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This Decision is immediately executory and no extension of time to file a motion for its reconsideration shall be entertained.

SO ORDERED.

Teehankee C.J., Narvasa, Cruz and *Griño-Aquino, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-38999. March 9, 1988]

OSCAR HONORIO, *petitioner, vs.* **THE HONORABLE GABRIEL DUNUAN, Presiding Judge of the Court of First Instance of Nueva Viscaya, Branch I, and LUZ YARCIA, represented by her Attorney-in-fact, ANASTACIA YARCIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PARTITION; PROCEDURE TO BE FOLLOWED. — *The procedure* provided for by law thereafter is that if the parties can agree among themselves then the partition can be made by the parties by the proper instruments of conveyance which shall be submitted for approval of the court and such partition with the court order confirming the same shall be recorded in the office of the register of deeds for the province. However if the parties are unable to agree upon the partition, the court shall by order appoint not more than three (3) competent and disinterested persons as commissioners to make the partition, commanding them to set off to the plaintiff and to each party in interest such part and proportion of the property as the court in such order shall direct.

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2. **ID.; ID.; ID.; ID.; ASSIGNMENT OF PROPERTIES TO CO-OWNER, ALLOWED.—** When it is made to appear to the commissioners that the real estate, or a portion thereof cannot be divided without great prejudice to the interests of the parties, the court may order it assigned to one of the parties willing to take the same, provided he pays to the other parties such sum or sums of money as the commissioners deem equitable, unless one of the parties interested asks that the property be sold instead of being assigned, in which case the court shall order the commissioners to sell the real estate at public sale, and the commissioners shall sell the same accordingly.

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; APPROVING SECOND PROPOSAL FOR PARTITION IN THE ABSENCE OF ONE PARTY CONSTITUTES GRAVE ABUSE OF DISCRETION; CASE AT BAR.** — No doubt respondent court committed a grave abuse of discretion in approving the second proposal for partition of private respondent in the absence of petitioner and over his subsequent objection. The house and lot is undeniably much more valuable than the two agricultural lots so that the allocation of the former to private respondent and the latter to the petitioner is certainly inequitable.

4. **ID.; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; NOT *PRO FORMA* WHERE SUBSTANTIAL ISSUE WAS RAISED.** — The motion for reconsideration of said order filed by petitioner was not *pro forma* as it raised the substantial issue of the inequity of the proposed partition. The appeal therefor of petitioner from the order of October 29, 1973 should have been given due course by the trial court.

APPEARANCES OF COUNSEL

Ernesto S. Salunant and *B.P. Rupisan* for petitioner.

Vicente M. Tupasi and *Luis C. Rañon* for respondents.

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DECISION

GANCAYCO, *J.*:

On February 11, 1971 an action for partition and co-ownership of properties and support of minor children was filed by Luz Yarcia in the Court of First Instance of Nueva Viscaya against her estranged common-law husband Oscar Honorio, out of which relationship they begot four children, covering the properties described in the complaint as follows:

"1. A residential lot and vegetable garden, designated as Lot No. 256 of the Cadastral Survey of Bagabag, Nueva Viscaya, bounded on the NE by Lot No. 255; on the SE by (Provincial) National Road, on the SW. by Lot No. 253; and on the NW. by Tullag Creek; containing an area of one thousand four hundred ten (1,410) square meter; more or less.

Registered under Transfer Certificate of Title No. T-19449, issued by the Office of the Register of Deeds for the Province of Nueva Viscaya, on December 6, 1965, in the name of the defendant "OSCAR HONORIO, of legal age, Filipino, married to Luz Yarcia, and resident of Lantap, Bagabag, Nueva Viscaya."

Declared for taxation under Tax Declaration No. 6283, and assessed at ₱720.00;

2. A house of strong materials built on a portion of Lot No. 256, situated at Tuao, Bagabag, Nueva Viscaya, with a ground floor area of 140 square meters, more or less; declared for taxation purposes under Tax Declaration No. 6300 and assessed at ₱4,410.00;

3. A camarin of semi-strong materials built on a portion of Lot No. 256, situated at Tuao, Bagabag, Nueva Viscaya, and housing, or, wherein was installed a rice mill. Said camarin is not declared for taxation purposes, but has a current market value of ₱5,000.00;

4. A parcel of land situated in the Municipality of Bagabag, Nueva Viscaya; bounded on the W. and N. along lines 1-2-3 by Road; on the E. along lines 3-4-5 by lot 3298; and on the S and W along lines 4-5-6-7-1 by Road; containing an area of THIRTY-EIGHT THOUSAND THREE HUNDRED AND THIRTY-EIGHT (38,338) SQUARE METERS, more or less. Registered under Transfer Certificate of Title No. T-21245 issued by the Office of the Register

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of Deeds for the Province of Nueva Viscaya, in the name of "OSCAR HONORIO, of legal age, married, and resident of Tuao, Bagabag, Nueva Viscaya. Declared for taxation purposes under Tax Declaration No. 6284, and assessed at ₱3,830.00;

5. A parcel of land, situated at Tabban, Pogoncio, Bagabag, Nueva Viscaya; Bounded on the North and East by Lots Nos. 3668 and 3663 and a Road; on the South by Lot No. 2662 and Pls-92; and on the West by Lot No. 3777 and Pls-92; containing an area of six (6) Hectares, more or less. Declared for taxation purposes under Tax Declaration No. 3655, and assessed at ₱5,700.00; and

6. A Rice Mill installed in the Camarin, which is situated at Tuao, Bagabag, Nueva Viscaya, with Machine BLACKSTONE HORIZONTAL DIESEL ENGINE, Serial No. JPL-650284 and all its appurtenances, which plaintiff and defendant bought from the Northern Luzon Equipment and Supply, Solano, Nueva Viscaya, on September 23, 1965, at ₱7,590.00."

After trial on the merits a decision was rendered on April 11, 1972 the dispositive portion of which reads as follows:

IN VIEW OF THE FOREGOING, finding the weight of the evidence in favor of the plaintiff and against the defendant, it is hereby ordered:

1. That the defendant shall give support to each of the children during their respective minority in the sum of Thirty Pesos (₱30.00) monthly;

2. That all the properties mentioned in the complaint, excepting the camarin and the ricemill, shall be equally partitioned between the parties-litigants; and

3. That the defendant pays costs."

On July 21, 1972 plaintiff filed a motion for approval of a project of partition wherein she prays that the lots described under No. 4 and 5 be authorized by the court to be subdivided by a private surveyor, one-half of which to be given to the minor children represented by their guardian and the other half to be given to defendant; and that with respect to the house and lot that it be sold at a reasonable price and the proceeds be divided again in the same proportion, one-half for the minors

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and one-half for defendant after deducting all reasonable expenses that may be incurred thereby.

Since the proposed sale of said house and lot was acceptable to the defendant, in an order of August 15, 1973 the court ordered the property to be sold the proceeds of which to be used for the support of the minor wards and to enforce the decision of the court.

However as the proposed sale of the house and lot was not implemented plaintiff then submitted to the court a manifestation and another project of partition dated September 17, 1973 whereby *the house and lot is to be alloted as the share of the plaintiff* while the two agricultural lots will be the share of the defendant. Defendant opposed the proposal as inequitable. In an order of October 29, 1973 the court approved the said proposal, upon failure of defendant and his counsel to appear at the hearing, a copy of which was received by defendant on October 20, 1973.

A motion for reconsideration of said order was filed by defendant on November 5, 1973 alleging that there was already an agreement to sell the house and lot and that the new proposal is contrary to the decision of April 11, 1972.

This was denied in an order of December 7, 1973, a copy of which was received by defendant on January 3, 1974. On January 24, 1974 defendant filed a notice of appeal and a motion for extension of fifteen (15) days from January 26, 1974 within which to file the record on appeal from the order of the court *of October 29, 1973. The appeal bond was filed on February* 5, 1974. Plaintiff filed an opposition to defendant's motion for extension of time to file the appeal bond and record on appeal on the ground that the motion for reconsideration of the order of October 29, 1973 is *pro forma* and did not interrupt the period of appeal. On the same day, January 28, 1974, plaintiff filed a petition for execution of judgment.

Instead of resolving the pending incidents before it, the trial court on March 29, 1974 issued an order acknowledging that it committed an error in issuing the order of October 29, 1973 as it deviated from the procedure as provided for by law and so

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it required the parties to submit within five days from receipt the names of such competent and disinterested persons to compose the Commission of three with the legal researcher of the court as Chairman to undertake the task of the partition of the property.

Plaintiff then filed a motion to set aside said order of March 29, 1974 as it tends to alter or modify the order of October 29, 1973 which had already become final and executory; that the motion or reconsideration filed by defendant of the order of October 29, 1973 is *pro forma* and did not interrupt the running of the period of appeal so that the order has become final and executory. The motion was granted in an order of June 10, 1974 reconsidering and giving no effect to the order of March 29, 1974, denying the motion of defendant for extension of time to file the record on appeal, granting the petition of plaintiff for execution of judgment, and ordering the defendant to vacate the premises of the property in question.

On June 24, 1974 defendant filed an urgent motion for reconsideration of said order of June 10, 1974 inviting the attention of the trial court to the provisions of Section 3, Rule 69 of the Rules of Court that where a partition cannot be undertaken unilaterally then three commissioners must be appointed for the purpose. The motion was denied in an order of June 27, 1974.

On July 3, 1974 defendant filed a motion for execution of the decision of April 11, 1972, the same having become final and executory, but the same was denied in an order of the Court on July 12, 1974.

Hence defendant filed this petition for *certiorari* with prohibition alleging that the respondent judge committed a grave abuse of discretion and/or acted without or in excess of jurisdiction in issuing the orders of June 10, 1974 and October 29, 1973, so he prays that the order of October 29, 1973 be declared null and void; that the order of March 29, 1974, for the appointment of the three commissioners be declared valid and legal and should not have been set aside; that the order of June 10, 1974 be declared null and void; that the decision of April 11, 1972 be declared correct and lawful; and that pending determination of

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the petition a restraining order be issued restraining the provincial sheriff and his deputy from enforcing the orders of June 10, 1974 and October 29, 1973 ejecting petitioner from the premises of the house and lot in question.

In a resolution of July 31, 1974 this court without giving due course to the petition required respondent to comment thereto and issued the restraining order as prayed for in the petition.

Private respondent filed her comment while the petitioner as required by the court filed his compliance why the restraining order should not be lifted. After the case was heard, the case was deemed submitted for decision.

The petition is impressed with merit.

This is an action where co-ownership is not disputed.[1] The decision of April 11, 1972 which provides in paragraph No. 2 of the dispositive part "that all the properties mentioned in the complaint, excepting the camarin and ricemill, shall be equally partitioned between the parties-litigants," is final.[2] However, proceedings must be undertaken to effect the partition as provided for in said order.

The procedure provided for by law thereafter is that if the parties can agree among themselves then the partition can be made by the parties by the proper instruments of conveyance which shall be submitted for approval of the court and such partition with the court order confirming the same shall be recorded in the office of the register of deeds for the province.[3] However if the parties are unable to agree upon the partition, the court shall by order appoint not more than three (3) competent and disinterested persons as commissioners to make the partition, commanding them to set off to the plaintiff and to each party

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[1] *Rodriguez vs. Ravilan*, 17 Phil. 63.

[2] *Fabrica vs. Court of Appeals*, G.R. No. L-47360, 146 SCRA 250, 255-256; *Miranda, et al. vs. Court of Appeals, et al.*, 71 SCRA 295; and *Valden vs. Bagaso*, 82 SCRA 2.2.

[3] Section 2, Rule 69, Rules of Court.

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in interest such part and proportion of the property as the court in such order shall direct.[4]

When it is made to appear to the commissioners that the real estate, or a portion thereof cannot be divided without great prejudice to the interests of the parties, the court may order it assigned to one of the parties willing to take the same, provided he pays to the other parties such sum or sums of money as the commissioners deem equitable, unless one of the parties interested asks that the property be sold instead of being assigned, in which case the court shall order the commissioners to sell the real estate at public sale, and the commissioners shall sell the same accordingly.[5]

Apparently, in this case the first proposal of private respondent to sell the house and lot and to divide the proceeds equally between petitioner and private respondent, and to have the two agricultural lands subdivided and divided equally between the parties appears to be acceptable to petitioner at least in so far as the sale of the house and lot is concerned. Thus in an order of August 15, 1973 the trial court ordered the said sale. However, on October 29, 1973 the trial court upon motion of private respondent, in the absence of petitioner, issued another order allocating the house and lot to private respondent, while the two agricultural lots shall pertain to petitioner. Petitioner filed a motion for reconsideration thereof alleging it is inequitable but this was denied on December 7, 1973. Petitioner then interposed a timely notice of appeal therefrom and a motion for an extension of time to file record on appeal and appeal bond. In a total turn-about the trial court set aside its order of October 29, 1973 and decided to appoint commissioners to undertake the partition in accordance with Section 3, Rule 69 of the Rules of Court. Again upon a motion to set aside the order filed by private respondent, the trial court committed another *flip-flop* by issuing the order of June 10, 1974 holding that the order of October 29, 1973 has become final and executory, ordering its execution and directing petitioner to vacate the house and lot in question.

[4] Section 3, *Supra*; *Tell vs. Tell*, 48 Phil. 70.

[5] Section 5, Rule 69, Rules of Court; Article 498, Civil Code.

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No doubt respondent court committed a grave abuse of discretion in approving the second proposal for partition of private respondent in the absence of petitioner and over his subsequent objection. The house and lot is undeniably much more valuable than the two agricultural lots so that the allocation of the former to private respondent and the latter to the petitioner is certainly inequitable.[6]

Moreover, the motion for reconsideration of said order filed by petitioner was not *pro forma* as it raised the substantial issue of the inequity of the proposed partition. The appeal therefor of petitioner from the order of October 29, 1973 should have been given due course by the trial court.

It is unfortunate that because of the wavering attitude of the respondent judge in the application of clear provisions of law to be observed in the partition of properties in co-ownership, a long delay has been occasioned in effecting said partition in this case. The four minor children of the contending parties then could have benefited from an early adjudication at the time they needed it most as their parents accused each other of unfaithfulness. Their mother left them for abroad to try her luck there, and their father, petitioner herein, who also abandoned them appears to have lost his sanity. The Court must now see to it that this partition is undertaken justly and without any further delay in implementation of the decision of April 11, 1972.

WHEREFORE, the petition is granted and the orders of October 29, 1973 and June 10, 1974 of the respondent court are hereby set aside and are hereby declared null and void. The respondent court is hereby directed to immediately constitute and appoint the commissioners as provided by Section 3, Rule 69 of the Rules of Court to effect the partition in accordance with the other provisions of the same rule. The restraining order the Court issued is hereby made permanent. This judgment is

[6] TSN, hearing of December 9, 1974, p. 12.

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immediately executory and no extension of the period to file a motion for reconsideration shall be entertained. No costs.

SO ORDERED.

Teehankee (C.J.), Narvasa, Cruz and *Griño-Aquino, JJ.*, concur.

FIRST DIVISION

[G.R. No. 62089. March 9, 1988]

PASCUAL MENDOZA and POMPILA VILLEGAS, *petitioners, vs.* **COURT OF APPEALS and FRANCISCO DE LOS SANTOS,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; REPUBLIC ACT NO. 3844; SALE OF LANDED ESTATES; REVOCATION OF TITLE, PROPER FOR FAILURE TO COMPLY WITH RESOLUTORY CONDITIONS.— From these established facts flow certain significant and irrefutable consequences, namely: (1) de los Santos failed to comply with the condition in the deed of sale by which the lot in question was conveyed to him, i.e., that he should personally occupy and/or cultivate it "within six (6) months/two (2) years after the execution (of the deed), and continuously thereafter"; (2) his belated attempt to recover possession of the land was not to personally occupy or cultivate it, but to transfer it to his sons; and (3) on account thereof, there is sufficient ground for the cancellation of the deed of sale executed in his favor by the Governor of the Land Authority and the title issued to him in virtue thereof. In fine, the sale to him of the lot by the Land Authority and his title should be revoked, and under the circumstances, he has no means of preventing that revocation.