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or when unjustified postponements are sought which prolong the trial for an unreasonable length of time.[30] In the case at bench, besides the filing of the petitions before the Court of Appeals and this Court, petitioner had likewise filed a Motion to Quash and a Motion for Reconsideration with the Regional Trial Court of Quezon City, Branch 218. As such, it is clear that petitioner is not without fault in the delay in the prosecution of the case against her.

WHEREFORE, the petition is hereby *DENIED*, and the decision of the Court of Appeals dated May 1, 1999 is hereby *AFFIRMED*.

SO ORDERED.

Melo (Chairman) Vitug, Panganiban, and *Purisima, JJ.*, concur.

THIRD DIVISION

[G.R. No. 139524. October 12, 2000]

PHILIP C. SANTOS and HEIRS OF ELISEO M. SANTOS, *petitioners, vs.* **LADISLAO M. SANTOS represented herein by his Attorney-In-Fact NOE M. SANTOS,** *respondent.*

SYNOPSIS

Sometime in 1993, Ladislao Santos filed an action for judicial partition of a 391 square meter parcel of land against his brother Eliseo Santos and the latter's successor-in-interest Philip. Eliseo and Philip, however, disputed Ladislao's status as a co-owner. Allegedly, the brothers entered into a Combined Deed of

[30] *Guerrero vs. Court of Appeals*, 257 SCRA 703.

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Partition wherein the entire subject parcel of land was conveyed to Eliseo. In support of this allegation, Eliseo and Philip presented the testimonies of Virginia Santos, Rodolfo Bautista and Philip himself on the existence of said document. Eliseo and Philip likewise invoked ordinary acquisitive prescription in their favor. The Regional Trial Court dismissed Ladislao's complaint. The Court of Appeals reversed the decision of the Regional Trial Court. Hence, this petition for review on *certiorari*.

The Court agreed with the Court of Appeals that only the original document is the best evidence of the fact as to whether the brothers Ladislao and Eliseo Santos executed a Combined Deed of Partition wherein the entire property was conveyed to Eliseo. It held that in the absence of such document, petitioners' argument regarding said partition must fail. The testimonies on the existence of and the contents of the aforesaid document are, at most, secondary evidence, which are inadmissible considering that the offerors failed to prove any of the exceptions provided in Section 3, Rule 130 of the Rules of Court, and to establish the conditions for their admissibility. Considering that there was no proof that Ladislao Santos executed any "Combined Deed of Partition" in tandem with Eliseo Santos, co-ownership still subsists between the brothers over the property. Prescription does not run in favor of a co-owner or co-heir against his co-owners or his co-heirs so long as he expressly or impliedly recognizes the co-ownership. There is no showing that Eliseo had complied with the requisites on repudiating co-ownership.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; RULES OF ADMISSIBILITY; BEST EVIDENCE RULE; ORIGINAL DOCUMENT ITSELF, BEST EVIDENCE OF FACT AS TO WHETHER DEED WAS EXECUTED. — Only the original document is the best evidence of the fact as to whether the brothers Ladislao and Eliseo Santos executed a Combined Deed of Partition wherein the entire property of Isidra Santos was conveyed to Eliseo. In the absence of such document, petitioners' arguments regarding said partition must fail.

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2. ID.; ID.; ID.; REQUISITES BEFORE SECONDARY EVIDENCE SUCH AS TESTIMONIES MAY BE ALLOWED. — The testimonies of Virginia Santos and Philip Santos on the existence of and the contents of the aforesaid documents are, at most, secondary evidence, which are inadmissible considering that the petitioners as the offerors failed to prove any of the exceptions provided in Section 3, Rule 130 of the Rules of Court and to establish the conditions for their admissibility. We quote with favor the findings of the Court of Appeals. Before a party is allowed to adduce secondary evidence to prove the contents of the original of the deed, the offeror is mandated to prove the following: "(a) the execution and existence of the original (b) the loss and destruction of the original or its non-production in court; and (c) unavailability of the original is not due to bad faith on the part of the offeror." *(Francisco, Rules of Court, Part 1, Volume VII, 1997 ed. at page 154).*"

3. CIVIL LAW; PROPERTY; CO-OWNERSHIP; NO PRESCRIPTION RUNS IN FAVOR OF A CO-OWNER UNLESS THERE WAS REPUDIATION OF CO-OWNERSHIP; REPUDIATION, WHEN EFFECTIVE. — Petitioners insist that acquisitive prescription has already set in; and that estoppel lies to bar the instant action for partition. Considering that there was no proof that Ladislao Santos executed any "Combined Deed of Partition" in tandem with the Eliseo Santos, we rule that a co-ownership still subsists between the brothers over the Isidra property. This being the case, we apply Article 494 of the Civil Code which states that, "prescription does not run in favor of a co-owner or co-heir against his co-owners or his co-heirs so long as he expressly or impliedly recognizes the co-ownership." We are not convinced that Eliseo had repudiated the co-ownership, and even if he did, there is no showing that the same had been clearly made known to Ladislao.

4. ID.; ID.; ID.; RIGHT TO DEMAND PARTITION, IMPRESCRIPTIBLE. — The action for partition is not barred by laches. An action to demand partition is imprescriptible or cannot be barred by laches. Each co-owner may demand at any time the partition of the common property.

5. ID.; ID.; OWNERSHIP; TAX DECLARATIONS DO NOT VEST OWNERSHIP OF PROPERTY UPON DECLARANT. — A mere tax declaration does not vest ownership of the property upon

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the declarant. Neither do tax receipts nor declarations of ownership for taxation purposes constitute adequate evidence of ownership or of the right to possess realty.

APPEARANCES OF COUNSEL

Manuel M. Katapang for petitioners.
E.G. Ferry Law Offices for private respondent.

D E C I S I O N

GONZAGA-REYES, *J.*:

Before us is a petition for review on *certiorari* assailing the January 8, 1999 Decision[1] of the Court of Appeals[2] in CA-G.R. CV No. 48576 which reversed the decision[3] of the Regional Trial Court[4] of San Mateo, Rizal (Branch 76) and which declared Ladislao M. Santos and Eliseo M. Santos as entitled to ½ *pro indiviso* shares in the property of Isidra M. Santos. The dispositive portion of the assailed Decision reads:

"IN THE LIGHT OF *ALL THE FOREGOING*, the appeal is granted. The Decision appealed from is *REVERSED*. Judgment is hereby rendered in favor of the Appellant and against the Appellees as follows:

1. Tax Declaration Nos. 04-0566 and 04-0016, *Exhibits "8" and "9"*, under the name of Appellee Philip Santos and the *"Deed of Sale of Unregistered Residential Land"* (Exhibit "15") are hereby declared inefficacious insofar as the undivided one-half portion of the Appellant in the Isidra property is concerned;

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[1] *Rollo*, pp. 109-138.

[2] Special Tenth Division, composed of *J.* Romeo J. Callejo, Sr., *ponente* and acting chairman, and *JJ.* Candido V. Rivera and Mariano M. Umali, members.

[3] *Rollo*, pp. 72-78.

[4] Penned by Judge Jose C. Reyes, Jr.

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2. The Appellant and the Appellee Eliseo Santos are hereby declared each entitled to 1/2 *pro indiviso* shares in the Isidra property;

3. The Court *a quo* is hereby ordered to effect the partition of the subject lot conformably with Rule 69 of the 1997 Rules of Civil procedure.

Without pronouncement as to costs.

SO ORDERED."

The following facts as narrated by the Court of Appeals are undisputed:

On May 13, 1993, Ladislao Santos, a resident in the United States of America, the Appellant in the present recourse, through his Attorney-in-fact, Noe Santos, filed a complaint, with the Regional Trial Court of Rizal, against his brother, Eliseo Santos and the latter's son, Philip Santos, the Appellees in the present recourse, for *"Judicial Partition."*

The Appellant averred, *inter alia,* in his complaint, that, when his and Eliseo Santos' sister, Isidra Santos, died intestate on April 1, 1967, without any issue, they inherited her parcel of land covered by Tax Declaration 1115, issued by the Provincial Assessor of Rizal located along General Luna Street, Gitnangbayan, San Mateo, Rizal; that, sometime, in February 1, 1993, the Appellant discovered that Tax Declaration No. 1115 had been cancelled by Tax Declaration No. 7892, under the name of his nephew, Appellee Philip Santos, and that, on December 16, 1980, Virgilio Santos executed a *"Deed of Absolute Sale of Unregistered Residential Land"* on the basis of which Tax Declaration No. 04-0016 was issued to the Appellee Philip Santos. The Appellant prayed the Court that judgment be rendered in his favor as follows:

"WHEREFORE, it is most respectfully prayed of this Honorable Court that after due hearing judgment be rendered as follows:

(1) Ordering the division of the intestate estate of the late Isidra Santos between petitioner and respondent Eliseo M. Santos;

(2) Declaring Tax Declaration No. 04-0015 in the name of Virgilio Santos as null and void;

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(3) Declaring the Deed of Sale dated December 11, 1980, executed by Virgilio Santos in favor of Philip Santos as null and void;

(4) Declaring Tax Declaration No. 04-00161 (*sic*) in the name of Philip Santos as null and void;

Petitioner prays for other relief which this Court may deem just and equitable in the premises." *(at page 3. Records)*

In their Answer to the complaint, the Appellees admitted that, upon the demise of Isidra Santos, the Appellant and the Appellee Eliseo Santos inherited the said property and the latter's share in Lot 1522 of the San Mateo Cadastre, which they and their sister, Isidra Santos, inherited from their father, Bonifacio Santos who died before the outbreak of the Second World War but insisted that the Appellant and the Appellee Eliseo Santos had agreed, in 1969, after the death of Isidra Santos, on April 1, 1967, to partition Lot 1522, under which a portion of Lot 1522, with an area of 3,387 square meters, was adjudicated to the Appellant, and a portion of the same lot, with an area of 3,000 square meters, was conveyed to the Appellee Eliseo Santos and the parcel of land left by Isidra Santos was conveyed by Appellee Eliseo Santos to Virgilio Santos, who, from infancy had been under the care of Isidra Santos, to approximately equalize the share of the Appellee Eliseo Santos in the estate of Bonifacio Santos. The Appellees further averred that Appellees had acquired the Isidra property by acquisitive prescription.

Neither Appellant Ladislao Santos nor Appellee Eliseo Santos testified in the Court *a quo*. Although the Appellee Eliseo Santos was present during the proceeding, he did not testify anymore because of senility being then about 88 years old. Virginia Santos, the widow of Virgilio Santos, testified, in the Court *a quo*, and declared, that she and Virgilio Santos married, on February 12, 1967, and resided in the house of Isidra Santos until the sale, by Virgilio Santos, of the Isidra property to his brother, the Appellee Philip Santos and in exchange with the property of the latter located at Kambal Street, Gitnangbayan, San Mateo, Rizal, where the couple and, after Virgilio Santos' death, on April 5, 1984, had been residing. Virginia Santos likewise declared that Appellant Ladislao Santos and the Appellee Eliseo Santos had an agreement, notarized by Atty. Sixto Natividad, that Virgilio Santos and Virginia Santos became the new owners of the Isidra property. The copy of the Agreement given Virgilio Santos was xeroxed and the xerox copy was given to Appellee Philip Santos

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while Virgilio Santos' copy was filed with the Provincial Assessor's Office on the basis of which, Tax Declaration No. 7892 was issued under his name. The Appellee Philip Santos, on the other hand, declared that the Appellant Ladislao Santos and the Appellee Eliseo Santos and their respective Spouses executed a *"Combined Deed of Partition,"* in 1969, covering the Lot 1522 and the Isidra Property, wherein it was covenanted that the Isidra Property was deeded to Appellee Eliseo Santos. The Appellee Philip Santos further declared that he was then about 20 years old, and saw the said *"Combined Deed of Partition"* in the possession of Appellee Eliseo Santos.

After due proceedings, the Court *a quo* promulgated a Decision dismissing Appellant's complaint on the ground that the Appellant failed to adduce proof of his entitlement to the relief prayed for by him and on the ground of acquisitive prescription.

The present recourse stemmed from the following factual backdrop — when Bonifacio Santos died intestate, he was survived by his two (2) sons, namely Ladislao Santos, the Appellant in the present recourse, and Appellee Eliseo Santos, one of the Appellees in the present recourse and their sister, Isidra Santos. The latter was the owner of a parcel of land, hereinafter referred to, for brevity's sake, as the *Isidra property*, located in General Luna Street, Gitnangbayan, San Mateo, Rizal, with an area of 391 square meters, more or less, covered by Tax Declaration No. 655, located in front of but oblique to and about fifty (50) meters away from the property, with an area of 6,340 square meters, covered by Tax Declaration No. 383 of the Provincial Assessor's Office, (*Exhibit "L-3"*). She had a house constructed on her lot where she had been residing ever since.

In the meantime, on November 10, 1964, a cadastral survey of lands in San Mateo, Rizal, was undertaken. The property, with an area of 6,340 square meters was identified as Lot 1522, Cadastre No. 375-D. Tax Declaration No. 655, covering the Isidra Property was later cancelled by Tax Declaration 1115 under her name, effective 1966 (*Exhibit "4"*).

On May 29, 1967, the Appellant and his wife, Leonila Mateo executed a *"Deed of Absolute Conveyance with Right of Way"* over the southwestern portion of *Lot 1522,* with an area of 3,000 square meters, in favor of his brother, the Appellee Eliseo Santos for the price of ₱500.00, with a provision for a right of way.

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On April 1, 1967, Isidra Santos died intestate and was survived by her two (2) brothers, the Appellant and the Appellee Eliseo Santos.

On September 9, 1969, the Provincial Assessor issued Tax Declaration No. 7892, over the Isidra property, under the name of Virgilio Santos and Virginia Santos, thereby canceling Tax Declaration No. 1115 under the name of Isidra Santos (*Exhibit "5"*). In 1972, Tax Declaration No. 7892 was cancelled by Tax Declaration No. 5043, still under the names of Virgilio Santos and Virginia Santos, effective 1974 (*Exhibit "4"*) and by Tax Declaration No. 04-0015, effective 1980 (*Exhibit "7"*).

On December 16, 1980, Virgilio Santos executed a *"Deed of Absolute Sale of Unregistered Residential Land"* in favor of his brother, the Appellee Philip Santos, over the Isidra Property at the time covered by Tax Declaration No. 04-0015, for the price of ₱24,460.00 (*Exhibit "H"*). On the basis of said deed, Tax Declaration No. 04-0015 was cancelled by Tax Declaration No. 04-0566, under the name of Appellee Philip Santos, effective 1981 (*Exhibit "E"*). The Spouses Virgilio Santos vacated the said property and resided at Kambal Street, Gitnangbayan I, San Mateo, Rizal formerly owned by Philip Santos. The latter, in turn, had the house on the lot demolished and had his shop installed in the Isidra Property. Since then, Philip Santos had been paying the realty taxes therefor. On April 5, 1984, Virgilio Santos died intestate and was survived by his wife, Virginia Santos. In the meantime, the Appellant and Appellee Philip Santos left the Philippines and resided in the United States of America.

Despite the *"Deed of Absolute Conveyance With Right of Way"* executed by the Appellant in favor of Appellee Eliseo Santos, the children of the Appellant and their uncle, the Appellee Eliseo Santos, signed an Application, on September 26, 1984 and filed the same with the Regional Trial Court of Rizal (*at San Mateo*) for the registration of *"their title" over Lots 1522 and 2433 of Cadastre 375-D.* The Applicants alleged, *inter alia* in said application, that Noe Santos, *et al.*, (children of Ladislao Santos), were occupying a portion of Lot 1522, with an area of 3,430 square meters, while Appellee Eliseo Santos was occupying a portion of the same lot, with an area of 3,000 square meters, more or less, as a site of cockpit building (*Exhibit "5"*). On July 16, 1986, the Regional Trial Court promulgated a Decision granting the application, the decretal portion of which reads as follows:

> "WHEREFORE, this Court hereby declares herein applicants the absolute owners of that parcels of land identified as Lot

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1522 and Lot 2433, both of Plan AP-04-001205 marked as Exhibit "D" and in consequence thereof, it is hereby Ordered that the said parcels of land be registered in the names of the applicants, to wit:

1. Noe Santos, married to Felicidad Santos; Asuncion S. Ramos, married to Virgilio Ramos; LADISLAO SANTOS, JR., married to Regina Linco; NELIA S. MACALALAD, married to Jacinto Macalalad; OFELIA SANTOS, single; RECTO SANTOS, single, all of legal ages, Filipino citizens and all are residents of Gen. Luna St., San Mateo, Rizal, an undivided portion of 3,387 square meters of that parcel of land identified as Lot 1522 of Plan AP-04-001205, marked as Exhibit "D" and undivided rights, interest and participation of that parcel of land identified as Lot 2433 of the above-mentioned Plan with an area of 43 square meters, all in equal shares (*pro-indiviso*);

2. ELISEO SANTOS, of legal age, Filipino citizen, married to Virginia Santos and resident of Gen. Luna St., San Mateo, Rizal, an undivided portion of 3,000 square meters of that parcel of land identified as Lot 1522 of Plan AP-04-001205. Once this Decision becomes final, let an Order of the issuance of a Decree of Registration issue" (*Exhibits "26-E" and "26-F"*)

On the basis of the Decision of the Court, Noe Santos, *et al.*, and Appellee Eliseo Santos, were issued an Original Certificate of Title No. ON-1146, on November 18, 1986 over Lot 1522 (*Exhibit "M"*).

Noe Santos, for and in behalf of his siblings and Appellee Eliseo Santos had a subdivision plan prepared, subdividing Lot 1522 into two (2) subdivision lots, namely, *Lot 1522-A, with an area of 3,000 square meters (Exhibit "15-A")* and *Lot 1522-B, with an area of 3,387 square meters (Exhibit "15-B").*

In June, 1987, Noe Santos and his siblings and their uncle, Appellee Eliseo Santos, executed a *"Partition Agreement" adjudicating Lot 1522-A,* with an area of 3,000 square meters unto Appellee Eliseo Santos, *and Lot 1522-B*, with an area of 3,387 square meters, unto Noe Santos, *et al.*, (*Exhibit "13"*). On the basis of said deed, Original Certificate of Title No. ON-1146 was cancelled and Transfer Certificate of Title No. 148892 was issued to Appellee Eliseo Santos over Lot 1522-A (*Exhibit "11"*).

On March 17, 1993, Appellant Ladislao Santos, through counsel, sent a letter to the Appellee Philip Santos alleging that the Appellant

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had discovered that the *Isidra property* inherited by Appellant and Appellee Eliseo, had been declared, for taxation purposes, under the name of Appellee Philip Santos, on the basis of a *"Deed of Sale"* executed by Virgilio Santos and suggesting a conference regarding the matter (*Exhibit "J"*). The Appellee Philip Santos wrote to the counsel of the Appellant, declaring, *inter alia* that the Isidra property, with the portion and Lot 1522-A, with an area of 3,000 square meters, formed part of the share of Appellee Eliseo Santos in the estate of *his father,* Bonifacio Santos; that Appellee Eliseo Santos transferred the Isidra property to his son, Virgilio Santos, who, in turn, sold the said property to Appellee Philip Santos, for the amount of ₱24,600.00, as part of the consideration of the conveyance, by Appellee Philip Santos, of his property located in Kambal Street, Gitnangbayan, San Mateo, Rizal, where Virgilio Santos' widow and family had been residing (*Exhibit "24"*) and the redemption, by Appellee Philip Santos, of the Mortgage of the property by Virgilio Santos from the Rural Bank of San Mateo."[5]

On May 13, 1993, herein respondent Ladislao Santos filed an action for the judicial partition of the Isidra property. After due proceedings, the trial court promulgated a decision dismissing Ladislao's complaint on the ground that the latter failed to adduce proof of his entitlement to the relief prayed for by him and on the ground of acquisitive prescription. Specifically, the trial court cited the following reasons: (1) the subject property was registered/declared for taxation purposes only in the name of Isidra Santos; (2) the fact of co-ownership thereof by reason of inheritance was not reflected in the tax declaration; (3) there was no proof presented that the cancellation of the tax declaration in Isidra's name and the issuance of another in Virgilio's name had been effected through fraud and misrepresentation; (4) there is no proof that a fake document was presented to the provincial assessor for the cancellation of the tax declaration and the issuance of another in lieu thereof as all assessment records were destroyed by the fire which gutted the office of the provincial assessor; and (5) from the time of Isidra's death in 1967 up to May 13, 1993 when this case was filed, acquisitive prescription may have already set in.

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[5] *Rollo*, pp. 245-249.

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In due course, the Court of Appeals, as earlier stated, rendered its assailed Decision granting the appeal, reversing the trial court's decision and declaring that Ladislao Santos and Eliseo Santos are each entitled to ½ *pro indiviso* shares in the Isidra property.

Hence, this appeal to this Court under Rule 45 of the Rules of Court raising the following issues:

"I. THE HONORABLE COURT OF APPEALS ERRED IN NOT UPHOLDING THE LEGALITY AND REGULARITY OF THE TRANSFER OF ISIDRA PROPERTY TO VIRGILIO SANTOS AND LATER TO PETITIONER PHILIP C. SANTOS.

II. THE HONORABLE COURT OF APPEALS ERRED IN AWARDING ONE-HALF (1/2) PORTION *PRO INDIVISO* OF ISIDRA PROPERTY IN FAVOR OF RESPONDENT DESPITE AND INSPITE OF THE ABSENCE OF PROOF OF ALLEGED FRAUD AND MISREPRESENTATION IN THE CANCELLATION OF THE TAX DECLARATION IN ISIDRA'S NAME AND ITS SUBSEQUENT TRANSFER TO VIRGILIO SANTOS' NAME.

III. THE HONORABLE COURT OF APPEALS ERRED IN NOT UPHOLDING THAT ACQUISITIVE PRESCRIPTION HAS ALREADY SET IN AS TO BAR THE INSTANT ACTION FOR PARTITION.

IV. THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT'S RIGHT TO FILE THIS INSTANT ACTION FOR PARTITION HAS ALREADY PRESCRIBED.

V. THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT LACHES HAS ALREADY SET IN AS TO BAR RESPONDENT IN ASSERTING HIS CLAIM UNDER THE PETITION.

VI. THE HONORABLE COURT OF APPEALS ERRED IN NOT UPHOLDING THE RIGHT OF PETITIONER PHILIP SANTOS AS BUYER IN GOOD FAITH AND FOR VALUE."[6]

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[6] *Rollo*, p. 210.

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The material aspects of the issues are closely intertwined; hence, they are consolidated into two main issues specifically dealing with the following subjects: (1) the validity of the transfers of the property originally belonging to Isidra M. Santos (the Isidra property) from Eliseo Santos to Virgilio Santos and then to Philip Santos; and (2) whether the action for partition is already barred by ordinary acquisitive prescription of ten years and estoppel by laches.

The petition is not meritorious.

The controversy involves a 391 square meter parcel of land situated in San Mateo, Rizal, owned by Isidra Santos, a spinster who died intestate and without issue in 1967. She was survived by her two brothers, Ladislao and Eliseo. Sometime in 1993, Ladislao through his attorney-in-fact Noe M. Santos filed an action for judicial partition of the Isidra property against his brother Eliseo and the latter's son Philip. While admitting that Ladislao and Eliseo inherited the subject Isidra property, Eliseo and Philip submitted that "Eliseo Santos and wife and Ladislao and wife signed a document wherein Eliseo acquired the subject lot from the combined partition of the estate of their father Bonifacio Santos and their sister Isidra Santos. Bonifacio's estate was composed of 6,387 square meters while that of Isidra Santos is the subject property with an area of 391 square meters. Out of this combined parcels of land, respondent got 3,387 square meters while Eliseo got 3,000 square meters and the subject Isidra property with an area of 391 square meters. Eliseo, in turn, donated the subject Isidra property to his son, Virgilio Santos."

Considering that petitioners Eliseo and Philip disputed the status of Ladislao as co-owner on the ground that the brothers entered into a Combined Deed of Partition wherein the entire Isidra property was conveyed to Eliseo, It was then incumbent upon them to present the best evidence obtainable to prove the same. We agree with the Court of Appeals that the claim of a subsisting co-ownership by Ladislao over the Isidra property has not been effectively refuted by Eliseo and Philip, and that Eliseo and his successors-in-interest (Virgilio and Philip) did not acquire exclusive title over the entire Isidra property.

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Petitioners insist that they have effectively refuted the co-ownership between Ladislao and Eliseo based on a "lawful document" proven as follows in the court *a quo:* (1) the annotation at the back of Tax Declaration No. 1115 which states: "cancelled by Tax No. 7892, dated September 9, 1969, Virgilio and Virginia Cruz-Santos"; (2) Rodolfo Bautista, municipal assessor of San Mateo, Rizal testified on the existence of the "document" authorizing the cancellation of Tax Declaration No. 1115 in favor of the issuance of Tax Declaration No. 7892 in Virgilio's name; (3) Virginia Santos (wife of Virgilio), Philip and a certain Dr. Linco testified on the existence of said "document." In relation to the foregoing, petitioners argue that the Isidra property was acquired through a valid document inscribed in the tax declaration;[7] that the existence and nature of this document was proved by testimonial evidence; and that respondent was not able to show that the document registered with the provincial assessor's office was not the combined partition or deed of transfer by brothers Ladislao and Eliseo.

We agree with the Court of Appeals that only the original document is the best evidence of the fact as to whether the brothers Ladislao and Eliseo Santos executed a Combined Deed of Partition wherein the entire property of Isidra Santos was conveyed to Eliseo. In the absence of such document, petitioners' arguments regarding said partition must fail. The testimonies of Virginia Santos and Philip Santos on the existence of and the contents of the aforesaid documents are, at most, secondary evidence, which are inadmissible considering that the petitioners as the offerors failed to prove any of the exceptions provided in Section 3, Rule 130 of the Rules of Court[8] and to establish the conditions for their

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[7] *Rollo*, p. 239.

[8] SEC. 3. *Original document must be produced; exceptions.* — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

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admissibility.[9] We quote with favor the findings of the Court of Appeals, thus:

"Even if we assumed, *for the nonce*, that indeed, Lot 1522 was inherited by the Appellant and his brother, the Appellee Eliseo Santos, however, we are not convinced that the Appellant and his wife deeded to the Appellee Eliseo Santos and the latter to Virgilio Santos the Isidra Property under a *"Deed of Transfer"* as testified to by Virginia Santos or under a *"Combined Deed of Partition"* as testified to by Appellee Philip Santos. The Appellees never adduced in evidence any copy of the said deed executed by the Appellant and the Appellee Eliseo Santos and their respective spouses. Since the subject of inquiry was the subject of said deed, it was incumbent on the Appellees to adduce in evidence the original of the deed or a copy of the original of the deed conformably with Section 3, Rule 130 of the Rules of Evidence. The Appellees failed to do so. The Court *a quo* allowed the Appellees to adduce secondary evidence to prove the contents of the said deed, but it was inappropriate for the Court *a quo* to do so over the objections of the Appellant. This is so because, before the Appellees are allowed to adduce secondary evidence to prove the contents of the original of the deed, the Appellees had to prove, with the requisite quantum of evidence, the loss or destruction or unavailability of all the copies of the original of the deed. As former Supreme Court Chief Justice Manuel V. Moran declared:

> "Where there are two or more originals, it must appear that all of them have been lost, destroyed or cannot be produced before secondary evidence can be given of any one. For example, a lease was executed in duplicate, one being retained by the lessor and the other by the lessee. Either copy was, therefore, an original, and could have been introduced as evidence of the contract without the production of the other. One of these originals could not be found. The non-production of the other was not accounted for it was held that "under these

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(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

[9] *Republic vs. Court of Appeals,* 258 SCRA 223 (1996).

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> circumstances, the rule is that no secondary evidence of the contents of either is admissible until it is shown that originals must be accounted for before secondary evidence can be given of any one." (Moran, *Comments on the Rules of Court*, Volume V, 1970 ed. at pages 90-91, *supra*, italics supplied)

Indeed, before a party is allowed to adduce secondary evidence to prove the contents of the original of the deed, the offeror is mandated to prove the following:

"(a) the execution and existence of the original (b) the loss and destruction of the original or its non-production in court; and (c) unavailability of the original is not due to bad faith on the part of the offeror." (Francisco, *Rules of Court*, Part I, Volume VII, 1997 ed. at page 154)."

When she testified in the Court a quo, Virginia Santos declared that there were three (3) copies of the deed signed by the parties thereof. One copy of the deed was given to Virgilio Santos, one copy was retained by the Appellee Eliseo Santos, and one copy was retained by Atty. Sixto Natividad, the Notary Public. Virgilio Santos had his copy xeroxed and gave the xerox copy to Appellee Philip Santos. Virgilio Santos' copy was later filed with the Provincial Assessor's Office. x x x.

x x x x x x x x x.

When he testified in the Court *a quo,* the Appellee Philip Santos admitted that he saw a copy of the deed in the possession of his father, the Appellee Eliseo Santos:

x x x x x x x x x.

While the Appellees adduced evidence that the copy filed with the Provincial Assessor's Office was burned when the Office of the Provincial Assessor was burned on April 7, 1977, however, the Appellees failed to adduce proof that the copy in the possession of Atty. Sixto Natividad was lost or destroyed. It bears stressing that a Notary Public is mandated, under the Notarial Law, to retain two (2) copies of every deed involving real estate as part of his notarial record, a copy of which he is to submit to the Notarial Section of the Regional Trial Court.

The Appellees could very well have procured, by *subpoena ad testificandum* and *duces tecum*, the attendance of Atty. Sixto Natividad before the Court *a quo* and bring with him his copy of the deed.

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After all, there is no evidence on record that he was already dead or was unavailable at the time of the trial in the Court *a quo*. The Appellees did not. Moreover, the Appellees failed to prove the loss or destruction of the copy on file with the Notarial Section of the Regional Trial Court or of the copy in the possession of the Appellee Eliseo Santos. Assuming, *for the nonce*, that the Appellees mustered the requisite quantum of evidence to prove the loss or destruction of all the copies of the original of the deed, however, Section 5 of Rule 130 of the Rules of Evidence provides that, before testimonial evidence may be adduced to prove the contents of the original of the deed, the offeror is mandated to prove the loss or non-availability of any copy of the original or of some authentic document reciting the contents thereof: x x x."

x x x x x x x x x.

In the present recourse, Virginia Santos admitted that a xerox copy of the deed was given to the Appellee Philip Santos. However, when she testified in the Court *a quo,* she admitted not having inquired from the Appellee Philip Santos if he still had the xerox copy of all deeds that Virgilio gave him. x x x.[10]

We also agree with the Court of Appeals that petitioners' evidence consisting of the tax declarations in Virgilio's name and then in Philip's name are not conclusive and indisputable evidence to show that the lot in question was conveyed to Virgilio Santos, Philip's predecessor-in-interest. A mere tax declaration does not vest ownership of the property upon the declarant. Neither do tax receipts nor declarations of ownership for taxation purposes constitute adequate evidence of ownership or of the right to possess realty.[11]

As for the much-vaunted testimony of the municipal assessor of San Mateo, Rizal, the Court of Appeals had this to say:

"The Appellees presented Rodolfo Bautista, the representative of the Rizal Provincial Assessor, to prove that Tax Declaration No. 7892, under the name of Virgilio Santos and Virginia Santos, cancelled Tax Declaration No. 1115, under the name of Isidra Santos, on the

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[10] *Rollo,* pp. 253-259.

[11] *Deiparine vs. Court of Appeals,* 299 SCRA 668 (1998).

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basis of the *"Combined Deed of Partition"* purportedly executed by the Appellant and his wife, in tandem with the Appellee Eliseo Santos and his wife, which was, however, burned when the Provincial Assessor's Office was gutted by fire on April 7, 1977. However, Rodolfo Bautista himself unabashedly admitted, when he testified in the Court *a quo* that he had no knowledge of the nature of the deed that was used for the cancellation of Tax Declaration No. 1115 under the name of Isidra Santos or the previous document burned or gutted by the fire.

"Atty. Ferry:

Q: When you testified last March 14, 1994, Mr. Bautista, you declared that you assumed your position in the Office of the Municipal Assessor only on January 6, 1982. Before that, you were not connected with the Municipal Assessor?

A: I am not yet connected, sir.

Q: So for the first time you learned, in your official capacity, the alleged lost of all records in the Office of the Provincial Assessor bearing dates 1977 down was only recently?

A: No, sir.

Q: When?

A: When I took over in 1982, sir.

Q: But the fact is, you will agree with me in so far as the present controversy is concerned, you have no way of determining the particular document presented to the Office of the Provincial Assessor which was made the basis in effecting the transfer of tax declaration in the name of Isidra Santos in favor of Virgilio Santos marked in evidence as Exh. 4. You have no way of determining or identifying the particular document used or presented to the Office of the Provincial Assessor which was made the basis for the cancellation of tax declaration in the name of Isidra Santos and that paved the issuance of the tax declaration in the name of Virgilio Santos marked in evidence by the defendants as Exh. 5. You will not be able to know that simply on the basis of this document? You are in no position to tell or determine what particular document was presented in the Office of the Provincial Assessor which paved the way to the cancellation of Exh. 4 which is tax declaration no. 1115 in the name of Isidra Santos and the issuance of another one in the name of Virgilio Santos marked in evidence as Exh. 5?

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A: I do not know, sir (*t.s.n. Bautista. at pages 9-10, April 18, 1994, italics supplied*)

The Appellees can find no solstice[12] on the face of Tax Declaration No. 1115, Exhibit "4", which contains the following entry:

"Cancelled by:

Tax Declaration No. 7892
Dated: Sept. 9, 1969
Virgilio & Virginia Cruz Santos"
(Exhibit "4-B")

This is so because the entry does not contain any clue of the nature of the deed, if it was a deed at all, used for the cancellation of Tax Declaration No. 1155, the parties who executed the said deed or the beneficiary of said deed. Indeed, the Court admitted, in its Decision, that there was no way of identifying the document used as basis for the issuance of a new tax declaration under the name of Virgilio Santos (*t.s.n. Bautista. supra*). Virgilio Santos could very well have executed a "*Deed of Extra-judicial Settlement of Estate and of Self-Adjudication of Real Property*" covering the Isidra Property and filed the same with the Provincial Assessor on the basis of which he was issued Tax Declaration No. 7892 over the property. But then, such a deed did not prejudice the share of the Appellant in the Isidra Property. It is not legally possible for one to adjudicate unto himself a property he was not the owner of. Hence, We find and so declare that the Isidra Property remained the property of the Appellant and the Appellee Eliseo Santos as their inheritance from Isidra Santos. As our Supreme Court declared in an avuncular case:

> "Despite admission during the hearing on the identify (*sic*) of the land in question (see p. 21, Record on Appeal), Maria's counsel, on appeal, re-emphasized her original claim that the two parcels of land in her possession were acquired from the Sps. Placido Biduya and Margarita Bose. However, the private document relative to the purchase, was not produced at the trial, allegedly because they were placed in a trunk in their house which were burned during the Japanese Occupation. In 1945, Maria sold the riceland. No written evidence was submitted for all intents therefore, the riceland remained inherited property (*Maria Bicarme, et al., versus Court of Appeals, et al., 186 SCRA 294, at pages 298-299).*"

[12] *Sic*, should be solace.

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In the light of our findings and disquisitions, Virgilio Santos did not acquire title over the Isidra Property. Hence, Virgilio Santos could not have lawfully sold the said property to his brother, the Appellee Philip Santos. As the Latin aphorism goes: *"NEMO DAT QUOD NON HABET."*[13]

All told, the testimonies of the prosecution witnesses, Virginia Santos, Philip Santos and Rodolfo Bautista, on the existence of said document, specifically, the Combined Deed of Partition, cannot be considered in favor of the petitioners, the same being, at most, secondary evidence.

Anent the second issue, petitioners insist that acquisitive prescription has already set in; and that estoppel lies to bar the instant action for partition. According to petitioners, Virgilio Santos was already in possession of the subject property since after the death of Isidra Santos on April 1, 1967. Thereafter, Philip Santos took possession of the subject property on December 16, 1980 upon its sale on said date. They reason out that more than 13 years had lapsed from April 1, 1967 to December 16, 1980; and that more than 12 years had lapsed from the time Philip Santos took possession of the property on December 16, 1980 up to the time Ladislao Santos filed the action for partition on May 13, 1993. Petitioners conclude that the instant action is already barred by ordinary acquisitive prescription of ten years. Further, it is argued that the possession of Virgilio Santos could be tacked with the possession of Philip Santos bringing to a total of 26 years the time that elapsed before the filing of the case in 1993. They add that these 26 years of inaction call for the application of the principle of estoppel by laches.

Considering that there was no proof that Ladislao Santos executed any "Combined Deed of Partition" in tandem with the Eliseo Santos, we rule that a co-ownership still subsists between the brothers over the Isidra property. This being the case, we apply Article 494 of the Civil Code which states that, "prescription does not run in favor of a co-owner or co-heir

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[13] *Rollo*, pp. 127-129.

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against his co-owners or his co-heirs so long as he expressly or impliedly recognizes the co-ownership." In *Adile vs. Court of Appeals*,[14] it was held:

"x x x. Prescription, as a mode of terminating a relation of co-ownership, must have been preceded by repudiation (of the co-ownership). The act of repudiation, in turn, is subject to certain conditions: (1) a co-owner repudiates the co-ownership; (2) such an act of repudiation is clearly made known to the other co-owners; (3) the evidence thereon is clear and conclusive; and (4) he has been in possession through open, continuous, exclusive, and notorious possession of the property for the period required by law."

There is no showing that Eliseo Santos had complied with these requisites. We are not convinced that Eliseo had repudiated the co-ownership, and even if he did, there is no showing that the same had been clearly made known to Ladislao. As aptly observed by the Court of Appeals:

"Under Article 1119 of the New Civil Code, acts of possessory character executed in virtue of license or tolerance of the owners shall not be available for the purposes of possession.

Indeed, Filipino family ties being close and well-knit as they are, and considering that Virgilio Santos was the ward of Isidra Santos ever since when Virgilio Santos was still an infant, it was but natural that the Appellant did not interpose any objection to the continued stay of Virgilio Santos and his family on the property and even acquiesce thereto. Appellant must have assumed too, that his brother, the Appellee Eliseo Santos, allowed his son to occupy the property and use the same for the time being. Hence, such possession by Virgilio Santos and Philip Santos of the property does not constitute a repudiation of the co-ownership by the Appellee Eliseo Santos and of his privies for that matter. As our Supreme Court succinctly observed:

> "x x x [A]nd it is probable that said conduct was simply tolerated by the plaintiffs on account of his being their uncle, and they never thought that by said conduct the defendant was attempting to oust them forever from the inheritance, nor

[14] 157 SCRA 455 (1988), cited in Compendium of Civil Law and Jurisprudence, by J. C. Vitug, 1993.

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> that the defendant would have so intended in any way, dealing as we do here with the acquisition of a thing by prescription, the evidence must be so clear and conclusive as to establish said prescription without any shadow of doubt. This does not happen in the instant case, for the defendant did not even try to prove that he has expressly or impliedly refused plaintiff's right over an aliquot part of the inheritance. (*at page 875, supra*)"[15]

Penultimately, the action for partition is not barred by laches. An action to demand partition is imprescriptible or cannot be barred by laches. Each co-owner may demand at any time the partition of the common property.[16]

As a final note, it must be stated that since Ladislao has successfully hurdled the issue of co-ownership of the property sought to be partitioned, there is the secondary issue of how the property is to be divided between the two brothers.[17] This Court cannot proceed forthwith with the actual partitioning of the property involved, hence, we reiterate the order of the Court of Appeals for the trial court to effect the partition of the subject property in conformity with Rule 69 of the 1997 Rules of Civil Procedure.

WHEREFORE, the decision of the Court of Appeals is *AFFIRMED in toto*.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and *Purisima, JJ.*, concur.

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[15] *Rollo*, pp. 135-136.

[16] *Deiparine vs. Court of Appeals*, 299 SCRA 668 (1998).

[17] *Roque vs. Intermediate Appellate Court*, 165 SCRA 118 (1988).