

[CV No. 74550, May 25, 2010]

**CYNTHIA D. GONZALES ESPILOY, DIVINO DEFEO GONZALES,
MACARIA D. GONZALES PINEDA, AND RODOLFO DEFEO
GONZALES, APPLICANTS-APPELLEES, VS. PRISCILLA REPIZO,
BRIGIDA GONZALES ARTIOLA, REBECCA GONZALES HUERTAS,
AND CARIDAD GONZALES DEGRACIAS, OPPOSITORS-
APPELLANTS.**

Court of Appeals

Before this Court is an^[*] appeal from the Decision^[1] dated January 21, 2002 of the Regional Trial Court, Fifth Judicial Region, Branch 45, Masbate City, in LRA Case No. N-480 entitled "*In Re: Application for Registration of Title Over Real Property, Cynthia D. Gonzales Espiloy, Divino Gonzales, Macaria D. Gonzales Pineda and Rodolfo Defeo Gonzales, Applicants*", the dispositive portion of which reads:

WHEREFORE, the applicants, CYNTHIA GONZALES ESPILOY, DIVINO GONZALES, MACARIA GONZALES PINEDA and RODOLFO GONZALES, residents of Masbate City, all Filipinos (sic) having a proper title of registration and confirmation over a parcel of land plotted and described under plan Ap-05-000570 and its accompanying technical descriptions, together with all its improvements existing thereon, situated at Brgy. Poblacion, City of Masbate, this Court hereby orders for the confirmation and registration of said land pursuant to the provisions of the Property Registration Decree (P.D. 1529).

The opposition to the application of private oppositors Priscila (sic) Repizo, Rebecca Gonzales Huertas, Brigida Gonzales Artiola, Caridad Gonzales Deogracias and Alfredo Gonzales, Jr., are (sic) ordered dismissed for lack of merit.

Once this decision becomes final and executory, let the corresponding decree of registration issue.

SO ORDERED."

The facts:

On March 25, 1999, applicants-appellees Cynthia D. Gonzales Espiloy, Divino Defeo Gonzales, Macaria D. Gonzales Pineda, and Rodolfo Defeo Gonzales filed a application^[2] for registration of a parcel of land pursuant to Act No. 496, as amended by Presidential Decree (P.D.) No. 1529, otherwise known as Property Registration Decree. The subject land is described as follows:

"A parcel of land (as shown on plan Ap-05-000570 L.R.C. Record No.) situated in the Poblacion, Municipality of Masbate, Province of Masbate, Island of Masbate. Bounded on the SW, along line 1-2 by property of Evaristo F. Tabones (psu-202434); on the NW, along line 2-3 by property

of Catalina D. Ricacho, on the SW and NW, along line 3-4-5, by property of Adelaida Z. Cordero and on the NE, along line 5-1 by Tara Street (13.00 m. wide). Beginning at a point marked "1" on plan being S. 54 deg. 07'E 624.92 m. from B.L.L.M. No. 1 Mp. of Masbate, Masbate,

thence S 38 deg. 29'W, 15.34 m. to point 2,
thence N 53 deg. 05'W, 12.32 m. to point 3,
thence N 55 deg. 54'W, 5.39 m. to point 4,
thence N 41 deg. 34'E, 13.69 m. to point 5,
thence S 59 deg. 40'E, 17.12 m. to the point of

beginning, containing an area of Two Hundred Forty Nine (249) square meters. All point referred to, are indicated on the plan and are marked on the ground by P.S. Cyl. Cone, monuments 15 x 60 cm. Bearing is true, date prepared Feb. 24, 1977 and that of approval March 4, 1977."^[3]

The application alleges that: applicants-appellees are co-owners in equal shares of the above-described parcel of land, having purchased on different dates, their respective shares therein consisting of 62.25 square meters, from its previous owner, Jose R. Gonzales; said parcel of land has assessed value of P7,244.00 and is occupied by applicant-appellee Cynthia D. Gonzales Espiloy, Gloria D. Gonzales and Zaldy Conrado, who have their respective houses thereon; Gloria D Gonzales and Zaldy Conrado's possession of the portions of the land was with the permission of applicants-appellees or their predecessors; they have been in open continuous, peaceful, exclusive and notorious possession and occupation thereof under a claim of ownership through their predecessors-in-interest since time immemorial prior to June 12, 1945; and the land has not been encumbered nor claimed by any other persons.

Initial hearing of the application was set on December 7, 1999 and subsequently reset to March 27, 2000 during which Alfredo Gonzales, Jr., oppositors-appellants Brigida Gonzales and Rebecca Gonzales signified their intention to file a formal opposition.

In his Opposition^[4], Alfredo Gonzales, Jr. alleged that he is one of the three children of Alfredo Gonzales, Sr., a brother of the applicants-appellees. During the lifetime of his father, he did not sell his share in the inheritance to any of the applicants-appellees. Thus, he alleged that he and his co-heirs, in representation of their late father, should be joined as party applicant.

Likewise, on April 19, 2000 oppositors-appellants Priscilla Repizo (Priscilla), Brigida Gonzales Artiola (Brigida), Rebecca Gonzales Huertas (Rebecca) and Caridad Gonzales Degracia (Caridad) filed their own Opposition^[5] to the application, alleging that; oppositor-appellant Priscilla is entitled to one-half (1/2) of the entire parcel of land, while the rest of the oppositors-appellants should inherit one-third (1/3) of the remaining half; oppositor-appellant Priscilla is the second wife of Fortunato Gonzales and the rest of the oppositors-appellants are their children; Spouses Fortunato Gonzales and Priscilla Repizo acquired the subject land during their marriage, however, after the death of Fortunato Gonzales, his children by his first marriage extrajudicially settled his estate, including the subject land, without segregating and delivering the shares of the oppositors-appellants, and adjudicated it to Jose Gonzales, the father of applicants-appellees.

In their reply to the opposition of Alfredo Gonzales, Jr., applicants-appellees stated that; their father, Jose Gonzales, made previous conveyances to his children, including Alfredo Gonzales, Sr., father of oppositor Alfredo Gonzales, Jr. who got the lot located in Magdalena, Baleno, Masbate, Masbate and, during his lifetime, Jose Gonzales had the right to convey his properties, including the subject land.

In an "Answer to Opposition of Private Oppositors Priscilla Repizo, Et Al."^[6], applicants-appellees denied the allegations of oppositors-appellants in their opposition, claiming that the money used by Fortunato Gonzales in buying the subject land came from the income of his conjugal properties with his deceased wife Albina Supleto. They alleged further that: Fortunato Gonzales was a widower when he acquired the subject land and granting that it was acquired during his cohabitation with Priscilla Repizo, who was his common-law wife, the latter had no means of livelihood and was wholly dependent on Fortunato Gonzales for support; the subject land formed part of the conjugal properties of Fortunato Gonzales and his deceased wife Albinia Supleto; and oppositors-appellants Priscilla Brigida, Rebecca and Caridad, were not included in the settlement of the estate of Fortunato Gonzales because they were already given a parcel of land in Barangay Titong, Masbate, Masbate.

Applicants-appellees' sole witness was Cynthia Gonzales Espiloy whose testimony may be summarized as follows:

She is one of the children of Jose Gonzales, the previous owner of the subject land situated in Tara Street, Barangay Pating, Masbate, Masbate. Jose Gonzales acquired the subject land by virtue of an Extra Judicial Settlement of Conjugal Partnership of Real Property^[7] dated December 29, 1979 of the decedents, Spouses Fortunato Gonzales and Albinia Supleto. Fortunato Gonzales, then a widower, in turn, bought it from Spouses Mauro Valdemorro and Aurora Maristela, as per Deed of Absolute Sale of Real Property^[8] dated March 27, 1954. He had the land declared in his name of taxation purposes and paid the realty taxes thereon. Spouses Mauro Valdemorro and Aurora Maristela, the sellers, bought the subject land from Jose Zurbito, to whom Tax Declaration Nos. 3341^[9] and 5193^[10] were issued.

While the tax declaration of the land was still in the name of Fortunato Gonzales, Jose Gonzales was the one paying the realty taxes from 1956 to 1974.

In four (4) Deeds of Absolute Sale dated June 5, 1994^[11], June 24, 1994^[12], July 11, 1994^[13] and August 11, 1994^[14], Jose Gonzales sold to applicants-appellees portions of the subject land. Each of them declared their respective shares for taxation purposes and paid the realty taxes thereon. She (Cynthia), together with Gloria D. Gonzales, the wife of her brother Alfredo Gonzales, Sr., and Zaldy Conrado, her cousin, are the ones staying in the land. Gloria D. Gonzales and Zaldy Conrado were allowed by her father, during his lifetime, to occupy portion of the subject land, but they are not claiming ownership of the property. Before his death on March 14, 1996, Alfredo Gonzales, Sr. and his wife Gloria D. Gonzales were already staying in the subject land, and even after his death, his wife continued living there, Jose Gonzales' possession of the subject land was continuous, exclusive, peaceful and in the concept of an owner. From the time applicants-appellees bought the subject land in 1994 up to March 27, 2000, no one claimed adverse ownership nor filed a case

against them in court.

Applicant-appellee Cynthia Gonzales Espiloy knows oppositors-appellants Priscilla, Rebecca, Brigida and Caridad who are aware of the fact that the subject land was conveyed by Jose Gonzales to her and her siblings. She informed them about the filing of this application when it was about to be heard, but they did not react. She also knows that the subject land is alienable and disposable as shown by the Certification^[15] dated November 6, 1998 issued by the Community Environment and Natural Resources Office (CENRO), Mobo, Masbate.

For their part, oppositors-appellants presented Priscilla and Rebecca as witnesses. The substance of the testimony of Priscilla is as follows:

She is the surviving wife of Fortunato Gonzales whom she married on June 23, 1957. Before their wedding, however, they were living together as husband and wife since 1949 and their union was blessed with four children, but one of them died. The remaining three children are: Brigida who was born in 1952, Rebecca who was born in 1954 and Caridad who was born in 1956. She is familiar with the subject land because she and her husband were the ones who bought it from Spouses Valdemorro on March 27, 1954. They stayed there from 1954 until Fortunato died in 1957. After his death, Pepe Gonzales, Fortunato Gonzales' son by his first marriage, took possession of the subject land. It was Pepe who took possession of it because his siblings were already dead. She came to know about the existence of an extrajudicial settlement^[16] and the filing of the application by applicants-appellees only recently. She is aware of the execution by Jose Gonzales of four deeds of sale in favor of his children because he asked for the documents pertaining to the subject land she gave them to him so that he would not get angry. She is opposing the application because she has children who ought to be given their share in the subject land.

The testimony of Rebecca may be summed up as follows:

She is a daughter of Spouses Fortunato Gonzales and Priscilla Repizo and the sister of oppositors-appellants Brigida and Caridad. She is familiar with the subject land having stayed there with her half-sister Purificacion Gonzales during her elementary and high school days. She is opposing this application because she is an heir of

Fortunato Gonzales and the subject land was acquired in 1953, during the union of her mother and his father Fortunato Gonzales. When her Kuya Peping was still alive, she asked for their share of land. He told her to build her house on the land, but she failed to do so.

Oppositor Alfredo Gonzales, Jr. presented as witness Gloria Desuyo Gonzales who testified as follows:

She is the widow of the late Alfredo Gonzales, Sr. who died on December 19, 1994 and the mother of oppositors Alfredo Gonzales, Jr., Joma Gonzales and Gloria Gonzales. Her husband was one of the children of the late Jose Gonzales who died on March 14, 1996. She lives in a house built on the subject land. In the months of June, July and August, 1994 when her husband was still alive, her father-in-law, Jose Gonzales, was in Manila for medical treatment. While in Manila, his father-in-

law sent her a handwritten open letter which was handed to her by her sister-in-law, Mrs. Espiloy. In said letter, her father-in-law, Jose Gonzales, stated that her husband would have share in the subject land. She does not know that the subject land was sold to applicants-appellees until this case was filed. She is also not aware of the lot in Magdalena, Masbate that applicant-appellee Cynthia Espiloy alleged to have been given to her husband and neither did her husband tell her about it. Her husband, being a son and heir of Jose Gonzales, is entitled to a share in the subject land.

On rebuttal applicant-appellee Cynthia Espiloy testified that: the estate of the late Spouses Fortunato Gonzales and Albinia Supleto was already extrajudicially settled among their heirs in 1979; oppositors-appellants did not object to the settlement of said estate because they were already given their shares *i.e.*, oppositors-appellant Priscilla and her children had a coconut land in Barangay Titong, Masbate, Masbate covered by Tax Declaration No. 3559.^[17] The deed of extrajudicial settlement of estate was published in "*Sorsogon Newsweek*" for three consecutive weeks^[18] and from the time of its publication in 1980 oppositors-appellants never questioned the same nor filed a case in court relative thereto; with respect to oppositor Alfredo Gonzales, Jr., he was given his share of the estate consisting of a residential lot located in Magdalena, Masbate, and the same is also covered by a Deed of Absolute Sale^[19] dated May 20, 1994 executed by Jose Gonzales.

After hearing, the lower court rendered the assailed decision granting applicants-appellees' application and dismissing the opposition.

Hence, this appeal, assigning the following errors.

I.

THE TRIAL COURT ERRED IN GRANTING THE APPLICATION FOR LAND REGISTRATION INSTEAD OF DENYING THE SAME ON THE FACE OF THE FACT THAT OPPOSITORS ARE ENTITLED TO A SHARE OF THE LAND APPLIED FOR TITLE;

II.

THE TRIAL COURT ERRED IN HOLDING THAT THE CLAIMS OF OPPOSITORS-APPELLANTS ARE BARRED BY LACHES.

The appeal is meritorious.

Oppositors-appellants argue that; under Article 144 of the Civil Code, Priscilla is entitled to one-half of the properties she and her husband Fortunato Gonzales acquired during their cohabitation; since the law uses the phrase "*either or both*", even if it is the man alone who worked, whatever they acquired during cohabitation shall be owned equally by the partners; the law does not state that the partner who did not contribute to the acquisition of the property has no share, otherwise there is no co-ownership to speak of; prior to the filing of their application, applicants-appellees recognized oppositors-appellants as co-owners, thus prescription would not run, as the former expressly or impliedly recognized the co-ownership.

Applicants-appellees counter that; the subject land is owned by the conjugal partnership of gains of the first marriage between Fortunato Gonzales and Albinia