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Instance two days later (or June 23, 1977) *exclusive* jurisdiction was vested in the Circuit Criminal Court.

Accordingly, the *certiorari* petition must be as it is hereby dismissed for the respondent Judge did not act without or in excess of jurisdiction.

Accordingly also, the trial court's judgment of conviction is hereby AFFIRMED, however, due to the lack of the necessary votes, the sentence of death is hereby reduced to *reclusion perpetua*. The civil indemnity to the heirs of the victim, Isaias Bayani, is however increased from P12,000.00 to P30,000.00.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, and *Feliciano, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-47360. December 15, 1986]

PETRA FABRICA, EUGENIO BAS, PETRONA BAS, ANTONIO BAS, VICENTE BAS, FLAVIANA BAS, JOSEFINA BAS, NUMERIANA BAS, PASCUAL ZAFRA, MARCIAL BAS, RUFINA LAREGO, FAUSTA OBEJERO, TEOFILO TABAY, VICTORIA OBEJERO, PEDRO GAHUM, ARSENIO CANEDA, FAUSTINA BAS, MOISES BAS, and GIL OBEJERO, *petitioners, vs.* **HONORABLE COURT OF APPEALS and ZACARIAS BAS, CIPRIANO BAS, ELEUTERIA BAS, AGUSTIN BAS, ISIDRO OBEJERO, DEMETRIA BAS, JOSE BAS, OSMUNDO BAS, ANDREA BAS, VIVENCIA BAS, FRANCISCO BAS, ESTELITA BAS,**

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BUENAVENTURA BAS, JUANA BAS, DOMINGO BAS, DOLORES BAS, and DULCE BAS, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL PROCEEDINGS; PARTITION; PREMATURE UNLESS OWNERSHIP IS RESOLVED.**— The records of the case clearly reveal that the main purpose of the complaint is to determine who between the parties are the true owners and entitled to the exclusive use of the disputed properties. While it is true that the complaint is one for partition, it is one which is premised on the resolution of the issue on the validity of the oral partition allegedly made in favor of defendants and the two deeds of conveyance executed in the names of the heirs of the deceased spouses Catalino Bas and Cristeta Niebres. Unless this issue of ownership is definitely and finally resolved, it would be premature to effect a partition of the disputed properties.

2. **ID.; CIVIL PROCEDURE; JUDGMENT; DETERMINATION OF OWNERSHIP OR POSSESSION OF PROPERTY IN COMPLAINT FOR PARTITION, A FINAL JUDGMENT; APPEALABLE.**— When the trial court rendered its judgment of partition in favor of the plaintiffs, rejecting defendants' claim of exclusive ownership of the properties by previous oral partition, it rendered a final or definitive judgment on the merits from which the party adversely affected can make an appeal. In *Valdez vs. Bagaso*, 82 SCRA 22, the Court held that: "x x x Contrary to the holding of the Appellate Court, the decision of the trial court declaring null the aforesaid conveyances and granting recovery of the properties for the purpose of ordering their partition is a definitive judgment because it decided the rights of the parties upon the issue submitted. It was not, therefore, an interlocutory order. As this Court enunciated in *Miranda, et al. v. Court of Appeals, et al.*, a judgment which grants recovery of the ownership and possession of property in favor of one party as against the adverse claim of title of the other is in effect a final judgment which is appealable. In *Miranda*, this Court Considered as the better rule the one enunciated in *H.E. Heacock Co. vs. American Trading Co.*, to wit; that where the primary purpose of a case is to ascertain and determine who, as between plaintiff and defendant, is the true owner and

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entitled to the exclusive use of the disputed property, the judgment rendered by the lower court is a judgment on the merits as to those questions, and that the order for an accounting is merely incidental to such judgment."

APPEARANCES OF COUNSEL

Leonardo Garcillano and *Gabriel Roldan* for petitioners.
Americo H. Acosta for private respondents.

D E C I S I O N

PARAS, *J.*:

This is a petition to review on certiorari 1) the decision of the respondent Court of Appeals in CA-G.R. No. 54374-R, which ordered that the records be remanded to the Court *a quo*, holding that the judgment of the latter court is merely interlocutory and 2) the resolution which denied the motion for reconsideration.

The parties before the hearing in the trial court, submitted the following:

"AGREED STIPULATION OF FACTS

COME NOW the plaintiffs and defendants in the above-entitled case, accompanied by their respective counsels, and to this Honorable Court, most respectfully submit the following Agreed Stipulation of Facts:

1. That, except for defendant Petra Fabrica who is the surviving spouse of Pedro Bas, all the plaintiffs and the other defendants are the grandchildren and/or great grandchildren of spouses Catalino Bas and Cristeta Niebres, who died in 1916 and 1930, respectively, leaving six (6) children, namely: Alberto, Andres, Diogracias, Miguel, Pedro and Restituta, all surnamed Bas, now all deceased.

2. That the said spouses Catalino Bas and Cristeta Niebres during their lifetime possessed and owned, and, after their deaths, left to their six aforenamed children, eight (8) parcels of land, situated in Talisay, Cebu, and known as Lots Nos. 2464, 2467 (the lots in question), 2528, 2535, 2542, 2549, 2552 and 4041 of the Talisay-Minglanilla Friar Lands Estate;

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3. That the plaintiffs: Zacarias Bas is the only surviving child and only heir of Miguel Bas; Juana, Domingo, Dolores and Dulce, all surnamed Bas, are the only surviving children and heirs of Alberto Bas; Cipriano, Numeriana, Eleuteria, Marcial, Faustina, Agustin and Moises, all surnamed Bas, and Victoria, Isidro, Gil, and Fausta, all surnamed Obejero, are the only surviving grandchildren and heirs of Diogracias Bas, by his son Rufino Bas and daughter Eulogia Bas-Obejero, respectively, both deceased; and Fortunata, Demetria, Jose, Osmundo, Petrona and Andres, all surnamed Bas, and Vivencia, Estelita, Buenaventura and Francisco, all surnamed Bas, are surviving children and/or grandchildren and heirs of Andres Bas;

4. That defendant Petra Fabrica is the surviving widow of Pedro Bas, who died in 1948, and the other defendants are their only surviving children and heirs;

5. That Lot 2528 was partitioned among the six (6) children of Catalino Bas and Cristeta Niebres, who received their respective portions, which were given new lot numbers 2528 New, 8498, 9494, 8495, 8496 and 8497;

6. That Catalino Bas and Cristeta Niebres did not leave any last will and testament;

7. That the six surviving children and heirs of Catalino Bas and Cristeta Niebres, and their (children) successors in interest the plaintiffs and defendants herein, have during their lifetimes, continuously resided either in Dumlog or Pook, Talisay, Cebu, except the children and widow of Alberto Bas who moved to Cotabato a few years ago;

8. That Lots 2464 and 2467 in question were originally sold on installments payable in 20 and 18 regular yearly installments by the Talisay-Minglanilla Friar Lands Estate to spouses Catalino Bas and Cristeta Niebres, and patents Nos. 40190 and 40191, respectively were issued on November 24, 1936 and December 23, 1936 respectively, the "The Legal Heirs of Catalino Bas, Pooc, Talisay, Cebu";

9. That Restituta Bas died single and without issue in 1966 at Barrio Dumlog, Talisay, Cebu;

10. That the total assessed value of the above described lots in question is P1,640.00;

Cebu City, Philippines, November x x x 1970."

The trial court ruled that the only issue to be resolved in this case is whether Lots Nos. 2464 and 2467, which are covered

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by TCT Nos. 17900 and 18122, respectively, registered in the name of the legal heirs of Catalino Bas, are still owned in common *pro-indiviso* by the heirs of Catalino Bas, and Cristeta Niebres, or whether the said lots belong exclusively to Pedro Bas or his heirs.

After trial, the lower court rendered judgment, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered declaring Lots Nos. 2464 and 2467 of the Talisay-Minglanilla Friar Lands Estate, covered by Transfer Certificates of Title Nos. 17900 and 18122, respectively, in the name of the Legal Heirs of Catalino Bas, as properties still owned in common by the heirs of Catalino Bas and Cristeta Niebres, and ordering their partition among the children of Catalino Niebres, — Alberto, Andres, Deogracias, Miguel, and Pedro, all surnamed Bas — and/or their heirs; and further ordering the defendants Petra Fabrica, Eugenio Bas, Antonio Bas, Flaviana Bas, Vicente Bas. and Josefina Bas, to pay to the plaintiffs the sum of P1,000.00 by way of attorney's fees, plus the costs of this action." (Decision, Printed Record on Appeal, p. 86).

From said judgment, defendants (petitioners herein) appealed to the Court of Appeals which ruled that the judgment of the court a *quo* in the partition case is not appealable, it being interlocutory, and ordered the remanding of the case to the lower court. Petitioners now come to Us alleging the following:

"ASSIGNMENT OF ERRORS

I

THE COURT *A QUO* ERRED WHEN IT FOUND THAT LOTS NOS. 2464 and 2467, WERE NOT PARTITIONED AND WERE RESERVED FOR CRISTETA NIEBRES AND RESTITUTA BAS, WHICH CONCLUSION WAS BASED ON A LACK OF COMPREHENSIVE APPRECIATION OF THE ENVIRONMENTAL CIRCUMSTANCES EXPOSED BY THE EVIDENCE OF RECORD, AND CLEARLY POINTED OUT IN DEFENDANTS' MEMORANDUM.

II

THE COURT *A QUO* ERRED IN BASING ITS CONCLUSION THAT THE LOTS IN QUESTION WERE NOT PARTITIONED IN

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THE TESTIMONY OF DEFENDANTS' WITNESSES, WHOSE TESTIMONIES SHOULD HAVE BEEN TAKEN IN THE PROPER CONTEXT BASED ON THE EVIDENCE AS A WHOLE.

III

THE COURT *A QUO* ERRED WHEN IT DID NOT FIND THAT PEDRO BAS HAD ACTUALLY BEEN ALLOTTED THE LOTS IN QUESTION BY VIRTUE OF THE PARTITION OF THE LANDS OF CATALINO BAS AND CRISTETA NIEBRES, BECAUSE IT HAD OVERLOOKED THE SIGNIFICANCE AND/OR HAD MISINTERPRETED THE TOTALITY OF THE EVIDENCE OF RECORD SHOWING THE JUSTNESS OF SUCH PARTITION.

IV

THE COURT *A QUO* ERRED WHEN IT RENDERED JUDGMENT AGAINST THE HEREIN DEFENDANTS AND IN FAVOR OF THE PLAINTIFFS.

Petitioners' contentions merit our consideration. The instant case is for partition of properties left by the deceased spouses Catalino Bas and Cristeta Niebres filed with the lower court by private respondents against petitioners. In their amended complaint for partition filed with the trial court plaintiffs (private respondents herein) alleged among other things that after the death of Restituta Bas the defendants (Petra Fabrica, surviving spouse of the late Pedro Bas, and her children, private respondents herein) took possession of the two (2) parcels of land in question and claimed that they are the owners thereof; and despite repeated demands for partition made upon them, the defendants refused and still refuse to partition the same, thereby depriving the plaintiffs of their shares in the products of the said land notwithstanding the fact that deeds of conveyance over Lot No. 2464 on November 24, 1936 and over Lot No. 2467 on December 23, 1936 were made in favor of the legal heirs of Catalino Bas as shown in the records of the Office of the District Land Officer of Cebu under Patents Nos. 40190 and 40191, respectively. The defendants in their answer as their affirmative defenses alleged among other things that Pedro Bas took possession of Lots Nos. 2464 and 2467 in 1929 after Cristeta Niebres and her children orally and extrajudicially partitioned

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the estate left by Catalino Bas, and that Lots Nos. 2464 and 2467 were given to Pedro Bas while Lot 2528 was given to the six children, subject to the usufruct of Cristeta Niebres during her lifetime, and Lots Nos. 2542, 2549, 2552 and 4041 were given to Alberto, Andres, Deogracias, Miguel and Restituta Bas; and that since 1929 up to the present, they have been in the actual physical, material and exclusive possession and dominion of the lots in question, declaring same for taxation and paying the taxes thereon in the name of Pedro Bas, planting them to corn and coconuts and enjoying the fruits thereof to the exclusion of Restituta Bas and of all others.

The records of the case clearly reveal that the main purpose of the complaint is to determine who between the parties are the true owners and entitled to the exclusive use of the disputed properties. While it is true that the complaint is one for partition, it is one which is premised on the resolution of the issue on the validity of the oral partition allegedly made in favor of defendants and the two deeds of conveyance executed in the names of the heirs of the deceased spouses Catalino Bas and Cristeta Niebres. Unless this issue of ownership is definitely and finally resolved, it would be premature to effect a partition of the disputed properties. Thus, when the trial court rendered its judgment in favor of the plaintiffs, rejecting defendants' claim of exclusive ownership of the properties by oral partition, it rendered a final or definitive judgment on the merits from which the party adversely affected can make an appeal, (See *Miranda, et al. vs. Court of Appeals, et al.*, 71 SCRA 295 and *Valdez v. Bagaso*, 82 SCRA 22, superseding the principles enunciated in *Zaldariaga vs. Enriquez*, 1 SCRA 1188.). We held in the *Valdez* case that —

"x x x Contrary to the holding of the Appellate Court, the decision of the trial court declaring null the aforesaid conveyances and granting recovery of the properties for the purpose of ordering their partition is a definitive judgment because it decided the rights of the parties upon the issue submitted. *It was not, therefore, an interlocutory order. As this Court enunciated in Miranda et al. v. Court of Appeals, et al., supra a judgment which grants recovery of the ownership and possession of property in favor of one party as against the adverse*

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claim of title of the other is in effect a final judgment which is appealable. In *Miranda,* this Court considered as the better rule the one enunciated in *H.E. Heacock Co. vs. American Trading Co.*,[1] to wit; that where the primary purpose of a case is to ascertain and determine who, as between plaintiff and defendant, is the true owner and entitled to the exclusive use of the disputed property, the judgment rendered by the lower court is a judgment on the merits as to those questions, and that the order for an accounting is merely incidental to such judgment. We explained therein that if said judgment is merely considered interlocutory subject to the control of the judge, there would be as many decisions to be taken up on appeal as there were successor judges inclined to review or reverse his predecessor's judgment. "With none of the parties adversely affected able to appeal from any of the fluctuating decisions for as long as the accounting has not been terminated." Such unbriddled power of the Court to change at will its judgment does violence to the very purpose for which courts are organized which is to put an end to controversy. This Court adverted to the fact that "imperative considerations of public policy and of sound practice in the courts and adherence to the constitutional mandate of simplified, just, speedy, and inexpensive determination of every action call for considering such judgments for recovery of property with accounting as final judgments which are duly appealable (and would therefore become final and executory if not appealed within the reglementary period) with the accounting as a mere incident of the judgment to be rendered during the course of the appeal as provided in Rule 39, section 4 or to be implemented at the execution stage upon final affirmance on appeal of the judgment x x x and that the only reason given in Fuentebella for the contrary ruling, *viz*, "the general harm that would follow from throwing the door open to multiplicity of appeals in a single case' is of lesser import and consequence."[2] We reiterate the validity of that doctrine and find it clearly applicable in this case. Indeed, it would be more conducive to the speedy and inexpensive determination of the case, if the issue of the validity of the two deeds of sale is first finally resolved by the Appellate Court before the question of partition can be taken up by the trial court." (italics ours)

WHEREFORE, judgment is hereby rendered SETTING ASIDE the assailed decision of the respondent Court of Appeals and

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[1] 53 Phil. 481.

[2] *Miranda, et al. vs. Court of Appeals, et al. supra,* p. 333.

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ordering the same to give due course to petitioners' appeal and to decide the appeal on the merits. Let the records of the case be remanded to the Court of Appeals for further proceedings.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Gutierrez, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 52230. December 15, 1986]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VENANCIO RAMILO Y SANGALANG,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, ACCORDED WITH HIGH DEGREE OF RESPECT.**— On the issue if credibility of witnesses, the Court has always accorded a high degree of respect to the findings of the trial court, the latter being in the best position to observe the deportment and demeanor of the witnesses. After a careful review of the records, we find no reason to deviate from this well-settled rule.

2. **ID.; ID.; ID.; NOT IMPAIRED BY INCONSISTENCIES ON MINOR DETAILS WHICH SERVE TO ADD CREDENCE AND VERACITY TO TESTIMONY.**— Even if there are variances as to measurements, conflicting testimonies on measurements of distance are of minor consequence (*People v. Espinos,* 141 SCRA 110; *People vs. Hilario,* 113 SCRA 291). It is well settled that inconsistencies on minor details do not affect credibility as they only refer to collateral matters which do not touch upon the commission of the crime itself (*People*