

**HEIRS OF GUIDO YAPTINCHAY AND ISABEL YAPTINCHAY, NAMELY:
LETICIA ENCISO-GADINGAN, EMILIO ENCISO, AURORA ENCISO, AND
NORBERTO ENCISO, REPRESENTED BY LETICIA ENCISO-GADINGAN,
ATTO...**

G.R. No. 124320. March 02, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a Petition for Certiorari under Rule 65 of the Revised Rules of Court assailing the Orders dated October 25, 1995 and February 23, 1996, respectively, of Branch 21 of the Regional Trial Court in Imus, Cavite ("RTC").

The facts that matter are, as follows:

Petitioners claim that they are the legal heirs of the late Guido and Isabel Yaptinchay, the owners-claimants of Lot No. 1131 with an area of 520,638 and Lot No. 1132 with an area of 96,235 square meters, more or less situated in Bancal, Carmona, Cavite.

On March 17, 1994, petitioners executed an Extra-Judicial Settlement of the estate of the deceased Guido and Isabel Yaptinchay.

On August 26, 1994, petitioners discovered that a portion, if not all, of the aforesaid properties were titled in the name of respondent Golden Bay Realty and Development Corporation ("Golden Bay") under Transfer Certificate of Title Nos. ("TCT") 225254 and 225255. With the discovery of what happened to subject parcels of land, petitioners filed a complaint for ANNULMENT and/or DECLARATION OF NULLITY OF TCT NO. 493363, 493364, 493665, 493366, 493367; and its Derivatives; As Alternative Reconveyance of Realty WITH A PRAYER FOR A WRIT OF PRELIMINARY INJUNCTION and/or RESTRAINING ORDER WITH DAMAGES, docketed as RTC BCV-94-127 before Branch 21 of the Regional Trial Court in Imus, Cavite.

Upon learning that "Golden Bay" sold portions of the parcels of land in question, petitioners filed with the "RTC" an Amended Complaint to implead new and additional defendants and to mention the TCTs to be annulled. But the respondent court dismissed the Amended Complaint.

Petitioners moved for reconsideration of the Order dismissing the Amended Complaint. The motion was granted by the RTC in an Order^[1] dated July 7, 1995, which further allowed the herein petitioners to file a Second Amended Complaint,^[2] which they promptly did.

On August 12, 1995, the private respondents presented a Motion to Dismiss^[3] on the grounds that the complaint failed to state a cause of action, that plaintiffs did not have a right of action, that they have not established their status as heirs, that the land being claimed is different from that of the defendants, and that plaintiffs' claim was barred by laches. The said Motion to Dismiss was granted by the respondent court in its Order^[4] dated October 25, 1995, holding that petitioners "have not shown any proof or even a semblance of it - except the allegations

that they are the legal heirs of the above-named Yaptinchays - that they have been declared the legal heirs of the deceased couple."

Petitioners interposed a Motion for Reconsideration[5] but to no avail. The same was denied by the RTC in its Order[6] of February 23, 1996.

Undaunted, petitioners have come before this Court to seek relief from respondent court's Orders under attack.

Petitioners contend that the respondent court acted with grave abuse of discretion in ruling that the issue of heirship should first be determined before trial of the case could proceed. It is petitioners' submission that the respondent court should have proceeded with the trial and simultaneously resolved the issue of heirship in the same case.

The petition is not impressed with merit.

To begin with, petitioners' Petition for Certiorari before this Court is an improper recourse. Their proper remedy should have been an appeal. An order of dismissal, be it right or wrong, is a final order, which is subject to appeal and not a proper subject of certiorari[7]. Where appeal is available as a remedy, certiorari will not lie[8].

Neither did the respondent court commit grave abuse of discretion in issuing the questioned Order dismissing the Second Amended Complaint of petitioners, as it aptly ratiocinated and ruled:

"But the plaintiffs who claimed to be the legal heirs of the said Guido and Isabel Yaptinchay have not shown any proof or even a semblance of it - except the allegations that they are the legal heirs of the aforementioned Yaptinchays - that they have been declared the legal heirs of the deceased couple. Now, the determination of who are the legal heirs of the deceased couple must be made in the proper special proceedings in court, and not in an ordinary suit for reconveyance of property. This must take precedence over the action for reconveyance (Elena C. Monzon, et. al., v. Angelita Taligato, CA-G-R No. 33355, August 12, 1992)."

In *Litam, etc., et. al. v. Rivera*[9], this court opined that the declaration of heirship must be made in an administration proceeding, and not in an independent civil action. This doctrine was reiterated in *Solivio v. Court of Appeals*[10] where the court held:

"In *Litam, et al. v. Rivera*, 100 Phil. 364, where despite the pendency of the special proceedings for the settlement of the intestate estate of the deceased Rafael Litam, the plaintiffs-appellants filed a civil action in which they claimed that they were the children by a previous marriage of the deceased to a Chinese woman, hence, entitled to inherit his one-half share of the conjugal properties acquired during his marriage to Marcosa Rivera, the trial court in the civil case declared that the plaintiffs-appellants were not children of the deceased, that the properties in question were paraphernal properties of his wife, Marcosa Rivera, and that the latter was his only heir. On appeal to this Court, we ruled that 'such declarations (that Marcosa Rivera was the only heir of the decedent) is improper, in Civil Case No. 2071, it being within the exclusive competence of the court in Special Proceedings No. 1537, in which it is not as yet, in issue, and, will not be, ordinarily, in issue until the presentation of the project of partition.' (p. 378)."

The trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding. Under Section 3, Rule 1 of the 1997 Revised Rules of Court, a 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" while a special proceeding is "a remedy by which a party seeks to establish a status, a right, or a particular fact." It is then decisively clear that the declaration of heirship can be made only in a special proceeding inasmuch as the petitioners here are seeking the establishment of a status or right.

We therefore hold that the respondent court did the right thing in dismissing the Second Amended Complaint,

which stated no cause of action. In *Travel Wide Associated Sales (Phils.), Inc. v. Court of Appeals*[11], it was ruled that:

" xxx If the suit is not brought in the name of or against the real party in interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action."

WHEREFORE, for lack of merit, the Petition under consideration is hereby DISMISSED. No pronouncement as to costs.

SO ORDERED.

Romero, (Chairman), and Gonzaga-Reyes, JJ., concur.
Vitug, J., abroad on official business.
Panganiban, J., on leave.

[1] Rollo, Annex "J", p. 105.

[2] Ibid., Annex "B", pp. 16-72.

[3] Ibid., Annex "K", pp. 107-124.

[4] Ibid., Annex "A", p. 14.

[5] Ibid., Annex "D", pp. 75-76.

[6] Ibid., Annex "C", p. 73.

[7] *American Home Assurance, Company v. Court of Appeals*, 208 SCRA 343.

[8] *Ongsitco v. Court of Appeals*, 255 SCRA 703.

[9] 100 Phil. 364.

[10] 182 SCRA 119, 128.

[11] 199 SCRA 205.

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