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Wilfredo V. Lapitan
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Division Clerk of Court
Third Division

Republic of the Philippines
Supreme Court
Manila

JUN 27 2016

THIRD DIVISION

**HEIRS OF THE LATE GERRY*
ECARMA, NAMELY: AVELINA
SUIZA-ECARMA, DENNIS ECARMA,
JERRY LYN ECARMA PEÑA,
ANTONIO ECARMA and NATALIA
ECARMA SANGALANG,**
Petitioners,

G.R. No. 193374

Present:

VELASCO, JR., J.,
Chairperson,
PERALTA,**
PEREZ,
REYES, and
JARDELEZA, JJ. ***

- versus -

**COURT OF APPEALS and
RENATO A. ECARMA,**
Respondents.

Promulgated:

June 8, 2016

Wilfredo V. Lapitan

X ----- X

DECISION

PEREZ, J.:

We here have another case of heirs quarrelling over inherited properties, some of them refusing their partition.

Before us is a Petition for *Certiorari*¹ under Rule 65 of the Rules of Court assailing the twin Resolutions² of the Court of Appeals (CA) in CA-G.R. CV No. 92375 for having been issued with grave abuse of discretion amounting to lack of or in excess of jurisdiction. The appellate court dismissed outright the appeal of petitioners, heirs of Gerry Ecarma for a number of procedural defects, including failure to comply with Section 13,

* Spelled as Jerry Ecarma in some of the pleadings and in the body of this Decision.

** On Official Leave.

*** On Wellness Leave.

¹ *Rollo*, pp. 3-18.

² Id. at 19-25; dated 31 March 2010 and 22 June 2010, respectively; penned by Associate Justice Amy C. Lazaro-Javier with Justices Mario L. Guariña III and Sesonando E. Villon, concurring.

Rule 44 of the Rules of Court on the contents of their appellants' brief. Petitioners sought to appeal the two (2) Orders³ of the Regional Trial Court (RTC), Branch 220, Quezon City in SP PROC. No. Q-90-6332 which approved the Project of Partition proposed by respondent Renato Ecarma, administrator in the intestate proceedings to settle the estate of decedent Arminda *vda.* de Ecarma covering four (4) properties.

Because of the outright dismissal of their appeal before the CA, we have a dearth of facts we had to glean from the bare pleadings of petitioners.

The decedent Arminda was married to Natalio Ecarma who predeceased her on 9 May 1970. During their marriage, they acquired several properties and begat seven (7) children: (1) Angelita; (2) Rodolfo; (3) respondent Renato; (4) Maria Arminda; (5) Gerry Anthony Ecarma, husband and father respectively of herein petitioners Avelina Suiza Ecarma, Dennis Ecarma, Gerry Lyn Ecarma Pena, Antonio Ecarma and Natalia Ecarma Sangalang (collectively petitioners and/or heirs of Gerry Ecarma); (6) Fe Shirley; and (7) Rolando.

After Natalio's death, his heirs executed an Extrajudicial Settlement of Estate⁴ covering four (4) properties designated as Kitanlad, Cuyapo and Lala (consisting of two separate lots), half of which was specifically noted as pertaining to herein decedent Arminda's share in their property regime of conjugal partnership of gains. In the same Extrajudicial Settlement of Estate signed by all the heirs, the four (4) properties were partitioned among them: Arminda was assigned an undivided two-ninth's (2/9's) proportion and all their children in equal proportion of one-ninth (1/9) each. Significantly, despite the partition agreement, no physical division of the properties was effected, Natalio's heirs remaining in co-ownership (*pro indiviso*) even at the time of their mother's, decedent Arminda's, death on 17 April 1983.

On 18 May 1990, after his petition for the probate of Arminda's will was dismissed by the RTC, Branch 86, Quezon City, respondent Renato filed the subject intestate proceedings before the RTC, Branch 220.

On 30 January 1991, Renato was appointed Special Administrator by the RTC, Branch 220.

³ Both the *Rollo* and the CA *rollo* do not include a copy of the Regional Trial Court, Branch 220, Quezon City's Order of Partition dated 28 July 2005. Moreover, even herein petitioners' Appellants' Brief filed with the Court of Appeals fail to attach said Order. We simply cited the Order from herein petitioners' attachment of their Record on Appeal to the Petition for *Certiorari* at bench.

⁴ *Rollo*, pp. 58-61.



After what appears to be continuing conflict between Gerry Ecarma and the other heirs of Natalio and Arminda over actual division of their inherited properties, by 9 March 2005, Renato unequivocally moved to terminate their co-ownership: he filed a Project of Partition of the Kitanlad Property, alleging that:

1. This probate case has been left unresolved for 16 years now because of the incessant opposition by Oppositor and legal heir, Jerry Ecarma, the only legal heir who stays in Kitanlad, for reasons they had ventilated already in this Court in their previous pleadings. xxx

2. This Court has ordered the sale of the assets of the estate in an earlier order, but efforts to sell the Kitanlad property, the most contentious issue, by the Regular Administrator, [Renato Ecarma], has been thwarted by Jerry for reasons already known by this Court. xxx

3. The law frowns on the indivision of property held in common indefinitely. Furthermore, the legal heirs, except Jerry and perhaps the Oppositor, have expressed their desire to have the Kitanlad property partitioned. The fairest legal way to partition the property without any legal heir getting a share bigger than the others is to sell the property and divide the net proceeds, but Jerry's objection to its sale at a price which will attract interested buyers has rendered nugatory this option. The next best option, with no legal heir getting an undue advantage over the others, is to divide the property longitudinally from the frontage down to the other end in seven equal parts. Although this option will render the improvements unusable, it must be realised that these improvements are now fully depreciated. The duplex house is 57 years old, while the apartments are now 40 years old. All seven parts will be equal to each other in all their aspects: the measurements, length and width, will be the same, each part will have a frontage to the street. Each legal heir will have complete control over his/her portion. He/she may keep it if he/she wishes, or sell it if he/she desires. Allocation of these seven parts will be by lot.⁵

On 7 April 2005, Renato filed another motion, Omnibus Motion: Project of Partition of the Lala and Cuyapo Properties.

Finding the motions impressed with merit, the RTC, Branch 220, on 28 July 2005,⁶ issued a lengthy Order approving the proposed partition of the properties:

1. That the property be divided longitudinally from the frontage down to the other end in seven (7) equal parts. The shares of Jerry Ecarma and Rodolfo Ecarma shall be contiguous to each other on

⁵ Id. at 33-34.

⁶ The Petition erroneously states the date of the Order of Partition as 28 July 2006.

one side of the property nearest the main entrance, while the shares of the other five (5) legal heirs shall comprise the balance thereof. Following this general guideline, Jerry Ecarma and Rodolfo Ecarma shall determine among themselves their respective share. Similarly, the five (5) remaining legal heirs shall determine among themselves by draw of lot their respective shares. They shall submit to the Petitioner/Regular Administrator their choice of their specific shares not later [than] fifteen (15) days upon receipt of this Order. Should they fail to comply, the Regular Administrator is hereby directed to assign the respective share of each legal heir.

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II. Cuyapo Property

1. The Cuyapo farm lot shall be partitioned into seven (7) equal parts substantially in accordance with Annex "A" of the "Partial Project of Partition of Estate" dated 22 June 1992. Lots 1 and 2 will be allocated to Jerry Ecarma and Rodolfo Ecarma, so that the remaining balance will remain contiguous to one another. The remaining balance, as prayed for, can now be donated by the five (5) other legal heirs to the Armed Forces of the Philippines (AFP). This manner of partition will effectuate the desire of the five (5) remaining legal heirs to donate their share to the AFP.
2. The Regular Administrator is hereby directed to cause the partition and titling of the property.
3. Expenses for the partition and titling of the property shall be for the personal account of each legal heir, which shall be deducted from their share of the estate.

III. Lala Property

1. The Lala Property consisting of two (2) farm lots contiguous to each other, one consisting of more than six (6) hectares and the other more than 13 hectares shall each be partitioned into seven (7) equal parts substantially in accordance with Annex "B" of the aforesaid "Partial Project of Partition of Estate" dated 22 June 1992, as submitted by the Regular Administrator. Lots 6 and 7 of the six-hectare lot will while Lots 1 and 2 of the 13-hectare lot will be likewise allocated to Jerry Ecarma and each other. The remaining balance can now be donated by the five (5) other legal heirs to the AFP. This manner of partition will effectuate the desire of the five (5) remaining legal heirs to donate their shares to the AFP.⁷

Gerry Ecarma filed a motion for reconsideration on the following grounds: (1) the project of partition of the Kitanlad properties is not feasible,

⁷ CA rollo, pp. 9-10.

impractical and detrimental to the interests of the heirs of the Spouses Natalio and Arminda Ecarma; (2) the planned partition is not in accordance with the wishes of the decedents, the spouses Natalio and Arminda; and (3) the RTC, Branch 220, as the court settling the intestate estate of Arminda, has no jurisdiction over part of the subject properties which do not form part of Arminda's estate, such undivided share already pertaining to the other heirs as part of their inheritance from their deceased father, Natalio.

The other oppositor to the partition, Rodolfo Ecarma, likewise filed a Motion for Reconsideration of the 28 July 2005 Order of Partition on the main ground, akin to the 3rd ground raised by Gerry in his motion, that the RTC, Branch 220 acted without or in excess of jurisdiction by ordering the partition of the subject properties, portions of which do not belong to the intestate estate of Arminda.

After Renato filed his Comment/Opposition to the two motions for reconsideration, the RTC, Branch 220, finding no cogent reason to reverse or modify its prior order of partition, issued an Order denying Gerry's and Renato's motions.

Thereafter, Gerry filed both a Notice of Appeal and a Record on Appeal before the RTC, Branch 220 to bring up on appeal to the CA the trial court's partition order.

It appears that sometime before 4 May 2009, counsel of Gerry Ecarma filed a Notice of Death of Gerry Ecarma before the appellate court and was subsequently required by the latter to submit a certified true copy of Gerry Ecarma's death certificate within a prescribed period.⁸

Meanwhile, herein petitioners, presumably in substitution of the deceased Gerry Ecarma, filed their Appellants' Brief pursuant to the order of the appellate court. From this incident of herein petitioners' Appellants' Brief before the CA, and its contents, the controversy has reached us.

Renato forthwith filed a Motion to Dismiss Appellants' Brief, to which the CA required a comment from petitioner.⁹

The Resolutions of the CA finding insufficient herein petitioners' Appellants' Brief are now before us. The CA ruled that:

⁸ Id. at 43.

⁹ Id. at 79.



The Court xxx finds [petitioners'] submission [that their brief substantially complied with the requirements under Section 13, Rule 44 of the Rules of Court] to be utterly devoid of merit. Indeed, [petitioners'] brief does not contain a subject index, table of cases and authorities, statement of case, statement of facts and page references to the record in violation of Section 13, Rule 44 of the 1997 Rules of Civil Procedure xxx.

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Non-compliance with these requirements warrants the dismissal of appeal under Section 1(f), Rule 50.

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[Petitioners] could have easily cured these multiple defects in the same manner their counsel did with his MCLE compliance and SPA. But, they opted not to. Instead, they stubbornly insist, albeit erroneously, that their appellants' brief substantially complied with the requirements. They failed, however, to point out with specificity what part or parts of their brief contain their so-called substantial compliance. Surely, the Court cannot countenance [petitioners'] careless attitude, if not irreverent disregard, of the procedural rules intended precisely to ensure orderly administration of justice.

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Accordingly, the appeal is DISMISSED.¹⁰

Petitioners moved for reconsideration of the dismissal of their appeal, attaching a Supplemental Appellants' Brief¹¹ to their motion. However, the appellate court again deemed the Supplemental Appellants' Brief to be unsatisfactory and non-compliant with the rules and denied petitioners' motion for reconsideration:

Notably, the new appeal brief, just like the original one, does not contain reference to the relevant portions of the record pertaining to its statement of facts. Further, the subject index does not contain a summary of arguments and reference to the specific pages of the brief, and the supporting laws and authorities.¹²

From that denial, petitioners filed this petition for *certiorari* under Rule 65 of the Rules of Court almost sixty (60) days from the time they received the appellate court's denial of their motion for reconsideration.

¹⁰ *Rollo*, pp. 20-22.

¹¹ *Id.* at 97-98; Annex "N" of the Petition.

¹² *Id.* at 25.

At the outset, we see through petitioners' obvious ploy to avoid the necessary consequence of their failure to file, within the required fifteen-day period, the correct remedy of appeal by *certiorari* under Rule 45¹³ of the Rules of Court, from the assailed ruling of the CA. On this score alone, the present petition should have been dismissed outright.

Petitioners' simple allegation of grave abuse of discretion in the CA's dismissal of their appeal cannot substitute for the correct remedy of a lost appeal.¹⁴

Notably, as they have stubbornly done so in the appellate court, petitioners urge us to reverse these adverse rulings of the appellate court without abiding by the rules therefor.

First. An appeal by *certiorari* under Rule 45 of the Rules of Court is different from a petition for *certiorari* under Rule 65 thereof. A special civil action for *certiorari* may be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.¹⁵ Simply imputing in a petition that the ruling sought to be reviewed is tainted with grave abuse of discretion does not magically transform a petition into a special civil action for *certiorari*.

¹³ **SEC. 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.

SEC. 2. Time for filing; extension. — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment.
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¹⁴ *Sps. Saguan v. PBC*, 563 Phil. 696 (2007).

¹⁵ RULES OF COURT, Rule 65, Sec. 1.

Certiorari, Prohibition and Mandamus

Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

The appellate court's outright dismissal of therein appellants' appeal was a final order which left it with nothing more to do to resolve the case.¹⁶ That disposition is a final and executory order, appealable to, and may be questioned before, this Court by persons aggrieved thereby, such as herein petitioners, *via* Rule 45.

Moreover, the dismissal of therein appellants', herein petitioners', appeal before the CA is expressly allowed by Section 1(f),¹⁷ Rule 50 of the Rules of Court. The appellate court, therefore, cannot be charged with grave abuse of discretion as there is no showing that, in the exercise of its judgment, it acted in a capricious, whimsical, arbitrary or despotic manner tantamount to lack of jurisdiction. Absent grave abuse of discretion, petitioners should have filed a petition for review on *certiorari* under Rule 45 instead of a petition for *certiorari* under Rule 65. The soundness of the ruling dismissing petitioners' appeal before the appellate court is a matter of judgment with respect to which the remedy of the party aggrieved is a Rule 45 petition. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as grave abuse of discretion. Errors of judgment are correctible by appeal, while those of jurisdiction are reviewable by *certiorari*.¹⁸

Even if we were to take a liberal stance and consider this present petition as that filed under Rule 45 of the Rules of Court raising grave error in the appellate courts' ruling, such cannot cure the unavoidable consequence of dismissal for failure to file an appeal within the reglementary fifteen-day period provided under Section 2¹⁹ of Rule 45.

Second. The CA correctly dismissed herein petitioners' Appellants' Brief for failure to comply with the content requirement specified under Section 13²⁰ of Rule 44.

¹⁶ *Raymundo v. vda. de Suarez, et al.*, 593 Phil. 28, 48 (2008).

¹⁷ **Section 1.** *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

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- (f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in section 13, paragraphs (a), (c), (d) and (f) of Rule 44;

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¹⁸ *Supra* note 15.

¹⁹ *Id.* note 13.

²⁰ **Section 13.** *Contents of appellant's brief.* — The appellant's brief shall contain, in the order herein indicated, the following:

- (a) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;

Petitioners are adamant, however, that they complied with the required content specified in the rules even attaching a sample copy of an Appellant's Brief found in Guevarra's Legal Forms which was purportedly their guideline in revising and submitting their Supplemental Appellants' Brief to the appellate court.²¹

We assiduously went through the Supplemental Appellants' Brief of herein petitioners and as the CA have, we likewise find it wanting, a lame attempt at compliance through superficial changes, devoid of substance.²²

In fact, the Supplemental Appellants' Brief could only cite Section 1, Rule 74 of the Rules of Court as its sole legal authority in questioning the RTC, Branch 220's Order of Partition.²³ Petitioners, even in their present petition before us, are unable to grasp the necessity of supporting and anchoring their arguments with legal basis. They cannot simply cite one section of one rule without expounding thereon.

In the recent case of *Lui Enterprises, Inc., v. Zuellig Pharma Corporation, et al.*,²⁴ we reiterated the faithful adherence to the rules on the specific contents of an Appellant's Brief as provided in Section 14, Rule 44 of the Rules of Court:

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- (b) An assignment of errors intended to be urged, which errors shall be separately, distinctly and concisely stated without repetition and numbered consecutively;
 - (c) Under the heading "Statement of the Case," a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters necessary to an understanding of the nature of the controversy with page references to the record;
 - (d) Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, with page references to the record;
 - (e) A clear and concise statement of the issues of fact or law to be submitted, to the court for its judgment;
 - (f) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found;
 - (g) Under the heading "Relief," a specification of the order or judgment which the appellant seeks; and
 - (h) In cases not brought up by record on appeal, the appellant's brief shall contain, as an appendix, a copy of the judgment or final order appealed from.

²¹ Supra note 11.

²² *De Liano v. Court of Appeals*, 421 Phil.1033 (2001).

²³ CA rollo, pp. 145 and 154.

²⁴ G.R. No. 193494, March 12, 2014, 719 SCRA 88.

Lui Enterprises did not comply with the rules on the contents of the appellant's brief

Under Rule 50, Section 1, paragraph (f) of the 1997 Rules of Civil Procedure, the Court of Appeals may, on its own motion or that of the appellee, dismiss an appeal should the appellant's brief lack specific requirements under Rule 44, Section 13, paragraphs (a), (c), (d), and (f):

Section 1. *Grounds for dismissal of appeal.* – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

xxxx

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 13, paragraphs (a), (c), (d), and (f) of Rule 44[.]

These requirements are the subject index of the matter in brief, page references to the record, and a table of cases alphabetically arranged and with textbooks and statutes cited:

Section 13. *Contents of the appellant's brief.* – The appellant's brief shall contain, in the order herein indicated, the following:

(a) A subject index of the matter in brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;

xxxx

(c) Under the heading "Statement of the Case," a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the controversy, with page references to the record;

(d) Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating

thereto in sufficient detail to make it clearly intelligible, with page references to the record;

xxxx

(f) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found;

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Lui Enterprises' appellant's brief lacked a subject index, page references to the record, and table of cases, textbooks and statutes cited. Under Rule 50, Section 1 of the 1997 Rules of Civil Procedure, the Court of Appeals correctly dismissed Lui Enterprises' appeal.

Except for cases provided in the Constitution, appeal is a "purely statutory right." The right to appeal "must be exercised in the manner prescribed by law" and requires strict compliance with the Rules of Court on appeals. Otherwise, the appeal shall be dismissed, and its dismissal shall not be a deprivation of due process of law.

In *Mendoza v. United Coconut Planters Bank, Inc.*, this court sustained the Court of Appeals' dismissal of Mendoza's appeal. Mendoza's appellant's brief lacked a subject index, assignment of errors, and page references to the record. In *De Liano v. Court of Appeal*, this court also sustained the dismissal of De Liano's appeal. De Liano's appellant's brief lacked a subject index, a table of cases and authorities, and page references to the record.

There are exceptions to this rule. In *Philippine Coconut Authority v. Corona International, Inc.*, the Philippine Coconut Authority's appellant's brief lacked a clear and concise statement of the nature of the action, a summary of the proceedings, the

nature of the judgment, and page references to the record. However, this court found that the Philippine Coconut Authority substantially complied with the Rules. Its appellant's brief apprise[d] [the Court of Appeals] of the essential facts and nature of the case as well as the issues raised and the laws necessary [to dispose of the case]." This court "[deviated] from a rigid enforcement of the rules" and ordered the Court of Appeals to resolve the Philippine Coconut Authority's appeal.

In *Go v. Chaves*, Go's 17-page appellant's brief lacked a subject index. However, Go subsequently filed a subject index. This court excused Go's procedural lapse since the appellant's brief "[consisted] only of 17 pages which [the Court of Appeals] may easily peruse to apprise it of [the case] and of the relief sought." This court ordered the Court of Appeals to resolve Go's appeal "in the interest of justice."

In *Philippine Coconut Authority and Go*, the appellants substantially complied with the rules on the contents of the appellant's brief. Thus, this court excused the appellants' procedural lapses.

In this case, *Lui Enterprises* did not substantially comply with the rules on the contents of the appellant's brief. It admitted that its appellant's brief lacked the required subject index, page references to the record, and table of cases, textbooks, and statutes cited. However, it did not even correct its admitted "technical omissions" by filing an amended appellant's brief with the required contents. Thus, this case does not allow a relaxation of the rules. The Court of Appeals did not err in dismissing *Lui Enterprises'* appeal.

Rules on appeal "are designed for the proper and prompt disposition of cases before the Court of Appeals." With respect to the appellant's brief, its required contents are designed "to minimize the [Court of Appeals'] labor in [examining] the record upon which the appeal is heard and determined."

The subject index serves as the brief's table of contents. Instead of "[thumbing] through the [appellant's brief]" every time the Court of Appeals Justice encounters an argument or citation, the Justice deciding the case only has to refer to the subject index for the argument or citation he or she needs. This saves the Court of Appeals time in

reviewing the appealed case. Efficiency allows the justices of the appellate court to substantially attend to this case as well as other cases.

Page references to the record guarantee that the facts stated in the appellant's brief are supported by the record. A statement of fact without a page reference to the record creates the presumption that it is unsupported by the record and, thus, "may be stricken or disregarded altogether."

As for the table of cases, textbooks, and statutes cited, this is required so that the Court of Appeals can easily verify the authorities cited "for accuracy and aptness."

Lui Enterprises' appellant's brief lacked a subject index, page references to the record, and a table of cases, textbooks, and statutes cited. These requirements "were designed to assist the appellate court in the accomplishment of its tasks, and, overall, to enhance the orderly administration of justice." This court will not disregard rules on appeal "in the guise of liberal construction." For this court to liberally construe the Rules, the party must substantially comply with the Rules and correct its procedural lapses. Lui Enterprises failed to remedy these errors.

All told, the Court of Appeals did not err in dismissing Lui Enterprises' appeal. It failed to comply with Rule 44, Section 13, paragraphs (a), (c), (d), and (f) of the 1997 Rules of Civil Procedure on the required contents of the appellant's brief.

Third. While we sustain the appellate court's dismissal of herein petitioners' appeal, we find it imperative to rule on the merits of the RTC, Branch 220's Order of Partition to forestall any further delay in the settlement of decedent Arminda's estate which has been pending since 1990 where Order of Partition of the subject properties was issued on 28 July 2005. We note also that petitioners themselves pray for a ruling thereon.

There is no quarrel from any of the parties that the subject properties were originally part of the conjugal partnership of gains property regime of the deceased spouses Natalio and Arminda.²⁵ The nature of these properties

²⁵ See CIVIL CODE, Articles 143 and 153 and FAMILY CODE, Articles 105, 116-117.

Art. 143. All property of the conjugal partnership of gains is owned in common by the husband and wife.

Art. 153. The following are conjugal partnership property:

(1) That which is acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;

as part of the spouses' conjugal properties was confirmed in the Extrajudicial Settlement of the Estate of Natalio signed by all his heirs, his spouse Arminda and their children, including predecessor of herein petitioners, Gerry Ecarma.²⁶

Essentially, pursuant to this Extrajudicial Settlement, Arminda was apportioned two-ninth's (2/9's) share, while her children were equally ascribed one-ninth (1/9) portion, of the subject properties. Upon Arminda's death, her heirs' rights to the succession (covering Arminda's share in the subject properties) vested and their co-ownership over the subject properties has consolidated by operation of law.²⁷ Effectively, without a valid will of Arminda, and as Arminda's compulsory heirs,²⁸ herein parties (specifically

(2) That which is obtained by the industry, or work, or as salary of the spouses, or of either of them;

(3) The fruits, rents or interests received or due during the marriage, coming from the common property or from the exclusive property of each spouse.

FAMILY CODE, Articles 105, 116-117.

Art. 105. During the pendency of legal separation proceedings the court shall make provision for the care of the minor children in accordance with the circumstances and may order the conjugal partnership property or the income therefrom to be set aside for their support; and in default thereof said minor children shall be cared for in conformity with the provisions of this Code; but the Court shall abstain from making any order in this respect in case the parents have by mutual agreement, made provision for the care of said minor children and these are, in the judgment of the court, well cared for.

Art. 116. When one of the spouses neglects his or her duties to the conjugal union or brings danger, dishonor or material injury upon the other, the injured party may apply to the court for relief.

The court may counsel the offender to comply with his or her duties, and take such measures as may be proper.

Art. 117. The wife may exercise any profession or occupation or engage in business. However, the husband may object, provided:

(1) His income is sufficient for the family, according to its social standing, and

(2) His opposition is founded on serious and valid grounds.

In case of disagreement on this question, the parents and grandparents as well as the family council, if any, shall be consulted. If no agreement is still arrived at, the court will decide whatever may be proper and in the best interest of the family.

²⁶ *Rollo*, pp. 58-61.

²⁷ CIVIL CODE, Articles 774 and 777.

Art. 774. Succession is a mode of acquisition by virtue of which the property rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law.

Art. 777. The rights to the succession are transmitted from the moment of the death of the decedent.

²⁸ CIVIL CODE, Articles 778, 886, 887 and 960.

Art. 778. Succession may be:

(1) Testamentary;

(2) Legal or intestate; or

(3) Mixed.

Gerry Ecarma prior to his death and substitution by herein petitioners) all *ipso facto* co-owned the subject properties in equal proportion being compulsory heirs of the deceased spouses Natalio and Arminda.²⁹

Art. 886. Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.

Art. 887. The following are compulsory heirs:

- (1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;
- (2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
- (3) The widow or widower;
- (4) Acknowledged natural children, and natural children by legal fiction;
- (5) Other illegitimate children referred to in Article 287.

Compulsory heirs mentioned in Nos. 3, 4, and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.

In all cases of illegitimate children, their filiation must be duly proved.

The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code.

Art. 960. Legal or intestate succession takes place:

- (1) If a person dies without a will, or with a void will, or one which has subsequently lost its validity;
- (2) When the will does not institute an heir to, or dispose of all the property belonging to the testator. In such case, legal succession shall take place only with respect to the property of which the testator has not disposed;
- (3) If the suspensive condition attached to the institution of heir does not happen or is not fulfilled, or if the heir dies before the testator, or repudiates the inheritance, there being no substitution, and no right of accretion takes place;
- (4) When the heir instituted is incapable of succeeding, except in cases provided in this Code.

²⁹

CIVIL CODE, Articles 1078, 979, 980, 887 and 888.

Art. 1078. Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased.

Art. 979. Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages.

An adopted child succeeds to the property of the adopting parents in the same manner as a legitimate child.

Art. 980. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

Art. 887. The following are compulsory heirs:

- (1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;
- (2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
- (3) The widow or widower;
- (4) Acknowledged natural children, and natural children by legal fiction;
- (5) Other illegitimate children referred to in Article 287.

Compulsory heirs mentioned in Nos. 3, 4, and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.

In all cases of illegitimate children, their filiation must be duly proved.

There appears to be no clear objection, therefore, to the RTC, Branch 220's Order of Partition approving the proposal of the administrator, herein respondent Renato, for the equal division of the properties:

1. The Kitanlad property: longitudinally from the frontage down to the other end with the shares of the [oppositors to the partition] Jerry Ecarma and Rodolfo Ecarma contiguous to each other on one side of the property nearest to the main entrance; and

xxxx

2. The Cuyapo and Lala properties: partitioned into seven (7) equal parts with Jerry's and Rodolfo's respective shares contiguous to each other, and the remainder to be donated by the other legal heirs, as manifested by them, to the Armed Forces of the Philippines (AFP).

Their objection to the actual partition notwithstanding, herein petitioners and even Rodolfo Ecarma cannot compel the other co-heirs to remain in perpetual co-ownership over the subject properties. Article 494, in relation to Article 1083, of the Civil Code provides:

Art. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

Neither shall there be any partition when it is prohibited by law.

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code.

Art. 888. The legitime of legitimate children and descendants consists of one-half of the hereditary estate of the father and of the mother.

The latter may freely dispose of the remaining half, subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided.



Art. 1083. Every co-heir has a right to demand the division of the estate unless the testator should have expressly forbidden its partition, in which case the period of indivision shall not exceed twenty years as provided in Article 494. This power of the testator to prohibit division applies to the legitime.

Even though forbidden by the testator, the co-ownership terminates when any of the causes for which partnership is dissolved takes place, or when the court finds for compelling reasons that division should be ordered, upon petition of one of the co-heirs.

The impasse between the parties is due to herein petitioners' persistent objection to proposals for the partition of the subject properties. The deceased Gerry Ecarma, Rodolfo Ecarma and herein petitioners consistently opposed the proposed partition of the administrator, respondent Renato, since such is ostensibly "not feasible, impractical and renders detrimental use of the Kitanlad property." However, it is apparent that Gerry Ecarma and his heirs (herein petitioners) completely object to any kind of partition of the subject properties, contravening even the proposed sale thereof.

We note that petitioners have been careful not to proffer that the subject properties are indivisible or that physical division of thereof would render such unserviceable since Article 495³⁰ of the Civil Code provides the remedy of termination of co-ownership in accordance with Article 498³¹ of the same Code, *i.e.* sale of the property and distribution of the proceeds. Ineluctably, therefore, herein petitioners' absolute opposition to the partition of the subject properties which are co-owned has no basis in law. As mere co-owners, herein petitioners, representing the share of the deceased Gerry Ecarma, cannot preclude the other owners likewise compulsory heirs of the deceased spouses Natalio and Arminda, from exercising all incidences of their full ownership.³²

³⁰ **Art. 495.** Notwithstanding the provisions of the preceding article, the co-owners cannot demand a physical division of the thing owned in common, when to do so would render it unserviceable for the use for which it is intended. But the co-ownership may be terminated in accordance with Article 498.

³¹ **Art. 498.** Whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds distributed.

³² CIVIL CODE, Article 427 and 428 on Ownership.

Art. 427. Ownership may be exercised over things or rights.

Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

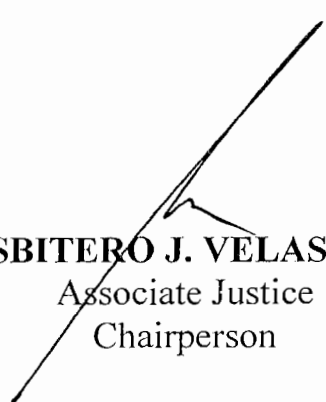


Wherefore, the petition is **DISMISSED**. The Court of Appeal's dismissal of the Appeal in CA-G.R. CV No. 92375 is **FINAL**. Costs against petitioners.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

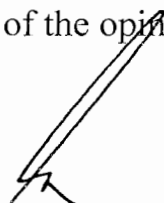
(On Official Leave)
DIOSDADO M. PERALTA
Associate Justice


BIENVENIDO L. REYES
Associate Justice

(On Wellness Leave)
FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest 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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Third Division, Chairperson

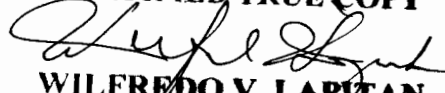
CERTIFICATION

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.



ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED TRUE COPY



WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUN 27 2016