Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ROBERTO STA. ANA DY, JOSE ALAINEO DY, and ALTEZA A. DY for themselves and as heirs/substitutes of deceased-petitioner CHLOE ALINDOGAN DY,
Petitioners,

- versus -

BONIFACIO A. YU, SUSANA A. TAN, and SOLEDAD ARQUILLA substituting deceased-respondent ROSARIO ARQUILLA,
Respondents.

G.R. No. 202632

Present:

SERENO, *C.J.*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JUL 08 2015

x---x

DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated April 25, 2012 and the Resolution[3] dated July 18, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 92962, which affirmed the Decision[4] dated August 15, 2007 of the Regional Trial Court (RTC) of Naga City, Branch 26 (RTC-Branch 26) in Civil Case No.'98-4100 declaring, *inter alia*, respondents Bonifacio A. Yu (Bonifacio), Susana A. Tan (Susana), and Soledad Arquilla (Soledad), children and herein substitutes of the late Rosario Arquilla (Rosario), as the absolute owners of Lot No. 1519-A, a

---

[1] *Rollo*, pp. 13-73.

[2] Id. at 86-97. Penned by Associate Justice Japar B. Dimaampao with Associate Justices Michael P. Elbinias and Leoncia R. Dimagiba concurring.

[3] Id. at 129-130.

[4] Id. at 76-84. Penned by Judge Filemon B. Montenegro.

subdivided portion of Lot 1519,[5] a 522-square meter residential lot located at Zamora Street, Sabang, Naga City.

The Facts

In 1936, Adriano Dy Chiao (Dy Chiao), the original owner of Lot 1519, gave said lot to his wife Manuela Sta. Ana (Manuela) and their children, namely, Carlos, Lilia, and herein petitioner Roberto, all surnamed Dy (Dy children).[6] After the death of Dy Chiao and Manuela, the surviving children executed an Extrajudicial Settlement with Sale[7] dated October 4, 1982 to partition their parents' estate[8] which consisted only of Lot 1519 and Lot 1531. In the said document, both Carlos and Lilia sold their respective shares over the properties to Roberto.[9]

Sometime in 1984 and on the basis of the extrajudicial settlement, Roberto filed an application[10] for registration of Lot 1519 before the RTC of Naga City, Branch 23, docketed as Land Reg. Case No. RTC '83-4. In a **Decision dated October 14, 1986**, the RTC ruled in favor of Roberto and was issued **Original Certificate of Title (OCT) No. 511**[11] by the Office of the Register of Deeds for the City of Naga on **October 6, 1987**.[12]

Lot 1519-A, having been included in OCT No. 511, became the subject matter of three separate cases, which proceedings are detailed as follows:

First Case: Civil Case No. RTC '89-1782 (Recovery of Possession and Damages)

On **May 22, 1989**, **Roberto filed a complaint**[13] **for recovery of possession with damages against Susana and her husband, Sixto Tan** (Sixto), before the RTC of Naga City, Branch 24 (RTC-Branch 24), docketed as **Civil Case No. '89-1782 (Recovery Case)**.

He alleged, among others, that he is the registered owner of Lot 1519 under OCT. No. 511, which he acquired by virtue of the Extrajudicial Settlement with Sale executed between him and his siblings after the death

---

[5] See *rollo*, p. 19. See also records (Civil Case No. RTC '98-4100), Vol. I, p. 7.
[6] *Rollo*, pp. 76 and 87.
[7] Records (Civil Case No. RTC '98-4100), Vol. I, pp. 662-663.
[8] *Rollo*, p. 77.
[9] See id. at 87.
[10] Records show that the Amended Application was dated July 25, 1984. Records (Civil Case No. RTC '98-4100), Vol. I, pp. 615-617.
[11] Id. at 636-637, including dorsal portions.
[12] *Rollo*, pp. 18 and 77.
[13] Records (Civil Case No. RTC '89-1782), Folder No. 1, pp. 1-3.

of their parents Dy Chiao and Manuela. During the lifetime of Manuela, the latter, by mere accommodation, permitted Rosario to temporarily occupy a portion of Lot 1519 (which would turn out to be Lot 1519-A after the mother lot's subdivision[14]) covering approximately 80 square meters, as well as to construct a house thereon, with the understanding that she would vacate the premises upon demand.[15] Rosario took possession of the property, who was later succeeded by Susana and Sixto. However, despite repeated demands to vacate, Susana and Sixto refused to do so.[16] Thus, Roberto prayed that the possession of said premises be surrendered to him, and that he be paid reasonable rent and damages.[17]

The complaint against Sixto was eventually dropped in an Order[18] dated August 15, 1989, as he had already been separated from Susana for more than twenty (20) years.[19]

Susana, for her part,[20] denied that Manuela merely allowed them to temporarily occupy Lot 1519-A, claiming that said portion was ceded to her mother, Rosario, by Roberto's father, Dy Chiao, by way of donation in 1938. Since then, Rosario (and later, Susana) had been in open and continuous possession of the property in the concept of an owner, having built a residential house thereon[21] and even declared it for tax purposes in Rosario's name.[22] Susana added that the Extrajudicial Settlement with Sale executed by Roberto and his siblings was a nullity since they were not the compulsory heirs of the late Dy Chiao, being mere illegitimate children.[23] She further claimed that Roberto's application for registration, *i.e.*, OCT No. 511, which included Lot 1519-A, was secured through fraud and misrepresentation.[24]

Meanwhile, Rosario moved to intervene in the proceedings and in her Answer-in-Intervention,[25] claimed that the property occupied by her and Susana was segregated from a bigger parcel of land by way of Subdivision Plan survey[26] and identified as Lot 1519-A containing a total area of 174 square meters.[27] The said portion was donated to her by Dy Chiao in 1938 (as evidenced by a written document in Chinese[28]), and that she has since been in continuous possession of the same for over 50 years.[29] She also

---

14 *Rollo*, p.150.
15 Records (Civil Case No. RTC '89-1782), Folder No. 1, p. 1.
16 See *rollo*, p. 173.
17 Records (Civil Case No. RTC '89-1782), Folder No. 1, p. 3.
18 Id. at 37.
19 See Sixto's answer dated July 7, 1989; id. at 21-22.
20 See Susana's answer dated June 24, 1989; id. at 9-13.
21 Id. at 9.
22 Id. at 12.
23 Id. at 10.
24 Id. at 11.
25 Dated September 5, 1989. Id. at 41-45.
26 Records (Civil Case No. RTC '98-4100), Vol. I, p. 614.
27 Records (Civil Case No. RTC '89-1782), Folder No. 1, p. 41.
28 Records (Civil Case No. RTC '98-4100), Vol. I, p. 611. See English translation; id. at 612.
29 Records (Civil Case No. RTC '89-1782), Folder No. 1, pp. 41-42.

maintained that she owned the house constructed thereon and that she requested Susana to live with her.[30] Moreover, she averred that Roberto's title over Lot 1519 that included the Lot 1519-A was acquired through fraud, having intentionally concealed in his application for land registration her adverse possession thereof in the concept of an owner.[31] To further justify their claims, Susana and Rosario submitted to the RTC-Branch 24 a document entitled "Declaration of Ownership"[32] dated January 11, 1979, which Rosario executed over the subject portion, duly registered with the Registry of Property of Naga City.[33] Accordingly, they prayed for the dismissal of the Recovery Case, and that Rosario be declared the owner of Lot 1519-A, as well as the residential house constructed thereon.[34]

In a Decision[35] dated March 30, 1990, the RTC-Branch 24 dismissed Roberto's complaint for lack of merit and thereby declared Rosario as the lawful owner of Lot 1519-A. It held that while the donation of the subject portion by Dy Chiao in favor of Rosario was found to be void for failure to comply with the formalities provided under the Civil Code, the latter had, nonetheless, acquired ownership thereof by acquisitive prescription given her actual, public, and continued possession of Lot 1519-A in good faith and in the concept of an owner for more than ten (10) years.[36] The RTC-Branch 24 added that since the nature of Rosario's Answer-in-Intervention amounted to an action for reconveyance and the subject portion was found to have been fraudulently included and registered by Roberto, the latter was ordered to reconvey said portion to Rosario being its rightful owner and to further pay attorney's fees, as well as costs of suit.[37]

Unfazed, Roberto filed an appeal[38] to the CA, docketed as **CA-G.R. CV No. 27322**.[39]

Pending resolution of the appeal, Roberto and his wife, herein petitioner Chloe Dy (Chloe), executed a Deed of Donation of Real Property[40] dated June 28, 1994 (June 28, 1994 Deed of Donation) in favor of their children petitioners Jose Alaineo A. Dy (Jose) and Alteza A. Dy (Alteza) over Lot 1519. As a result, OCT No. 511 was cancelled and a new Transfer Certificate of Title (TCT) No. 26227[41] was issued in favor of Jose and Alteza.

---

30 Id. at 42.
31 Id. at 42-43.
32 Id. at 78.
33 Id. at 166.
34 Id. at 44.
35 Id. at 155-176. Penned by Judge Juan B. Llaguno.
36 Id. at 173.
37 Id. at 175-176.
38 See Order dated June 11, 1990; id. at 202.
39 *Rollo*, p. 208.
40 Records (Civil Case No. RTC '98-4100), Vol. I, pp. 618-619.
41 Id. at 638.

On July 22, 1998, the CA rendered a Decision[42] in CA-G.R. CV No. 27322, reversing the March 30, 1990 Decision. It ruled that Rosario's defenses attacking the validity of OCT No. 511 on the ground of fraud amounted to a prohibited collateral attack on Roberto's title. It pointed out that if fraud attended the issuance of said title, the proper remedy was to institute a proceeding mainly for that purpose.[43]

Rosario's motion for reconsideration was denied by the CA in a Resolution[44] dated April 28, 1999, prompting her to elevate the matter to the Court *via* petition for review, docketed as G.R. No. 138561.[45] However, the petition and her subsequent motion for reconsideration were both denied by the Court in Minute Resolutions dated June 30, 1999[46] and September 8, 1999,[47] respectively, thereby upholding the validity of OCT No. 511. The foregoing attained finality and consequently recorded in the Book of Entries of Judgment[48] of the Court.

Second Case: Civil Case No. RTC '98-4073 (Reconveyance with Damages)

Prior to the resolution of Rosario's motion for reconsideration in CA-G.R. CV No. 27322 (which is the appeal of the Recovery Case) or on August 3, 1998, **Rosario filed a complaint[49] for reconveyance with damages against Roberto** before the **RTC-Branch 26**, docketed as **Civil Case No. RTC '98-4073 (Reconveyance Case)**. Essentially, Rosario alleged the same matters as that contained in her Answer-in-Intervention filed in the Recovery Case, among others: (*a*) that Lot 1519-A was conveyed to her by its original owner Dy Chiao, by way of donation in 1938; (*b*) that she has since been in actual, public, and continued possession thereof in the concept of an owner; (*c*) that the Extrajudicial Settlement with Sale executed by Roberto and his siblings was a nullity since they were not the compulsory heirs of the late Dy Chiao; and (*d*) that OCT No. 511, which application included Lot 1519-A, was procured by Roberto through fraud and misrepresentation.[50]

---

[42] *Rollo*, pp. 171-178. Penned by Associate Justice Angelina Sandoval Gutierrez (now retired Supreme Court Justice) with Associate Justices B.A. Adefuin-de la Cruz and Presbitero J. Velasco, Jr. (now a member of the Court) concurring.
[43] Id. at 177.
[44] Id. at 271.
[45] Id. at 25.
[46] Records (Civil Case No. RTC '89-1782), Folder No. 1, p. 206.
[47] Records (Civil Case No. RTC '98-4100), Vol. I, p. 85.
[48] Records (Civil Case No. RTC '89-1782), Folder No. 1, p. 205.
[49] Records (Civil Case No. RTC '98-4073), pp. 1-4.
[50] Id. at 1-2.

In his Answer,[51] Roberto raised, *inter alia*, the affirmative defense of forum shopping, and further mentioned that the land covered by OCT No. 511 had already been transferred to another.[52] He also interposed a counter-claim for damages, purporting that Rosario had filed a baseless suit.[53]

In an Order[54] dated November 3, 1998, the RTC-Branch 26 dismissed the Reconveyance Case on the ground of *litis pendentia* and forum shopping since the appeal of the Recovery Case, which was still pending appeal before the CA, *i.e.*, CA-G.R. CV No. 27322, involved the same parties, subject matter, and relief sought.

On the other hand, the RTC-Branch 26 allowed[55] Roberto to present evidence on his counter-claim, prompting Rosario to appeal[56] said directive before the CA, docketed as **CA-G.R. CV No. 62480**, which, however, was subsequently declared abandoned and dismissed on February 24, 2000[57] for her failure to file the required appellant's brief.

Third Case: Civil Case No. RTC '98-4100
(Annulment and/or Rescission of Deed of Donation)

Meanwhile, on August 12, 1998, Rosario discovered that Lot 1519 together with Lot 1519-A had been transferred by Roberto to his children, Jose and Alteza, by way of donation, and that said lot was eventually registered in their names under TCT No. 26227.[58]

Thus, on September 4, 1998, **Rosario filed another complaint**,[59] this time for the **annulment and/or rescission of the June 28, 1994 Deed of Donation with damages** against **petitioners Roberto, Chloe, Jose, and Alteza (petitioners)** also before the **RTC-Branch 26**, docketed as **Civil Case No. RTC '98-4100 (Annulment Case)**. Rosario alleged that the donation of the property to Jose and Alteza was illegal, considering that Roberto's title, which application included Lot 1519-A, was fraudulently procured by him. Ultimately, Rosario prayed for the cancellation of TCT No. 26227 and the reconveyance of Lot 1519-A.[60]

---

[51] Id. at 12-14.
[52] Id. at 13.
[53] Id. at 14.
[54] Id. at 16. Penned by Judge Edgar S. Surtida.
[55] Id. at 23.
[56] Id. at 27.
[57] See Resolution penned by Associate Justice Eriberto U. Rosario, Jr. with Associate Justices Eubulo G. Verzola and Roberto A. Barrios concurring; id. at 32.
[58] Records (Civil Case No. RTC '98-4100), Vol. I, p. 4.
[59] Dated August 31, 1998. Id. at 3-6.
[60] Id. at 5.

Petitioners moved to dismiss[61] the complaint, raising, among others, the pendency of the Recovery Case which involved the same parties for the same cause, which motion Rosario opposed.[62]

In an Order[63] dated January 27, 2000, the RTC-Branch 26 dismissed the Annulment Case on the ground of *litis pendentia* and forum shopping, reasoning that CA-G.R. CV No. 62480, which stemmed from the Reconveyance Case, and involved the same parties, subject matter, and relief sought, was still pending before the CA.

However, on reconsideration,[64] the Annulment Case was reinstated in an Order[65] dated May 11, 2000, finding that the controversy principally involved annulment of donation, which is not identical with the Recovery and Reconveyance Cases.

Subsequently, Rosario moved to amend[66] her complaint in the Annulment Case to include the cancellation of TCT No. 26227, reconveyance, and quieting of title, which the RTC-Branch 26 granted in the Order[67] dated November 6, 2000.

In the interim, or on October 10, 2000, Rosario died and was substituted by her compulsory heirs, namely, respondents Bonifacio, Susana, and Soledad (respondents).[68]

The RTC Ruling (Annulment Case)

In a Decision[69] dated August 15, 2007, the RTC-Branch 26 ordered the annulment and/or rescission of the Deed of Donation, as well as the reconveyance of Lot 1519-A, in respondents' favor.

It upheld respondents' claim of ownership over Lot 1519-A not on account of the donation made by Dy Chiao to Rosario in 1938, which was found to be void for failure to comply with the formalities of the Civil Code, but by virtue of acquisitive prescription as it was shown that Rosario was in actual, open, public, and continuous possession of the same in the concept of an owner for more than thirty (30) years.[70] It likewise found actual fraud on

---

[61] See Motion to Dismiss dated November 27, 1998; id. at 44-45.
[62] See Opposition to Motion to Dismiss dated December 4, 1998; id. at 46-47.
[63] Id. at 90. Penned by Judge Designate Marino O. Bodiao, Sr.
[64] See Motion for Reconsideration dated February 16, 2000; id. at 106-108.
[65] Id. at 124-125.
[66] See Motion for Leave to Admit Amended Complaint dated October 2, 2000; id. at 138-139 and Amended Complaint dated October 2, 2000; id. at 140-143.
[67] Id. at 176. Penned by Judge Filemon B. Montenegro.
[68] *Rollo*, p. 40.
[69] Id. at 252-260. See also records (Civil Case No. RTC '98-4100), Vol I., pp. 699-707.
[70] *Rollo*, pp. 257-258.

the part of Roberto in concealing in his application for land registration the adverse possession of respondents in violation of Section 15 of Presidential Decree No. (PD) 1529.[71] Accordingly, petitioners were ordered to reconvey the said portion in favor of the respondents. In addition, petitioners were also ordered to pay respondents attorney's fees and costs of suit.[72]

Aggrieved, petitioners appealed[73] to the CA, docketed as CA-G.R. CV No. 92962, posturing that the case should have been dismissed on the grounds of forum-shopping aside from the fact that it is already barred by prior judgments or *res judicata* in the Recovery and Reconveyance Cases, and that acquisitive prescription should not obtain in respondents' favor as it was not duly raised.[74]

The CA Ruling (Annulment Case)

In a Decision[75] dated April 25, 2012, the CA affirmed the ruling of the RTC-Branch 26.

It held that there was no *res judicata* since the dismissal of the Reconveyance Case was not based on the merits, but upon the mere say-so of the court *a quo* that forum shopping existed.[76] Neither would the case be barred by the judgment in the Recovery Case since there it was ruled that the recourse of respondents to attack OCT No. 511 was to file an action for reconveyance, which precisely what Rosario in the Reconveyance Case did.[77] It also countenanced the RTC-Branch 24's discussion on acquisitive prescription, and noted that said discussion was used by RTC-Branch 24 only to point out that Rosario and Susana have been in open, actual, exclusive, and notorious possession of the land since 1938.[78] Furthermore, the CA ruled that actual fraud was committed by Roberto in his application for land registration and as such, did not have any right to transfer the disputed portion to his children.[79] Finally, it awarded attorney's fees in the amount of 75,000.00 in favor of respondents, reasoning that they were compelled to litigate to protect their interests.[80]

---

[71] Otherwise known as "The Property Registration Decree" (approved on June 11, 1978).

[72] *Rollo*, pp. 259-260.

[73] Records show that petitioners' appeal was initially denied in an Order dated September 7, 2007 (see records [Civil Case No. RTC '98-4100], Vol. I, p. 716) but on petition for *certiorari* to the CA (docketed as CA-G.R. SP No. 101434), the same was set aside and the appeal was given due course in a Decision dated March 12, 2008 (see records [Civil Case No. RTC '98-4100], Vol. II, pp. 977-985, penned by Associate Justice Martin S. Villarama, Jr. [now a member of the Court] with Associate Justices Noel G. Tijam and Sesinando E. Villon concurring.).

[74] See CA *rollo*, pp. 100 and 112.

[75] *Rollo*, pp. 86-97. Penned by Associate Justice Japar B. Dimaampao with Associate Justices Michael P. Elbinias and Leoncia R. Dimagiba concurring.

[76] Id. at 92.

[77] Id. at 94.

[78] Id.

[79] Id. at 94-96.

[80] Id. at 96.

Dissatisfied, petitioners moved for reconsideration[81] which was, however, denied in a Resolution[82] dated July 18, 2012; hence, this petition.

The Issues Before the Court

The essential issues for the Court's resolution are whether or not: (*a*) the CA erred in upholding the August 15, 2007 Decision of the RTC-Branch 26 in the Annulment Case, despite petitioners' claims of *res judicata* and forum shopping; and (*b*) attorney's fees were properly awarded.

The Court's Ruling

I. *Res Judicata.*

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment."[83] Paragraphs (b) and (c) of Section 47 of Rule 39 of the Rules of Court state the doctrine of *res judicata*:

> SEC. 47. *Effect of judgments or final orders*. – The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> x x x x
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
>
> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Based on the afore-cited provisions, *res judicata* comprehends two concepts: (1) bar by former judgment, and (2) conclusiveness of judgment.

---

[81] Dated May 9, 2012. Id. at 98-127.
[82] Id. at 129-130.
[83] *Spouses Torres v. Medina*, 629 Phil. 101, 111 (2010).

"For *res judicata* to serve as an absolute bar to a subsequent action, the following requisites must concur: (*a*) the former judgment or order must be final; (*b*) **the judgment or order must be on the merits**; (*c*) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (*d*) there must be between the first and second actions, identity of parties, of subject matter, and of causes of action. When there is no identity of causes of action, but only an identity of issues, there exists *res judicata* in the concept of conclusiveness of judgment. Although it does not have the same effect as *res judicata* in the form of bar by former judgment which prohibits the prosecution of a second action upon the same claim, demand, or cause of action, the rule on conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action."[84]

Material to this discourse is the doctrine's second element, which evokes that the *res judicata* doctrine applies only when a judgment on the merits is finally rendered on the first complaint. The term "merits" has been defined as a matter of substance in law, as distinguished from matter of form; it refers to the real or substantial grounds of action or defense as contrasted with some technical or collateral matter raised in the course of the suit.[85] Thus, a judgment on the merits presupposes that trial has been conducted, evidence presented, and issues sufficiently heard and passed upon. It is a judgment rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal technical point.[86] Stated differently, a judgment is "on the merits" when it amounts to a legal declaration of the respective rights and duties of the parties, based upon the disclosed facts and upon which the right of recovery depends, irrespective of formal, technical or dilatory objectives or contentions.[87]

As applied herein, the Court finds that the RTC-Branch 26's dismissal of the **Reconveyance Case** did not constitute a bar to the filing of the complaint in the Annulment Case. As correctly ruled by the CA, the RTC-Branch 26's said dismissal was merely based on the finding of forum shopping and the pendency of a similar action before the CA. Accordingly, it cannot be said that the dismissal was constitutive of a judgment "on the merits" of the case where the rights and liabilities of the parties are determined based on the disclosed facts, irrespective of formal, technical or dilatory objections.[88] In fact, no trial has been held in the Reconveyance case. For all of these reasons, the doctrine of *res judicata* would not obtain to bar the Annulment Case.

---

[84] *Rep. of the Phils. v. Mangotara*, 638 Phil. 353, 466 (2010); emphasis supplied.
[85] *Luzon Development Bank v. Conquilla*, 507 Phil. 509, 527 (2005).
[86] *Cruz v. CA*, 369 Phil. 161, 172 (1999).
[87] See *Sta. Lucia Realty and Development, Inc. v. Cabrigas,* 411 Phil. 369, 390-391 (2001).
[88] See *Philippine Postal Corporation v. CA*, G.R. No. 173590, December 9, 2013, 711 SCRA 632

Neither would *res judicata* apply with respect to the final judgment in the **Recovery Case** as it likewise cannot be considered as one rendered on the merits. Records show that the CA set aside the March 30, 1990 Decision in the Recovery Case based on the ruling that Roberto's certificate of title, *i.e.*, OCT No. 511, cannot be assailed by Rosario through intervention as the same amounted to a mere collateral attack prohibited under the Property Registration Decree.[89] It further laid down the proper action that Rosario may take in the light of her allegations. Based on the foregoing, it is evident that the RTC-Branch 24's disposition was essentially based on the impropriety of Rosario's recourse of assailing Roberto's title in a proceeding not directly meant for that purpose. In such regard, there was no adjudication of the rights and liabilities of the parties with respect to the causes of action and the subject matter of the case, *i.e.*, the ownership of Lot 1519-A. Hence, the dismissal of Rosario's intervention was effectively a dismissal without prejudice that left the parties free to litigate the matter in a subsequent action as though the dismissed action had not been commenced.[90] That said, the judgment in the Recovery Case did not bar the Annulment Case under the doctrine of *res judicata*.

II. Forum Shopping and the Exception to the Rule.

Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, *simultaneously* or *successively*, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.[91]

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the element *of litis pendentia* is present, or whether a final judgment in one case will amount to *res judicata* in another. Otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[92] If a situation of *litis pendentia* or *res judicata* arises by virtue of a party's commencement of a judicial remedy identical to one which already exists (either pending or already resolved), then a forum shopping infraction is committed.

---

[89] Presidential Decree No. 1529 entitled "AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES" (June 11, 1978).

[90] *Heirs of Enrique Diaz v. Vitara,* 529 Phil. 799, 824 (2006).

[91] *Asian Construction and Development Corporation v. Sumitomo Corporation*, G.R. Nos. 196723 and 196728, August 28, 2013, 704 SCRA 332, 342.

[92] *Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 428.

As opposed to *res judicata* which was already hereinabove explained, *litis pendentia* refers to a situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits.[93] The requirements of *litis pendentia* are: (*a*) the *identity of parties*, or at least such as representing the same interests in both actions; (*b*) the *identity of rights* asserted and relief prayed for, the relief being founded on the same facts; and (*c*) the *identity of the two cases* such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[94]

In this case, the Court agrees with petitioners that Rosario violated the rule on forum shopping when she filed the Annulment Case on September 4, 1998 during the pendency of the Reconveyance Case before the same branch of the RTC, *i.e.,* Branch 26.

To begin with, there exists an *identity of parties* in both the Reconveyance and Annulment cases; this, despite the fact that Chloe and the Dy children were not impleaded in the former case as contrarily claimed. It is well-settled that only substantial, and not absolute, identity of parties is required for *litis pendentia* to lie.[95] Thus, in *Chu v. Cunanan*,[96] it was ruled that:

> There is *identity of parties* when the parties in both actions are the same, or there is privity between them, or **they are successors-in-interest by title subsequent to the commencement of the action litigating for the same thing and under the same title and in the same capacity**.[97] (Emphasis supplied)

The Dy children fall under the third classification. To recount, the property subject of both the Annulment and Reconveyance Cases is Lot 1519-A, which is the disputed portion of Lot 1519 registered in the name of Roberto. Chloe was impleaded in the Annulment Case as Roberto's wife, while the Dy children were impleaded as **transferees** of the subject lot through a Deed of Donation executed by Roberto and Chloe. It is clear that the interest held by the Dy children in the subject property was only passed on to them by Roberto and Chloe. This interest over Lot 1519-A, being a part of Lot 1519, is the same as that of which Roberto claimed in the Reconveyance Case in his own capacity. Therefore, although Chloe and the Dy children were not parties to the Reconveyance Case, they have now assumed interest over Lot 1519-A as Roberto's successor. Hence, the first element of *litis pendentia* – *identity of parties* – exists in this case.

---

[93] *Spouses Marasigan v. Chevron, Phils., Inc.*, G.R. No.184015, February 8, 2012, 665 SCRA 499, 511.
[94] *Goodland Company, Inc. v. Asia United Bank*, G.R. Nos. 195546 and 195561, March 14, 2012, 668 SCRA 366, 391.
[95] See *Spouses Marasigan v. Chevron, Phils., Inc.*, supra note 93, at 512.
[96] G.R. No. 156185, September 12, 2011, 657 SCRA 379.
[97] Id. at 392.

Also, there exists an *identity of rights* asserted and reliefs prayed for in the two cases since the reliefs sought for are founded on the same facts. It bears emphasizing that the true test to determine the identity of causes of action is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions.[98] As aptly pointed out in the case of *Benedicto v. Lacson*:[99]

> The test to determine identity of causes of action is to ascertain **whether the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the forms or the nature of the two (2) actions are different from each other**. If the same facts or evidence would sustain both, the two (2) actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not.[100] (Emphasis supplied)

A reading of the complaints for the Reconveyance and Annulment Cases readily shows that the prayers for relief[101] in both are based on the same attendant facts. While it cannot be denied that the two cases differ in form and nature, their resolutions both hinge on the question of ownership of a portion of Lot 1519, *i.e.*, Lot 1519-A. The determination of the rightful ownership of the disputed lot will decide whether reconveyance of the same to Rosario's successors-in-interest is in order. At the same time, it will also determine whether the Deed of Donation executed by Roberto and Chloe in favor of their children should be annulled. It follows that the same facts and evidence are necessary for the resolution of both causes of action and consequently, a decision in one case will amount to *res judicata* in the other. Therefore, the second and third elements of *litis pendentia* – *identity of rights* and *identity of the two cases* – are present in this case.

With the elements of *litis pendentia* attendant hereto as caused by Rosario's institution of the Annulment Case while the Reconveyance Case was pending, the conclusion is that forum shopping was committed.

Under the last sentence of Section 5, Rule 7 of the Rules of Court, "[i]f the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions."

---

[98] See *Benedicto v. Lacson*, 634 Phil. 154, 176-177 (2010).
[99] Id.
[100] Id. at 176.
[101] See records (Civil Case No. RTC '98-4073), p. 3, for the Reconveyance Case; and records (Civil Case No. RTC '98-4100), Vol. I, p. 5, for the Annulment Case.

In *Catayas v. CA*,[102] the Court elucidated on the consequences of forum shopping, to wit:

> [W]here a litigant sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are pending, the defense of *litis pendencia* in one case is a bar to the others; and, a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the rest.[103]

While the Court is fully aware of the consequences of forum shopping, as well as its animating policy, which is to stamp out the abominable practice of trifling with the administration of justice,[104] the circumstances obtaining in the instant case nevertheless distinctly call for a deviation from the general rule in order to further the ends of substantial justice.

Instructive on this score is the recent case of *Ching v. Cheng*[105] (*Ching*) where the Court, in the interest of substantial justice and in view of the numerous procedural entanglements surrounding the resolution on the merits of the original controversy, resolved not to strictly apply the rule on forum shopping when it can be shown that: (1) the original case has been dismissed upon request of the plaintiff for valid procedural reasons; (2) **the only pending matter is a motion for reconsideration**; and (3) **there are valid procedural reasons that serve the goal of substantial justice for the fresh new case to proceed.**

A resort to the **third exception** is warranted for it cannot be denied that the resolution of the controversy involving the ownership of Lot 1519-A has long been mired in numerous technical quandaries, despite the clarity of Rosario's ownership over said lot which she had already acquired through acquisitive prescription, and now transferred to her heirs, *i.e.*, respondents, as will be heretofore explained.

As culled from the records, the first case, *i.e.*, the **Recovery Case**, was decided in Roberto's favor only because Rosario's claim over Lot 1519-A was coursed through a mere intervention and, hence, constituted an impermissible collateral attack on Roberto's certificate of title. Although said disposition did not prevent Rosario from filing the appropriate action against Roberto involving the same facts and cause of action arising therefrom, her subsequent **Reconveyance Case** was nonetheless dismissed due to the pendency of her motion for reconsideration in the Recovery Case, which again was a dismissal based on a procedural technicality and, in fact, may have been excused under *Ching*'s **second exception**, *i.e.*, "the only

---

[102] G.R. No. 166660, August 29, 2012, 679 SCRA 291.

[103] Id. at 296, citing *Prubankers Association v. Prudential Bank & Trust Company*, 361 Phil. 744, 755 (1999).

[104] *Government Service Insurance System v. Group Management Corporation*, 666 Phil. 277, 120 (2011).

[105] See G.R. No. 175507, October 8, 2014, 737 SCRA 610; emphases supplied.

pending matter is a motion for reconsideration."

Contrastingly, the **Annulment Case** – which was filed before the dismissal of the Reconveyance Case – was the only proceeding that underwent a full blown trial and a judgment on the merits rendered by the RTC-Branch 26 and affirmed by the CA. Affirming the RTC's ruling, which completely litigated and resolved the core issue of Lot 1519-A's ownership, the CA found that actual fraud was committed by Roberto in his application for land registration, thereby warranting the annulment of the property's donation to his children, Jose and Alteza. The CA also expressed no qualms regarding the RTC-Branch 24's finding that Rosario and Susana have been in open, actual, exclusive, and notorious possession of the land since 1938, thus agreeing that they already acquired ownership over the same. In fact, after a judicious review of this case, the Court has itself reached the same conclusions, albeit qualify that the nullity of the donation to the Dy children should only be limited to Lot 1519-A, and not to Lot 1519's entirety. The Court elaborates.

While there is no gainsaying that the first deed of donation executed by Dy Chiao in Rosario's favor is void for failure to comply with the formalities under the old and new Civil Code, it has not been disputed that Rosario was in actual, open, public, and continuous possession of Lot 1519-A under a claim of ownership **since 1938**. Section 41 of the Code of Civil Procedure[106] provides for the applicable prescriptive period to vest ownership over the subject portion, considering that Article 1116 of the New Civil Code provides that "[p]rescription already running before the effectivity of this Code [(August 30, 1950)] shall be governed by laws previously in force x x x." Section 41 of the Code of Civil Procedure states:

> SEC. 41. *Title to land by prescription.* – **Ten years** actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the persons under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants. x x x.

Based on the foregoing, it is then clear that Rosario's possession of Lot 1519-A, in the character above-cited, and which ran for more than the above-stated number of years, had already ripened into ownership at the time Roberto filed his complaint in the Recovery Case in **May 22, 1989**, as well as at the time the Decision ordering the issuance of OCT No. 511 was

---

[106] Act No. 190 entitled "AN ACT PROVIDING A CODE OF PROCEDURE IN CIVIL ACTIONS AND SPECIAL PROCEEDINGS IN THE PHILIPPINE ISLANDS" enacted by the First Philippine Commission on August 7, 1901 (October 1, 1901).

rendered in **October 14, 1986**, and necessarily the issuance of the OCT itself in **October 6, 1987**.[107] Note that even under the New Civil Code, Rosario's possession of the said portion still ripened into ownership since she has been in uninterrupted possession thereof for more than thirty (30) years, even in the absence of good faith and just title.[108] Hence, there is no denying that Rosario and now, her heirs, *i.e.*, herein respondents, are the rightful owners of Lot 1519-A by virtue of acquisitive prescription.

That the issue on acquisitive prescription was not raised in these proceedings – as petitioners would like this Court to believe – is actually belied by the pleadings on record. To back track, acquisitive prescription was the basis behind the RTC-Branch 24's very first ruling in the Recovery Case declaring Rosario to be the lawful owner of Lot 1519-A. This same ruling was then explicitly incorporated as an integral part of Rosario's Complaint in the Annulment Case,[109] for which she had claimed to be the absolute owner of the same property.[110] At this stage, Roberto had already been apprised of the issue of prescription, as it related to Rosario's averment of her continued possession of Lot 1519-A, which was already a previously litigated issue between the same parties. To add, Rosario similarly stated in her pre-trial brief in the Annulment case that from the time the property was donated to her by Dy Chiao in 1938, she took actual physical possession over the same in the concept of an owner and, even constructed a residential house thereon where she was residing until her death on October 10, 2000.[111] The Pre-Trial Order[112] dated June 17, 2003 of the Annulment Case, in fact, reflected Rosario's reliance on the RTC-Branch 24's ruling in Civil Case No. RTC '89-1782,[113] which, in turn, related to the stipulated issue of whether or not plaintiffs, *i.e.*, Rosario, *et al.*, are the lawful and absolute owners of the subject property.[114] Jurisdiction over the issues of the case is determined and conferred by the pleadings filed in the case by the parties, or by their agreement in a pre-trial order or stipulation, or, at times by their implied consent as by the failure of a party to object to evidence on an issue not covered by the pleadings, as provided in Section 5, Rule 10 of the Rules of Civil Procedure.[115] Here, there is no dispute that the issue of possession as it relates to acquisitive prescription was raised through the facts above-stated, which then allowed the RTC-Branch 26 to acquire jurisdiction over said issue in the Annulment Case now before this Court on appeal. More so, the rule proscribing the Court from ruling on issues not raised hinges on considerations of due process and fairness.[116] But again, having been well-aware that Rosario was relying on the RTC-Branch 24's ruling in the

---

[107] Records (Civil Case No. RTC '98-4100), Vol. I, pp. 636-637, including dorsal portions.
[108] *Calicdan v. Cendaña*, 466 Phil. 894, 902 (2004).
[109] Records (Civil Case No. RTC '98-4100), Vol. I, p. 4.
[110] Id. at 3.
[111] See Pre-Trial Brief for Plaintiffs filed on March 14, 2001; id. at 200-201.
[112] Id. at 252-261. Penned by Judge Filemon B. Montenegro.
[113] Id. at 252.
[114] Id. at 260.
[115] *De Joya v. Marquez,* 516 Phil. 717, 723 (2006).
[116] "[F]airness and due process dictate that evidence and issues not presented below cannot be taken up for the first time on appeal." (See *Spouses Dycoco v. CA*, G.R. No. 147257, July 31, 2013.)

Recovery Case as basis for her alleged ownership over the property, and considering too her repetitive statements that she had been in actual possession of Lot 1519-A since 1938 in the concept of an owner, petitioners cannot pretend that their due process rights have been violated by the RTC-Branch 26 – as upheld by the CA and now, by this Court – in taking cognizance of the issue of acquisitive prescription.

Besides, even if one were to discount the foregoing, it also appears that Roberto's failure to disclose Rosario's possession of the disputed lot in his application for registration of Lot 1519 as required under Section 15 of PD 1529,[117] amounted to actual fraud in the procurement of his title[118] that warranted reconveyance of the subject portion back to Rosario and her successors-in-interest, the herein respondents. Indeed, this Court has ruled that:

> [C]oncealment and misrepresentation in the application that no other persons had any claim or interest in the said land, constitute specific allegations of extrinsic fraud supported by competent proof. Failure and intentional omission of the applicants to disclose the fact of actual physical possession by another person constitutes an allegation of actual fraud. Likewise, it is fraud to knowingly omit or conceal a fact, upon which benefit is obtained to the prejudice of a third person.[119]

It is well to point out that an action for reconveyance – as in Roberto's Recovery Case – is a legal and equitable remedy granted to the rightful land owner whose land was wrongfully or erroneously registered in the name of another, to compel the registered owner to transfer or reconvey the land to him.[120] By fraudulently including in his application for the registration of title over Lot 1519 the disputed portion, *i.e.*, Lot 1519-A, in his name, Roberto holds the title to said portion in trust for the benefit of Rosario as the true owner.[121] Indeed, registration does not vest title but merely confirms or records title already existing and vested.[122] Thus, not being the owner of the subject portion, Roberto could not have transferred ownership thereof to his children, petitioners Jose and Alteza. As succinctly held in *Spouses Lopez v. Spouses Lopez*:[123]

> As a logical consequence, petitioners did not become owners of the

---

[117] SEC. 15. *Form and contents.*—The application for land registration shall be in writing, signed by the applicant or the person duly authorized in his behalf, and sworn to before any officer authorized to administer oaths for the province or city where the application was actually signed. If there is more than one applicant, the application shall be signed and sworn to by and in behalf of each. The application shall contain a description of the land and shall state the citizenship and civil status of the applicant, whether single or married, and, if married the name of the wife or husband, and, if the marriage has been legally dissolved, when and how the marriage relation terminated. **It shall also state the full names and addresses of all occupants of the land and those of the adjoining owners, if known, and, if not known, it shall state the extent of the search made to find them.** (Emphasis supplied)

[118] See *Heirs of Roxas v. CA*, 337 Phil. 41, 53 (1997).

[119] *Alba vda. de Raz v. CA*, 372 Phil. 710, 738 (1999), citing *Heirs of Roxas v. CA*, supra at 52.

[120] *Leoveras v. Valdez*, 667 Phil. 190, 199-200 (2011).

[121] See CIVIL CODE OF THE PHILIPPINES, Article 1456.

[122] See *Heirs of Ermac v. Heirs of Ermac*, 451 Phil. 368, 377 (2003).

[123] 620 Phil. 368 (2009).

> subject property even after a TCT had been issued in their names. After all, registration does not vest title. Certificates of title merely confirm or record title already existing and vested. They cannot be used to protect a usurper from the true owner, nor can they be used as a shield for the commission of fraud, or to permit one to enrich oneself at the expense of others. Hence, reconveyance of the subject property is warranted.[124]

Since Rosario's claim of ownership was limited only to Lot 1519-A and not the entire Lot 1519, the donation remains to be valid insofar as it involves that portion rightfully belonging to the Dy children. Verily, it is a well-settled rule that a donor cannot lawfully convey what is not his property,[125] as Lot 1519-A in this case.

With all these considerations in mind, the Court has come to the conclusion that it cannot precipitately order the summary dismissal of the Annulment Case and set aside the judgments therein rendered in view of a mere forum shopping infraction as afore-discussed. To act otherwise would be tantamount to a blatant disregard of substantial justice in the name of unwarranted technical adherence. Case law dictates that technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[126] As aptly pointed out in *Barcelona v. CA*,[127] the rule on forum shopping should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure – which is to achieve substantial justice as expeditiously as possible. After all, the dispensation of justice is the core reason for the existence of courts.[128] Accordingly, the partial nullification of the June 28, 1994 Deed of Donation between spouses-petitioners Roberto and Chloe and petitioners Jose and Alteza insofar as it concerns Lot 1519-A owned by Rosario and, now respondents, as her heirs, is in order.

III. Attorney's Fees

On a final point, the Court, prompted as it is by petitioners' insinuation, finds it apt to delete the attorney's fees awarded in favor of respondents given that the trial court failed to explain its findings of facts and law to justify the award.

It bears to stress that power of the court to award attorney's fees demands factual, legal, and equitable justification, without which the award is a conclusion without a premise, its basis being improperly left to

---

[124] Id. at 376.
[125] *Miranda v. CA*, 258 Phil. 94, 98 (1989).
[126] *Benedicto v. Lacson*, supra note 98, at 174.
[127] 458 Phil 626, 641 (2003).
[128] *Bigornia v. CA*, 600 Phil. 693, 698-699 (2009).

speculation and conjecture.[129] In fact, such failure or oversight of the trial court cannot even be supplanted by the CA. As elucidated in the case of *S.C. Megaworld Construction and Development Corporation v. Parada*:[130]

> Article 2208 of the New Civil Code enumerates the instances where such may be awarded and, in all cases, it must be reasonable, just and equitable if the same were to be granted. Attorney's fees as part of damages are not meant to enrich the winning party at the expense of the losing litigant. They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. The award of attorney's fees is the exception rather than the general rule. As such, it is necessary for the trial court to make findings of facts and law that would bring the case within the exception and justify the grant of such award. The matter of attorney's fees cannot be mentioned only in the dispositive portion of the decision. They must be clearly explained and justified by the trial court in the body of its decision. On appeal, the CA is precluded from supplementing the bases for awarding attorney's fees when the trial court failed to discuss in its Decision the reasons for awarding the same. Consequently, the award of attorney's fees should be deleted. [131]

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated April 25, 2012 and the Resolution dated July 18, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 92962 are hereby **AFFIRMED** with the following **MODIFICATIONS**:

(*a*) The Deed of Donation dated June 28, 1994 executed by spouses Roberto Sta. Ana Dy and Chloe Dy in favor of Jose Alaineo A. Dy and Alteza A. Dy over Lot 1519 is declared **NULL** and **VOID** **but only with respect to that portion identified as Lot 1519-A** which had been wrongfully included in Original Certificate of Title (OCT) No. 511;

(*b*) The Office of the Register of Deeds for Naga City is **ORDERED** to **CANCEL** Transfer Certificate of Title No. 26227 registered in the names of Jose Alaineo A. Dy and Alteza A. Dy for the purpose of **AMENDING** it, as well as OCT No. 511 to **EXCLUDE** Lot 1519-A which had been wrongfully included therein; and

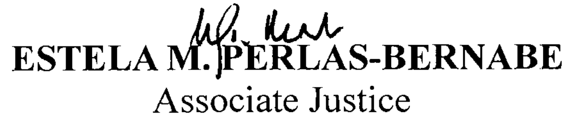
(*c*) The award of attorney's fees in favor of Bonifacio A. Yu, Susana A. Tan, and Soledad Arquilla is **DELETED**.

The rest of the CA Decision stands.

---

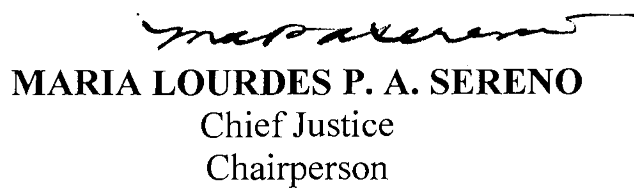
[129] *Buñing v. Santos*, 533 Phil. 610, 617 (2006).
[130] G.R. No. 183804, September 11, 2013, 705 SCRA 584.
[131] Id. at 611-612, citing *Frias v. San Diego-Sison*, 549 Phil. 49, 63-65 (2007).

SO ORDERED.



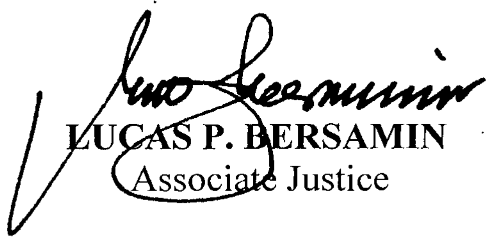
ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

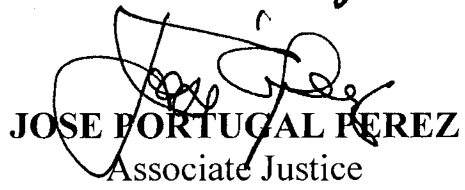


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice



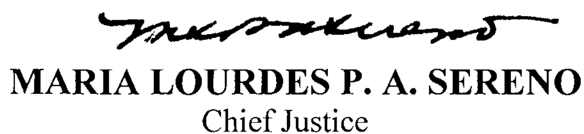
LUCAS P. BERSAMIN
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice