



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated November 10, 2020 which reads as follows:*

**“G.R. No. 240154 (Spouses Pascual G. Borlongan and Dolores M. Borlongan (Deceased), substituted by Jose M. Borlongan, Cesar M. Borlongan, Elmer M. Borlongan, Heirs of Greginto M. Borlongan and Irenaldo M. Borlongan v. Mina Alviar and Lucy Misa).** – Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court (Rules), assailing the Decision<sup>2</sup> dated February 28, 2018 and Resolution<sup>3</sup> dated May 29, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 148496.

**Antecedents**

In 1991, Alfredo Misa (Alfredo) died intestate and without any compulsory heir. Among the properties he left behind is a real property consisting approximately 282 square meters located in Barangay Mauway, Mandaluyong City (lot), which passed on by law to his brother, Simplicio Misa (Simplicio), who also died intestate. Moises Misa (Moises), son of Simplicio, succeeded to the property in his father’s stead. Upon Moises’ death, his son Magdaleno Misa (Magdaleno) and daughter Remedios Misa-De Leon (Remedios) succeeded him and took over the lot. Magdaleno is the spouse of respondent Lucy Misa (Lucy) while Remedios is the mother of respondent Mina Mia Alviar (Mina).<sup>4</sup> For more than 20 years since Alfredo’s death, Lucy and Mina have been residing on the subject lot.<sup>5</sup>

<sup>1</sup> *Rollo*, pp. 14-84.

<sup>2</sup> Penned by Associate Justice Ramon Paul L. Hernando (now a member of this Court), with the concurrence of Associate Justices Marlene B. Gonzales-Sison and Rafael Antonio M. Santos; *id.* at 94-103.

<sup>3</sup> *Id.* at 107-109.

<sup>4</sup> *Id.* at 111-112.

<sup>5</sup> *Id.* at 95.

A handwritten signature in black ink, located in the bottom right corner of the page.

In October 2012, petitioners Pascual and Dolores Borlongan (Sps. Borlongan) demanded that Mina and Lucy purchase the lot.<sup>6</sup> Believing that there was no reason to buy something they already owned, Mina and Lucy ignored the demand.<sup>7</sup> They later learned that the subject lot had allegedly been fraudulently registered under Sps. Borlongan's name.<sup>8</sup> Hence, Mina and Lucy instituted a petition seeking the judicial cancellation of Transfer Certificate of Title (TCT) No. 008-2012000208.<sup>9</sup>

In their Answer,<sup>10</sup> Sps. Borlongan denied the allegations of Mina and Lucy and disputed their claim that they are heirs of Alfredo. They insisted that Alfredo died with two compulsory heirs, Fe Misa (Fe) and petitioner Dolores Borlongan, who were adopted by Alfredo as evidenced by a Decision dated July 2, 1965 issued by the City Court of Quezon City, Branch III in Special Proceedings No. 276. They maintained *inter alia* that Mina and Lucy failed to prove their right to succeed as heirs of Alfredo and their title to the subject property.<sup>11</sup>

The trial court issued a Pre-Trial Order<sup>12</sup> chronicling, *inter alia*, the following:

## II. ADMISSIONS & STIPULATIONS:

### For the Petitioners [Mina and Lucy]:

1. That petitioner Mina Alviar is the great granddaughter of Alfredo Misa.  
- Not admitted.
2. That petitioner Lucy Misa is the great granddaughter of Alfredo Misa.  
- Not admitted.
3. That respondents [Sps. Borlongan] did not acquire the subject property by way of succession from Alfredo Misa.  
- Not admitted.

### Issues:

1. Whether or not the petitioners [Mina and Lucy] have the right to cause the cancellation of the existing title of the subject property; and
2. Whether or not the petitioners are entitled to damages.<sup>13</sup>  
(Emphasis and underscoring in the original)

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<sup>6</sup> Id. at 118.

<sup>7</sup> Id. at 112.

<sup>8</sup> Id. at 112-113.

<sup>9</sup> Id. at 95, 111-116.

<sup>10</sup> CA rollo, pp. 73-111.

<sup>11</sup> Id. at 74-78.

<sup>12</sup> Id. at 223-228.

<sup>13</sup> Id. at 223-224.

Sps. Borlongan also submitted the following stipulations and issues:

**For the Respondents** [Sps. Borlongan]:

1. They [Mina and Lucy] have been staying in the pieces of real estate known as Nos. 322/324 Dr. Fernandez Street, Barangay Mauway, Mandaluyong City, rent-free for close to forty years, upon mere tolerance of the former owner of the property, Mr. Alfredo Misa, now deceased, and the present owners, herein respondents;  
- Denied
2. They [Mina and Lucy] filed their initiatory pleadings in this case to delay their long, long overdue ejection from Nos. 322/324 Dr. Fernandez Street, Barangay Mauway, Mandaluyong City;  
- Denied, as regards the term to delay.
3. They [Mina and Lucy] did not question within the ten (10) year period provided by Article 1144 of the New Civil Code the Deed of Conditional Sale executed by and between Alfredo Misa married to Juanita Pido, as vendor, and Pascual Borlongan married to Dolores Misa and Antonio Yusay married to Fe Misa, as vendees, on June 27, 1978, which is known as Doc. No. 83, Series of 1978 of the Notarial Registry of Serafin De Guzman; and  
- Admitted, but denied as regards to the prescription.
4. They [Mina and Lucy] did not intervene in Special Proceeding No. 276, City Court of Quezon City, Branch III, entitled "In the Matter of the Adoption of Dolores Almirez and Fe Labrador," to object to or oppose the adoption of said Dolores Almirez and Fe Labrador by Alfredo Misa and Juanita Pido. The Decision in said special proceeding was promulgated on July 2, 1965.  
- Denied.

x x x x

**Issues:**

1. The main issue is that, they have to put up a defense of a direct succession to Alfredo Misa, when if you just look at it to the succession, they're just the grand nieces of the late grand niece owner of the land, not daughter and his granddaughter.  
- Denied.

2. The manner by which the property was transferred and that there was a sale.  
- Denied.<sup>14</sup> (Emphasis and underscoring in the original)

After Mina had given her testimony<sup>15</sup> for the plaintiffs, Sps. Borlongan filed a Motion to Dismiss<sup>16</sup> on the ground of lack of jurisdiction over the subject matter. They claimed that the instant case should be dismissed on the ground that Mina and Lucy's rights as alleged heirs of Alfredo should first be threshed out in a special proceeding.<sup>17</sup>

### **Ruling of the Regional Trial Court**

In an Order<sup>18</sup> dated February 29, 2016, the Regional Trial Court (RTC) denied the Motion to Dismiss of Sps. Borlongan and sustained the hearing scheduled on March 4, 2016 at 1:30 p.m.<sup>19</sup>

The RTC held that the Motion to Dismiss assailing the jurisdiction of the trial court over the subject matter of the case was filed too late. Also, Sps. Borlongan's active participation in the case, as well as the fact that they invoked the trial court's jurisdiction through their motions seeking affirmative reliefs and Answer, barred them from questioning the jurisdiction of the RTC.<sup>20</sup>

The RTC observed that when the Motion to Dismiss was filed, Mina and Lucy had already presented their first witness. After Sps. Borlongan filed their Answer, they actively participated in the mediation proceedings before the Philippine Mediation Board and the Judicial Dispute Resolution proceedings in the RTC. Sps. Borlongan also sought relief from the RTC by asking for the removal of the Notice of Lis Pendens in the title of the subject property.<sup>21</sup>

In an Order<sup>22</sup> dated September 30, 2016, the RTC denied the Motion for Reconsideration Sps. Borlongan filed for lack of merit.<sup>23</sup> The RTC maintained its earlier ruling that Sps. Borlongan are barred

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<sup>14</sup> Id. at 224-225.

<sup>15</sup> *Rollo*, pp. 130-156.

<sup>16</sup> *CA rollo*, pp. 133-147.

<sup>17</sup> Id. at 133.

<sup>18</sup> Penned by Presiding Judge Esteban A. Tacla, Jr.; *rollo*, pp. 159-160.

<sup>19</sup> Id. at 160.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Penned by Presiding Judge Esteban A. Tacla, Jr.; id. at 189-190.

<sup>23</sup> Id.

from questioning the jurisdiction of the trial court.

Thereafter, petitioners filed a Petition for Certiorari under Rule 65 of the Rules assailing the Orders of the RTC.

### **Ruling of the Court of Appeals**

On February 28, 2018, the CA rendered its Decision,<sup>24</sup> the dispositive portion of which reads:

**WHEREFORE**, the assailed *Orders* dated February 29, 2016 and September 30, 2016, both issued by the Regional Trial Court, Branch 208 of Mandaluyong City in LRC Case No. MC14-715, are **AFFIRMED**. The trial court is directed to henceforth evaluate the evidence presented by the parties and render a decision on the issues defined during the pre-trial, including the issue of heirship.

**SO ORDERED.**<sup>25</sup> (Emphasis in the original)

The CA found the denial of Sps. Borlongan's Motion to Dismiss to be in order. For reasons of practicality and as prayed for by both parties, the CA directed the RTC to try and render a prior determination of the heirship of Mina and Lucy without the need for a separate special proceeding.<sup>26</sup>

In affirming the denial of the Motion to Dismiss, the CA cited the case of *Portugal v. Portugal-Beltran*<sup>27</sup> where the Court dispensed with the need to institute a separate special proceeding to determine their heirship since the parties had voluntarily submitted the issue to the trial court and already presented their evidence.<sup>28</sup>

The CA also pointed out the ruling in *Heirs of Ypon v. Ricaforte*,<sup>29</sup> where it was held that the need to institute a separate special proceeding for the determination of heirship may also be dispensed with for the sake of practicality, as when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship, and

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<sup>24</sup> Supra note 2.

<sup>25</sup> *Rollo*, p. 103.

<sup>26</sup> Id.

<sup>27</sup> 504 Phil. 456 (2005).

<sup>28</sup> *Rollo*, pp. 100-101.

<sup>29</sup> 713 Phil. 570, 576 (2013).

the RTC had consequently rendered judgment thereon, or when a special proceeding had been instituted but had been finally closed and terminated, and hence, cannot be re-opened, or those of similar nature.<sup>30</sup>

Based on the stipulations and admissions in the Pre-Trial Order, the CA observed that both parties have raised during the pre-trial the issue of whether Mina and Lucy are rightful heirs of Alfredo. They have manifested their intent to prove, or disprove, and have the matter of Mina and Lucy's status as heirs tried and resolved by the RTC in the reconveyance case. For the CA, a separate special proceeding is now uncalled for.<sup>31</sup>

In a Resolution<sup>32</sup> dated May 29, 2018, the CA denied the Motion for Reconsideration Sps. Borlongan filed for lack of merit.<sup>33</sup>

In the present petition,<sup>34</sup> Sps. Borlongan insists that the need to institute a separate special proceeding for the determination of heirship may be dispensed with for the sake of practicality when: (1) the parties in the civil case had voluntarily submitted the issue to the court and already presented their evidence regarding the issue of heirship, and the RTC had consequently rendered judgment thereon; or (2) a special proceeding had been instituted but had been finally closed and terminated, and hence cannot be re-opened.<sup>35</sup> For Sps. Borlongan, these exceptions are not present in the case because they had not yet presented their evidence and judgment had not yet been rendered when they filed the Motion to Dismiss.<sup>36</sup>

In their Comment,<sup>37</sup> Mina and Lucy argue that Sps. Borlongan filed a 72-page Petition extensively discussing the merits of the petition for cancellation of title case pending before the RTC which involved questions of fact and not questions of law.<sup>38</sup> For them, Sps. Borlongan are estopped from questioning the jurisdiction of the RTC as they themselves recognized the trial court's jurisdiction to declare heirship in the same proceedings by filing their Answer, cross-examining Mina, actively participating during trial, and seeking reliefs

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<sup>30</sup> *Rollo*, p. 101.

<sup>31</sup> *Id.* at 103.

<sup>32</sup> *Supra* note 3.

<sup>33</sup> *Rollo*, p. 109.

<sup>34</sup> *Id.* at 14-84.

<sup>35</sup> *Id.* at 18, 61-65.

<sup>36</sup> *Id.* at 20, 65-67.

<sup>37</sup> *Id.* at 198-210.

<sup>38</sup> *Id.* at 199.

by filing several motions.<sup>39</sup> They also reiterate that, pursuant to the ruling of the Court in *Portugal*,<sup>40</sup> the court can relax its rules and allow the trial court in a proceeding for annulment of title to determine the status of the parties as heirs when there is only one property and the parties had voluntarily submitted the issue to the RTC.<sup>41</sup> They also maintain that a prior declaration of heirship in a separate special proceeding is not required before the title is annulled based on fraud.<sup>42</sup>

### Issues

The issues to be resolved are:

1. Whether Sps. Borlongan may assail the jurisdiction of the trial court over the subject matter despite having filed an answer and several motions seeking affirmative reliefs and actively participating during trial; and
2. Whether Mina and Lucy must institute a prior determination of heirship in a separate special proceeding to determine their status as heirs of Alfredo before they can file an ordinary civil action to cancel the transfer certificate of title issued to Sps. Borlongan on the ground of fraud.

### Ruling of the Court

**Sps. Borlongan is not barred from assailing the jurisdiction of the trial court over the issue on the status of Mina and Lucy as heirs of Alfredo despite having filed an answer and several motions seeking affirmative reliefs and actively participating during trial.**

Mina and Lucy argue that Sps. Borlongan are now estopped from questioning the jurisdiction of the trial court considering that trial had already started and Sps. Borlongan secured several affirmative reliefs. They are mistaken.

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<sup>39</sup> Id. at 200-203.

<sup>40</sup> Supra note 27.

<sup>41</sup> *Rollo*, pp. 205-206.

<sup>42</sup> Id. at 208-210.

As a rule, jurisdiction is not to be left to the will or stipulation of the parties. It cannot be lost by estoppel.<sup>43</sup> By way of exception, in *Tijam v. Sibanghanoy*,<sup>44</sup> the Court held that the doctrine of estoppel by laches may operate to bar belated jurisdictional challenges. In *Sibanghanoy*, the issue of lack of jurisdiction was raised for the first time only in a Motion for Reconsideration filed in the CA 15 years after the complaint for a sum of money was instituted in the Court of First Instance. Prior to that, the same party invoked the jurisdiction of the Court of First Instance to obtain affirmative relief and submitted its case for a final adjudication on the merits. The Court held that a “party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction” for public policy considerations.<sup>45</sup>

In *Adlawan v. Joaquino*,<sup>46</sup> the Court cautioned the indiscriminate application of the ruling in *Sibanghanoy* and emphasized that:

x x x [T]he ruling in *Sibonghanoy* establishes an exception which is **to be applied only under extraordinary circumstances or to those cases similar to its factual situation**. The rule to be followed is that the lack of a court's jurisdiction is a non-waivable defense that a party can raise at any stage of the proceedings in a case, even on appeal; the doctrine of estoppel, being the exception to such non-waivable defense, must be applied with great care and the equity must be strong in its favor.<sup>47</sup>  
(Citation omitted; emphasis supplied)

We find no reason to depart from the general rule and apply the exception in *Sibanghanoy*. The present case does not share the same factual milieu as *Sibanghanoy* to warrant the application of the doctrine of estoppel. Sps. Borlongan called the attention of the trial court immediately after they realized that the underlying issue in the subject matter of Mina and Lucy's action is beyond the confines of an ordinary civil action. Sps. Borlongan's initial active participation during trial does not operate to bar them from assailing the jurisdiction of the RTC.

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<sup>43</sup> *Victoria Manufacturing Corporation Employees Union v. Victoria Manufacturing Corp.*, G.R. No. 234446, July 24, 2019, citing *Figueroa v. People*, 580 Phil. 58 (2008).

<sup>44</sup> G.R. No. L-21450, April 15, 1968

<sup>45</sup> Id.

<sup>46</sup> 787 Phil. 599, 611 (2016).

<sup>47</sup> Id.



**Respondents Mina and Lucy do not need to institute a separate special proceeding to determine their status as purported heirs of Alfredo.**

An ordinary civil action is defined as one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.<sup>48</sup> On the other hand, a special proceeding refers to a remedy by which a party seeks to establish a status, a right or a particular fact.<sup>49</sup> Therefore, a plaintiff's right to institute an ordinary civil action should be based on his own right to the relief sought.<sup>50</sup>

Unless otherwise authorized by law or the Rules, every action must be prosecuted or defended in the name of the real party in interest who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.<sup>51</sup> The real interest contemplated by the Rules is one "which is present and substantial, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest."<sup>52</sup>

Noticeably, while the captioned "petition" Mina and Lucy filed stated that it is "FOR: Cancellation of Transfer Certificate of Title," a careful examination of the allegations in the pleading reveals that the foundation of their claim of ownership over the subject lot is their assertion that they are heirs of Alfredo. This is evident from the following statements:

x x x x

3. Petitioner Lucy Misa's rights to the subject property can be traced back to one Alfredo Misa who passed away without any compulsory heir to succeed his properties and without a will. Upon the death of Alfredo Misa, his brother Simplicio Misa succeeded to his properties in accordance with the law. Simplicio Misa died without a will.

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<sup>48</sup> RULES OF COURT, RULE 1, SECTION 3(A).

<sup>49</sup> RULES OF COURT, RULE 1, SECTION 3(C).

<sup>50</sup> *Reyes v. Enriquez*, 574 Phil. 245, 251 (2008), citing *Ibonilla v. Province of Cebu*, 285 Phil. 1034 (1992).

<sup>51</sup> RULES OF COURT, RULE 3, SECTION 3.

<sup>52</sup> *Gemina v. Eugenio*, 797 Phil. 763, 770 (2016).

4. By way of succession, the properties which Simplicio Misa succeeded from Alfredo Misa would be passed to his son Moises Misa. Moises Misa (now deceased) is the father of Lucy Misa's husband Magdaleno Misa (also deceased). Lucy Misa and Magdaleno Misa got married in 1958 and continued to reside in the subject property.

5. Petitioner Mina Alviar's rights to the subject property can be traced back also to one Alfredo Misa who passed away without any compulsory heir to succeed his properties and without a will. Upon the death of Alfredo Misa, his brother Simplicio Misa succeeded to his properties in accordance with the law. Simplicio Misa died without a will.

6. By way of succession, the properties which Simplicio Misa succeeded from Alfredo Misa would be passed to his son Moises Misa. Moises Misa (now deceased) is the father of Remedios Misa-de Leon who has been occupying the subject property since 1950s. Remedios Misa-de Leon gave her rights to the property in favor of her daughter petitioner Mina Alviar.<sup>53</sup>

In determining whether the cancellation of the TCT of the subject lot is proper, the Court must essentially ascertain the respective rights of the parties. Impliedly, Mina and Lucy are asking the Court to recognize them as heirs of Alfredo in order to grant the reliefs they are praying for in the present ordinary civil action.

In the recent case of *Treyes v. Larlar*,<sup>54</sup> the Court abandoned the rulings laid down in *Heirs of Ypon v. Ricaforte*,<sup>55</sup> *Heirs of Yaptinchay v. Del Rosario*,<sup>56</sup> *Portugal v. Portugal-Beltran*,<sup>57</sup> *Reyes v. Enriquez*,<sup>58</sup> and *Heirs of Gabatan v. Court of Appeals*<sup>59</sup> requiring a prior determination of heirship in a separate special proceeding as a prerequisite before one can file an ordinary civil action to enforce ownership rights acquired by virtue of succession. The Court, speaking through the *ponencia* of Associate Justice Alfredo Benjamin S. Caguioa, declared that:

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<sup>53</sup> Id. at 111-112.

<sup>54</sup> G.R. No. 232579, September 8, 2020.

<sup>55</sup> Supra note 29.

<sup>56</sup> 363 Phil. 393 (1999).

<sup>57</sup> Supra note 27.

<sup>58</sup> 574 Phil. 245 (2008).

<sup>59</sup> 600 Phil. 112 (2009).

x x x [U]nless there is a pending special proceeding for the settlement of the decedent's estate or for the determination of heirship, the compulsory or intestate heirs may commence an ordinary civil action to declare the nullity of a deed or instrument, and for recovery of property, or any other action in the enforcement of their ownership rights acquired by virtue of succession, without the necessity of a prior and separate judicial declaration of their status as such. The ruling of the trial court shall only be in relation to the cause of action of the ordinary civil action, *i.e.*, the nullification of a deed or instrument, and recovery or reconveyance of property, which ruling is binding only between and among the parties.<sup>60</sup>

In ruling that the legal heirs of a decedent are parties in interest to an ordinary civil action arising out their respective right of succession without the need to file a separate special proceeding for declaration of heirship, the Court explained in *Treyes v. Larlar*<sup>61</sup> that:

x x x [E]ven assuming *arguendo* that the Rules strictly provide that a separate judicial determination of heirship in a special proceeding is a precondition in an ordinary civil action wherein heirship is already established by compulsory succession or intestacy and is only sought to be enforced, which, as already discussed at length, is not the case, **the Rules must still yield to the specific provisions of the Civil Code that certain relatives of the decedent attain their status as either compulsory or intestate heirs and that their successional rights are transmitted and enforceable at the very moment of death without need of such separate judicial determination.**<sup>62</sup> (Emphasis supplied)

To quiet title, Article 477 of the Civil Code requires that the plaintiff must have a legal or an equitable title to or interest in the real property that is the subject matter of the action.<sup>63</sup> Here, the ordinary civil action Mina and Lucy instituted may prosper as their successional rights as collateral relatives of Alfredo are transmitted and enforceable at the very moment of his death without need of a separate judicial determination.

**WHEREFORE**, the petition is **DENIED**.

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<sup>60</sup> Id.

<sup>61</sup> Supra note 54.

<sup>62</sup> Id.

<sup>63</sup> CIVIL CODE OF THE PHILIPPINES, ARTICLE 477.

**SO ORDERED.” ZALAMEDA, J.,** on official leave.

**By authority of the Court:**

**LIBRADA C. BUENA**  
Division Clerk of Court

by:



**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**132-B**

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