

G.R. No. 232579 – DR. NIXON L. TREYES, *Petitioner*, v. ANTONIO L. LARLAR, REV. FR. EMILIO L. LARLAR, HEDDY L. LARLAR, *ET AL.*, *Respondents*.

Promulgated: September 8, 2020

X-----X

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur. The Regional Trial Court of San Carlos City, Branch 59 (RTC) did not gravely abuse its discretion in denying the *second* motion to dismiss filed by petitioner Dr. Nixon L. Treyes (petitioner). Hence, the Court of Appeals (CA) correctly denied the petition for *certiorari*¹ filed by petitioner before it.

This case stemmed from a Complaint² filed before the RTC by respondents Antonio L. Larlar, *et al.* (respondents) against petitioner. The nature of the actions/s may be seen from the four (4) reliefs prayed for in the Complaint as follows:

FIRST ITEM OF RELIEF

(Annulment of Affidavits of Self Adjudication and Cancellation of Transfer Certificates of Title issued pursuant thereto)

SECOND ITEM OF RELIEF

(Reconveyance)

THIRD ITEM OF RELIEF

(Partition)

FOURTH ITEM OF RELIEF

(Damages)³

In their Complaint, respondents alleged that: (a) petitioner is the surviving spouse of the decedent, Rosie Larlar Treyes (Rosie), while respondents are the siblings of the latter; (b) in gross bad faith and with malicious intent, petitioner executed Affidavits of Self-Adjudication arrogating upon himself Rosie's properties as her "sole" heir, thereby obtaining certificates of title thereto; and (c) petitioner's execution of such documents prejudiced respondents, considering that under Article 1001⁴ of

¹ *Rollo*, pp. 15-55.

² *Id.* at 228-241.

³ See *ponencia*, p. 3.

⁴ Article 1001 of the CIVIL CODE reads:

2

the Civil Code, they are also considered heirs of Rosie, and as such, are legally entitled to share in her estate. Hence, respondents prayed for the following:

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that, after due notice and hearing, judgment be rendered as follows:

- a) Declaring the Affidavits of Self-Adjudication dated September 2, 2008 (*Annex "X"*) and May 19, 2011 (*Annex "Y"*) as null and void and illegal and ordering the cancellation of all Transfer Certificates of Titles issued pursuant thereto;
- b) Ordering the defendant to reconvey the plaintiffs' successional share in the estate of the late ROSIE LARLAR TREYES;
- c) Ordering the partition of the estate of ROSIE LARLAR TREYES among the parties hereto who are also the heirs of the latter;
- d) Ordering the defendant to pay plaintiffs moral damages of not less than ₱500,000.00 and exemplary damages of not less than ₱500,000.00[; and]
- e) Ordering the defendant to pay plaintiffs attorney's fees of ₱200,000.00 and litigation expenses of not less than ₱150,000.00.

Other reliefs as may be just and equitable under the premises are also prayed for.⁵

Initially, petitioner moved for the dismissal of the case (first motion to dismiss) on the ground of *lack of jurisdiction over his person*. After due proceedings, the RTC corrected such defect by re-issuing summons together with the complaint which was duly served on petitioner. Thereafter, petitioner filed another Motion to Dismiss⁶ (**second** motion to dismiss), this time, specifically invoking *three (3) grounds*, namely, **lack of jurisdiction over the subject matter of the claim; improper venue; and prescription**. In a Resolution⁷ dated July 15, 2014, the RTC denied the motion for lack of merit, but nonetheless recognized that it had no jurisdiction over the third cause of action in the Complaint which is partition:

To rebut these contentions of the defendant, plaintiffs cite the case of *Ricardo F. Marquez, et al. vs. Court of Appeals* which in essence settles the issues now raised by the defendant.

Article 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half.

⁵ *Rollo*, pp. 238-239.

⁶ Dated June 20, 2014. *Id.* at 102-112.

⁷ *Id.* at 83-85. Penned by Presiding Judge Katherine A. Go.

In that case, a father executed an Affidavit of Self Adjudication unilaterally adjudicating unto himself the property owned by his deceased wife to the exclusion of his children. A civil case was brought by his children for the reconveyance of the said property. The Supreme Court held:

As such, when Rafael Marquez, Sr., for one reason or another, misrepresented in his unilateral affidavit that he was the only heir of his wife when in fact their children were still alive, and managed to secure a transfer certificate of title under his name, a constructive trust under Article 1456 was established. Constructive trusts are created in equity in order to prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress, or abuse of confidence obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold. Prescinding from the foregoing discussion, did the action for reconveyance prescribe, as held by the Court of Appeals?

In this regard, it is settled that an action for reconveyance based on an implied or constructive trust prescribes in ten years from the issuance of the Torrens title over the property.

The factual antecedents in the cited case and in the case at bar are on all points. A perusal of the Complaint shows that the causes of action are 1) the Annulment of the Affidavit of Self Adjudication; 2) Reconveyance; 3) Partition; and 4) Damages. **Hence, the Court has jurisdiction over the first, second and fourth causes of action but no jurisdiction over the third cause of action of Partition and the said cause of action should be dropped from the case.**

Lastly, venue is properly laid as it appears from the allegations of the Complaint that majority of the parcels of land object of this case is situated in San Carlos City. As this is an action involving title to real property then the action can be filed in any jurisdiction where the property or a portion thereof is located.

WHEREFORE, in view of the foregoing, the Court hereby resolves to DENY the "Motion to Dismiss" for lack of merit.⁸ (Emphasis and underscoring supplied)

Petitioner moved for reconsideration⁹ which was denied in an Order¹⁰ dated August 27, 2014. Aggrieved, petitioner filed a petition for *certiorari* before the CA. In a Decision¹¹ dated August 18, 2016, the CA affirmed the questioned RTC issuances, holding, among others, that:

⁸ Id. at 83-84.

⁹ See Omnibus Motion to Reconsider Resolution dated 15 July 2014 and to Defer Filing of Answer dated July 28, 2014; id. at 147-161.

¹⁰ Id. at 86.

¹¹ Id. at 214-219. Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo L. Delos Santos (now a member of the Court) and Geraldine C. Fiel-Macaraig, concurring.

The Supreme Court has repeatedly held that the legal heirs of a decedent are the parties in interest to commence ordinary actions arising out of the rights belonging to the deceased, without separate judicial declaration as to their being heirs of said decedent, provided that there is no pending special proceeding for the settlement of the decedent's estate. There being no pending special proceeding for the settlement of Mrs. Treyes' estate, Private Respondents, as her intestate heirs, had the right to sue for the reconveyance of the disputed properties, not to them, but to the estate itself, for distribution later in accordance with law.

Moreover, Public Respondent admitted that it only has jurisdiction over the Annulment of the Affidavit of Self-Adjudication, Reconveyance, and Damages, while specifically stating that it had no jurisdiction over Partition. Clearly, Public Respondent did not commit grave abuse of discretion.¹²

As stated above, the CA held that respondents, "as [Rosie's] intestate heirs, had the right to sue for the reconveyance of the disputed properties, not to them, but to the estate itself, for distribution later in accordance with law." This hews with the RTC's own recognition that it cannot in an ordinary civil action, yet distribute specific portions of the estate absent a special proceeding for the purpose. **Hence, the RTC's own statement that it has no jurisdiction over the third cause of action, i.e., partition.**

Undaunted, petitioner filed a motion for reconsideration. In a Resolution¹³ dated June 1, 2017, the CA denied the motion, holding, *inter alia*, that "[p]rivate [r]espondents were automatically vested with the right to inherit from Mrs. Treyes the moment she died without a will. Title or rights to a deceased person's property are immediately passed to his or her heirs upon death. The heirs' rights become vested without need for them to be declared 'heirs.'"¹⁴

Notably, as earlier mentioned, *the CA did not, in any way, order the actual distribution of the properties forming part of the decedent estate, recognizing that the right to sue for reconveyance is only limited to the disposition that the properties in dispute would revert to the estate itself but for distribution later "in accordance with law."* This phrase "in accordance with law" can only mean a special proceeding.

Unsatisfied still, petitioner filed the instant petition.¹⁵

¹² Id. at 217.

¹³ Id. at 223-225.

¹⁴ Id. at 224.

¹⁵ Id. at 15-52.

2

After a judicious study of the case, I submit that the CA did not commit any reversible error in holding that the RTC did not gravely abuse its discretion in denying petitioner's **second** motion to dismiss based on the grounds stated therein.

Anent the ground of improper venue, the RTC correctly ruled that venue was properly laid as the properties under litigation are located in San Carlos City, Negros Occidental, and hence, within the territorial jurisdiction of the RTC.¹⁶ Besides, as the *ponencia* pointed out,¹⁷ the ground of improper venue (unlike the excepted grounds of prescription, lack of jurisdiction, *res judicata* and *litis pendentia*¹⁸) was already deemed waived since petitioner failed to raise the same in his first motion to dismiss pursuant to the Omnibus Motion Rule.

As to the ground of prescription, the RTC's ruling was silent on the matter. Nevertheless, the *ponencia* properly observed that prescription has not yet set in since the present action was practically one for reconveyance based on an implied/constructive trust that prescribes in ten (10)-years from the time the Torrens certificate of title was issued. Thus, since the certificate of title was issued in the name of petitioner in 2011, respondents have until 2021 to file their claim.¹⁹

The final ground raised in the second motion to dismiss is **lack of jurisdiction over the subject matter**. In this regard, petitioner contends that respondents' primary goal in filing the complaint is to have them declared as Rosie's legal heirs, a subject matter which must be properly threshed out in a special proceeding and not in an ordinary civil action such as respondents' complaint.²⁰ In support of such contention, petitioner cites the cases of *Litam v. Rivera*,²¹ *Heirs of Yaptinchay v. Del Rosario*,²² *Portugal v. Portugal-Beltran*,²³ *Reyes v. Enriquez*,²⁴ and *Heirs of Ypon v. Ricaforte*²⁵ (*Ypon*) all of which essentially instruct that "the status of a [person] who claim[s] to be an heir to a decedent's estate could not be adjudicated in an ordinary civil action"²⁶ and that the "[d]etermination of who are the legal heirs of the deceased must be made in the proper special proceedings in court, and not in an ordinary suit for recovery of ownership and possession of property."²⁷ Given the foregoing, petitioner asserts that since an ordinary court has no power to declare as to who are the true heirs of a decedent, then the RTC

¹⁶ Id. at 84.

¹⁷ See *ponencia*, pp. 6-7.

¹⁸ Section 1, Rule 9, RULES OF COURT.

¹⁹ See *ponencia*, pp. 8-10.

²⁰ See *rollo*, p. 216.

²¹ 100 Phil. 364, 378 (1956).

²² 363 Phil. 393 (1999).

²³ 504 Phil. 456 (2005).

²⁴ 574 Phil. 2445 (2008).

²⁵ 713 Phil. 570 (2013).

²⁶ *Heirs of Gabatan v. CA*, 600 Phil. 112, 125 (2009), citing *Agapay v. Palang*, 342 Phil. 302, 313 (1997).

²⁷ *Ypon*, supra at 576.

should have dismissed the case on the ground of lack of jurisdiction over the subject matter.²⁸ Corollary thereto, petitioner further argues that absent a formal declaration of heirship in favor of respondents, they have no legal standing to file the instant suit. He, thus, posits, that it is only after respondents obtain such a declaration in their favor that they can file the instant case in pursuance of their successional shares in Rosie's estate.²⁹

Opposing petitioner's contentions, respondents maintain that they did not institute the instant case to have themselves declared as heirs, as they themselves recognize that such is a matter that is properly ventilated in a special proceeding. Rather, they are merely asserting their successional rights in order to nullify the Affidavits of Self-Adjudication executed by petitioner. According to them, a suit for the annulment of said documents partake the nature of an **ordinary civil action** over which the RTC has jurisdiction.³⁰

Respondents' assertions are meritorious.

While petitioner invokes *Ypon*, as well as other similar cases wherein it was effectively held that heirs need to first secure a prior declaration of heirship in a special proceeding before protecting or defending their interests in the estate, this doctrine appears to have already been *abandoned* in more recent jurisprudence – such as *Heirs of Lopez v. Development Bank of the Philippines*³¹ and *Capablanca v. Heirs of Bas*³² – **wherein the Court has already settled that an heir may assert his right to the property of the deceased, notwithstanding the absence of a prior judicial declaration of heirship made in a special proceeding.**

As edified in the above cases, a prior declaration of heirship in a special proceeding **should not** be required before an heir may assert successional rights in an ordinary civil action **aimed only to protect his or her interests in the estate.** Indeed, the legal heirs of a decedent should not be rendered helpless to rightfully protect their interests in the estate while there is yet no special proceeding. This requirement, to my mind, substantively modifies the essence of Article 777 of the Civil Code which provides that “[t]he rights to the succession are transmitted from the moment of the death of the decedent.”³³

²⁸ See *rollo*, pp. 24-38.

²⁹ See *id.* at 38-39.

³⁰ See *id.* at 347.

³¹ 747 Phil. 427 (2014).

³² 811 Phil. 861 (2017).

³³ See *ponencia*, p. 28.

For better perspective, these more recent cases echo case law which instructs that “[p]ending the filing of administration proceedings, **the heirs without doubt have legal personality to bring suit in behalf of the estate of the decedent in accordance with the provision of Article 777 of the [Civil Code] x x x [; which] in turn is the foundation of the principle that the property, rights and obligations to the extent and value of the inheritance of a person are transmitted through his death to another or others by his will or by operation of law.**”³⁴ As I see it, this more recent strand of jurisprudence correctly recognizes the legal effects of Article 777 of the Civil Code, and thus, adequately provides for remedies for the heirs to protect their successional rights over the estate of the decedent *even prior to the institution of a special proceeding for its settlement*. Thus, despite the absence of said special proceeding, an ordinary civil action for the purpose of protecting their legal interest in the estate may be availed of by the putative heirs. In this regard, they are merely asserting their successional rights, which are transmitted to them from the moment of the decedent’s death.

However, it must be reiterated that the ordinary civil action would not amount to the actual distribution of the properties forming part of the decedent’s estate. As the CA in this case correctly recognized, the right to sue for reconveyance is only limited to the disposition that the properties in dispute **would revert to the estate itself** but for distribution later “in accordance with law,” *i.e.*, a special proceeding. It is also in this regard that the RTC itself voluntarily recognized the limits of its own jurisdiction by stating that it had no jurisdiction over the cause of action of partition. Thus, to quote from the CA ruling:

There being no pending special proceeding for the settlement of Mrs. Treyes’ estate, Private Respondents, **as her intestate heirs, had the right to sue for the reconveyance of the disputed properties, not to them, but to the estate itself, for distribution later in accordance with law.**

Moreover, [the RTC] admitted that it only has jurisdiction over the Annulment of the Affidavit of Self-Adjudication, Reconveyance, and Damages, **while specifically stating that it had no jurisdiction over Partition. Clearly, Public Respondent did not commit grave abuse of discretion.**³⁵ (Emphases and underscoring supplied)

At this point, it is well to recognize that in these **ordinary civil actions aimed merely to protect the interest of the heirs so that the properties in dispute may properly revert to the estate**, the court (unlike in this case where heirship is not at issue) might have to tackle the issue of heirship so as to determine whether or not: (a) the plaintiff/defendant-heirs are real parties-in-interest to the suit; and (b) they are entitled to the reliefs sought. The court is competent to pass upon these matters but it must be stressed that **any discussion that touches upon the issue of heirship should be made only**

³⁴ *Rioferio v. Court of Appeals*, 464 Phil. 67 (2004).

³⁵ *Rollo*, p. 217.

“in relation to the cause of action of the ordinary civil action”³⁶ and for the limited purpose of resolving the issue/s therein, and such finding would not operate to bar the parties from raising the same issue of heirship in the appropriate forum, *i.e.*, special proceedings. As such, any declaration of heirship made in an ordinary civil action to recover property should only be deemed as *provisional* to the extent that it is necessary to determine who between the parties has the better right to possess/own the same. This provisional approach is similarly observed in ejectment cases where the issue of ownership may be passed upon for the limited purpose of resolving who has the right to possess the property.³⁷

Furthermore, and at the risk of belaboring the point, in such ordinary civil actions, the court’s ruling, if in favor of the heirs, should be limited to the **reversion of the property/ies in litigation back to the estate of the decedent**. Verily, as the courts *a quo* have herein recognized, the court cannot, as a general rule, order the partition of the property/ies of the decedent and distribute it/them among the heirs, because the court simply has no jurisdiction to do so in this ordinary civil action. In this relation, a special proceeding for the settlement of estate is necessary to not only definitively determine who are the true and lawful heirs to which specific portions of the estate may be distributed, but also, even prior thereto, to first pay off the claims against the estate, which is essential to ascertain the net estate to be distributed. Note, however, that, as an exception, the heirs may avail of an “ordinary action for partition” but only pursuant to the special conditions under Section 1, Rule 74³⁸ of the Rules of Court, namely, that: (a) the decedent left no will and no debts; (b) the heirs are all of age or the minor heirs are represented by their respective guardians; (c) the agreement or adjudication is made by means of a public instrument duly filed with the Register of Deeds; (d) the parties thereto shall, simultaneously with and as a condition precedent

³⁶ *Ponencia*, p. 30; emphasis supplied.

³⁷ See *Spouses Marcos R. Esmaquel and Victoria Sordevilla v. Coprada*, 653 Phil. 96 (2010).

³⁸ Section 1, Rule 74 of the RULES OF COURT reads:

Section 1. Extrajudicial settlement by agreement between heirs. — If the decedent **left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose**, the parties may without securing letters of administration, **divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition**. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, **simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds**, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under section 4 of this rule. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof. (Emphases and underscoring supplied)

to the filing of the public instrument, file a bond; and (e) the fact of settlement shall be published in a newspaper of general circulation.

In this case, respondents, in asking for the nullification of petitioner's Affidavits of Self-Adjudication and consequent reconveyance of the properties covered therein back to Rosie's estate, are only asserting their successional interests over such estate which they obtained at the exact moment of Rosie's death, and which they may do so by filing an ordinary civil action for such purpose. While respondents erroneously also prayed for the partition of Rosie's estate – a matter which should be properly threshed out in a special proceeding for the settlement of such estate – the RTC already remedied the situation by correctly recognizing that it has no jurisdiction over the same, and accordingly, ordering such cause of action to be dropped from the case. To reiterate, the pertinent portion of the RTC's Resolution dated July 15, 2014 reads:

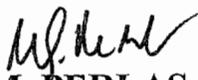
A perusal of the Complaint shows that the causes of action are 1) the Annulment of the Affidavit of Self Adjudication; 2) Reconveyance; (3) Partition; and 4) Damages. Hence, the Court has jurisdiction over the first, second and fourth causes of action but no jurisdiction over the third cause of action of Partition and the said cause of action should be dropped from the case.³⁹

The RTC's own extrication of this separate and distinct third cause of action for partition may already serve to assuage any fear that the present case would result into the final distribution of the estate. Stated otherwise, because partition has been dropped as an issue, in no way will the case culminate in the distribution of specific portions of the estate. To be sure, this distribution can only happen in the proper special proceeding for the purpose, which is the proper procedure to not only definitively declare who the heirs are, but also to resolve the claims against the estate. Only then may the **free portion of the estate** be distributed through the actual partition of the specific portions (and not mere aliquot interests) of the estate. Notably, it also deserves pointing out that in this case, no finding on heirship is necessary since the status of the parties as heirs is undisputed.

All things considered, the RTC did **not** gravely abuse its discretion in denying petitioner's **second** motion to dismiss, considering that: (a) venue was properly laid; (b) the action has yet to prescribe; and (c) it has jurisdiction over the causes of action for annulment of petitioner's Affidavits of Self-Adjudication, reconveyance of the properties in litigation back to Rosie's estate, and damages.

³⁹ *Rollo*, p. 84.

ACCORDINGLY, I vote to DENY the petition.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court