

VALENTE RAYMUNDO, PETITIONER, VS. TEOFISTA ISAGON VDA. DE SUAREZ, DANILO I. SUAREZ, EUFROCINA SUAREZ, MARCELO I. SUAREZ, JR, EVELYN SUAREZ, ET AL., RESPONDENTS.

G.R. No. 149017. November 28, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

This petition, filed under Rule 65 of the Rules of Court, assails the Court of Appeals (CA) Decision[1] and Resolution[2] in CA-G.R. SP No. 58090 which reversed, set aside and recalled the Regional Trial Court (RTC) Orders[3] in Civil Case No. 51203.

First, the long settled facts.

Marcelo and Teofista Isagon Suarez'[4] marriage was blessed with both material wealth and progeny in herein respondents, namely, Danilo,[5] Eufrocina, Marcelo Jr., Evelyn, and Reggineo,[6] all surnamed Suarez. During their marriage, governed by the conjugal partnership of gains regime, they acquired numerous properties, which included the following: (1) a parcel of land situated in Barrio Caniogan, Pasig with an area of 348 square meters covered by Transfer Certificate of Title (TCT) No. 30680; (2) property located in Pinagbuhatan, Pasig, with an area of 1,020 square meters under Tax Declaration No. A-016-01003; and (3) Lot Nos. 5, 6 & 7, Block 2 covered by Tax Declaration No. A-01700723 (subject properties).

After the death of Marcelo Sr. in 1955, Teofista and herein respondents, as well as Elpidio Suarez,[7] executed an Extrajudicial Settlement of Estate,[8] partitioning Marcelo Sr.'s estate, thus:

WHEREAS, the said deceased is survived by the parties hereto who are his only legal heirs: TEOFISTA ISAGON, being the surviving spouse, and EUFROCINA S. ANDRES, ELPIDIO SUAREZ, DANILO SUAREZ, EVELYN SUAREZ, MARCELO SUAREZ, JR. and REGGINEO SUAREZ, being the legitimate children of the deceased with the said TEOFISTA ISAGON;

WHEREAS, the minors ELPIDIO, SUAREZ, DANILO SUAREZ, EVELYN SUAREZ, MARCELO SUAREZ, JR. and REGGINEO SUAREZ are represented herein by EUFROCINA S. ANDRES, in her capacity as the guardian and legal administrator of the property of the said minors;

WHEREAS, there are no known debts or financial obligations of whatever nature and amount against the estate of the deceased;

NOW, THEREFORE, in consideration of the foregoing premises, the Parties have agreed to settle and liquidate the assets of the conjugal partnership between the deceased and TEOFISTA ISAGON, and to settle and adjudicate the estate of the said deceased, by and pursuance to these presents, in the following manner, to wit:

1. That TEOFISTA ISAGON, as the surviving spouse and partner of the deceased, shall receive in absolute and exclusive ownership the following properties as her lawful share in the assets of the conjugal partnership of

gains between her and the deceased, to wit:

(a)

Half (1/2) interest and participation in the parcel of land covered by Tax Declaration No. 6938, situated at Sitio Pantayan, Municipality of Taytay, Province of Rizal;

(b)

Half (1/2) interest and participation in the parcel of land covered by Tax Declaration No. 6939, situated at Sitio Pantayan, Municipality of Taytay, Province of Rizal;

(c)

Half (1/2) interest and participation in the parcel of land covered by TCT No. 38291, situated at Barrio Rosario, Municipality of Pasig, Province of Rizal;

(d)

Half (1/2) interest and participation in the parcel of land covered by TCT No. 38290, situated at Barrio Rosario, Municipality of Pasig, Province of Rizal;

(e)

TWELVE THOUSAND FIVE HUNDRED THIRTY PESOS AND NINETY (P12,530.90) deposited with the Commercial Bank and Trust Company of the Philippines, and THIRTY-NINE PESOS (P39.00) deposited with Prudential Bank.

2. That the Parties TEOFISTA ISAGON, EUFROCINA S. ANDRES, ELPIDIO SUAREZ, DANILO SUAREZ, EVELYN SUAREZ, MARCELO SUAREZ, JR. and REGGINEO SUAREZ, shall each and all receive and be entitled to a share equivalent to one-seventh (1/7) of the estate of the deceased MARCELO SUAREZ, which estate is comprised of the following properties, to wit:

(a)

A parcel of land covered by TCT No. 30680, situated at Barrio Kaniogan, Municipality of Pasig, Province of Rizal, with an assessed value of P4,150.00.

(b)

Three (3) parcels of land covered by TCT Nos. 33982, 33983 and 33984, situated at Barrio Pineda, Municipality of Pasig, Province of Rizal, with an assessed value of P560.00.

(c)

A parcel of land covered by TCT 33986, situated at Barrio Pineda, Municipality of Pasig, Province of Rizal, with an assessed value of P440.00.

(d)

Two (2) parcels of land, being Lots Nos. 42 and 44 of the amendment-subdivision plan TY-4653-Amd., being a portion of Lot 2 described on the original plan II-4653, G.L.R.O. Record No. _____, situated at Barrio Santolan, Municipality of Pasig, Province of Rizal, with a total assessed value of P590.00.

(e)

Two parcels of land, being Lots Nos. 43 and 45 of the amendment-subdivision plan TY-4653-Amd., being a portion of Lot 2 described on the original plan II-4653, G.L.R.O. Record No. _____, situated at Barrio

Santolan, Municipality of Pasig, Province of Rizal, with a total assessed value of P1,190.00.

(f)

A parcel of land, being Lot No. 6, Block 269 of the subdivision plan pos-112, being a portion of Lot 2, Block 348, Psd-3188, G.L.R.O. Record Nos. 375,699 and 917, situated at San Felipe Neri, Province of Rizal, with an assessed value of P6,340.00.

(g)

A parcel of land covered by OCT No. 391, situated in the Municipality of Taytay, Province of Rizal, with an assessed value of P1,840.00.

(h)

TWELVE THOUSAND (12,000) shares of stock of the Consolidated Mines, Inc. represented by Certificate No. 71-5-B (for 1,000 shares) and Certificate No. 12736 (for 11,000 shares).

PROVIDED, that their title to the properties hereinabove mentioned shall be in common and the share of each heir being pro indiviso.

Curiously, despite the partition, title to the foregoing properties, explicitly identified in the Extrajudicial Settlement of Estate as forming part of Marcelo's and Isagon's property regime, remained in the couple's name. Not surprisingly, Teofista continued to administer and manage these properties. On the whole, apart from those now owned exclusively by Teofista, all the properties were held pro indiviso by Teofista and her children; and respective titles thereto were not changed, with Teofista as de facto administrator thereof.

In 1975, Rizal Realty Corporation (Rizal Realty) and Teofista, the latter owning ninety percent (90%) of the former's shares of stock, were sued by petitioner Valente Raymundo, his wife Violeta, Virginia Banta and Maria Concepcion Vito (plaintiffs) in consolidated cases for Rescission of Contract and Damages, docketed as Civil Case Nos. 21736 to 21739. Thereafter, in 1975, the then Court of First Instance (CFI) of Rizal, Branch 1, rendered judgment: (1) rescinding the respective contracts of plaintiffs with Rizal Realty and Teofista, and (2) holding the two defendants solidarily liable to plaintiffs for damages in the aggregate principal amount of about P70,000.00.[9]

When the judgment of the CFI became final and executory, herein subject properties were levied and sold on execution on June 24, 1983 to satisfy the judgment against Teofista and Rizal Realty. The aforementioned plaintiffs were the highest bidder, and bought the levied properties for the amount of P94,170.00. As a result, a certificate of sale was issued to them and registered in their favor on August 1, 1983. On July 31, 1984, the Provincial Sheriff of Rizal issued a final deed of sale over the subject properties.

Parenthetically, before expiration of the redemption period, or on June 21, 1984, herein respondents filed a revindictory action against petitioner Valente, Violeta, Virginia and Maria Concepcion, docketed as Civil Case No. 51203, for the annulment of the auction sale and recovery of ownership of the levied properties. Essentially, respondents alleged in their complaint that they cannot be held liable for the judgment rendered against their mother, Teofista, not having been impleaded therein; and consequently, the subject properties, which they own pro indiviso with their mother, can neither be levied nor be sold on execution.

Meanwhile, the RTC, Branch 151, formerly the CFI, Branch 1, in Civil Case Nos. 21376 to 21379, issued an Order[10] directing Teofista: (1) to vacate the subject properties, (2) to desist from despoiling, dismantling, removing or alienating the improvements thereon, (3) to place petitioner Valente, Violeta, Virginia and Maria Concepcion in peaceful possession

thereof, and (4) to surrender to them the owner's duplicate copy of the torrens title and other pertinent documents. Herein respondents, joined by their mother, Teofista, filed a Motion for Reconsideration arguing that the subject properties are co-owned by them and further informing the RTC of the filing and pendency of Civil Case No. 51203. Nonetheless, the trial court denied Teofista's and herein respondents' motion, reiterated its previous order, which included, among others, the order for Teofista and all persons claiming right under her, to vacate the lots subject of the judicial sale.

Undaunted, Teofista and herein respondents filed a petition for certiorari before the CA to annul the foregoing orders. The appellate court, on July 6, 1987, dismissed Teofista's and herein respondents' petition, thus:

We believe this petition cannot prosper for two reasons. First, as purported case for certiorari it fails to show how the respondent judge had acted without or in excess of jurisdiction or with grave abuse of discretion. The two orders being assailed were preceded by a final judgment, a corresponding writ of execution, a levy on execution and a judicial sale, all of which enjoy a strong sense presumption of regularity.

Secondly, as far as [petitioner] Teofista Suarez is concerned, she cannot complain about the levy because she was a party in the consolidated cases where judgment was rendered against her in her personal capacity. Since she did not appeal from the decision, she cannot say that the judgment is erroneous for an obligation that belong to the corporation. And with respect to the children of Teofista Suarez, who are co-petitioners in this proceedings [herein respondents], suffice it to point out that not being parties in the consolidated cases, what they should have done was to immediately file a third party claim. The moment levy was made on the parcels of land, which they claim are theirs by virtue of hereditary succession, they should have seasonably filed such claim to protect their rights. As the record discloses, however, the children chose to remain silent, and even allowed the auction sale to be held, filing almost a year later a half-hearted complaint to annul the proceedings which they allowed to be dismissed by not diligently prosecuting it.

In *Santos v. Mojica* (10 SCRA 318), a partition case with third-party claimants, the Supreme Court came out with the following ruling: "The procedure (a petition for certiorari) followed by him (a petitioner not party to the original partition case) in vindicating his right is not the one sanctioned by law, for he should have filed a separate and independent action making parties therein the sheriff and the plaintiffs responsible for the execution xxx. It can, therefore, be said that (he) acted improperly in filing the present petition because his remedy was to file a separate and independent action to vindicate his ownership over the land.

WHEREFORE, the petition is denied and the restraining order previously issued is DISSOLVED, with costs against petitioners.[11]

On the other litigation front concerning Civil Case No. 51203, a writ of preliminary injunction was issued by the RTC Pasig, Branch 155, on February 25, 1985, enjoining petitioner Valente, Violeta, Virginia and Maria Concepcion from transferring to third parties the levied properties based on its preliminary finding that the auctioned properties are co-owned by Teofista and herein respondents. Subsequently, however, Civil Case No. 51203 was dismissed by the RTC, Branch 155, at the instance of petitioner Valente for failure of herein respondents to prosecute. But in yet another turn of events, the RTC, Branch 155, lifted its previous order of dismissal and directed the issuance of alias summons.

Thus, it was now petitioner Valente's, Violeta's, Virginia's and Maria Concepcion's turn to file a petition for certiorari with the CA, assailing the various orders of the RTC, Branch 155, which all rejected their bid to dismiss Civil Case No. 51203. The CA granted their petition, thus:

And the fact that herein private respondents, as the legal heirs of Teofista Vda. de Suarez and supposedly not parties in Civil Case Nos. 21376 - 21379 does not preclude the application of the doctrine of *res judicata* since, apart from the requisites constitutive of this procedural tenet, they were admittedly the children of Teofista

Suarez, who is the real party-in-interest in the previous final judgment. As successors-in-interest of Teofista Suarez, private respondents merely stepped into the shoes of their mother in regard to the levied pieces of property. Verily, there is identity of parties, not only where the parties in both actions are the same, but where there is privity with them as in the cases of successors-in-interest by title subsequent to the commencement of the action or where there is substantial identity.

Finally, the action to annul the judicial sale filed by herein private respondents is not the reivindicatory suit, much less the third party claim contemplated by Section 17 of Rule 39.

WHEREFORE, the petition for certiorari is hereby granted and the questioned orders dated February 25, 1985, May 19, 1989 and February 26, 1990 issued in Civil Case No. 51203 are hereby annulled; further respondent judge is ordered to dismiss Civil Case No. 51203.[12]

From this ruling, herein respondents appealed to the Supreme Court. In *Suarez v. Court of Appeals*,^[13] we reversed the appellate court, thus:

Even without touching on the incidents and issues raised by both petitioner [herein respondents] and private respondents [petitioner Valente, Violeta, Virginia and Maria Concepcion] and the developments subsequent to the filing of the complaint, [w]e cannot but notice the glaring error committed by the trial court.

It would be useless to discuss the procedural issue on the validity of the execution and the manner of publicly selling en masse the subject properties for auction. To start with, only one-half of the 5 parcels of land [subject properties] should have been the subject of the auction sale.

The law in point is Article 777 of the Civil Code, the law applicable at the time of the institution of the case:

The rights to the succession are transmitted from the moment of the death of the decedent."

Article 888 further provides:

"The legitime of the legitimate children and descendants consists of one-half of the hereditary estate of the father and of the mother.

The latter may freely dispose of the remaining half, subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided."

Article 892, par. 2 likewise provides:

"If there are two or more legitimate children or descendants, the surviving spouse shall be entitled to a portion equal to the legitime of each of the legitimate children or descendants."

Thus, from the foregoing, the legitime of the surviving spouse is equal to the legitime of each child.

The proprietary interest of petitioners [herein respondents] in the levied and auctioned property is different from and adverse to that of their mother [Teofista]. Petitioners [herein respondents] became co-owners of the property not because of their mother [Teofista] but through their own right as children of their deceased father [Marcelo Sr.]. Therefore, petitioners [herein respondents] are not barred in any way from instituting the action to annul the auction sale to protect their own interest.

WHEREFORE, the decision of the Court of Appeals dated July 27, 1990 as well as its Resolution of August 28, 1990 are hereby REVERSED and set aside; and Civil Case No. 51203 is reinstated only to determine that portion which belongs to petitioners and to annul the sale with regard to said portion.

It was at this point when another series of events transpired, culminating in the present petition.

Upon our reinstatement of Civil Case No. 51203, each and every pleading filed by herein respondents, as

plaintiffs therein, was hotly contested and opposed by therein defendants, including petitioner Valente. Moreover, even at that stage, when the case had been remanded with a directive to "determine that portion which belongs to [herein respondents] and to annul the sale with regard to said portion," Civil Case No. 51203 had to be re-raffled and transferred, for varied reasons, to the different court branches in Pasig City. In between all these, petitioner Valente, along with the other defendants, repeatedly filed a Motion to Dismiss Civil Case No. 51203 for the purported failure of herein respondents to prosecute the case. Most of these Motions to Dismiss were denied.

With each transfer of Civil Case No. 51203, the judge to which the case was raffled had to study the records anew. Expectedly, part of the records went missing and were lost. On April 12, 1993, the Clerk of Court of RTC, Branch 71, to which Civil Case No. 51203 was remanded, filed a report on the records of the case, to wit:

- The first volume of the record in the above-entitled case was recorded as received on June 20, 1990, by Sheriff Alejandro O. Loquinario;
- That the staff of Branch 71 at this time was sharing a small room with Branch 161 at the First Floor of the Justice Hall, and as the Branch was newly formed, it had no equipment or furniture of its own, and was still undermanned;
- That sometime in August 1990, Branch 71 moved to the staffroom of Branch 159 at the Second Floor of the Justice Hall;
- That on October 25, 1990, this Court received a Notice of Judgment dated October 22, 1990 from the Court of Appeals that ruled the dismissal of the above-entitled case, and as per standing instructions of Judge Graduacion A. Reyes-Claravall, the same was bound as volume 2 of the case;
- That just before the Christmas vacation in 1991, the branch was forced to hastily move all of its records and equipment to branch 69, because of the unexpected notice we received that the room we were occupying was to be demolished in order to meet the schedule for the renovation of the building;
- That unfortunately, the room was demolished before the undersigned could make a last check to see if everything was transferred;
- That it was only later on that this office discovered that important documents were indeed lost, including transcripts of stenographic notes in a case that was submitted for decision;
- That sometime in May 1992, the branch moved its Office to its present location;
- That on March 8, 1993, this Court received a copy of a Decision of the Supreme Court reversing the earlier ruling of the Court of Appeals;
- That it was at this time that the first volume of this case, which was bundled along with other cases which were decided and/or archived, was reported as missing;
- That from the time the same was found to be missing, Judge Claravall ordered that a search for the same be made in all of the offices wherein this branch was forced to share a room with, as well as the Court of Appeals, in the event that the same was transmitted to said Court;
- That all the efforts were in vain, as said record could not be located anywhere;
- That the undersigned now concludes that the first volume of the above-entitled case was probably lost during the renovation of the Justice Hall Building, and will have to be reconstituted with the use of documents in the possession of the parties, or documents entered as exhibits in other Courts.[14]

In this regard, herein respondents filed a Motion for Reconstitution of Records[15] of the case. Initially, petitioner Valente, and the other defendants -- Violeta, Virginia and Maria Concepcion -- opposed the motion.[16]

However, the trial court eventually granted the motion for reconstitution, and ordered petitioner Valente and the other defendants to submit a copy of their Answer filed thereat and copies of other pleadings pertinent to the case.[17]

Thereafter, three (3) incidents, among numerous others, set off by the parties' pleadings, are worth mentioning, to wit:

1. A Motion for Leave to File and Admit Supplemental Complaint[18] filed by herein respondents. The Supplemental Complaint additionally prayed that the levy and sale at public auction of the subject properties be annulled and set aside, as the bid price was unconscionable and grossly inadequate to the current value of the subject properties. The Supplemental Complaint further sought a re-bidding with respect to Teofista's share in the subject properties. Finally, it prayed that TCT No. 6509 in the name of petitioner Valente, Violeta, Virginia and Maria Concepcion be cancelled and TCT No. 30680 in the name of Marcelo Suarez, married to Teofista Isagon, be reinstated.

2. A Manifestation and Motion (to Execute/Enforce Decision dated September 4, 1992 of the Supreme Court)[19] filed by herein respondents pointing out that the Supreme Court itself had noted the current increased value of the subject properties and that petitioner Valente, Violeta, Virginia and Maria Concepcion unjustly enriched themselves in appropriating the subject properties worth millions then, for a measly bid price of P94,170.00, for a judgment obligation worth only P70,000.00.

3. An Urgent Motion [to direct compliance by plaintiffs (herein respondents) with Supreme Court Decision or to consider the matter submitted without evidence on the part of plaintiffs][20] filed by therein defendants, including herein petitioner Valente, pointing out that plaintiffs (herein respondents) have yet to comply with the RTC, Branch 67 Order commanding them to submit (to the RTC) any evidence showing settlement of the estate of the deceased Marcelo Suarez, in order for the court to determine the portion in the estate which belongs to Teofista. The Urgent Motion stated in paragraph 2, thus:

2. The defendants [including herein petitioner Valente] did everything possible to expedite the disposition of this case while the plaintiffs [herein respondents] did everything possible to DELAY the disposition of the same obviously because the plaintiffs [herein respondents] are in full possession and enjoyment of the property in dispute. In its decision of September 4, 1992, the SUPREME COURT nullified TWO final and executory DECISIONS of the Court of Appeals in an unprecedented action. In said decision, the Supreme Court ordered the plaintiffs [herein respondents] to establish with evidence their personality as heirs of Marcelo Suarez, and after being able to do so, to adduce evidence that would determine what portion belongs to plaintiffs hence the above matters need be litigated upon before the RTC can "annul the sale with regard to said portion" (belonging to the plaintiffs alleged heirs).

On these incidents, the records reveal the following Orders issued by the different branches of the RTC:

1. Order dated March 17, 1995, issued by Presiding Judge Rodrigo B. Lorenzo of Branch 266, Pasig City, admitting herein respondents' Supplemental Complaint.[21]

2. Order dated January 22, 1996, issued by Judge Apolinario B. Santos resolving: (a) herein respondents' Manifestation and Motion (to execute/enforce Decision dated September 4, 1992 of the Supreme Court), and (b) therein defendants' (including herein petitioner Valente's) Request for Answer to Written Interrogatories.[22] The RTC, Branch 67, resolved the incidents, thus:

From the foregoing uncontroverted facts, this Court is convinced beyond a shadow of doubt that the Decision of the Supreme Court of September 4, 1992, being the final arbiter in any judicial dispute, should be implemented for the following reasons:

x x x x

On the request for Answers to Written Interrogatories filed by the defendants, it is obvious that at this stage of the proceedings where the Supreme Court had already pronounced the undisputed facts, which binds this court, the answer sought to be elicited through written interrogatories, therefore, are entirely irrelevant, aside from having been filed way out of time.

WHEREFORE, premises considered, this court, implements the decision of the Supreme Court dated September 4, 1992 which mandates that:

"xxx and Civil Case No. 51203 is reinstated only to determine that portion which belongs to petitioner and to annul the sale with regard to said portion."

In order to enforce such mandate of the Supreme Court, this court orders that:

- a. The auction sale of the five (5) parcels of land and all prior and subsequent proceedings in relation thereto are declared null and void.
- b. Transfer Certificate of Title No. 6509 in the name of defendant Valente Raymundo is also declared null and void, and the Register of Deeds of Rizal, Pasig City, is ordered to issue a new one in the name of the deceased Marcelo Suarez or to reinstate Transfer Certificate of Title No. 30680 in the name of Marcelo Suarez.
- c. Teofista Suarez is ordered to reimburse the amount of P94,170.00, plus legal interest from the date of issuance of this order, and failing which, the portion of the estate of Marcelo Suarez belonging to the surviving spouse, Teofista Suarez, may be levied on execution.
- d. [Herein respondents], including Teofista Suarez, are hereby ordered to submit to this court any evidence showing settlement of the estate of the deceased, Marcelo Suarez, in order for this court to determine the portion in the estate which belongs to Teofista Suarez.

Therein defendants, including petitioner Valente, filed a Motion for Reconsideration which the trial court denied on May 29, 1996.

3. Order dated September 10, 1996, issued by Judge Santos denying the appeal interposed by petitioner Valente from the January 22, 1996 and May 29, 1996 Orders, ruling that these are interlocutory orders, and, therefore, not appealable.[23]

4. Order dated April 8, 1999, issued by Pairing Judge Santiago Estrella which declared, thus:

Considering that counsel for the plaintiffs does not have the birth certificates of the heirs of the plaintiff to prove their affiliation with the deceased which is one of the matters written in the decision of the higher court which must be complied with, and in order for counsel for the plaintiffs [herein respondents] to have the opportunity to complete all documentary evidence and in view of abbreviating the proceedings and as prayed for, today's scheduled pre-trial is re-set for the last time to May 19, 1999 at 8:30 a.m.

In this connection, counsel for plaintiffs [herein respondents] is advised to secure all the documentary evidence she needs material to this case which will expedite the disposition of this case.[24]

This last Order and therein defendants' Urgent Motion spawned another contentious issue between the parties. In this connection, Judge Estrella issued an Order[25] requiring the parties to file their respective position papers due to the "divergent views on the nature of the hearing that should be conducted in compliance with" our decision in Suarez. Both parties duly filed their position papers, with herein respondents attaching thereto a copy of the Extrajudicial Settlement of Estate executed by the heirs of Marcelo Suarez in 1957.

In resolving this latest crossfire between the parties, the RTC, Branch 67, issued an Order dated January 11, 2000,

which reads, in part:

This Court is of the view that the Honorable Supreme Court is not a trier of facts, precisely it directed that the records of this case be remanded to the Regional Trial Court for further proceedings.

x x x x

It is a matter of record that there was no trial on the merits completed in the Regional Trial Court. xxx The Supreme Court reversed the judgment of the Court of Appeals and ordered the reinstatement of Civil Case No. 51203. Naturally, there was no trial on the merits before this Court that allowed the parties to adduce evidence to establish their respective claims in the plaintiffs' [herein respondents] complaint and in the defendants' [including petitioner Valente] counter-claim, respectively. It is in this context that the Honorable Supreme Court reinstated the "action [of herein respondents] to annul the auction sale to protect their [herein respondents] own interest.

While this Court is of the view that trial on the merits is necessary for the purpose of giving the plaintiffs [herein respondents] a chance to adduce evidence to sustain their complaint and the defendants [including petitioner Valente] to prove their defense, consistent with the directive of the Honorable Supreme Court (in its Decision promulgated on September 4, 1992), the Court is, however, confronted with the very recent decision of the Honorable Supreme Court in "Heirs of Guido Yaptinchay, et al. vs. Del Rosario, et al., G.R. No. 124320, March 2, 1999" where it held that -

The declaration of heirship must be made in an administration proceeding, and not in an independent civil action. This doctrine was reiterated in *Solve vs. Court of Appeals* (182 SCRA 119, 128). 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.

In as much as the leading case on the matter is that of "Heirs of Yaptinchay v. Del Rosario, G.R. No. 124320, March 2, 1999" it is left with no choice but to obey said latter doctrine.

WHEREFORE, the foregoing premises considered, this Court holds that in the light of the doctrine laid down in the case of "Heirs of Yaptinchay vs. Del Rosario, G.R. No. 124320, March 2, 1999" this case is dismissed without prejudice to the plaintiffs' [herein respondents'] filing a special proceeding consistent with said latest ruling.[26]

Herein respondents moved for reconsideration thereof which, however, was denied by the RTC, Branch 67 on March 14, 2000.[27]

Consequently, herein respondents filed a petition for certiorari before the CA alleging grave abuse of discretion in the trial court's order dismissing Civil Case No. 51203 without prejudice. All the defendants in the trial court were impleaded as private respondents in the petition. Yet, curiously, only petitioner Valente filed a Comment thereto. The appellate court granted the petition, recalled and set aside RTC, Branch 67's Orders dated January 11, 2000 and March 14, 2000, and reinstated Judge Santos' Orders dated May 29, 1996 and September 6, 1996. It disposed of the petition, thus:

We agree with [herein respondents].

On September 4, 1992, the Supreme Court (G.R. No. 94918) reversed the decision of the Court of Appeals and mandates that Civil Case No. 51203 be reinstated in order to determine the portion in the estate which belongs to Teofista Suarez. The sale of the parcels of land was declared null and void. Necessarily, the title (TCT No. 5809) in the name of respondents was also declared null and void. xxx

x x x x

Hon. Apolinario Santos of Br. 67, Regional Trial Court, Pasig City, on January 22, 1996 and on motion of [herein respondents], issued an order to execute/enforce the decision of the Supreme Court xxx.

x x x x

[Petitioner Valente, Violeta, Virginia and Maria Concepcion] filed a notice of appeal on the order of Judge Santos. The appeal, on motion of [herein respondents] was denied on September 10, 1996. Obviously, the decision of the Supreme Court had become final and executory. Likewise, both orders of Judge Santos dated May 29, 1996 denying the motion for reconsideration and the denial of the notice of appeal dated September 6, 1996 had also become final and executory.

The denial of petitioner Valente's Motion for Reconsideration prompted the filing of this present petition for certiorari.

Petitioner Valente posits that the appellate court committed grave abuse of discretion in recalling and setting aside the Orders of Judge Estrella and reinstating those of Judge Santos because:

1. The CA ruled that the Orders dated May 29, 1996 and September 6, 1996 issued by Judge Santos were final and executory, and yet the latter did not allow an appeal to be taken therefrom ratiocinating that the questioned orders were interlocutory, and therefore, not appealable; and
2. The CA ignored and violated the Supreme Court's ruling in *Heirs of Yaptinchay v. Del Rosario*[28] which held that a declaration of heirship must be made in a special proceeding and not in a civil action.

We find the petition bereft of merit.

At the outset, we note that petitioner Valente incorrectly filed a petition for certiorari to appeal the CA decision. Petitioner should have filed a petition for review on certiorari under Rule 45 of the Rules of Court. Simply imputing in a petition that the decision sought to be reviewed is tainted with grave abuse of discretion does not magically transform a petition into a special civil action for certiorari. The CA decision disposed of the merits of a special civil action, an original petition, filed thereat by herein respondents. That disposition is a final and executory order, appealable to, and may be questioned before, this Court by persons aggrieved thereby, such as petitioner Valente, via Rule 45.

On this score alone, the petition should have been dismissed outright. However, we have disregarded this procedural flaw and now resolve this case based on the merits or lack thereof.

Petitioner asseverates that the assailed CA ruling "is unfair and it amounts to a trickery to prevent an appeal against a final order by claiming that the appealed order is merely interlocutory and later maintain that the same order has become final after declaring it to be interlocutory."

We reject petitioner's paltry contention. Petitioner apparently does not comprehend the distinction between an interlocutory order which is final and executory, and a final order which disposes of the controversy or case; much less, understand the available remedies therefrom.

We have defined an interlocutory order as referring to something between the commencement and the end of the suit which decides some point or matter but it is not the final decision on the whole controversy.[29] It does not terminate or finally dismiss or finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits.[30] Upon the other hand, a final order is one which leaves to the court nothing more to do to resolve the case.[31]

On more than one occasion, we laid down the test to ascertain whether an order is interlocutory or final i.e., "Does it leave something to be done in the trial court with respect to the merits of the case?" If it does, it is interlocutory; if it does not, it is final. The key test to what is interlocutory is when there is something more to be done on the merits of the case.[32] The Orders dated May 29, 1996 and September 6, 1996 issued by Judge Santos are interlocutory, and therefore, not appealable, as they leave something more to be done on the merits of the case. In fact, in paragraph (d) of Judge Santos' Order dated May 29, 1996, herein respondents were directed to submit evidence showing settlement of the estate of the deceased Marcelo Sr.

Contrary to petitioner Valente's stance, there is no trickery or chicanery in the CA's distinction between an interlocutory and a final order. Indeed, as ruled by the CA, the RTC Order denying petitioner Valente's Notice of Appeal attained finality when he failed to file a petition for certiorari under Rule 65 of the Rules of Court.

We cannot overemphasize the rule that the correct identification of the nature of an assailed order determines the remedies available to an aggrieved party. The old Rules of Court in Section 2, Rule 41 reads, thus:

SEC. 2. Judgments or orders subject to appeal.--Only final judgments or orders shall be subject to appeal. No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other.

x x x x

With the advent of the 1997 Rules of Civil Procedure, Section 1, Rule 41 now provides for the appropriate remedy to be taken from an interlocutory order, thus:

SECTION 1. Subject of appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

x x x

(c) An interlocutory order;

x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Clearly, the denial of therein defendants' (including petitioner Valente's) appeal from the Orders dated May 29, 1996 and September 6, 1996 was in order. Thus, the CA decision affirming the RTC's denial was correct.

Further, on this crucial distinction as applied to this case, petitioner Valente filed a petition for certiorari from the CA decision in CA-G.R. SP No. 58090, which is not an interlocutory order. It is a final order which completely disposed of the merits of the case with nothing more left to be done therein. The correct and available remedy available to petitioner Valente was, as previously discussed, a petition for review on certiorari under Rule 45 of the Rules of Court.

In fine, petitioner Valente erroneously sought relief through reversed remedies. He tried to appeal the interlocutory orders of the RTC which are unappealable. Thus, the RTC properly denied his Notice of Appeal, and the CA correctly upheld the RTC. He should have filed a petition for certiorari; under Rule 65. On the other hand, from the final order of the CA, he comes before this Court on a petition for certiorari under Rule 65, when the proper remedy is an appeal by certiorari under Rule 45.

In the recent case of Jan-Dec Construction Corporation v. Court of Appeals[33] we ruled in this wise:

As a rule, the remedy from a judgment or final order of the CA is appeal via petition for review under Rule 45 of the Rules.

Under Rule 45, decisions, final orders or resolutions of the CA in any case, i.e., regardless of the nature of the action or proceedings involved, may be appealed to the Court by filing a petition for review, which would be but a continuation of the appellate process over the original case. It seeks to correct errors of judgment committed by the court, tribunal, or officer. In contrast, a special civil action for certiorari under Rule 65 is an independent action based on the specific grounds therein provided and proper only if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. It is an extraordinary process for the correction of errors of jurisdiction and cannot be availed of as a substitute for the lost remedy of an ordinary appeal.

Independently of this procedural infirmity, even on the merits of the case, the petition does not fare otherwise. It must be dismissed for lack of merit.

Petitioner Valente insists that, following our ruling in *Heirs of Yaptinchay v. Del Rosario*,^[34] herein respondents must first be declared heirs of Marcelo Sr. before they can file an action to annul the judicial sale of what is, undisputedly, conjugal property of Teofista and Marcelo Sr.

We disagree. Our ruling in *Heirs of Yaptinchay* is not applicable.

Herein respondents' status as legitimate children of Marcelo Sr. and Teofista — and thus, Marcelo Sr.'s heirs — has been firmly established, and confirmed by this Court in *Suarez v. Court of Appeals*.^[35] True, this Court is not a trier of facts,^[36] but as the final arbiter of disputes,^[37] we found and so ruled that herein respondents are children, and heirs of their deceased father, Marcelo Sr. This having been settled, it should no longer have been a litigated issue when we ordered a remand to the lower court. In short, petitioner Valente's, Violeta's, Virginia's, and Maria Concepcion's representation in the RTC that our ruling in *Suarez* required herein respondents to present evidence of their affiliation with the deceased, Marcelo Sr., is wrong.

As was set forth in the dispositive portion of *Suarez*, "Civil Case No. 51203 is reinstated only to determine that portion which belongs to [herein respondents] and to annul the sale with regard to said portion." There is clearly no intimation in our decision for the RTC to have to determine an already settled issue i.e., herein respondents' status as heirs of Marcelo Sr.

Moreover, petitioner Valente cannot assail, directly or indirectly, the status of herein respondents as legitimate children of Marcelo Sr. and Teofista, and likewise demand that herein respondents first prove their filiation to Marcelo Sr. The following records bear out Marcelo, Sr.'s and Teofista's paternity of herein respondents, and the latter's status as legitimate children:

1. The CA decision in CA-G.R. SP Nos. 10646 to 10649 where Teofista, along with herein respondents, questioned the RTC, Branch 151's Orders dated October 10, 1984 and October 14, 1986. Although the CA ruled against Teofista and herein respondents, it explicitly recognized the latter's status as legitimate children of Teofista and Marcelo Sr.; and^[38]
2. The CA decision in CA-G.R. SP No. 20320 which incorrectly ruled that herein respondents were, as children of Teofista, merely successors-in-interest of the latter to the property and by virtue thereof, bound by the judgment in Civil Case Nos. 21376 to 21379 consistent with the doctrine of *res judicata*.^[39] We subsequently reversed this ruling on the wrong application of *res judicata* in the conclusive case of *Suarez*. We retained and affirmed, however, the CA's factual finding of herein respondents' status as heirs of Marcelo Sr. We categorically held therein that "the proprietary interest of [herein respondents] in the levied and auctioned [properties] is different from and adverse to that of [Teofista]. [Herein respondents] became co-owners of the property not because of

[Teofista] but through their own right as children of their deceased father [, Marcelo Sr.]."

Clearly, herein respondents' long possessed status of legitimate children of Marcelo Sr. and Teofista cannot be indirectly or directly attacked by petitioner Valente in an action to annul a judicial sale.

Articles 262,[40] 263,[41] 265 and 266[42] of the Civil Code, the applicable law at the time of Marcelo's death, support the foregoing conclusion, to wit:

Art. 262. The heirs of the husband may impugn the legitimacy of the child only in the following cases:

- (1) If the husband should die before the expiration of the period fixed for bringing his action;
- (2) If the husband should die after the filing of the complaint, without having desisted from the same;
- (3) If the child was born after the death of the husband.

Art. 263. The action to impugn the legitimacy of the child shall be brought within one year from the recording of birth in the Civil Register, if the husband should be in the same place, or in a proper case, any of his heirs.

If he or his heirs are absent, the period shall be eighteen months if they should reside in the Philippines; and two years if abroad. If the birth of the child has been concealed, the term shall be counted from the discovery of the fraud.

Art. 265. The filiation of legitimate children is proved by the record of birth appearing in the Civil Register, or by an authentic document or a final judgment.

Art. 266. In the absence of the titles indicated in the preceding article, the filiation shall be proved by the continuous possession of status of a legitimate child.

In Heirs of Yaptinchay, the complaint for annulment and/or declaration of nullity of certain TCT's was dismissed for failure of the petitioners to demonstrate "any proof or even a semblance of it" that they had been declared the legal heirs of the deceased couple, the spouses Yaptinchay. In stark contrast, the records of this case reveal a document, an Extrajudicial Settlement of Marcelo Sr.'s estate, which explicitly recognizes herein respondents as Marcelo Sr.'s legitimate children and heirs. The same document settles and partitions the estate of Marcelo Sr. specifying Teofista's paraphernal properties, and separates the properties she owns in common with her children, herein respondents. Plainly, there is no need to re-declare herein respondents as heirs of Marcelo Sr., and prolong this case interminably.

Petitioner Valente, along with Violeta, Virginia and Maria Concepcion, became owners of the subject properties only by virtue of an execution sale to recover Teofista's judgment obligation. This judgment obligation is solely Teofista's, and payment therefor cannot be made through an execution sale of properties not absolutely owned by her. These properties were evidently conjugal properties and were, in fact, even titled in the name of Marcelo, Sr. married to Teofista. Thus, upon Marcelo Sr.'s death, by virtue of compulsory succession, Marcelo Sr.'s share in the conjugal partnership was transmitted by operation of law to his compulsory heirs.

Compulsory succession is a distinct kind of succession, albeit not categorized as such in Article 778[43] of the Civil Code. It reserves a portion of the net estate of the decedent in favor of certain heirs, or group of heirs, or combination of heirs, prevailing over all kinds of succession.[44] The portion that is so reserved is the legitime. Article 886 of the Civil Code defines legitime as "that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs." Herein respondents are primary compulsory heirs,[45] excluding secondary compulsory heirs,[46] and preferred over concurring compulsory heirs in the distribution of the decedent's estate.[47]

Even without delving into the Extrajudicial Settlement of Marcelo Sr.'s estate in 1957, it must be stressed that herein respondents' rights to the succession vested from the moment of their father's death.[48] Herein respondents' ownership of the subject properties is no longer inchoate; it became absolute upon Marcelo's death, although their respective shares therein remained pro indiviso. Ineluctably, at the time the subject properties were sold on execution sale to answer for Teofista's judgment obligation, the inclusion of herein respondents' share therein was null and void.

In fine, Teofista's ownership over the subject properties is not absolute. Significantly, petitioner Valente does not even attempt to dispute the conjugal nature of the subject properties. Since Teofista owns only a portion of the subject properties, only that portion could have been, and was actually, levied upon and sold on auction by the provincial sheriff of Rizal. Thus, a separate declaration of heirship by herein respondents is not necessary to annul the judicial sale of their share in the subject properties.

We note the recent case of *Portugal v. Portugal-Beltran*,[49] where we scrutinized our rulings in *Heirs of Yaptinchay* and the cited cases of *Litam v.*

Rivera[50] and *Solivio v. Court of Appeals*,[51] and *Guilas v. CFI Judge of Pampanga*[52] cited in *Solivio*. We ruled thus:

The common doctrine in *Litam*, *Solivio* and *Guilas* in which the adverse parties are putative heirs to the estate of a decedent or parties to the special proceedings for its settlement is that if the special proceedings are pending, or if there are no special proceedings filed but there is, under the circumstances of the case, a need to file one, then the determination of, among other issues, heirship should be raised and settled in said special proceedings. Where special proceedings had been instituted but had been finally closed and terminated, however, or if a putative heirs has lost the right to have himself declared in the special proceedings as co-heir and he can no longer ask for its re-opening, then an ordinary civil action can be filed for his declaration as heir in order to bring about the annulment of the partition or distribution or adjudication of a property or properties belonging to the estate of the deceased.

In the case at bar, respondent, believing rightly or wrongly that she was the sole heir to Portugal's estate, executed on February 15, 1988 the questioned Affidavit of Adjudication under the second sentence of Rule 74, Section of the Revised Rules of Court. Said rule is an exception to the general rule that when a person dies leaving property, it should be judicially administered and the competent court should appoint a qualified administrator, in the order established in Sec. 6, Rule 78 in case the deceased left no will, or in case he did, he failed to name an executor therein.

x x x

It appearing, however, that in the present case the only property of the intestate estate of Portugal is the Caloocan parcel of land, to still subject it, under the circumstances of the case, to a special proceeding which could be long, hence, not expeditious, just to establish the status of petitioners as heirs is not only impractical; it is burdensome to the estate with the costs and expenses of an administration proceedings. And it is superfluous in light of the fact that the parties to the civil case—subject of the present case, could and had already in fact presented evidence before the trial court which assumed jurisdiction over the case upon the issues it defined during pre-trial.

In fine, under the circumstances of the present case, there being no compelling reason to still subject Portugal's estate to administration proceedings since a determination of petitioners' status as heirs could be achieved in the civil case filed by petitioners xxx.[53]

All told, under the circumstances, in addition to the already settled status of herein respondents as heirs of Marcelo Sr., there is no need to dismiss Civil Case No. 51203 and require herein respondents to institute a

separate special proceeding for a declaration of their heirship.

WHEREFORE, premises considered, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 58090 is AFFIRMED. The Orders dated May 29, 1996 and September 6, 1996 issued by Judge Santos are REINSTATED. Costs against the petitioner.

SO ORDERED.

Puno, C.J.[*], Ynares-Santiago, (Chairperson), Austria-Martinez, and Chico-Nazario, JJ., concur.

[*] Additional member in lieu of Associate Justice Ruben T. Reyes, per raffle dated November 19, 2007.

[1] Penned by Associate Justice Mariono M. Umali, with Associate Justices Ruben T. Reyes (now Associate Justice of the Supreme Court) and Rebecca de Guia-Salvador concurring, rollo, pp. 38-44.

[2] Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Remedios Salazar-Fernando and Bienvenido L. Reyes concurring, id. at 47-48.

[3] Dated January 11, and March 14, 2000, penned by pairing Judge Santiago Estrella, id. at 49-55.

[4] Teofista Isagon Suarez is named as a respondent in the title of this case. However, in the list of parties contained in the petition, Teofista is not included as a respondent. Neither was she a party in CA-G.R. SP No. 58090.

[5] Herein respondents filed a Notice of Death and Substitution of Deceased Party plaintiff Danilo Suarez, Records, pp. 267-269.

[6] Elpidio, another offspring of Marcelo and Teofista and brother of herein respondents, is not impleaded as a respondent in this petition. His name does not appear as a plaintiff, petitioner, respondent or defendant, in the exchange of pleadings between the parties for the entirety of this grueling suit.

[7] See note 6.

[8] Annex "A," Plaintiffs' Position Paper, records, pp. 591-602.

[9] Decision of CFI, Pasig, Rizal, Branch 1 in Civil Case Nos. 21376-21379, id. at 629-639.

[10] Dated October 10, 1984 and October 14, 1986.

[11] Records, pp. 163-164.

[12] Id. at 168.

[13] G.R. No. 94918, September 2, 1992, 213 SCRA 397.

[14] Records, pp. 28-29.

[15] Id. at 31-33.

[16] Id. at 52-53.

[17] Id. at 49-50.

[18] Id. at 243-248.

[19] Id. at 368-377.

- [20] Id. at 515-520.
- [21] Id. at 343.
- [22] Id. at 406-410.
- [23] Id. at 477.
- [24] Id. at 524.
- [25] Dated September 9, 1999, id. at 552.
- [26] Records, pp. 603-608.
- [27] Id. at 677.
- [28] G.R. No. 124320, March 2, 1999, 304 SCRA 18.
- [29] Bitong v. Court of Appeals, G.R. No. 123553, July 13, 1998, 292 SCRA 503.
- [30] Philgreen Trading Construction Corporation v. Court of Appeals, G.R. No. 120408, April 18, 1997, 271 SCRA 719.
- [31] Metropolitan Bank & Trust Company v. Court of Appeals, G.R. No. 110147, April 17, 2001, 356 SCRA 563.
- [32] Gavina Maglucot-Aw, et al., v. Leopoldo Maglucot, et al., G.R. No. 132518, March 28, 2000, 329 SCRA 78.
- [33] G.R. No. 146818, February 6, 2006, 481 SCRA 556.
- [34] Supra note 28.
- [35] Supra note 13.
- [36] Nicolas v. Desierto, G.R. No. 154668, December 16, 2004, 447 SCRA 154.
- [37] Angara v. Electoral Commission, 63 Phil. 139 (1936).
- [38] RTC Records, pp. 162-164.
- [39] Id. at 165-168.
- [40] Now Article 171 of the Family Code.
- [41] Now Article 170 of the Family Code.
- [42] Articles 265 and 266 of the Civil Code are now Article 172 of the Family Code.
- [43] Art. 778. Succession may be:
- (1) Testamentary;
 - (2) Legal or intestate; or
 - (3) Mixed.
- [44] Balane, Jottings and Jurisprudence in Civil Law (2002), p. 278.
- [45] See Art. 887, paragraph 1 of the Civil Code: The following are compulsory heirs:
- (1) Legitimate children and descendants, with respect to their legitimate parents and ascendants.

[46] Id., paragraph 2: (2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants.

[47] The legitime of the legitimate children/descendants of the decedent shall be satisfied first before that of the surviving spouse. The legitime of the surviving spouse, in the maximum portion allotted by law, never exceeds the share of a legitimate child when there is more than 1 legitimate child to inherit. In case the compulsory heirs are only 1 legitimate child and 1 surviving spouse, the share of the latter is only $\frac{1}{4}$ of the estate of the decedent.

[48] See Article 777 of the Civil Code: The rights to the succession are transmitted from the moment of the death of the decedent.

[49] G.R. No. 155555, August 16, 2005, 467 SCRA 184.

[50] 100 Phil. 364 (1956).

[51] G.R. No. 83484, February 12, 1990, 182 SCRA 119.

[52] G.R. L-26695, January 31, 1972, 43 SCRA 111.

[53] Supra note 49, 198-200.

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