZ, JR., AURORA NICOLAS, GLORIA RACADIO, ROBERTO DELA CRUZ, JOSELITO DELA CRUZ and LEONCIA S. LOPEZ,** *respondents.*

SYNOPSIS

Petitioner Milagros Manongsong, joined by her husband, filed an action for partition of a parcel of land located in San Jose Street, Manuyo Uno, Las Pinas, Metro Manila, before the Regional Trial Court of Makati City. Petitioner claimed that Manongsong is a co-owner or co-heir of the property by inheritance, more specifically as the heir of her father, Vicente Lopez. According to petitioner, Agatona Guevarra was the original owner of the said property and that upon her death, her children inherited the property. Each of the children, including Vicente Lopez, the father of petitioner, inherited from her one-fifth interest in the property. Respondents Emiliana Jumaquio Rodriguez and Felomena Jumaquio Estimo (Jumaquio sisters), daughters of Enriqueta Lopez Jumaquio, opposed petitioners' claim and contended that Justina Navarro, the mother of Agatona Guevarra, sold the property to the latter's daughter Enriqueta Lopez-Jumaquio. Both parties presented tax declarations and the testimonies of witnesses. However, the Jumaquio sisters also presented a notarized *KASULATAN SA BILIHAN NG LUPA* dated 11 October 1957 between Justina Navarro, vendor, and Enriqueta Lopez-Jumaquio, vendee, which controverted petitioners' claim of co-ownership. After trial on the merits, the trial court ruled in favor of the petitioners. It held that the *Kasulatan* was void because the property conveyed was conjugal at the time it was sold to Enriqueta Lopez Jumaquio. Hence,

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the compulsory heirs of Guevarra cannot be deprived of their legitimes. On appeal, the Court of Appeals reversed and set aside the decision of the trial court and affirmed the validity of the *Kasulatan*.

The Court did not agree with the trial court. It found no basis for applying the presumption in favor of the conjugal partnership. There was no evidence presented to establish that Navarro acquired the property during her marriage. According to the Court proof of acquisition during the marriage is an essential condition for the operation of the presumption in favor of the conjugal partnership. On the contrary, the Tax Declaration showed that, as far back as in 1949, the property was declared solely in Navarro's name. This tends to support the argument that the property was not conjugal. There was also no basis for the trial court's declaration that the sale embodied in the *Kasulatan* deprived the compulsory heirs of Guevarra of their legitimes. When the disposition is for valuable consideration, there is no diminution of the estate but merely a substitution of values. Thus, since the notarized *Kasulatan* is evidence of greater weight which petitioners failed to refute by clear and convincing evidence, the Court held that petitioners were not able to prove by preponderance of evidence that the property belonged to Guevarra's estate. There was, therefore, no legal basis for petitioners' complaint for partition of the property.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI;* ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTION.**— The issues raised by petitioners are mainly factual in nature. In general, only questions of law are appealable to this Court under Rule 45. However, where the factual findings of the trial court and Court of Appeals conflict, this Court has the authority to review and, if necessary, reverse the findings of fact of the lower courts. This is precisely the situation in this case.

2. **ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; BURDEN OF PROOF IN CIVIL CASES.**— We review the factual and legal issues of this case in light of the general rules of evidence and the burden of proof in civil cases, as explained by this Court in ***Jison v. Court of***

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Appeals: xxx Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. The concept of "preponderance of evidence" refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth.

3. **ID.; ID.; AUTHENTICATION AND PROOF OF DOCUMENTS; AUTHENTICITY AND DUE EXECUTION OF A NOTARIZED DOCUMENT SHALL BE UPHELD UNLESS OVERCOME BY CLEAR AND CONVINCING EVIDENCE.**— The *Kasulatan*, being a document acknowledged before a notary public, is a public document and *prima facie* evidence of its authenticity and due execution. To assail the authenticity and due execution of a notarized document, the evidence must be clear, convincing and more than merely preponderant. Otherwise the authenticity and due execution of the document should be upheld. The trial court itself held that "(n)o countervailing proof was adduced by plaintiffs to overcome or impugn the document's legality or its validity."

4. **ID.; ID.; ID.; EVIDENCE OF EXECUTION WHEN NOT NECESSARY.**— Even if the *Kasulatan* was not notarized, it would be deemed an ancient document and thus still presumed to be authentic. The *Kasulatan* is: (1) more than 30 years old, (2) found in the proper custody, and (3) unblemished by any alteration or by any circumstance of suspicion. It appears, on its face, to be genuine.

5. **ID.; ID.; ID.; NOTARIZED DOCUMENT IS EVIDENCE OF GREATER WEIGHT; CASE AT BAR.**— If Navarro were not the mother of Guevarra, it would only further undermine petitioners' case. Absent any hereditary relationship between Guevarra and Navarro, the Property would not have passed from Navarro to Guevarra, and then to the latter's children, including petitioners, by succession. There would then be no basis for

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petitioners' claim of co-ownership by virtue of inheritance from Guevarra. On the other hand, this would not undermine respondents' position since they anchor their claim on the sale under the *Kasulatan* and not on inheritance from Guevarra. Since the notarized *Kasulatan* is evidence of greater weight which petitioners failed to refute by clear and convincing evidence, this Court holds that petitioners were not able to prove by preponderance of evidence that the Property belonged to Guevarra's estate. There is therefore no legal basis for petitioners' complaint for partition of the Property.

6. **ID.; ID.; PRESENTATION OF EVIDENCE; OFFER AND OBJECTION; DOCUMENTS NOT FORMALLY OFFERED SHALL NOT BE ADMITTED; CASE AT BAR.**— We find no error in the Court of Appeals' refusal to give any probative value to the alleged birth certificate of Guevarra and the affidavit of Benjamin dela Cruz, Sr. Petitioners belatedly attached these documents to their appellee's brief. Petitioners could easily have offered these documents during the proceedings before the trial court. Instead, petitioners presented these documents for the first time on appeal without any explanation. For reasons of their own, petitioners did not formally offer in evidence these documents before the trial court as required by Section 34, Rule 132 of the Rules of Court. To admit these documents now is contrary to due process, as it deprives respondents of the opportunity to examine and controvert them.

7. **ID.; ID.; ID.; IMPERMISSIBLE CHANGE OF THEORY; WHEN A PARTY ADOPTS A CERTAIN THEORY IN THE COURT BELOW, HE CANNOT CHANGE HIS THEORY ON APPEAL.**— Moreover, even if these documents were admitted, they would not controvert Navarro's ownership of the Property. Benjamin dela Cruz, Sr.'s affidavit stated merely that, although he knew Navarro by name, he was not personally acquainted with her. Guevarra's alleged birth certificate casts doubt only as to whether Navarro was indeed the mother of Guevarra. These documents do not prove that Guevarra owned the Property or that Navarro did not own the Property. Petitioners admitted before the trial court that Navarro was the mother of Guevarra. However, petitioners denied before the Court of Appeals that Navarro was the mother of Guevarra. We agree with the appellate court that this constitutes an impermissible change of theory. When a party adopts a certain theory in the

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court below, he cannot change his theory on appeal. To allow him to do so is not only unfair to the other party, it is also offensive to the basic rules of fair play, justice and due process.

8. **CIVIL LAW; PERSONS; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; PRESUMPTION OF CONJUGAL PARTNERSHIP; PROOF OF ACQUISITION OF THE PROPERTY DURING THE MARRIAGE, ESSENTIAL CONDITION FOR THE OPERATION THEREOF; CASE AT BAR.**— Nevertheless, the trial court held that the *Kasulatan* was void because the Property was conjugal at the time Navarro sold it to Enriqueta Lopez Jumaquio. We do not agree. The trial court's conclusion that the Property was conjugal was not based on evidence, but rather on a misapprehension of Article 160 of the Civil Code, which provides: All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife. As the Court of Appeals correctly pointed out, the presumption under Article 160 of the Civil Code applies only when there is proof that the property was acquired during the marriage. Proof of acquisition during the marriage is an essential condition for the operation of the presumption in favor of the conjugal partnership. There was no evidence presented to establish that Navarro acquired the Property during her marriage. There is no basis for applying the presumption under Article 160 of the Civil Code to the present case. On the contrary, Tax Declaration No. 911 showed that, as far back as in 1949, the Property was declared solely in Navarro's name. This tends to support the argument that the Property was not conjugal.

9. **ID.; OBLIGATIONS AND CONTRACTS; SALES; NO DIMINUTION OF THE ESTATE BUT MERELY A SUBSTITUTION OF VALUES WHERE DISPOSITION IS FOR VALUABLE CONSIDERATION.**— We likewise find no basis for the trial court's declaration that the sale embodied in the *Kasulatan* deprived the compulsory heirs of Guevarra of their legitimes. As opposed to a disposition *inter vivos* by lucrative or gratuitous title, a valid sale for valuable consideration does not diminish the estate of the seller. When the disposition is for valuable consideration, there is no diminution of the estate but merely a substitution of values, that is, the property sold is replaced by the equivalent monetary consideration.

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10. ID.; ID.; ID.; CONTRACT OF SALE; ELEMENTS.— Under Article 1458 of the Civil Code, the elements of a valid contract of sale are: (1) consent or meeting of the minds; (2) determinate subject matter and (3) price certain in money or its equivalent. The presence of these elements is apparent on the face of the *Kasulatan* itself. The Property was sold in 1957 for ₱250.00.

APPEARANCES OF COUNSEL

Vicente Tagoc, Jr. for petitioner.
Roque Butuyan & Gangoso for private respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court is a petition for review[1] assailing the Decision[2] of 26 June 1998 and the Resolution of 21 December 1998 of the Court of Appeals in CA-G.R. CV No. 51643. The Court of Appeals reversed the Decision dated 10 April 1995 of the Regional Trial Court of Makati City, Branch 135, in Civil Case No. 92-1685, partitioning the property in controversy and awarding to petitioners a portion of the property.

Antecedent Facts

Spouses Agatona Guevarra ("Guevarra") and Ciriaco Lopez had six (6) children, namely: (1) Dominador Lopez; (2) Enriqueta Lopez-Jumaquio, the mother of respondents Emiliana Jumaquio Rodriguez and Felomena Jumaquio Estimo ("Jumaquio sisters"); (3) Victor Lopez, married to respondent Leoncia Lopez; (4) Benigna Lopez-Ortiz, the mother of respondents Narciso, Celestino, Rodolfo, Pastor Jr. and Romeo Ortiz, and Erlinda Ortiz Ocampo; (5) Rosario Lopez-dela Cruz, married to respondent Benjamin dela Cruz, Sr. and the mother of

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Eugenio Labitoria with Associate Justices Artemio G. Tuquero and Marina L. Buzon concurring.

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respondents Benjamin Jr., Roberto, and Joselito, all surnamed dela Cruz, and of Gloria dela Cruz Racadio and Aurora dela Cruz Nicolas; and (6) Vicente Lopez, the father of petitioner Milagros Lopez Manongsong ("Manongsong").

The contested property is a parcel of land on San Jose Street, Manuyo Uno, Las Piñas, Metro Manila with an area of approximately 152 square meters ("Property"). The records do not show that the Property is registered under the Torrens system. The Property is particularly described in Tax Declaration No. B-001-00390[3] as bounded in the north by Juan Gallardo, south by Calle Velay, east by Domingo Lavana and west by San Jose Street. Tax Declaration No. B-001-00390 was registered with the Office of the Municipal Assessor of Las Piñas on 30 September 1984 in the name of "Benigna Lopez, *et al*".[4] However, the improvements on the portion of the Property denominated as No. 831 San Jose St., Manuyo Uno, Las Piñas were separately declared in the name of "Filomena J. Estimo" under Tax Declaration No. 90-001-02145 dated 14 October 1991.[5]

Milagros and Carlito Manongsong ("petitioners") filed a Complaint[6] on 19 June 1992, alleging that Manongsong and respondents are the owners *pro indiviso* of the Property. Invoking Article 494 of the Civil Code,[7] petitioners prayed for the partition

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[3] Exhibit "A," Records, p. 217.

[4] *Ibid.*

[5] Exhibit "7," Records, p. 280.

[6] Records, p. 1.

[7] Article 494 of the Civil Code provides:

No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

Neither shall there be any partition when it is prohibited by law.

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and award to them of an area equivalent to one-fifth (1/5) of the Property or its prevailing market value, and for damages.

Petitioners alleged that Guevarra was the original owner of the Property. Upon Guevarra's death, her children inherited the Property. Since Dominador Lopez died without offspring, there were only five children left as heirs of Guevarra. Each of the five children, including Vicente Lopez, the father of Manongsong, was entitled to a fifth of the Property. As Vicente Lopez' sole surviving heir, Manongsong claims her father's 1/5 share in the Property by right of representation.

There is no dispute that respondents, who are the surviving spouses of Guevarra's children and their offspring, have been in possession of the Property for as long as they can remember. The area actually occupied by each respondent family differs, ranging in size from approximately 25 to 50 square meters. Petitioners are the only descendants not occupying any portion of the Property.

Most respondents, specifically Narciso, Rodolfo, Pastor Jr., and Celestino Ortiz, and Erlinda Ortiz Ocampo ("Ortiz family"), as well as Benjamin Sr., Benjamin Jr., and Roberto dela Cruz, Aurora dela Cruz Nicolas and Gloria Dela Cruz Racadio ("Dela Cruz family"), entered into a compromise agreement with petitioners. Under the Stipulation of Facts and Compromise Agreement[8] dated 12 September 1992 ("Agreement"), petitioners and the Ortiz and Dela Cruz families agreed that each group of heirs would receive an equal share in the Property. The signatories to the Agreement asked the trial court to issue an order of partition to this effect and prayed further that "those who have exceeded said one-fifth (1/5) must be reduced so that those who have less and those who have none shall get the correct and proper portion."[9]

No prescription shall run in favor of a co-owner or co-heir against his co-owners or coheirs so long as he expressly or impliedly recognizes the co-ownership.

[8] Exhibit "F" to "F-3," Records, p. 73.

[9] *Ibid.*

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Among the respondents, the Jumaquio sisters and Leoncia Lopez — who each occupy 50 square meter portions of the Property — and Joselito dela Cruz, did not sign the Agreement.[10] However, only the Jumaquio sisters actively opposed petitioners' claim. The Jumaquio sisters contended that Justina Navarro ("Navarro"), supposedly the mother of Guevarra, sold the Property to Guevarra's daughter Enriqueta Lopez Jumaquio.

The Jumaquio sisters presented provincial Tax Declaration No. 911[11] for the year 1949 in the sole name of Navarro. Tax Declaration No. 911 described a residential parcel of land with an area of 172.51 square meters, located on San Jose St., Manuyo, Las Piñas, Rizal with the following boundaries: Juan Gallardo to the north, I. Guevarra Street to the south, Rizal Street to the east and San Jose Street to the west. In addition, Tax Declaration No. 911 stated that the houses of "Agatona Lopez" and "Enriqueta Lopez" stood on the Property as improvements.

The Jumaquio sisters also presented a notarized *KASULATAN SA BILIHAN NG LUPA*[12] ("*Kasulatan*") dated 11 October 1957, the relevant portion of which states:

AKO SI JUSTINA NAVARRO, sapat ang gulang, may asawa, Pilipino at naninirahan sa LAS PIÑAS, ay siyang nagma-may-ari at nagtatangkilik ng isang lagay na lupa na matatagpuan sa Manuyo, Las Piñas, Rizal, lihis sa anomang pagkakautang lalong napagkikilala sa pamamagitan ng mga sumusunod na palatandaan:

BOUNDARIES:

NORTH: JUAN GALLARDO SOUTH: 1. GUEVARRA ST.

EAST: RIZAL ST., WEST: SAN JOSE ST.,

na may sukat na 172.51 metros cuadrados na may TAX DECLARATION BILANG 911.

NA DAHIL AT ALANG ALANG sa halagang DALAWANG DAAN LIMANGPUNG PISO (₱250.00), SALAPING PILIPINO, na sa akin

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[10] *Ibid.*

[11] Records, p. 27.

[12] Exhibits "4" to "4-A," Records, p. 277.

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ay kaliwang iniabot at ibinayad ni ENRIQUETA LOPEZ, may sapat na gulang, Pilipino, may asawa at naninirahan sa Las Piñas, Rizal, at sa karapatang ito ay aking pinatutunayan ng pagkakatanggap ng nasabing halaga na buong kasiyahan ng aking kalooban ay aking IPINAGBILI, ISINALIN AT INILIPAT sa nasabing, ENRIQUETA LOPEZ, sa kanyang mga tagapagmana at kahalili, ang kabuuang sukat ng lupang nabanggit sa itaas nito sa pamamagitan ng bilihang walang anomang pasubali. Ang lupang ito ay walang kasama at hindi taniman ng palay o mais.

Simula sa araw na ito ay aking ililipat ang pagmamay-ari at pagtatangkilik ng nasabing lupa kay ENRIQUETA LOPEZ sa kanilang/ kanyang tagapagmana at kahalili x x x.

The Clerk of Court of the Regional Trial Court of Manila certified on 1 June 1994 that the "*'KASULATAN SA BILIHAN NG LUPA'*, between Justina Navarro (*Nagbili*) and Enriqueta Lopez (*Bumili*), was notarized by Atty. Ruperto Q. Andrada on 11 October 1957 and entered in his Notarial Register x x x."[13] The certification further stated that Atty. Andrada was a duly appointed notary public for the City of Manila in 1957.

Because the Jumaquio sisters were in peaceful possession of their portion of the Property for more than thirty years, they also invoked the defense of acquisitive prescription against petitioners, and charged that petitioners were guilty of laches. The Jumaquio sisters argued that the present action should have been filed years earlier, either by Vicente Lopez when he was alive or by Manongsong when the latter reached legal age. Instead, petitioners filed this action for partition only in 1992 when Manongsong was already 33 years old.

The Ruling of the Trial Court

After trial on the merits, the trial court in its Decision[14] of 10 April 1995 ruled in favor of petitioners. The trial court held that the *Kasulatan* was void, even absent evidence attacking its validity. The trial court declared:

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[13] Exhibit "5," Records, p. 278.

[14] Records, p. 337.

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It appears that the ownership of the estate in question is controverted. According to defendants Jumaquios, it pertains to them through conveyance by means of a Deed of Sale executed by their common ancestor Justina Navarro to their mother Enriqueta, which deed was presented in evidence as Exhs. "4" to "4-A". Plaintiff Milagros Manongsong debunks the evidence as fake. The document of sale, in the observance of the Court, is however duly authenticated by means of a certificate issued by the RTC of the Manila Clerk of Court as duly notarized public document (Exh. "5"). *No countervailing proof was adduced by plaintiffs to overcome or impugn the document's legality or its validity.*

x x x The conveyance made by Justina Navarro is subject to nullity because the property conveyed had a conjugal character. No positive evidence had been introduced that it was solely a paraphernal property. The name of Justina Navarro's spouse/husband was not mentioned and/or whether the husband was still alive at the time the conveyance was made to Justina Navarro. Agatona Guevarra as her compulsory heir should have the legal right to participate with the distribution of the estate under question to the exclusion of others. She is entitled to her *legitime*. The Deed of Sale [Exhs "4" & "4-1"(*sic*)] did not at all provide for the reserved legitime or the heirs, and, therefore it has no force and effect against Agatona Guevarra and her six (6) *legitimate* children including the grandchildren, by right of representation, as described in the order of intestate succession. The same Deed of Sale should be declared a nullity *ab initio*. The law on the matter is clear. The compulsory heirs cannot be deprived of their *legitime*, except on (*sic*) cases expressly specified by law like for instance disinheritance for cause. x x x (Italics supplied)

Since the other respondents had entered into a compromise agreement with petitioners, the dispositive portion of the trial court's decision was directed against the Jumaquio sisters only, as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and *against the remaining active defendants, Emiliana Jumaquio and Felomena J. Estimo, jointly and severally*, ordering:

1. That the property consisting of 152 square meters referred to above be immediately partitioned giving plaintiff Milagros Lopez-

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Manongsong her lawful share of 1/5 of the area in square meters, or the prevailing market value on the date of the decision;

2. Defendants to pay plaintiffs the sum of ₱10,000.00 as compensatory damages for having deprived the latter the use and enjoyment of the fruits of her 1/5 share;

3. Defendants to pay plaintiffs' litigation expenses and attorney's fee in the sum of ₱10,000.00; and

4. Defendants to pay the costs of suit.

SO ORDERED.[15] (Italics supplied)

When the trial court denied their motion for reconsideration, the Jumaquio sisters appealed to the Court of Appeals.

The Ruling of the Court of Appeals

Petitioners, in their appellee's brief before the Court of Appeals, presented for the first time a supposed photocopy of the death certificate[16] of Guevarra, which stated that Guevarra's mother was a certain Juliana Gallardo. Petitioner also attached an affidavit[17] from Benjamin dela Cruz, Sr. attesting that he knew Justina Navarro only by name and had never met her personally, although he had lived for some years with Agatona Guevarra after his marriage with Rosario Lopez. On the basis of these documents, petitioners assailed the genuineness and authenticity of the *Kasulatan*.

The Court of Appeals refused to take cognizance of the death certificate and affidavit presented by petitioners on the ground that petitioners never formally offered these documents in evidence.

The appellate court further held that the petitioners were bound by their admission that Navarro was the original owner of the Property, as follows:

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[15] *Ibid.*

[16] CA *Rollo*, p. 97.

[17] *Ibid.*, p. 98.

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Moreover, plaintiffs-appellees themselves admitted before the trial court that Justina Navarro and not Juliana Gallardo was the original owner of the subject property and was the mother of Agatona Navarro (*sic*). Plaintiffs-appellees in their Reply-Memorandum averred:

> "As regards the existence of common ownership, the defendants clearly admit as follows:
>
> x x x x x x x x x
>
> 'History of this case tells us that originally the property was *owned by JUSTINA NAVARRO who has a daughter by the name of AGATONA GUEVARRA* who on the other hand has six children namely: x x x x x x x x x.'
>
> which point-out that co-ownership exists on the property between the parties. *Since this is the admitted history, facts of the case it follows that there should* have been proper document to extinguish this status of co-ownership between the common owners either by (1) Court action or proper deed of tradition, x x x x x x x x x"

The trial court confirms these admissions of plaintiffs-appellees. The trial court held:

> "x x x x x x x x x
>
> With the *parties' admissions and their conformity to a factual common line of relationship of the heirs with one another, it has been elicited ascendant Justina Navarro is the common ancestor* of the heirs herein mentioned, however, it must be noted that the parties failed to amplify who was the husband and the number of compulsory heirs of Justina Navarro. x x x x x x x x x x x x"

Therefore, plaintiffs-appellees cannot now be heard contesting the fact that Justina Navarro was their common ancestor and was the original owner of the subject property.

The Court of Appeals further held that the trial court erred in assuming that the Property was conjugal in nature when Navarro sold it. The appellate court reasoned as follows:

> However, it is a settled rule that the party who invokes the presumption that all property of marriage belongs to the conjugal

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partnership, must first prove that the property was acquired *during* the marriage. Proof of acquisition *during* the coveture is a condition ***sine qua non*** for the operation of the presumption in favor of conjugal ownership.

In this case, not a single iota of evidence was submitted to prove that the subject property was acquired by Justina Navarro during her marriage. x x x

The findings of the trial court that the subject property is conjugal in nature is not supported by any evidence.

To the contrary, records show that in 1949 the subject property was declared, for taxation purposes under the name of Justina Navarro alone. This indicates that the land is the paraphernal property of Justina Navarro.

For these reasons, the Court of Appeals reversed the decision of the trial court, thus:

WHEREFORE, foregoing considered, the appealed decision is hereby REVERSED and SET ASIDE. A new one is hereby rendered DISMISSING plaintiffs-appellees' complaint in so far as defendants-appellants are concerned.

Costs against plaintiffs-appellees.

SO ORDERED.[18]

Petitioners filed a motion for reconsideration, but the Court of Appeals denied the same in its Resolution of 21 December 1998.[19]

On 28 January 1999, petitioners appealed the appellate court's decision and resolution to this Court. The Court initially denied the petition for review due to certain procedural defects. The Court, however, gave due course to the petition in its Resolution of 31 January 2000.[20]

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[18] *Rollo*, p. 19.

[19] *Ibid.*, p. 54.

[20] *Ibid.*, p. 115.

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The Issues

Petitioners raise the following issues before this Court:

1. WHETHER PETITIONER HAS NO COUNTERVAILING EVIDENCE ON THE ALLEGED SALE BY ONE JUSTINA NAVARRO;
2. WHETHER THERE IS PRETERITION AND THE ISSUES RAISED ARE REVIEWABLE;
3. WHETHER THERE IS CO-OWNERSHIP *PRO INDIVISO*;
4. WHETHER THE RULE OF THE MAJORITY CO-OWNERS ON THE LAND SHOULD PREVAIL;
5. WHETHER THE ALLEGED SALE IS VALID AND BINDS THE OTHER CO-HEIRS;
6. WHETHER PRESCRIPTION APPLIES AGAINST THE SHARE OF PETITIONERS.[21]

The fundamental question for resolution is whether petitioners were able to prove, by the requisite quantum of evidence, that Manongsong is a co-owner of the Property and therefore entitled to demand for its partition.

The Ruling of the Court

The petition lacks merit.

The issues raised by petitioners are mainly factual in nature. In general, only questions of law are appealable to this Court under Rule 45. However, where the factual findings of the trial court and Court of Appeals conflict, this Court has the authority to review and, if necessary, reverse the findings of fact of the lower courts.[22] This is precisely the situation in this case.

We review the factual and legal issues of this case in light of the general rules of evidence and the burden of proof in

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[21] *Ibid.*, p. 141.

[22] *Lagon v. Hooven Comalco Industries, Inc.*, G.R. No. 135657, 17 January 2001, 349 SCRA 363; *P.T. Cerna Corporation v. Court of Appeals*, G.R. No. 91622, 6 April 1993, 221 SCRA 19.

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civil cases, as explained by this Court in ***Jison v. Court of Appeals***.[23]

> x x x Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiffs *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. The concept of "preponderance of evidence" refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth.

Whether the Court of Appeals erred in affirming the validity of the Kasulatan sa Bilihan ng Lupa

Petitioners anchor their action for partition on the claim that Manongsong is a co-owner or co-heir of the Property by inheritance, more specifically, as the heir of her father, Vicente Lopez. Petitioners likewise allege that the Property originally belonged to Guevarra, and that Vicente Lopez inherited from Guevarra a 1/5 interest in the Property. As the parties claiming the affirmative of these issues, petitioners had the burden of proof to establish their case by preponderance of evidence.

To trace the ownership of the Property, both contending parties presented tax declarations and the testimonies of witnesses. However, the Jumaquio sisters also presented a notarized *KASULATAN SA BILIHAN NG LUPA* which controverted petitioners' claim of co-ownership.

The *Kasulatan*, being a document acknowledged before a notary public, is a public document and *prima facie* evidence of its authenticity and due execution. To assail the authenticity and due execution of a notarized document, the evidence must

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[23] G.R. No. 124853, 24 February 1998, 286 SCRA 495.

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be clear, convincing and more than merely preponderant.[24] Otherwise the authenticity and due execution of the document should be upheld.[25] The trial court itself held that "(n)o countervailing proof was adduced by plaintiffs to overcome or impugn the document's legality or its validity."[26]

Even if the *Kasulatan* was not notarized, it would be deemed an ancient document and thus still presumed to be authentic. The *Kasulatan* is: (1) more than 30 years old, (2) found in the proper custody, and (3) unblemished by any alteration or by any circumstance of suspicion. It appears, on its face, to be genuine.[27]

Nevertheless, the trial court held that the *Kasulatan* was void because the Property was conjugal at the time Navarro sold it to Enriqueta Lopez Jumaquio. We do not agree. The trial court's conclusion that the Property was conjugal was not based on evidence, but rather on a misapprehension of Article 160 of the Civil Code, which provides:

> All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife.

As the Court of Appeals correctly pointed out, the presumption under Article 160 of the Civil Code applies only when there is proof that the property was acquired during the marriage. Proof of acquisition during the marriage is an essential condition for the operation of the presumption in favor of the conjugal partnership.[28]

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[24] *Ruiz v. Court of Appeals*, 414 Phil. 310 (2001); *P.T. Cerna Corporation v. Court of Appeals, supra*, see note 20.

[25] *Aznar Brothers Realty Company v. Court of Appeals*, 384 Phil. 95 (2000).

[26] *Supra*, see note 14.

[27] *Cequeña v. Bolante*, G.R. No. 137944, 6 April 2000, 330 SCRA 216.

[28] *Francisco v. CA*, 359 Phil. 519 (1998); *Sps. Estonina v. CA*, 334 Phil. 577 (1997).

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There was no evidence presented to establish that Navarro acquired the Property during her marriage. There is no basis for applying the presumption under Article 160 of the Civil Code to the present case. On the contrary, Tax Declaration No. 911 showed that, as far back as in 1949, the Property was declared solely in Navarro's name.[29] This tends to support the argument that the Property was not conjugal.

We likewise find no basis for the trial court's declaration that the sale embodied in the *Kasulatan* deprived the compulsory heirs of Guevarra of their legitimes. As opposed to a disposition *inter vivos* by lucrative or gratuitous title, a valid sale for valuable consideration does not diminish the estate of the seller. When the disposition is for valuable consideration, there is no diminution of the estate but merely a substitution of values,[30] that is, the property sold is replaced by the equivalent monetary consideration.

Under Article 1458 of the Civil Code, the elements of a valid contract of sale are: (1) consent or meeting of the minds; (2) determinate subject matter and (3) price certain in money or its equivalent.[31] The presence of these elements is apparent on the face of the *Kasulatan* itself. The Property was sold in 1957 for ₱250.00.[32]

Whether the Court of Appeals erred in not admitting the documents presented by petitioners for the first time on appeal

We find no error in the Court of Appeals' refusal to give any probative value to the alleged birth certificate of Guevarra

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[29] *Supra*, see note 11.

[30] A. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Volume III, p. 250. (1996), citing 6 Manresa 227; 6 Sanchez Roman 790.

[31] *Laforteza v. Machuca*, G.R. No. 137552, 16 June 2000, 333 SCRA 640.

[32] This is reasonable considering that, according to Tax Declaration No. 911, the assessed value of the Las Piñas property in 1949 was one hundred and seventy pesos (₱170.00).

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and the affidavit of Benjamin dela Cruz, Sr.. Petitioners belatedly attached these documents to their appellee's brief. Petitioners could easily have offered these documents during the proceedings before the trial court. Instead, petitioners presented these documents for the first time on appeal without any explanation. For reasons of their own, petitioners did not formally offer in evidence these documents before the trial court as required by Section 34, Rule 132 of the Rules of Court.[33] To admit these documents now is contrary to due process, as it deprives respondents of the opportunity to examine and controvert them.

Moreover, even if these documents were admitted, they would not controvert Navarro's ownership of the Property. Benjamin dela Cruz, Sr.'s affidavit stated merely that, although he knew Navarro by name, he was not personally acquainted with her.[34] Guevarra's alleged birth certificate casts doubt only as to whether Navarro was indeed the mother of Guevarra. These documents do not prove that Guevarra owned the Property or that Navarro did not own the Property.

Petitioners admitted before the trial court that Navarro was the mother of Guevarra. However, petitioners denied before the Court of Appeals that Navarro was the mother of Guevarra. We agree with the appellate court that this constitutes an impermissible change of theory. When a party adopts a certain theory in the court below, he cannot change his theory on appeal. To allow him to do so is not only unfair to the other party, it is also offensive to the basic rules of fair play, justice and due process.[35]

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[33] Rule 132, Section 34 of the Rules of Court states:

SECTION 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

[34] *Supra*, see note 16. In his *Sinumpaang Salaysay*, Benjamin dela Cruz, Sr. stated that, "*x x x ang pangalang Justina Navarro ay kilala ko lamang sa pangalan pero hindi ko na siya nakilala ng personal o nakasama sa bahay na katulad ni Agatona Guevarra na aking biyenan x x x.*"

[35] *Drilon v. CA*, 336 Phil. 949 (1997).

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If Navarro were not the mother of Guevarra, it would only further undermine petitioners' case. Absent any hereditary relationship between Guevarra and Navarro, the Property would not have passed from Navarro to Guevarra, and then to the latter's children, including petitioners, by succession. There would then be no basis for petitioners' claim of co-ownership by virtue of inheritance from Guevarra. On the other hand, this would not undermine respondents' position since they anchor their claim on the sale under the *Kasulatan* and not on inheritance from Guevarra.

Since the notarized *Kasulatan* is evidence of greater weight which petitioners failed to refute by clear and convincing evidence, this Court holds that petitioners were not able to prove by preponderance of evidence that the Property belonged to Guevarra's estate. There is therefore no legal basis for petitioners' complaint for partition of the Property.

WHEREFORE, the Decision of 26 June 1998 of the Court of Appeals in CA-G.R. CV No. 51643, dismissing the complaint of petitioners against Felomena Jumaquio Estimo and Emiliana Jumaquio, is *AFFIRMED*.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Vitug, Ynares-Santiago, and *Azcuna, JJ.*, concur.

THIRD DIVISION

[G.R. No. 146018. June 25, 2003]

EDGAR COKALIONG SHIPPING LINES, INC., *petitioner, vs.* **UCPB GENERAL INSURANCE COMPANY, INC.,** *respondent.*