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The Director of the Bureau of Corrections is directed to implement this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

Quisumbing (Chairperson), Carpio Morales, Velasco, Jr., and *Brion, JJ.,* concur.

THIRD DIVISION

[G.R. No. 179540. March 13, 2009]

PERFECTA CAVILE, JOSE DE LA CRUZ and RURAL BANK OF BAYAWAN, INC., *petitioners, vs.* **JUSTINA LITANIA-HONG, accompanied and joined by her husband, LEOPOLDO HONG and GENOVEVA LITANIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEWING ONLY ERRORS OF LAW; EXCEPTION; PRESENT IN CASE AT BAR. — The Court notes prefatorily that in resolving the present case, an examination of the respective evidence of the parties must necessarily be undertaken. Although the jurisdiction of the Court in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing only errors of law, we find that an exception to this rule is present in the instant case in that the Court of Appeals made findings of fact which were contrary to those of the RTC.

2. ID.; EVIDENCE; EXCEPTION TO THE HEARSAY RULE; DECLARATIONS AGAINST INTEREST; ADMITTED AS EVIDENCE NOTWITHSTANDING THEY ARE HEARSAY;

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REASON. — As held by the Court of Appeals, the Confirmation of Extrajudicial Partition partakes of the nature of an admission against a person's proprietary interest. As such, the same may be admitted as evidence against Castor and petitioner spouses, his successors-in-interest. The theory under which declarations against interest are received in evidence, notwithstanding that they are hearsay, is that the necessity of the occasion renders the reception of such evidence advisable and, further, that the reliability of such declaration asserts facts which are against his own pecuniary or moral interest.

3. ID.; ID.; BURDEN OF PROOF; IN CIVIL CASES, THE PARTY HAVING THE BURDEN OF PROOF MUST ESTABLISH HIS CASE BY PREPONDERANCE OF EVIDENCE; PREPONDERANCE OF EVIDENCE, DEFINED. — Nevertheless, the Confirmation of Extrajudicial Partition is just one piece of evidence against petitioner spouses. It must still be considered and weighed together with respondents' other evidence *vis-à-vis* petitioner spouses' evidence. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." "Preponderance of evidence" is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

4. ID.; ID.; ID.; ID.; ID.; GUIDELINES IN DETERMINING PREPONDERANCE OF EVIDENCE. — Rule 133, Section 1 of the Rules of Court provides the guidelines in determining preponderance of evidence, thus: In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same

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may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number. Herein, despite the admission made by Castor in the Confirmation of Extrajudicial Partition against his own interest, the Court is still convinced that the evidence adduced by the petitioner spouses preponderated over that of the respondents.

5. CIVIL LAW; LAND REGISTRATION; TAX DECLARATIONS ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP OF THE PROPERTIES STATED THEREIN. — Other than the Confirmation of Extrajudicial Partition, respondents were only able to present as evidence of their title to the subject lots tax declarations covering the same, previously, in the name of Susana and, subsequently, in their own names. We find such tax declarations insufficient to establish respondents' ownership of the subject lots. That the disputed property has been declared for taxation purposes in the name of any party does not necessarily prove ownership. Jurisprudence is consistent that tax declarations are not conclusive evidence of ownership of the properties stated therein. A disclaimer is even printed on the face of such tax declarations that they are "issued only in connection with real property taxation [and] should not be considered as title to the property." At best, tax declarations are *indicia* of possession in the concept of an owner. Conversely, non-declaration of a property for tax purposes does not necessarily negate ownership.

6. ID.; ID.; A TORRENS TITLE ISSUED ON THE BASIS OF FREE PATENTS BECOME AS INDEFEASIBLE AS ONE WHICH WAS JUDICIALLY SECURED UPON THE EXPIRATION OF ONE YEAR FROM DATE OF ISSUANCE OF THE PATENT. — Sometime in 1962, petitioner Perfecta applied for and was granted by the Bureau of Lands free patents over the subject lots. Pursuant thereto, Original Certificates of Title No. FV-4976, No. FV-4977, and No. FV-4978, covering the subject lots, were issued by the Registry of Deeds for the Province of Negros Oriental, on **9 October 1962**, in the name of petitioner Perfecta. Given this crucial fact, the Court pronounces that respondents' Complaint for reconveyance of the subject lots and damages filed only on **23 December 1974** is already barred. A Torrens title issued on the basis of the free patents become as indefeasible as one which was judicially

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secured upon the expiration of one year from date of issuance of the patent. However, this indefeasibility cannot be a bar to an investigation by the State as to how such title has been acquired, if the purpose of the investigation is to determine whether or not fraud has been committed in securing the title. Indeed, one who succeeds in fraudulently acquiring title to public land should not be allowed to benefit from it.

7. ID.; ID.; THE LEGALITY OF THE GRANT OF A FREE PATENT IS A QUESTION BETWEEN THE GRANTEE AND THE GOVERNMENT; PRIVATE PARTIES HAVE NO PERSONALITY TO CHALLENGE THE VALIDITY OF THE PATENT AND THE CORRESPONDING TITLE. — On this matter, Section 101 of Commonwealth Act No. 141 provides that all actions for the reversion to the government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Commonwealth [now Republic] of the Philippines. Such is the rule because whether the grant of a free patent is in conformity with the law or not is a question which the government may raise, but until it is so raised by the government and set aside, another claiming party may not question it. The legality of the grant is a question between the grantee and the government. Thus, private parties, like respondents in the instant case, cannot challenge the validity of the patent and the corresponding title, as they had no personality to file the suit. Although jurisprudence recognizes an exception to this case, the respondents may not avail themselves of the same.

8. ID.; ID.; ACTION FOR RECONVEYANCE BASED ON IMPLIED OR CONSTRUCTIVE TRUST; PRESCRIPTIVE PERIOD. — Verily, an aggrieved party may still file an action for reconveyance based on implied or constructive trust, which prescribes in 10 years from the date of the issuance of the Certificate of Title over the property, provided that the property has not been acquired by an innocent purchaser for value. An action for reconveyance is one that seeks to transfer property, wrongfully or fraudulently registered by another, to its rightful and legal owner. If the registered owner, be he the patentee or his successor-in-interest to whom the free patent was transferred, knew that the parcel of land described in the patent and in the Torrens title belonged to another, who together with

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his predecessors-in-interest had been in possession thereof, and if the patentee and his successor-in-interest were never in possession thereof, the true owner may bring an action to have the ownership of or title to the land judicially settled. The court in the exercise of its equity jurisdiction, without ordering the cancellation of the Torrens titled issued upon the patent, may direct the defendant, the registered owner, to reconvey the parcel of land to the plaintiff who has been found to be the true owner thereof. In the instant case, respondents brought the action for reconveyance of the subject lots before the RTC only on 23 December 2004, or **more than 12 years** after the Torrens titles were issued in favor of petitioner Perfecta on 9 October 1962. The remedy is, therefore, already time-barred.

9. REMEDIAL LAW; EVIDENCE; MERE ALLEGATION OF FRAUD IS NOT ENOUGH; SPECIFIC, INTENTIONAL ACTS TO DECEIVE AND DEPRIVE ANOTHER PARTY OF HIS RIGHT, OR IN SOME MANNER INJURE HIM, MUST BE ALLEGED AND PROVED. — Furthermore, respondents' allegation that petitioner Perfecta committed fraud and breach of trust in her free patent application is specious. The fact that the document evidencing the sale of the subject lots by Castor to petitioner Perfecta was not presented does not automatically mean that said contract was never in existence. Also undeserving of much consideration without sufficient proof is respondents' averment that the subject lots were private lands which could no longer be granted to any person *via* free patent. Respondents ought to remember that mere allegation of fraud is not enough. Specific, intentional acts to deceive and deprive another party of his right, or in some manner injure him, must be alleged and proved. Also, the issuance by Bureau of Lands of free patents over the subject property to petitioner Perfecta enjoys the presumption of regularity.

APPEARANCES OF COUNSEL

Victoriano Law Offices for petitioners.
Erames Law Offices for respondents.

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D E C I S I O N

CHICO-NAZARIO, *J.*:

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, which seeks to reverse and set aside the Decision[2] dated 8 March 2007 and the Resolution[3] dated 3 September 2007 of the Court of Appeals in CA-G.R. CV No. 66873. The assailed Decision of the appellate court reversed and set aside the Decision[4] dated 29 February 2000 of the Regional Trial Court (RTC) of Negros Oriental, Branch 35, in Civil Case No. 6111, dismissing the complaint of respondents Justina Litania-Hong, her husband Leopoldo Hong, and her sister Genoveva Litania; and declaring petitioner spouses Perfecta Cavile and Jose de la Cruz to be the absolute owners of the parcels of land subjects of this case. The assailed Resolution of the appellate court denied petitioner spouses' Motion for Reconsideration of its decision.

The factual and procedural antecedents of the case proceed as follows:

On 5 April 1937, a **Deed of Partition**[5] was entered into by the heirs of the spouses Bernardo Cavile and Tranquilina Galon. Said heirs included the legitimate children of Bernardo and Tranquilina, namely, (1) Susana Cavile, (2) Castor Cavile, and (3) Benedicta Cavile; as well as the children of Bernardo by his previous marriages, specifically: (4) Simplicia Cavile, (5) Fortunato Cavile, and (6) Vevencia Cavile.[6] Subject of the Deed of Partition

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[1] *Rollo*, pp. 8-36.

[2] Penned by Associate Justice Agustin S. Dizon with the concurrence of Associate Justices Arsenio J. Magpale and Francisco P. Acosta; *rollo*, pp. 38-44.

[3] *Rollo*, pp. 46-47.

[4] Penned by Judge Victor C. Patrimonio; *rollo*, pp. 116-127.

[5] Folder 2, Index of Exhibits, Exhibit 1.

[6] Having died before the execution of the Deed of Partition, Fortunato and Vevencia were merely represented therein by their eldest children, Lucio Cavile and Vicente Navarra, respectively.

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were several parcels of land situated in the Municipality of Tolong, Negros Oriental, which were then covered by Tax Declarations No. 5615, No. 5729, No. 7143, No. 7421 and No. 7956, all under the name of Bernardo.

Of particular interest in this case are the lots covered by **Tax Declarations No. 7421 and No. 7956**. The lot covered by Tax Declaration No. 7421 was described in the Deed of Partition as "bounded on the North by Simplicio Cavile antes Roman Echaves, on the East by Rio Bayawan, on the South by Riachuelo Napasu-an, and on the West by Riachuelo Napasu-an *y* Julian Calibug antes Francisco Tacang." The lot covered by Tax Declaration No. 7956 was identified to be the one "bounded on the North by Hilario Navaro, on the East by Silverio Yunting, on the South by Fortunato Cavile, and on the West by Maximiano Balasabas."

In accordance with the Deed of Partition, the conjugal properties of Bernardo and Tranquilina were divided into two parts. The first part, corresponding to Bernardo's share, was further divided into six equal shares and distributed among his six heirs. The second part, corresponding to Tranquilina's share, was subdivided only into three shares and distributed among her children with Bernardo, *i.e.*, Susana, Castor, and Benedicta.

Also stated in the Deed of Partition was the sale by the other aforementioned legal heirs to their co-heir Castor of their aliquot shares in the lots covered by Tax Declarations No. 7143, No. 7421, and No. 7956; thus, making Castor the sole owner of the said properties. Similarly, the Deed of Partition acknowledged the sale by all the legal heirs to Ulpiano Cavile of their respective shares in the lot covered by Tax Declaration No. 5729, thus, transferring to the latter absolute ownership of said parcel of land.

Thereafter, on 5 August 1960, Castor and Susana executed a **Confirmation of Extrajudicial Partition**,[7] whereby Castor recognized and confirmed that the lots covered by **Tax Declarations No. 2039 and No. 2040** were the just and lawful

[7] Folder 2, Index of Exhibits, Exhibit A.

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shares of Susana in the properties left by their deceased parents Bernardo and Tranquilina, and that Susana was in actual possession of the said properties. According to the Confirmation of Extrajudicial Partition, the lot covered by Tax Declaration No. 2039 was "bounded on the North by Simplicio Cavile, on the East by Rio Bayawan, on the South by Napasu-an, and on the West by Napasu-an Creek and Julian Calibog"; while the one covered by Tax Declaration No. 2040 was "bounded on the North by Hilario Navvaro (sic), on the South by Fortunato Cavile, on the East by Silverio Yunting, and on the West by Maximino (sic) Balasabas."

The descriptions of the lots covered by Tax Declarations No. 2039 and No. 2040 in the Confirmation of Extrajudicial Partition were strikingly close to those of the lots covered by Tax Declarations No. 7421 and No. 7956, respectively, in the Deed of Partition.

Fourteen years after the execution of the Confirmation of Extrajudicial Partition in 1960, respondents filed on 23 December 1974 a Complaint for Reconveyance and Recovery of Property with Damages before the RTC against Perfecta Cavile, the daughter of Castor, Jose de la Cruz, the husband of Perfecta (hereinafter petitioner spouses), and the Rural Bank of Bayawan, Inc. The Complaint was docketed as Civil Case No. 6111.[8]

Respondents averred in the Complaint that respondents Justina and Genoveva inherited two parcels of land, covered by **Tax Declarations No. 07408 and No. 07409** (subject lots),[9] from their mother Susana, who, in turn, inherited the same from her parents Bernardo and Tranquilina. Respondents invoked the

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[8] In 1985, the complaint was amended in view of the death of petitioner Jose de la Cruz. His children Solon de la Cruz and Don de la Cruz were impleaded as defendants. Felicitas L. Reston was also impleaded as a plaintiff, as she was likewise a daughter of Susana Cavile.

[9] The descriptions of the boundaries of the lots covered by **Tax Declarations No. 07408 and No. 07409** in the Complaint correspond to those of the lots covered by **Tax Declarations No. 7956 and No. 7421**, respectively, in the Deed of Partition, as well as to the lots covered by **Tax Declarations No. 2040 and No. 2039** in the Confirmation of Extrajudicial Partition.

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Confirmation of Extrajudicial Partition dated 5 August 1960 wherein Castor purportedly recognized Susana's ownership of the subject lots. Susana had enjoyed undisputed ownership and possession of the subject lots, paying the realty taxes due and introducing improvements thereon. Susana was even able to obtain a loan from the Rural Bank of Dumaguete City sometime in 1960, mortgaging the subject lots as security for the same.

After Susana's death in 1965, the subject lots were inherited by her daughters, respondents Justina and Genoveva, who then assumed the mortgage thereon. However, respondents alleged that Castor and petitioner spouses eventually intruded upon and excluded respondents from the subject lots. When Castor died in 1968, petitioner spouses continued their unlawful occupancy of the subject lots, planting on the same and harvesting the products. Respondents claimed that they exerted efforts to settle the matter, but petitioner spouses stubbornly refused to accede. In 1974, prior to the filing of the Complaint, respondents again sought an audience with petitioner spouses, yet the latter only presented to them the Original Certificates of Title (OCTs) No. FV-4976,[10] No. FV-4977,[11] and No. FV-4978[12] covering the subject lots, issued by the Registry of Deeds for the Province of Negros Oriental, on 9 October 1962, in the name of petitioner Perfecta. Respondents were, thus, constrained to institute Civil Case No. 6111 against petitioner spouses and the Rural Bank of Bayawan, Inc., seeking the cancellation of the OCTs in the name of petitioner Perfecta or, alternatively, the reconveyance by petitioner spouses of the subject lots to respondents, plus award for damages. The Rural Bank of Bayawan, Inc. was impleaded as a defendant in the Complaint since petitioner spouses mortgaged the subject lots in its favor as security for a loan in the amount of ₱42,227.50. However, the bank was later dropped as a party after the aforesaid loan was settled.

Petitioner spouses countered in their Answer to the Complaint that, by virtue of the Deed of Partition dated 5 April 1937, the

[10] Folder 2, Index of Exhibits, Exhibits B to B-2.

[11] *Id.* at Exhibits C to C-2.

[12] *Id.* at Exhibits D to D-2.

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heirs of both Bernardo and Tranquilina took exclusive possession of their respective shares in the inheritance. Castor fully possessed the lots covered by Tax Declarations No. 7143, No. 7421 and No. 7956, after his co-heirs sold to him their shares therein. In 1962, Castor sold to petitioner Perfecta the lots covered by Tax Declarations No. 7421 and No. 7956, which corresponded to the subject lots in the Complaint. Following the sale, petitioner Perfecta took possession of the subject lots and filed with the Bureau of Lands an application for the issuance of title over the same. The Bureau issued free patent titles over the subject lots in favor of petitioner Perfecta and, by virtue thereof, she was able to secure on 9 October 1962, OCTs No. FV-4976, No. FV-4977, and No. FV-4978 in her name.

Petitioner spouses asserted that the Confirmation of Extrajudicial Partition dated 5 August 1960 involving the subject lots was a nullity since said properties were never owned nor adjudicated in favor of Susana, respondents' predecessor-in-interest. Castor and Susana executed the Confirmation of Extrajudicial Partition merely to accommodate the latter who then needed security for the loan she was trying to obtain from the Rural Bank of Dumaguete City. Respondents would not be able to deny the said accommodation arrangement, given that neither Susana nor respondents actually possessed the subject lots or applied for titles thereto. Respondents did not even know that the subject lots were divided into three lots after a Government survey. If Susana and respondents paid realty taxes for the subject lots, it was only to convince the Rural Bank of Dumaguete to renew their loan from year to year, secured as it was by the mortgage on the subject lots. Thus, petitioner spouses posited that no ownership could then be transferred to respondents after Susana's death.

Trial in Civil Case No. 6111 thereafter ensued before the RTC.[13]

[13] In the RTC, respondent Justina Litania-Hong was presented as a lone witness for the plaintiffs in 1975. In 1987, the Perdices Coliseum, upon which the trial court was situated, was burned. The original records of the case were, thus, lost and were only duly reconstituted on 16 September 1987. Afterwards, petitioner Perfecta Cavile testified for the defendants, followed by another witness, Leticia Navarra.

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On 29 February 2000, the RTC promulgated its Decision, with the following dispositive portion:

> WHEREFORE, premises considered, judgment is hereby rendered declaring [herein petitioner spouses] as the absolute owners over the parcels of land in litigation. Consequently, [herein respondents'] complaint is ordered dismissed. [Respondents'] counterclaim is likewise entered dismissed for lack of merit.[14]

The RTC ruled that the petitioner spouses' evidence was more worthy of credence in establishing their ownership of the subject lots. As petitioner Perfecta testified before the RTC, Castor immediately took possession of the subject lots after the Deed of Partition was executed in 1937. This fact was supported by the unrebutted testimony of Luciana Navarra, petitioner Perfecta's cousin, who declared that her husband was petitioner Perfecta's tenant on the subject lots since 1947 and that respondents never actually occupied the said properties. The RTC observed that it was highly questionable and contrary to human experience that respondents waited nine long years after their ejection from the subject lots in 1965 before taking any legal step to assert their rights over the same.

The RTC further subscribed to the testimony of Perfecta that the Confirmation of Extrajudicial Partition was executed by Castor solely to accommodate Susana, enabling her to obtain a bank loan using the subject lots as collateral. It noted that Susana did not bother to apply for the issuance of title to the subject lots in her name. Contrarily, it was Perfecta who applied for and obtained title to the subject lots, which, surprisingly, respondents were not even aware of. The RTC found that the contemporaneous and subsequent acts of the parties after the execution of the Confirmation of Extrajudicial Partition evidently demonstrated their intention to merely accommodate Susana in her loan application. Hence, the RTC concluded that the Confirmation of Extrajudicial Partition was a simulated contract which was void and without any legal effect.

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[14] *Rollo,* p. 127.

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Without seeking a reconsideration of the above RTC Decision, respondents challenged the same by way of appeal before the Court of Appeals, docketed as CA-G.R. CV No. 66873.

On 8 March 2007, the Court of Appeals rendered the assailed Decision in favor of respondents, the decretal portion of which provides:

> WHEREFORE, the assailed decision is **REVERSED AND SET ASIDE** and a new one entered **ORDERING** [herein petitioner spouses] and/or their heirs, assigns and representatives as follows:
>
> 1. To reconvey to [herein respondents] the possession and title to the litigated parcels of land.
> 2. Upon reconveyance of the litigated properties, the Register of Deeds of Dumaguete City is ordered to cancel Certificate of Title No. 4877 (sic), 4976 and 4978 and to issue a new certificate to [respondents] or their successors in interest.
> 3. With costs against [petitioner spouses].[15]

The Court of Appeals agreed in the respondents' contention that the Confirmation of Extrajudicial Partition was not a simulated document. The said document should be entitled to utmost respect, credence, and weight as it was executed by and between parties who had firsthand knowledge of the Deed of Partition of 1937. Moreover, the Confirmation of Extrajudicial Partition constituted evidence that was of the highest probative value against the declarant, Castor, because it was a declaration against his proprietary interest. Other than petitioner Perfecta's testimony, the appellate court found no other proof extant in the records to establish that the Confirmation of Extrajudicial Partition was a simulated document or that it did not express the true intent of the parties. The Court of Appeals likewise highlighted the fact that Castor did not attempt to have the subject lots declared in his name during his lifetime and that petitioner Perfecta herself admitted that she only started paying real estate taxes for the subject lots in 1993. It was Susana and, later, her children, respondents Justina and Genoveva, who had been paying for the realty taxes on the subject lots since 1937.

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[15] *Id.* at 43.

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Petitioner spouses filed a Motion for Reconsideration[16] of the foregoing Decision, but it was denied by the Court of Appeals in a Resolution[17] dated 3 September 2007.

Petitioner spouses filed the instant Petition, raising the following issues for the Court's consideration:

I.

WHETHER [OR NOT] THE HONORABLE COURT OF APPEALS ACTED IN ACCORDANCE WITH LAW IN RULING THAT EXTRANEOUS EVIDENCE IN THE FORM OF AN AFFIDAVIT, THE "CONFIRMATION OF EXTRAJUDICIAL PARTITION," MAY BE ADMITTED IN EVIDENCE TO VARY THE TERMS OF A JUDICIALLY DECLARED VALID AGREEMENT ENTITLED "DEED OF PARTITION"?

II.

WHETHER [OR NOT] THE HONORABLE COURT OF APPEALS COMMITTED A LEGAL ERROR IN NOT DISMISSING THE COMPLAINT ON THE GROUND OF *RES JUDICATA*?

III.

WHETHER [OR NOT] THE COMPLAINT FILED BY THE RESPONDENTS SHOULD BE DISMISSED ON THE GROUND OF FORUM-SHOPPING?

IV.

WHETHER [OR NOT] THE FREE PATENT TITLES ISSUED TO THE PETITIONERS MAY BE RECONVEYED TO THE RESPONDENTS?[18]

Essentially, the Court finds that the fundamental issue that must be settled in this case is who, among the parties herein, have the better right to the subject lots.

The Court notes prefatorily that in resolving the present case, an examination of the respective evidence of the parties must necessarily be undertaken. Although the jurisdiction of the Court

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[16] *Id.* at 48-57.

[17] *Id.* at 46-47.

[18] *Id.* at 19.

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in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing only errors of law, we find that an exception[19] to this rule is present in the instant case in that the Court of Appeals made findings of fact which were contrary to those of the RTC.

Before proceeding, the Court further establishes as a foregone fact, there being no issue raised on the matter, that the subject lots covered by Tax Declarations No. 07408 and No. 07409 described in the Complaint in Civil Case No. 6111 are the very same lots covered by Tax Declarations No. 7956 and No. 7421 included in the Deed of Partition, and by Tax Declarations No. 2040 and No. 2039 subject of the Confirmation of Extrajudicial Partition.

Respondents, as plaintiffs before the RTC in Civil Case No. 6111, sought the reconveyance and recovery of the subject lots purportedly illegally usurped by petitioner spouses who succeeded in having the same titled in the name of petitioner Perfecta. Respondent Justina testified in open court that the subject lots were inherited by her and co-respondent Genoveva's mother, Susana, from their grandparents, Bernardo and Tranquilina.[20] As proof of Susana's ownership of the subject lots, respondents presented the Confirmation of Extrajudicial

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[19] In a petition for review under Rule 45 of the Rules of Court, questions of fact may be determined by the Court when: (1) the conclusion of the Court of Appeals is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the Court of Appeals are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (See *Rosario v. PCI Leasing and Finance, Inc.*, G.R. No. 139233, 11 November 2005, 474 SCRA 500, 506, citing *Sarmiento v. Court of Appeals*, 353 Phil. 834, 846 [1998]).

[20] TSN, 11 December 1975, pp. 8-9.

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Partition executed on 5 August 1960 by Castor and Susana. In said document, Castor ostensibly recognized and confirmed Susana's ownership and possession of the subject lots.[21] Tax declarations[22] covering the subject lots in the names of Susana and respondents were also offered to the court *a quo* to lend support to respondents' claims of ownership.

On the other hand, to prove their entitlement to the subject lots, petitioner spouses presented before the RTC the Deed of Partition[23] entered into by the heirs of spouses Bernardo and Tranquilina on 5 April 1937. By virtue thereof, Castor acquired

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[21] The pertinent portions of the Confirmation of Extrajudicial Partition provide:

Confirmation of Extrajudicial Partition

KNOW ALL MEN BY THESE PRESENTS:

That I, CASTOR CAVILE, x x x, hereinafter called and referred to as the PARTY OF THE FIRST PART; and SUSANA CAVILE, xxx, hereinafter called and referred to as the PARTY OF THE SECOND PART,

WITNESSETH:

That the parties herein are the only legitimate children of the deceased spouses Bernardo Cavile and Tranquilina Alvier Galon, who both died intestate, in the Municipality of Bayawan, Negros Oriental, sometime on the year 1917, and February 19, 1945, respectively.

That the said deceased spouses left several parcels of agricultural land in the Municipality of Bayawan, province of Negros Oriental, and among said parcels of land are the following property described and bounded as follows:

x x x x x x x x x

That the PARTY OF THE FIRST PART hereby recognizes, agree, bind and confirm that the above-described parcels of land are (sic) the just and lawful share of the PARTY OF THE SECOND PART, and which property is actually in the possession of the latter.

x x x x x x x x x

IN WITNESS WHEREOF, we have hereunto signed this instrument on this 5th day of August, 1960, at the Municipality of Bayawan, Province of Negros Oriental, Philippines.

SGD CASTOR CAVILE (Party of the First Part) SGD SUSANA CAVILE (Party of the Second Part)

[22] Folder 2, Index of Exhibits, Exhibits E to L-2.

[23] The pertinent portions of the Deed of Partition read:

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through sale the shares of his co-heirs in the subject lots. Petitioner Perfecta testified before the trial court that right after the execution of said Deed, she and her father, Castor, assumed

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DEED OF PARTITION

KNOW ALL MEN BY THESE PRESENTS:

THAT Susana Cavile, Castor Cavile, Benedicta Cavile, Simplicia Cavile, Lucio Cavile and Vicenta Navarra both (*sic*) of legal age and residents in the Municipality of Tolong, Province of Oriental Negros, Philippine Islands, after being duly sworn to in legal form, WITNESSETH:

That Susana Cavile, Castor Cavile and Benedicta Cavile are the only children of Bernardo Cavile with his wife Tranquilina Galon, and that Simplicia Cavile and Fortunato Cavile and Vevencia Cavile are the children of Bernardo Cavile outside from the conjugal home of Bernardo Cavile and Tranquilina Galon.

That Fortunato Cavile and Vevencia Cavile having already been dead are survived by their corresponding children and represented in this document by their oldest child, Lucio Cavile and Vicenta Navarra, respectively.

That during the union of Bernardo Cavile and Tranquilina Galon several properties have been acquired by them and declared under the name of Bernardo Cavile all situated in the Municipality of Tolong, Province of Oriental Negros, which properties are described as follows:

x x x x x x x x x

That by this document it is hereby agreed by the legal heirs of Bernardo Cavile and Tranquilina Galon to divide and by these presents it is hereby divided the above mentioned properties in the following manner:

1 - That the conjugal properties of said Bernardo Cavile and Tranquilina Galon which are already described are hereby divided into *two parts* ONE (1) part which corresponds to the share of Bernardo Cavile is also divided into SIX (6) equal parts, that is among Susana Cavile, Castor Cavile, Benedicta Cavile, Simplicia Cavile, Fortunato Cavile represented by his oldest son, Lucio Cavile, and Vevencia Cavile represented by her oldest child Vicenta Navarra.

2 - That the other ONE (1) part which corresponds to the share of Tranquilina Galon is also hereby equally divided into THREE (3) parts, that is among Susana Cavile, Castor Cavile and Benedicta Cavile.

SHARE OF BERNARDO CAVILE

x x x x x x x x x

That the share of Bernardo Cavile in parcels Tax Declaration Nos. 7421, 7143 and 7956 are sold by the legal heirs to Castor Cavile in consideration of the sum of ONE HUNDRED SIXTY(-) SIX PESOS (₱166.00), Philippine currency, which amount has been received and divided equally among them.

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possession of the subject lots, planting coconuts, rice, and corn thereon.[24] She additionally testified that realty taxes on the subject lots had since been paid by Castor and, subsequently, by her.[25] Possession of the subject lots by Castor and petitioner spouses was corroborated by the testimony of Luciana Navarra, who insisted that respondents never occupied the said lots.[26] Finally, petitioner spouses presented OCTs No. FV-4976, No. FV-4977, and No. FV-4978, covering the subject lots, issued by the Registry of Deeds for the Province of Negros Oriental on 9 October 1962 in the name of petitioner Perfecta.

After a careful evaluation of the evidence adduced by the parties in the instant case, the Court rules in favor of petitioner spouses.

At this point, let it be stated that the validity and due execution of the Deed of Partition executed in 1937 is not directly assailed in this case, thus, the Court need not pass upon the same. Under the said Deed of Partition, the other heirs of Bernardo and Tranquilina clearly and unequivocally sold their shares in the subject lots to Castor, petitioner Perfecta's father. What appeared to be the clear right of ownership of Castor over the

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x x x x x x x x x

SHARE OF TRANQUILINA GALON

x x x x x x x x x

That the share of Tranquilina Galon in parcels Tax Declaration Nos. 7421, 7143 and 7956 are hereby sold by the heirs of said Tranquilina Galon to Castor Cavile in consideration of the sum of ONE HUNDRED SIXTY(-)SIX PESOS (₱166.00), Philippine currency(,) which sum has been received and divided equally among them.

That the said heirs of Bernardo Cavile and Tranquilina Galon above mentioned hereby agree and accept as it is hereby agreed and accepted all the items and conditions in this DEED OF PARTITION.

IN WITNESS HEREOF we have this 5th day of April, 1937, A.D., sign our names below in the Municipality of Tolong, Province of Oriental Negros, Philippine Islands. (Folder 2, Index of Exhibits, Exhibits 1 to 1-c.)

[24] TSN, 20 July 1994, pp. 9-10.

[25] Folder 2, Index of Exhibits, Exhibits 2 to 2-e.

[26] TSN, 24 April 1995, pp. 10-12.

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subject lots was put in doubt by the execution of the Confirmation of Extrajudicial Partition by Castor and his sister Susana in 1960. Respondents, children and heirs of Susana, base their claim of ownership of the subject lots on the said document, while petitioner spouses denounce the same to be simulated, executed for purposes other than to transfer ownership of the subject lots, and cannot legally alter the terms of the previously duly executed Deed of Partition.

As held by the Court of Appeals, the Confirmation of Extrajudicial Partition partakes of the nature of an admission against a person's proprietary interest.[27] As such, the same may be admitted as evidence against Castor and petitioner spouses, his successors-in-interest. The theory under which declarations against interest are received in evidence, notwithstanding that they are hearsay, is that the necessity of the occasion renders the reception of such evidence advisable and, further, that the reliability of such declaration asserts facts which are against his own pecuniary or moral interest.[28]

Nevertheless, the Confirmation of Extrajudicial Partition is just one piece of evidence against petitioner spouses. It must still be considered and weighed together with respondents' other evidence *vis-à-vis* petitioner spouses' evidence. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." "Preponderance of evidence" is a phrase which, in

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[27] **S**ection 38 of Rule 130 of the Rules of Court provides:

SEC. 38. *Declaration against interest*. — The declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors-in-interest and against third persons.

[28] *Parel v. Prudencio*, G.R. No. 146556, 19 April 2006, 487 SCRA 405, 416.

the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[29] Rule 133, Section 1 of the Rules of Court provides the guidelines in determining preponderance of evidence, thus:

> In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Herein, despite the admission made by Castor in the Confirmation of Extrajudicial Partition against his own interest, the Court is still convinced that the evidence adduced by the petitioner spouses preponderated over that of the respondents.

In analyzing the two vital documents in this case, the Court discerns that while the Deed of Partition clearly explained how Castor came to fully own the subject lots, the Confirmation of Extrajudicial Partition, even though confirming Susana's ownership of the subject lots, failed to shed light on why or how the said properties wholly pertained to her when her parents Bernardo and Tranquilina clearly had other heirs who also had shares in the inheritance.

Other than the Confirmation of Extrajudicial Partition, respondents were only able to present as evidence of their title to the subject lots tax declarations covering the same, previously, in the name of Susana and, subsequently, in their own names. We find such tax declarations insufficient to establish respondents' ownership of the subject lots. That the disputed property has

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[29] *Go v. Court of Appeals*, 403 Phil. 883, 890-891 (2001).

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been declared for taxation purposes in the name of any party does not necessarily prove ownership. Jurisprudence is consistent that tax declarations are not conclusive evidence of ownership of the properties stated therein. A disclaimer is even printed on the face of such tax declarations that they are "issued only in connection with real property taxation [and] should not be considered as title to the property." At best, tax declarations are *indicia* of possession in the concept of an owner.[30] Conversely, non-declaration of a property for tax purposes does not necessarily negate ownership.[31]

On the other hand, the Court is at a loss as to how the Court of Appeals failed to give due consideration to the Torrens titles issued in the name of petitioner Perfecta when it rendered its assailed Decision.

Sometime in 1962, petitioner Perfecta applied for and was granted by the Bureau of Lands free patents over the subject lots. Pursuant thereto, Original Certificates of Title No. FV-4976, No. FV-4977, and No. FV-4978, covering the subject lots, were issued by the Registry of Deeds for the Province of Negros Oriental, on **9 October 1962**, in the name of petitioner Perfecta. Given this crucial fact, the Court pronounces that respondents' Complaint for reconveyance of the subject lots and damages filed only on **23 December 1974** is already barred.

A Torrens title issued on the basis of the free patents become as indefeasible as one which was judicially secured upon the expiration of one year from date of issuance of the patent.[32] However, this indefeasibility cannot be a bar to an investigation by the State as to how such title has been acquired, if the purpose of the investigation is to determine whether or not fraud has been committed in securing the title. Indeed, one who succeeds

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[30] *Azana v. Lumbo*, G.R. No. 157593, 22 March 2007, 518 SCRA 707, 718-719.

[31] *Id.* at 719.

[32] *Spouses De Ocampo v. Arlos*, 397 Phil. 799, 810 (2000); *Republic v. Court of Appeals*, 325 Phil. 636, 642-643 (1996).

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in fraudulently acquiring title to public land should not be allowed to benefit from it.[33]

On this matter, Section 101 of Commonwealth Act No. 141[34] provides that all actions for the reversion to the government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the Commonwealth [now Republic] of the Philippines. Such is the rule because whether the grant of a free patent is in conformity with the law or not is a question which the government may raise, but until it is so raised by the government and set aside, another claiming party may not question it. The legality of the grant is a question between the grantee and the government.[35] Thus, private parties, like respondents in the instant case, cannot challenge the validity of the patent and the corresponding title, as they had no personality to file the suit.

Although jurisprudence recognizes an exception to this case, the respondents may not avail themselves of the same.

Verily, an aggrieved party may still file an action for reconveyance based on implied or constructive trust, which prescribes in 10 years from the date of the issuance of the Certificate of Title over the property, provided that the property has not been acquired by an innocent purchaser for value. An action for reconveyance is one that seeks to transfer property, wrongfully or fraudulently registered by another, to its rightful and legal owner.[36] If the registered owner, be he the patentee or his successor-in-interest to whom the free patent was transferred, knew that the parcel of land described in the patent and in the Torrens title belonged to another, who together with his predecessors-in-interest had been in possession thereof, and

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[33] *Republic of the Philippines v. Heirs of Angeles*, 439 Phil. 349, 357 (2002).

[34] Public Land Act.

[35] See *Maninang v. Consolacion*, 12 Phil. 342, 349 (1908).

[36] See *Heirs of Sanjorjo v. Heirs of Quijano*, G.R. No. 140457, 19 January 2005, 449 SCRA 15, 27.

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if the patentee and his successor-in-interest were never in possession thereof, the true owner may bring an action to have the ownership of or title to the land judicially settled. The court in the exercise of its equity jurisdiction, without ordering the cancellation of the Torrens titled issued upon the patent, may direct the defendant, the registered owner, to reconvey the parcel of land to the plaintiff who has been found to be the true owner thereof.[37]

In the instant case, respondents brought the action for reconveyance of the subject lots before the RTC only on 23 December 2004, or **more than 12 years** after the Torrens titles were issued in favor of petitioner Perfecta on 9 October 1962. The remedy is, therefore, already time-barred.

And even if respondents' Complaint was filed on time, the Court would still rule that respondents failed to satisfactorily prove that they were in possession of the subject lots prior to the grant of free patents and issuance of Torrens titles over the same in favor petitioner Perfecta. The bare testimony of respondent Justina that Susana had been in the peaceful and undisturbed possession of the subject lots since 1937 up to the time of her death in 1965 was entirely bereft of substantiation and details. No information was provided as to how said possession of the subject lots was actually exercised or demonstrated by Susana. In contrast, the possession of the subject lots by Castor, and later on by petitioner spouses, was established not just by the testimony of petitioner Perfecta, but was corroborated by the testimony of Luciana Navarra, whose husband was a tenant working on the subject lots. Petitioner spouses possessed the subject lots by planting thereon coconuts, rice, and corn — a claim which respondents were unable to refute.

Furthermore, respondents' allegation that petitioner Perfecta committed fraud and breach of trust in her free patent application is specious. The fact that the document evidencing the sale of the subject lots by Castor to petitioner Perfecta was not presented does not automatically mean that said contract was never in existence.

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[37] *Vital v. Anore*, 90 Phil. 855, 858-859 (1952).

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Also undeserving of much consideration without sufficient proof is respondents' averment that the subject lots were private lands which could no longer be granted to any person *via* free patent. Respondents ought to remember that mere allegation of fraud is not enough. Specific, intentional acts to deceive and deprive another party of his right, or in some manner injure him, must be alleged and proved.[38] Also, the issuance by Bureau of Lands of free patents over the subject property to petitioner Perfecta enjoys the presumption of regularity.

WHEREFORE, premises considered, the Petition for Review under Rule 45 of the Rules of Court is hereby *GRANTED*. The assailed Decision dated 8 March 2007 and Resolution dated 3 September 2007 of the Court of Appeals in CA-G.R. CV No. 66873 are hereby *REVERSED AND SET ASIDE*. The Decision dated 29 February 2000 of the RTC of Negros Oriental, Branch 35, in Civil Case No. 6111 is hereby *REINSTATED*. No costs.

SO ORDERED.

Ynares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Peralta, JJ.,* concur.

EN BANC

[G.R. No. 180122. March 13, 2009]

FELICISIMO F. LAZARTE, JR., *petitioner, vs.* **SANDIGANBAYAN (First Division) and PEOPLE OF THE PHILIPPINES,** *respondents.*

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[38] *Crisologo v. Court of Appeals,* 160-A Phil. 1085, 1093-1094 (1975).