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The records show that the CA did not err in awarding the said amounts, nor was there any mistake in its computation. The respondents were able to establish their case by a preponderance of evidence. However, the petitioner is correct when it stated that the award of ₱100,000.00 as moral damages is excessive. Jurisprudence has set the amount to ₱50,000.00.[20]

WHEREFORE, the Petition for Review is hereby *DENIED*. Consequently, the Decision of the Court of Appeals, dated August 15, 2001, is hereby *AFFIRMED* with the *MODIFICATION* that the moral damages be reduced to ₱50,000.00.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Abad,* and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 157476. March 16, 2011]

VENANCIO GIVERO, EDGARDO GIVERO and FLORIDA GAYANES, *petitioners, vs.* **MAXIMO GIVERO and LORETO GIVERO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL UNDER RULE 45 OF THE RULES OF COURT; RESTRICTS THE REVIEW ONLY TO QUESTIONS OF LAW.— [W]hat the petitioners assail in this appeal is the evaluation of the

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[20] See *Metro Manila Transit Corporation v. CA,* G.R. No. 116617, with *Rosales, et al. v. Court of Appeals, et al.,* G.R. No. 126395, 359 Phil. 18 (1998).

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 933, dated January 24, 2011.

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credibility of the testimonies of Luciano and Maria, Venancio's brother and sister, who affirmed their own participation in the oral partition by Teodorico. Furthermore, the petitioners insist that the respondents did not preponderantly establish the existence of the oral partition. The petitioners thereby raise factual issues. However, the Court may not review all over again the findings of fact of the RTC, especially as such findings were affirmed by the CA. This appeal is brought under Rule 45 of the Rules of Court, whose Section 1 restricts the review only to questions of law x x x.

2. **ID.; ID.; ID.; ID.; FACTUAL FINDINGS OF TRIAL COURTS ARE GENERALLY ACCORDED HIGH RESPECT, IF NOT CONCLUSIVE EFFECT; EXCEPTIONS. —** The restriction of the review to questions of law emanates from the Court's not being a trier of facts. As such, the Court cannot determine factual issues in appeals taken from the lower courts. As the consequence of the restriction, the Court accords high respect, if not conclusive effect, to the findings of fact by the RTC, when affirmed by CA, unless there exists an exceptional reason to disregard the findings of the fact, like the following, namely: (*a*) When the findings are grounded entirely on speculation, surmises, or conjectures; (*b*) When the inference made is manifestly mistaken, absurd, or impossible; (*c*) When there is grave abuse of discretion; (*d*) When the judgment is based on misapprehension of facts; (*e*) When the findings of facts are conflicting; (*f*) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (*g*) When the CA's findings are contrary to those by the trial court; (*h*) When the findings are conclusions without citation of specific evidence on which they are based; (*i*) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (*j*) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (*k*) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

3. **CIVIL LAW; PROPERTY, OWNERSHIP AND ITS MODIFICATIONS; CO-OWNERSHIP; THE IMPLEMENTATION OF THE ORAL PARTITION USING A DEED OF DONATION**

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IS CONSIDERED VALID IN CASE AT BAR. — [T]he contention of the petitioners, that the respondents were inconsistent and self-contradictory by reason of their insistence, on the one hand, on the donation of the property from Severina, and, on the other hand, on the oral partition by Teodorico, has no substance and merit. The supposed inconsistency and self-contradiction are imaginary, not real. In this regard, the CA rendered the following erudite and irrefutable explanation, to wit: "**Clearly, therefore, the fact that it was Severina who actually conveyed the properties to the said heirs of Rufino does not in anyway contradict the fact that the partition was actually made by Teodorico prior to his demise. The basis of their ownership to the property is indubitably the right vested on their said predecessor-in-interest at the time of Teodorico's death. The existence of the *Deed of Donation* is evidently a mere surplusage which does not affect the right of Rufino's heirs to the property.**" The foregoing explanation by the CA was appropriate. It recognized a practical solution to the suspended implementation of the oral partition. The use of the deed of donation to implement the oral partition was a matter of choice on the part of the parties to the transaction, for there might have been other feasible ways under our laws by which Severina as the family matriarch could have implemented the delivery of Rufino's share just as effectively and efficiently. What was important was that the just intention behind the delivery ensured the validity of the implementation. Thus, whether or not Severina had the right to transfer the share was a matter too inconsequential for consideration by the Court. In this instance, substance, not form, was held to prevail by the CA. Besides, we, as a Court of law, justice and equity, cannot permit prolonged unfairness and uncertainty to be suffered by the respondents and the family of their deceased brother Juan as the ultimate heirs of Rufino. The avoidance of that unfairness and uncertainty was visibly the reason for the intervention of their uncle Luciano and aunt Maria as witnesses testifying against Venancio, their own brother, to favor the respondents on the question of the oral partition. Plainly, therefore, the CA committed no reversible error.

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APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Henry D. Diesta and *Claudette G. Ubaldo* for respondents.

R E S O L U T I O N

BERSAMIN, *J.*:

The petitioners appeal the adverse decision promulgated on October 4, 2002,[1] whereby the Court of Appeals (CA) affirmed the decision rendered against them on November 12, 1993 by the Regional Trial Court, Branch 55, in Irosin, Sorsogon (RTC).[2]

The dispute involves a portion of Lot No. 2618 of the Matnog Cadastre (with an area of 5,000 square meters, more or less) that the petitioners, particularly Venancio Givero, have claimed to belong to them, but which claim was denied by the respondents who have insisted that the whole of Lot No. 2618, consisting of 12,952 square meters, more or less, was the share of their late father Rufino Givero, a brother of Venancio, pursuant to the oral partition among 11 children (including Venancio and Rufino) made by the spouses Teodorico Givero and Severina Genavia.

The antecedents are culled from the findings of fact of the RTC, which the CA affirmed without modification.

The original owners of Lot No. 2618 were Teodorico and Severina who respectively died in 1917 and 1958. During their marriage, they acquired properties located in Barangay Balocawe and Barangay Gadgaron, both in the Municipality of Matnog, Sorsogon. They had 11 children, namely; Calixta, Timoteo, Eustaquia, Dorotea, Mamerto, Venancio, Luciano, Ines, Gabriel, Maria, and Rufino, all surnamed Givero. In his lifetime, Teodorico

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[1] *Rollo*, pp. 85-97; penned by Associate Justice Mercedes Gozo-Dadole (retired), and concurred in by Associate Justice Salvado J. Valdez, Jr. (retired and deceased) and Associate Justice Sergio L. Pestaño (retired and deceased).

[2] *Id.*, pp. 49-53; penned by Judge Ireneo B. Escandor.

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orally partitioned the properties among their children by pointing to them their respective shares. According to Luciano and Maria, who both testified at the trial, the grown-up children received and occupied the shares assigned to them, but the rest could receive their shares only after Teodorico's death in 1917, with Severina delivering their shares. The last to receive his share was Rufino Givero, the youngest child.

The properties situated in Barangay Balocawe were shared by six brothers and sisters, namely: Venancio, Gabriel, Luciano, Calixta, Eustaquia and Dorotea. The properties found in Barangay Gadgaron were shared by the remaining five brothers and sisters. The Barangay Gadgaron properties were divided into two by the highway going towards the direction of the *poblacion* of Matnog, Sorsogon. The portion found on the left side of the highway going towards the direction of the *poblacion* was the share of Rufino, and the portions on the right side were allocated to Mamerto, Timoteo, Ines, and Maria. Thus, all the children of Teodorico and Severina came into full possession of their perspective shares in accordance with the oral partition made by Teodorico during his lifetime.

The property in question was part of Lot No. 2618 partitioned to Rufino. The respondents (plaintiffs below) were the children of Rufino who had died in 1942, survived at his death by his wife Remedios and their three sons, namely: Juan, Maximo, and Loreto. Juan, being already deceased, was survived by his wife and children. Rufino and Remedios, with their children, had occupied Lot No. 2618 until the Japanese occupation, when they relocated to the *poblacion* of Matnog. Although Rufino, being a soldier, had been away during the war, Remedios periodically visited the property. In 1945, after the war had ended, she and her children returned to and stayed on Lot No. 2618. In 1952, she let Venancio build a house on Lot No. 2618 for the use of his children who were then going to school in the *poblacion* of Matnog, considering that Lot No. 2618 was nearer to the *poblacion* than Venancio's house in Barangay Balocawe.

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In March 1982, however, Venancio started to assert ownership of the disputed portion of Lot No. 2618 by declaring it in his name for taxation purposes, and erecting a barbed wire fence around it. His actuations impelled the respondents to commence on October 15, 1987 in the RTC this action for quieting of title to and recovery of real property and damages against the petitioners.

The respondents alleged in their complaint that Lot No. 2618 had been delivered to them as Rufino's share in the estate of Teodorico through a deed of donation executed by Severina in their favor as Rufino's heirs, thereby making them the *pro indiviso* owners; that they had been in continuous, peaceful, public, and adverse possession of the property for 45 years; that the defendants (namely, petitioners Venancio, his daughter Florida Givero-Gayanes and a relative Edgardo Givero) had been only permitted by Remedios to build a small house of light materials on a portion of Lot No. 2618; and that later on, Venancio, without any right, had enclosed the 5,000-square meter portion with barbed wire, and had declared the portion under his name for taxation purposes.[3]

In their answer, the petitioners maintained that Teodorico and Severina had not partitioned their estate among their 11 children; that the Barangay Balocawe properties of Teodorico and Severina had been levied and auctioned for realty tax delinquency; that Venancio had become the owner of the Barangay Balocawe properties by virtue of redemption, but had given shares to his brothers and sisters out of magnanimity, retaining only a portion corresponding to the amount he had paid for the redemption; that Venancio had retained a share in the Barangay Gadgaron properties, which was the portion in dispute, because that portion had been his rightful share in the estate of his father; that Venancio had allowed the respondents to stay on the properties because they were his nephews; that the deed of donation executed by Severina after the death of Teodorico in favor of the respondents through their mother was void because Severina was not the real owner but a mere usufructuary under

[3] *Id.*, pp. 87-88.

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the provisions of the old *Civil Code*; and that at the most, the respondents would be entitled to only 1/11 portion of the Barangay Gadgaron properties.[4]

In its decision, the RTC held in favor of the respondents, explaining:

> Having disposed of the legal issues on the validity of the oral partition of the estate of Teodorico Givero and Severina Genavia, let us proceed to the factual issue on the claim of the defendant Venancio Givero that the portion of the property in question occupied by him and his co-defendants belonged to him as his rightful share in the estate of his father which he started to occupy and possess as owner in 1952.
>
> There are proven facts in this case which belie this claim of Venancio Givero. His brother Luciano and sister Maria, who have no reason to perjure against their brother Venancio were positive in their testimony that the property in question is the share of their brother Rufino and that the share of Venancio is found in Balocawe. This testimony of witnesses Maria and Luciano is corroborated by the judicial admission made by Venancio Givero in his answer that the Balocawe properties were divided among some of his brothers and sisters, retaining for himself 7,580 sq. meters under Title No. P-9542. His payment of the tax delinquency of said property, granting the same is true, did not make him the owner of said property. The properties in Balocawe remained under co-ownership and his right is limited to compel his other co-heirs to contribute to the preservation of the thing owned in common. (Art. 395, Old Civil Code). Venancio Givero was aware of this as shown by the fact that he partitioned the Balocawe properties among his other co-owners. Again, he claims that he had been in open, adverse, and public possession of this portion of the property in question since 1952. However, on April 20, 1980, Myrna Hallig Manalo, a granddaughter of Venancio, bought 225 sq. meters of the land in question within the area claimed by Venancio Givero (Exh. "2") from Remedios *vda. de* Givero with the conformity of the plaintiffs. If indeed his claim of ownership since 1952 was adverse, open and public, why was this fact not known to the members of his family even in the year 1980? But the most telling evidence against this claim of ownership by Venancio Givero is the unrebutted testimony of plaintiff Maximo

[4] *Id.*, pp. 88-89.

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Givero to the effect that this property claimed by Venancio Givero is within the original area of 12,952 in the Deed of Donation Exh. "A". Thus:

q. What is the actual area claimed by the defendant?

a. ½ hectare actually occupied by the defendant.

q. Is this from the original area from 12,952 sq. meters or outside?

a. It is within that area.

(TSN April 6, 1989 p. 15)

In his testimony, Venancio Givero admitted that the share of his brother Rufino, was given to his widow, Remedios *vda. de* Givero in the form of a donation. And in fact, when this donation was made in 1956 (Exh. "A"), Venancio Givero was a witness to said transaction. Having participated in the delivery of the share of Rufino Givero to his heirs and knowing the metes and bounds of said property, he is estopped from claiming ownership of any portion of that property. (Arts. 1431, 1432, and 1433, NCC).

From the testimonies of Remedios *vda. de* Givero and Maximo Givero, it is clear that this property which corresponds to the share of Rufino Givero when cadastrally surveyed was designated as Lot No. 2618 and the area increased to 21,736 sq. meters. This is the property which belong to the plaintiffs Maximo Givero and Loreto Givero as well as the heirs of their deceased brother, Juan Givero. From the evidence presented, it appears that some portions of this property had been sold by Remedios *vda. de* Givero with the consent of the plaintiffs. The sales made are valid and not null and void as claimed by the defendants.

There are sufficient evidences showing that the defendant Venancio Givero through the execution of a Deed of Ratification and Confirmation of Ownership (Exh. "11") was able to declare in his name for taxation purposes a portion of the property in question (Exh. "12"). The issuance of said tax declaration No. 13-178 in the name of Venancio Givero as owner, cast a cloud on the title of the plaintiffs and their other co-heirs. This is an error which should be corrected by having this tax declaration and other subsequent tax declarations that may have been issued, cancelled by the Office of the Provincial Assessor. Because of these acts of the defendants, the plaintiffs were forced to bring this case to Court and should be

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entitled to attorney's fees and other litigation expenses. (Art. 2208 (11) NCC).[5]

and decreeing, *viz*:

> WHEREFORE, the Court renders judgment:
>
> 1. Finding the plaintiffs the owner of Lot No. 2618, of the Matnog cadastre, the property in question;
>
> 2. Ordering the defendants to vacate the premises and to remove whatever improvements they may have introduced on said property; and perpetually enjoining them from further molesting the plaintiffs in the possession of the property in question.
>
> 3. Ordering the defendants jointly and severally to pay the plaintiffs as damages the amount of ₱5,000.00 representing attorney's fees and other litigation expenses.
>
> 4. Ordering the Office of the Provincial Assessor to cancel TD No. 13-178 in the name of Venancio Givero, entered in the real property roll for 1982 and for this purpose the plaintiffs are ordered to furnish said office a copy of this Decision for the guidance and compliance of that office.
>
> SO ORDERED.[6]

On appeal, the petitioners urged that the donation by Severina in favor of Rufino's heirs contradicted the respondents' claim that an oral partition of Teodorico's estate had taken place during Teodorico's lifetime, for there would have been no need for the donation had such partition *inter vivos* really taken place. Thus, the petitioners concluded that the respondents' right to the disputed portion was solely based on the deed of donation that was void due to the donor not being the owner of the property.[7]

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[5] *Id.*, pp. 51-53.

[6] *Id.*, p. 53.

[7] *Id.*, p. 92.

On October 4, 2002, the CA affirmed the decision of the RTC.

Hence, this appeal.

The petitioners submit that the respondents did not preponderantly establish that the oral partition by Teodorico had actually taken place; that had the partition been really made, there would have been no need for Severina to still convey the disputed portion through donation; that the CA's finding that the Barangay Balocawe properties had remained under co-ownership discredited its pronouncement on the validity of the oral partition by Teodorico.[8]

The petition for review lacks merit.

Firstly, what the petitioners assail in this appeal is the evaluation of the credibility of the testimonies of Luciano and Maria, Venancio's brother and sister, who affirmed their own participation in the oral partition by Teodorico. Furthermore, the petitioners insist that the respondents did not preponderantly establish the existence of the oral partition.

The petitioners thereby raise factual issues. However, the Court may not review all over again the findings of fact of the RTC, especially as such findings were affirmed by the CA. This appeal is brought under Rule 45 of the *Rules of Court*,[9] whose Section 1 restricts the review only to questions of law, *viz*:

> Section 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition shall raise only questions of law which must be distinctly set forth.** (1a, 2a)[10]

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[8] *Id.* p. 27.

[9] *D.M. Wenceslao and Associates, Inc. v. Readycon Trading and Construction Corporation*, G.R. No. 154106, June 29, 2004, 433 SCRA 251.

[10] The rule, already amended by A.M. No. 07-7-12-SC, effective December 27, 2007, now reads:

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The restriction of the review to questions of law emanates from the Court's not being a trier of facts. As such, the Court cannot determine factual issues in appeals taken from the lower courts. As the consequence of the restriction, the Court accords high respect, if not conclusive effect, to the findings of fact by the RTC, when affirmed by the CA,[11] unless there exists an exceptional reason to disregard the findings of fact, like the following, namely:[12]

(*a*) When the findings are grounded entirely on speculation, surmises, or conjectures;

(*b*) When the inference made is manifestly mistaken, absurd, or impossible;

(*c*) When there is grave abuse of discretion;

(*d*) When the judgment is based on a misapprehension of facts;

(*e*) When the findings of facts are conflicting;

(*f*) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

(*g*) When the CA's findings are contrary to those by the trial court;

Section 1. *Filing of petition with Supreme Court.* —A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition** may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth.** The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[11] *Senoja v. People*, G.R. No. 160341, October 19, 2004, 440 SCRA 695.

[12] *Sampayan v. Court of Appeals*, G.R. No. 156360, January 14, 2005, 448 SCRA 220; *Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79; *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, G.R. No. 139437, December 8, 2000, 347 SCRA 542, 549; *Nokom v. National Labor Relations Commission*, G.R. No. 140043, July 18, 2000, 336 SCRA 97; *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, G.R. No. 96262, March 22, 1999, 305 SCRA 70; *Sta. Maria v. Court of Appeals*, G.R. No. 127549, January 28, 1998, 285 SCRA 351.

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(*h*) When the findings are conclusions without citation of specific evidence on which they are based;

(*i*) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;

(*j*) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or

(*k*) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

None of the exceptions has any application herein. Besides, the findings of fact upheld by the CA are entirely consistent with the established facts.

And, secondly, the contention of the petitioners, that the respondents were inconsistent and self-contradictory by reason of their insistence, on the one hand, on the donation of the property from Severina, and, on the other hand, on the oral partition by Teodorico, has no substance and merit.

The supposed inconsistency and self-contradiction are imaginary, not real. In this regard, the CA rendered the following erudite and irrefutable explanation, to wit:

In the case at bar, it is clear from the testimonies of Maria and Luciano Givero, sister and brother, respectively, of appellant Venancio Givero, that the properties were assigned to each of the 11 children even prior to their father's death, with their parents pointing to them their respective shares. With respect to the shares of the younger children, however, it appears from Maria's testimony that the properties were administered by their mother, Severina, while they were not yet old enough to handle the same. This was the reason why Severina appeared to be the one who delivered and conveyed to the other children their shares to the inheritance, which included the share of the youngest son, Rufino, which share was actually delivered to the latter's heirs as he predeceased Severina. **Clearly, therefore, the fact that it was Severina who actually conveyed the properties to the said heirs of Rufino does not in anyway**

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contradict the fact that the partition was actually made by Teodorico prior to his demise. The basis of their ownership to the property is indubitably the right vested on their said predecessor-in-interest at the time of Teodorico's death. The existence of the *Deed of Donation* is evidently a mere surplusage which does not affect the right of Rufino's heirs to the property.[13]

The foregoing explanation by the CA was appropriate. It recognized a practical solution to the suspended implementation of the oral partition. The use of the deed of donation to implement the oral partition was a matter of choice on the part of the parties to the transaction, for there might have been other feasible ways under our laws by which Severina as the family matriarch could have implemented the delivery of Rufino's share just as effectively and efficiently. What was important was that the just intention behind the delivery ensured the validity of the implementation. Thus, whether or not Severina had the right to transfer the share was a matter too inconsequential for consideration by the Court. In this instance, substance, not form, was held to prevail by the CA. Besides, we, as a Court of law, justice and equity, cannot permit prolonged unfairness and uncertainty to be suffered by the respondents and the family of their deceased brother Juan as the ultimate heirs of Rufino. The avoidance of that unfairness and uncertainty was visibly the reason for the intervention of their uncle Luciano and aunt Maria as witnesses testifying against Venancio, their own brother, to favor the respondents on the question of the oral partition. Plainly, therefore, the CA committed no reversible error.

WHEREFORE, we deny the petition for review on *certiorari*, and affirm the decision promulgated on October 4, 2002.

Costs of suit to be paid by the petitioners.

SO ORDERED.

Carpio Morales (Chairperson), Abad,[*] *Villarama, Jr.,* and *Sereno, JJ.,* concur.

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[13] *Rollo,* p. 95 (bold emphasis supplied).

[*] In lieu of Justice A. D. Brion who is on leave per Special Order No. 940 dated February 7, 2011.