



Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **November 13, 2019**, which reads as follows:

“G.R. No. 248594 (Felicidad B. Dadizon v. Carmelita Tan-Inchoco and Dwight Anthony T. Inchoco). - This Court has carefully reviewed the allegations, issues, and arguments adduced in the instant Petition for Review on *Certiorari*¹ and accordingly resolves to deny the same for failure to sufficiently show that the Court of Appeals (CA) in its Decision² dated September 27, 2018 and Resolution³ dated July 1, 2019 in CA-G.R. CV No. 05644 committed any reversible error in affirming the Decision⁴ dated May 19, 2015 of the Regional Trial Court of Naval, Biliran, Branch 16 (RTC).

While jurisdiction may be assailed at any time, even on appeal, an exception is when the party questioning the jurisdiction of the court actively participated in the proceedings. By actively participating in the proceedings before the RTC and the CA, petitioner Felicidad B. Dadizon waived her right to question jurisdiction, similar to what happened in *Marquez v. Secretary of Labor*.⁵

Petitioner incorrectly claims the partition case to be a revival of the judgment in the recovery case. The two cases refer to different causes of action: the recovery case concerned validity of the sale to respondents Carmelita Tan-Inchoco and Dwight Anthony T. Inchoco in relation to petitioner’s right to their undivided share, while the partition case involved respondents’ right to have the lot physically divided to determine each co-owner’s ownership over a specific portion of the lot.

¹ Rollo, pp. 4-20.

² Penned by Associate Justice Emily R. Aliño-Geluz, with Executive Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap, concurring; id. at 24-44.

³ Id. at 47-48.

⁴ Penned by Presiding Judge Bienvenido M. Montalla, id. at 57-83.

⁵ 253 Phil. 329 (1989). In *Marquez*, this Court ruled that Marquez was estopped from assailing the jurisdiction of the Regional Director of the Department of Labor and Employment because Marquez did not raise the issue of jurisdiction even when an adverse decision was promulgated and even when the case was appealed to the Secretary of Labor. It was only before this Court that Marquez questioned the Regional Director’s jurisdiction (id. at 336).

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Respondents were within their rights in seeking the partition of the subject lot. The co-ownership subsists because petitioner failed to redeem the lot. Petitioner's right to redeem the lot prescribed ten (10) years after the judgment in a previous recovery case became final in 1995. In the previous recovery case, the RTC denied petitioner's Manifestation (filed in 2008) to redeem the property because the exercise of such right was barred by the statute of limitations.⁶ Petitioner's filing of an ejectment case and continued possession over the subject lot are not clear acts of repudiation to dissolve a co-ownership.

Nevertheless, the RTC erred in awarding ₱30,000.00 as attorney's fees in petitioner's favor. The basis of attorney's fees in this case, *i.e.*, Article 2208(2)⁷ of the Civil Code, does not apply here. Respondents' act of filing a complaint for partition was not because of petitioner's unjustified refusal to partition the subject lot but because respondents, as co-owners, had the right to do so under Article 494⁸ of the Civil Code.

WHEREFORE, the Court resolves to **AFFIRM with MODIFICATION** the Decision dated September 27, 2018 and the Resolution dated July 1, 2019 of the Court of Appeals in CA-G.R. CV No. 05644. The award of attorney's fees is hereby **DELETED**.

SO ORDERED." (Leonen, J., *on official business*; Gesmundo, J., *designated as Acting Chairperson of the Third Division per Special Order No. 2737*; Lazaro-Javier, J., *designated as Additional Member of the Third Division per Special Order No. 2728, on official leave.*)

Very truly yours,

Mis-DC Batt
MISAEAL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court

*gmd
11/20/19*

⁶ Rollo, p. 31, citing Section 6, Rule 39 of the Rules of Court.

⁷ CIVIL CODE, Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

x x x x

⁸ CIVIL CODE, 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.

x x x x

Atty. Patrick V. Santo
Counsel for Petitioner
SANTO LAW OFFICE
2/F Prima Asuncion Building, Apitong Road
6500 Tacloban City

COURT OF APPEALS
CA G.R. CEB CV No. 05644
6000 Cebu City

Atty. Clemencio C. Sabitsana, Jr.
Counsel for Respondents
2/F Mirasol Building, P. Inocentes St.
6500 Naval, Biliran

The Presiding Judge
REGIONAL TRIAL COURT
Branch 16, Naval
6543 Biliran
(Civil Case No. B-1399)

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