

RICHARD V. FUNK, PETITIONER, VS. SANTOS VENTURA HOCORMA FOUNDATION, INC., FEDERICO O. ESCALER, JOSE M. ZARAGOZA, DOMINGO L. MAPA, ERNESTO C. PEREZ AND ARISTON ESTRADA, SR., RESP...

G.R. No. 212346. July 07, 2016

Ponente: BRION, J.

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BRION, J.:

Before the Court is a petition for review on certiorari[1] filed by Atty. Richard V. Funk (Atty. Funk) to challenge the November 5, 2013 decision[2] and the April 29, 2014 resolution [3] of the Court of Appeals (CA) in CA-G.R. CV No. 97527.

The CA denied Atty. Funk's appeal from the order of the Regional Trial Court (RTC), Branch 66, Makati City, denying his second motion for execution.[4]

ANTECEDENTS

In 1983, Atty. Funk represented Teodoro Santos (Santos) in a collection case against Philbank Corporation and in a transfer of properties to respondent Santos Ventura Hocorma Foundation, Inc. (the Foundation). The agreed attorney's fees were 25% and 10% of the market value of the properties.[5]

Teodoro Santos executed a special power of attorney (SPA) to authorize Atty. Funk to collect his fees from the Foundation.[6] The Foundation failed to fully pay the attorney's fees despite demand. Atty. Funk thus filed the case for the collection of his attorney's fees with the RTC.[7]

On February 14, 1994, the RTC ordered the Foundation to pay Atty. Funk attorney's fees in the amount of P150,000.00 for the collection case and P500,000.00 for the transfer of properties. On Atty. Funk's motion for reconsideration, the RTC increased the attorney's fees to P918,919.50. The RTC also declared Atty. Funk co-owner of 10% of the properties whose market values were not established in court.[8]

On appeal, the CA affirmed the RTC decision but held that Atty. Funk had no right of co-ownership over the properties. The Foundation appealed to this Court in a case docketed as G.R. No. 131260 (mother case).[9]

On December 6, 2006, we denied the Foundation's appeal and held that the issues it raised (whether the Foundation's Board of Trustees approved the SPA and whether the attorney's fees were reasonable) were questions of fact which we cannot review.[10] We thus denied the Foundation's appeal and thereby effectively sustained the findings of the RTC and the CA.

Under these findings, the minutes of the Foundation's board meetings indicated that: (1) the SPA executed by Santos, when presented to the Board of Trustees on December 13, 1983, was unanimously confirmed, acknowledged, and approved; and (2) the Foundation even undertook to implement the retainer agreements

between Atty. Funk and Santos.[11]

Our decision in the mother case became final and executory.[12] Atty. Funk then filed a partial motion for execution (the first motion for execution) with the RTC.[13] During the hearing on the motion, the Foundation paid the attorney's fees in the total amount of P1,450,501.02.[14]

The Foundation, however, remitted P167,735.48 to the Bureau of Internal Revenue (BIR) as withholding taxes. It likewise withheld the bill of costs (filing fees, commissioner's fee, stenographer's fee, and other court fees) in the total amount of P20,281.00.[15]

In an order dated February 16, 2009, the RTC upheld the remittance of the withholding of taxes, and denied the inclusion of the bill of costs because of Atty. Funk's supposed failure to comply with Section 8, Rule 142 of the Rules of Court.[16]

Interpreting the February 16, 2009 RTC order as a command to directly elevate his case to this Court, Atty. Funk filed with the Second Division an urgent motion for the Clerk of Court to include costs in the execution.[17]

On March 30, 2009, we denied the urgent motion and resolved to expunge it from the record because "the [mother case had] been decided on 06 December 2006 and entry of judgment [had] been made on 14 June 2007 x x x"[18] Atty. Funk moved but failed to obtain a reconsideration of our March 30, 2009 Resolution. [19]

Atty. Funk went back to the RTC and filed an urgent motion for execution of costs (the second motion for execution). The respondents opposed the motion. They argued that the February 16, 2009 RTC order denying the bill of costs and affirming the withholding of taxes had become final since Atty. Funk did not move for its reconsideration nor file an appeal.[20]

THE RTC RULING

On October 23, 2009, the RTC denied Atty. Funk's second motion for execution, stating among others that:

Anent the amount withheld by the [respondents] and remitted to the [BIR], the same has been sustained by the BIR itself in its Opinion (dated September 10, 2008) issued per [Atty. Funk's] request. Having obtained an unfavorable ruling, [he] cannot turn [his] back on the same for in doing so, [he] not only defies the said ruling but contradicts [himself] in the process. Thusly, [the respondents] are under no obligation to remit to [Atty. Funk] the Php 167,735.48 they withheld from the amount owing to [the latter] and remitted to the BIR as this act was upheld by the BIR x x x.

WHEREFORE, premises considered and for lack of merit, the instant Motion for Execution for Costs in the amount of Php 20,281.00 (covering the bill of costs) and Php 167,735.48 (covering the tax withheld and remitted to the BIR) are [sic] denied.

SO ORDERED.[21]

Atty. Funk moved but failed to secure a reconsideration of the RTC order. Hence, he appealed to the CA.[22]

THE CA RULING

The CA upheld the denial of the second motion for execution and agreed with the RTC that: (1) the February 16, 2009 RTC order denying the inclusion of the bill of costs had become final for Atty. Funk's failure to move for reconsideration or to appeal; (2) in any case, Atty. Funk did not comply with Section 8, Rule 142 of the Rules of Court, i.e., the need to move for the execution of the costs of suit after [sic] five days from the date the judgment had become final and executory; and (3) the BIR's opinion that the Foundation properly withheld P167,735.48 as taxes, is binding on Atty. Funk.[23]

The CA denied Atty. Funk's motion for reconsideration; thus, the present petition. [24]

THE PETITION

Atty. Funk posits in his petition that:

First, the CA erred in applying Section 8, Rule 142 of the Rules of Court.[25]

Citing the 1960 case of *Romulo v. Desalla*,[26] Atty. Funk points out that the finality of the decision where costs were granted does not bar the execution of the costs "for the payment of [costs], the law prescribes that certain steps be first taken, such as the assessment by the clerk of court, and the appeal, if any, from that assessment to the court, and unless these steps are taken, the judgment as to costs cannot be executed." [28]

He contends that there is no basis in the RTC and CA's holding that the "costs of suits should be filed after five days when the decision becomes final and executory" and that the Rule only states that "[i]n superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party." [29]

Second , contrary to the CA ruling, the motions for execution were filed on time.[30] Section 6, Rule 39 of the Rules of Court provides that a final and executory judgment or order may be executed on motion within five years from the date of its entry.

Atty. Funk explains that the entry of judgment in the mother case was made on June 14, 2007, and that he filed the first motion for execution on August 31, 2007, and the second motion for execution in October 2009.[31] Clearly, both motions were filed within the five-year period.

Third, the BIR's opinion that the Foundation properly withheld and remitted the taxes on the attorney's fees is not binding on the courts.[32]

Atty. Funk posits that his fees should not have been subjected to withholding taxes. Rather, the sum withheld should have been included in his gross income for taxable year 2008. Only after deductions of expenses should the resulting net income, if any, be taxed.[33] Atty. Funk also criticizes the CA and the RTC's reliance on the BIR opinion without examining its correctness.[34]

Atty. Funk thus prays that we order the RTC to direct the respondents to pay the costs of suit and refund the amount remitted to the BIR.[35]

THE RESPONDENTS' COMMENT

The respondents counter that the denial of the bill of costs is correct as Atty. Funk failed to comply with Section 8, Rule 142 of the Rules of Court, i.e., he failed to raise the issue of the bill of costs in a timely manner. They insist that the February 16, 2009 RTC order had become final because of Atty. Funk's failure to move for its reconsideration or to appeal.[36]

The respondents further contend that Atty. Funk is estopped from questioning the BIR opinion as it was he who sought its issuance. It was only after the BIR opined against his interests did he question the opinion's correctness. In any case, the opinion of the BIR - the agency that has the expertise on taxation — is entitled to great respect.[37]

ISSUES

The present petition brings to the fore two issues: (1) whether the costs of suit can still be executed; and (2) whether Atty. Funk can recover the amount withheld as taxes.

OUR RULING

We deny the petition.

The Execution of the Costs of Suit

To resolve the first issue, we examine the effects of the February 16, 2009 RTC order that denied the first motion for execution.

The respondents point out and Atty. Funk does not dispute that he did not move for reconsideration or appeal the February 16, 2009 RTC order. Still, he argues that the order did not become final because the costs of suit may be executed under Section 6, Rule 39 of the Rules of Court. He also cites *Romulo*, which purportedly held that costs may be executed despite the finality of the judgment that awarded the costs. He insists that he could, as he did, file with the RTC the second motion for execution.

The Denial of the First Motion for Execution

The RTC held that Atty. Funk failed to comply with Section 8, Rule 142 of the Rules of Court, which states:

Section 8. Costs, how taxed. — In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment. In superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution. [38] [emphasis ours]

The RTC ruled that Atty. Funk should have given written notice to the respondents five days after the decision became final and executory. Although the RTC used the word *after*, what it meant was that Atty. Funk should have given the written notice within five days from the date the judgment became final and executory, i.e., date of its entry.[39] Hence, the RTC denied the first motion for execution filed on August 31, 2007, or more than two months from the date of entry - June 14, 2007 - of our judgment in the mother case. The CA affirmed the RTC ruling in toto.

The RTC and the CA incorrectly applied Section 8 of Rule 142.

To execute the costs of suit in superior courts (i.e., courts other than the first level courts), Section 8 of Rule 142 does not require the prevailing party to notify the adverse party within five days from the entry of judgment. What Section 8 mandates is that the adverse party must be given at least five days written notice before costs may be taxed or assessed. The obvious purpose of the notice is to give opportunity to the adverse party to object to the costs. The clerk of court will thereafter tax or assess the costs, which assessment may be appealed by either party to the court where execution is sought.

Further, the last sentence of Section 8 of Rule 142 contemplates a scenario where costs may be taxed or assessed even, before the entry of judgment. This possibility contradicts the RTC and CA's conclusion that notice must be given within five days from the date of entry of judgment.

In reality, to require the prevailing party to move for the execution of costs within five days from the date of entry would render nugatory the prescriptive periods for execution of judgments under Section 6 of Rule 39 of the Rules of Court. We elaborate on the significance of these periods vis-a-vis the execution of costs in our discussion below.

The Denial of the Second Motion for Execution

That the RTC and the CA erroneously denied the first motion for execution does not mean that the denial of the second motion for execution was also incorrect. We sustain the denial of the second motion for execution on the following grounds:

First, the February 16, 2009 RTC order was a final order. Atty. Funk's failure to timely contest the order resulted in its immutability,

Under Section 6, Rule 39 of the Rules of Court, a final and executory judgment or order may be executed on motion within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.[40]

Thus, under the rules, there are two modes by which a judgment may be executed: first, on motion if made within five years from the date of entry of the judgment sought to be executed; and second, by an independent action to revive the judgment within the statute of limitations, which is ten years from the date of entry.[41]

Atty. Funk availed of the first mode. However, the February 16, 2009 RTC order denying his first motion for execution was a final order. His failure to move for reconsideration or appeal resulted in the order's finality or immutability.

A final order is one that disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.[42] The February 16, 2009 RTC order completely disposed of the issues of the execution of costs and withholding of taxes.

To recall, the respondents had paid the attorney's fees in the total amount of P1,450,501.02.[43] The only issues left unresolved were the propriety of the execution of the costs of suit and the withholding of taxes. In its February 16, 2009 order, the RTC ruled that: (1) Atty. Funk could not move for the execution of the costs of suit because he failed to comply with Section 8 of Rule 142; and (2) the BIR opinion was binding on Atty. Funk.

In this way, the RFC resolved all pending matters when it denied the first motion for execution. Atty. Funk's remedy was either to move for reconsideration or appeal the February 16, 2009 RTC order.

Section 1, Rule 41 of the Rules of Court provides:

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, [emphasis ours]

We stress that the present case does not involve a litigant who filed a late motion for reconsideration or appeal. Glaringly, Atty. Funk did not appeal or move for reconsideration. Having failed to contest the February 16, 2009 RTC order, Atty. Funk cannot now question its correctness.

On this note, we remind Atty. Funk that no procedural rule is more settled than the courts' strict adherence to the fundamental principle that a decision or an order that has acquired finality becomes immutable and unalterable. A definitive final judgment or final order, however erroneous, is no longer subject to change or revision. The principle of immutability of judgments is the cornerstone of our justice system; without this iron rule, litigations will not end.[44] Indeed, the application of this principle is of utmost necessity both for the parties as well as for the courts.[45]

While the rule on immutability of judgments admits of exceptions, namely: (1) the correction of clerical errors; (2) the *nunc pro tunc* entries that cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable,[46] none

of these exceptions are present in the present case.

Further, Atty. Funk committed another procedural error when he directly elevated his case to this Court by moving for execution with the Second Division. Not only did his failure to move for reconsideration (with the RTC) or appeal (to the CA) result in the finality of the February 16, 2009 order; he also bypassed the hierarchy of courts.

Second, Section 6, Rule 39 of the Rules of Court bars a second or subsequent motion for execution that raise the same issues or the same items in the judgment sought to be executed.

Section 6 of Rule 39 provides:

Section. 6. Execution by motion or by independent action. —A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations. [emphasis and italics ours]

To be clear, Section 6 of Rule 39 does not prohibit a second motion for execution. We recognize that there may be instances where the prevailing party can validly or reasonably file a second or subsequent motion for execution.

For example, the losing party in a damages suit may partially question the money judgment against him. While he might agree with the award of actual damages, he may refuse to pay the unrealized income claimed by the prevailing party. Thus, he will appeal the award of unrealized income and let the award of actual damages become final and executory (assuming he does not pay the amount of actual damages outright). In such case, the prevailing party can already move for the execution of the actual damages within five years from the finality of the judgment on actual damages while the award of unrealized income is on appeal.

If the award of unrealized income is later affirmed by the appellate court and the ruling becomes final and executory, the prevailing party can file another motion for execution, this time to implement the award of unrealized income within five years from the finality of the ruling on unrealized income.

However, the filing of a subsequent motion for execution cannot be allowed if the denial of the first motion for execution had become final, and the subsequent motion for execution raises the same issues or items already passed upon. By items, we mean the particular, separable, and identifiable portions of the judgment.

The concept of bar by prior judgment as enunciated in Section 47 (b) of Rule 39 of the Rules of Court^[47] applies. Bar by prior judgment means that when a right or fact had already been judicially tried on the merits and determined by a court of competent jurisdiction, the final judgment or order shall be conclusive upon the parties and those in privity with them and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action.^[48]

The requisites for res judicata under the concept of bar by prior judgment are:

- (1) The former judgment or order must be final;
- (2) It must be a judgment on the merits;
- (3) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and
- (4) There must be between the first and second actions, identity of parties, subject matter, and cause of action.^[49]

The denial of the first motion for execution bars the second motion for execution because all the requisites of bar

by prior judgment are present, namely:

- The February 16, 2009 order became final because Atty. Funk did not move for reconsideration or appeal;
- The February 16, 2009 order was a judgment on the merits because the RTC definitively held: (a) that Atty. Funk was not entitled to the execution of the costs of suit because of his failure to comply with the Section 8, Rule 142 of the Rules of Court; and (b) that the BIR opinion was binding to him;
- The RTC had the jurisdiction to resolve the first motion for execution because it was the court of origin;^[50] and
- The first and second motions for execution involved the same parties (Atty. Funk and the respondents), subject matter (the costs of suit and withholding of taxes), and cause of action (the execution of the costs of suit and taxes allegedly wrongly withheld).

Third, the case of Romulo is not applicable to the present case.

Atty. Funk invokes a line in Romulo stating that "even if the decision wherein costs were granted, had already become final, that does not hold true for the costs x x x"^[51] From this isolated reading of the decision, he concludes that the costs of suit may be executed anytime within the periods provided under Section 6 of Rule 39.

Atty. Funk's contention is inaccurate as he takes our holding in Romulo out of context.

We made the above observation because the clerk of court in that case issued the writ of execution, which included the costs of suit, without assessing whether the bill of costs was accurate. The adverse party was likewise not given the opportunity to contest the bill of costs. Thus, we nullified the writ of execution.^[52]

We held that even if the decision wherein costs were granted had already become final, that does not hold true for the costs because it would be unfair for the losing party to shoulder the costs that were not checked for accuracy by the clerk of court. This was the context of the line invoked by Atty. Funk. We did not rule that the costs of suit may, in all instances, be executed anytime within the periods under Section 6 of Rule 39.

Action to Revive Judgment

For the sake of judicial economy, we resolve a question that, although not raised by the parties, will inevitably result from our discussions above: May Atty. Funk still file an independent action (second mode) to execute the costs of suit and taxes withheld?

We answer in the negative.

An action for revival judgment is a procedural means of securing the execution of a previous judgment which has become dormant after the passage of five years without it being executed upon motion of the prevailing party. ^[53] After the lapse of the five-year period, the judgment is reduced to a mere right of action, which judgment must be enforced, as all other ordinary actions, by the institution of a complaint in the regular form. Such action must be filed within ten (10) years from the date the judgment has become final. ^[54]

In concrete terms, the prevailing party, who for some reason or another, failed to move for execution within five years from the date of entry of the judgment, can file an action to have the judgment revived. The rule allowing the filing of an action within ten years from the date of entry merely gives substance to the Civil Code provisions on the prescription of an action upon a judgment.^[55]

While Section 6 of Rule 39 does not expressly state that the two modes of execution are mutually exclusive, it is not difficult to discern why no action upon a judgment can be filed once the prevailing party had availed of the first mode of execution. For the same reason that a second motion for execution raising the same issues or items is

barred by the denial of the first motion for execution, so is an independent action raising the same issues or items is barred. The bar by prior judgment principle would equally apply.

To be more specific, an independent action to execute the costs of suit and the taxes withheld would be the same as the first motion for execution that had raised these issues. Since the denial of the first motion for execution has become final and immutable, Atty. Funk is barred from filing an independent action raising exactly the same issues.

The Withholding of Taxes

We emphasize that the RTC squarely ruled on the issue of withholding of taxes in its February 16, 2009 order. Since the order had become final and immutable, it follows that the ruling on withholding of taxes has likewise become final and immutable.

Finally, we note that the sum withheld has been remitted to the BIR. The money is already in the hands of the Government. The Court would bypass established rules of procedure on refund of taxes under the National Internal Revenue Code if we declare outright that Atty. Funk is entitled to a refund. 56

WHEREFORE, premises considered, we DENY the petition and thereby AFFIRM the November 5, 2013 decision and the April 29, 2014 resolution of the Court of Appeals in CA- G.R. CV No. 97527.

SO ORDERED.

Carpio, J., Chairperson, Del Castillo, and Leonen, JJ., concur.
Mendoza, J., on official leave.

[1] Rollo, pp. 3-30. The petition is filed under Rule 45 of the Rules of Court.

[2] Id. at 33-44. Associate Justice Stephen C. Cruz penned the assailed decision and resolution with the concurrence of Associate Justice Ramon M. Bato, Jr. and Associate Justice Myra V. Garcia-Fernandez (Special Eleventh Division).

[3] Id. at 46-47.

[4] RTC Civil Case 89-5622.

[5] Rollo, pp. 33-34, see footnote 3 of the Court of Appeals' November 5, 2013 decision.

[6] Santos Ventura Hocorma Foundation, Inc. v. Richard V. Funk, 539 Phil. 125,127 (2006). The facts revealed that Teodoro Santos hired Atty. Funk to "protect his other assets because he was afraid that his properties might be the subject of attachments, garnishments and executions should there be future litigations." But it was not clear why the Foundation was established, or how Teodoro Santos was related to the Foundation. The Foundation may have been set up to hold Teodoro Santos's assets for estate planning purposes. In any case, the Board of Trustees' confirmation of the SPA rendered discussion on this matter superfluous.

[7] Rollo, p. 34.

[8] Id.

[9] Supra note 6.

[10] Id. at 129.

[11] Id. at 130.

[12] Rollo, p. 42, see footnote 24 of the CA decision.

[13] Dated August 31, 2007. Id. at 34.

[14] Id. The RTC heard the motion on June 18, 2008. The payments were made with manager's check amounting to P912,831.57, another check in the amount of P37,669.45, plus P500,000.00. The amount of the checks represented Atty. Funk's share in the market value of the properties. It is unclear under the facts whether the P500,000.00 was paid in cash.

[15] Id. at 34-35. The bill of costs is itemized as follows: filing fees -P7,676.00; commissioner's fee - P5,000.00; stenographer's fee -P3,000.00; costs in the RTC, CA and SC -P4,605.00.

[16] Section 8, Rule 142 of the RULES OF COURT, provides:

Section 8. Costs, how taxed. - In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment. In superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution.

[17] Rollo, p. 35.

[18] Id. at 35-36.

[19] Id. at 36.

[20] Id.

[21] Id.

[22] Id. at 37.

[23] Id. at 40-44.

[24] Id. at 45-47.

[25] Id. at 13-16.

[26] 108 Phil. 346(1960).

[28] Id. at 350.

[29] Rollo, pp. 15-16.

[30] Id. at 17-18.

[31] Id. at 18. The records do not show the exact date when Atty. Funk filed the second motion for execution. We note, however, that the RTC resolved to deny the motion on October 23 2009.

[32] Id. at 23-29.

[33] Id. at 23-24. Atty. Funk's arguments on this point are paraphrased for brevity and clarity.

[34] Id. at 25-29.

[35] Id. at 29.

[36] Id. at 52-55.

[37] id. at 55-56.

[38] Id. at 35.

[39] Id. at 42. See footnote 24 of the CA decision.

[40] Section 6, Rule 39 of the RULES OF COURT.

[41] Article 1144 of the Civil Code provides, among others, that an action upon a judgment must be brought within ten years from the time the right of action accrues. Under 1152 of the Civil Code, the period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final, which under Section 2 of Rule 36 of the Rules of Court, is the date of its entry.

[42] Republic v. Heirs of Oribello, Jr., 705 Phil. 614, 624 (2013), citing RCBC v. Magwin Marketing Corp., 450 Phil. 720, 737 (2003).

[43] Supra note 14.

[44] Apo Fruits Corporation v. Court of Appeals, 622 Phil. 215, 230-231 (2009).

[45] Id.

[46] Id.

[47] Supapo v. Spouses de Jesus, G.R. No. 198356, April 20, 2015, Res judicata has two concepts: (1) bar by prior judgment as enunciated in Rule 39, Section 47 (b) of the Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Section 47 (c);

Section 47 (b) of the Rules of Court provides:

SEC. 47. Effect of judgments or final orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

xxxx

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity.

xxxx

[48] Id., citing Rizal Commercial Banking Corporation v. Royal Cargo Corporation, 617 Phil. 764, 774 (2009).

[49] Id.

[50] Section 1, Rule 39, RULES OF COURT.

[51] Supra note 25, at 350.

[52] Id. at 351.

[53] Saligumba v. Palonog, 593 Phil. 420, 426 (2008), citing Panotes v. City Townhouse Development

Corporation, G.R. No. 154739. 23 January 2007, 512 SCRA 269; Filipinas Investment and Finance Corporation v. Intermediate Appellate Court, G.R. Nos. 66059-60, 4 December 1989, 179 SCRA 728; Azotes v. Blanco, 85 Phil. 90 (1949).

[54] Terry v. People, 373 Phil. 444. 450 (1999)

[55] Supra note 39.

[56] Section 229 of the National Internal Revenue Code states:

Section. 229. Recovery of Tax Erroneously or Illegally Collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax. penalty, or sum has been paid under protest or duress

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax. where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

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